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Tuesday
June 8, 1999

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Rules and Regulations

Federal Register
Vol. 64, No. 109
Tuesday, June 8, 1999

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–48–AD; Amendment 39–11187; AD 99–12–03]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series turbofan engines, that requires revisions to the engine manufacturer's Time Limits Section (TLS) of the JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR Turbofan Engines Manual to include enhanced inspection of selected critical life-limited parts at each piece-part exposure. This amendment will also require an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures. This amendment is prompted by a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts that indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions that if allowed to continue in service, could result in uncontained failures. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective July 8, 1999.

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

SUPPLEMENTARY INFORMATION: A proposal to amend pat 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) PW JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series turbofan engines was published in the **Federal Register** on July 28, 1998 (64 FR 40226). That action proposed to require, within the next 30 days after the effective date of this AD, revisions to the Time Limits Section (TLS) of the JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR Turbofan Engines Manual, and, for air carriers, the approved continuous airworthiness maintenance program. The manufacturer of JT8D series turbofan engines has provided the Federal Aviation Administration (FAA) with a detailed proposal that identifies and prioritizes the critical life-limited rotating engine parts with the highest potential to hazard the airplane in the event of failure, along with instructions for enhanced, focused inspection methods. The enhanced inspections resulting from this AD will be conducted at piece-part opportunity, as defined in this AD, rather than specific inspection intervals.

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

One commenter supports the measures outlined in the proposed rule.

Several commenters ask that the FAA clarify the record keeping aspects of the mandatory inspections resulting from the required changes to the Original Equipment Manufacturer's manual and operator's continuous airworthiness maintenance program. Two commenters believe that paragraph (e) of the proposed rule is unclear and suggests that certain preamble language be added to it for clarity and that it be revised by eliminating the word ''or'' from the first sentence and beginning a second sentence with ''In lieu of the record. * * *'' Two commenters state that the AD should be revised to clearly specify which types of maintenance records must be retained (i.e., inspection results, defect reporting requirements, date of performed maintenance, signature of the person performing the maintenance). These commenters believe that these revisions are necessary in order to avoid potential differences in interpretation between the air carriers and the FAA. And, one commenter states that the AD should clarify that there is no need for a special form to comply with the AD record keeping requirements. The FAA concurs in part. Generally, record keeping requirements are addressed in other regulations and this AD does not change those requirements. In order to allow flexibility from operator to operator, the FAA does not concur that the AD itself specify the precise nature of the records that will result from the required changes to the manufacturer's manual and operator's maintenance program. The FAA has, however, revised Paragraph (e) of this AD to clarify record keeping aspects of the new mandatory inspections.

Several commenters suggested that the tables used to specify those parts requiring mandatory inspections be given standardized formats and that the parts be identified by ''all'' rather than by specific part number. The FAA does not concur. The FAA intentionally allowed each manufacturer to choose a format that fits their products manual. Identification of parts requiring mandatory inspections has been accomplished by either part number identification or use of the word ''all''. Part number identification was chosen by some manufacturers since the processes and procedures needed to conduct new inspections were not yet developed for all parts of a certain type, i.e., fan disks/hubs. The FAA wants the manufacturers to have flexibility in managing how their manuals are structured within Air Transport Association code requirement.

One commenter requests that the FAA link the conduct of mandatory inspections on whether the subject part was removed from an engine while the engine was installed on the airplane or while the engine was removed and in an overhaul shop. The commenter wishes to exempt those parts that are removed from installed engines from the focused inspections. The FAA does not concur. The mandatory inspections are based on a single trigger. The trigger is a part being completely disassembled using the engine manual instructions (piece-part opportunity), and is not dependent on whether an engine is installed on the airplane. This final rule mandates that the definition of piece-part opportunity appears in the mandatory section of each affected engine manual. This final rule further mandates that an operator's continuous airworthiness maintenance program be modified to capture those engine manual changes.

Several commenters suggest that the 100 cycle in service inspection waiver provided in the piece-part opportunity definition was too low and could not be justified from a crack growth standpoint or that language be added to the requirements adding a minimum cycles in service threshold after which mandatory inspections would be applicable. The FAA does not concur. The 100 cycle waiver is intended to allow short term alleviation from mandatory inspections for a part recently inspected in accordance with the engine manual requirements. It was specifically aimed at disassembled parts removed from an engine following a test cell reject or some other occurrence that caused the parts removal shortly after successful completion of mandatory inspections. Waiver of mandatory inspections in this instance also requires that the part was not damaged or related to the cause for its removal from the engine. Mandatory inspections are also required on fully disassembled parts regardless of time-since-new (TSN). The FAA is aware that cracks can be missed during part inspections and that each time a part is processed through an inspection line, the probability of detecting a crack is increased. Commonly used on-condition maintenance plans make it likely that a given part could be returned to service for thousands of cycles without the need for additional focused inspection. Recognizing two opposing aspects of part removal and inspection, i.e., a need for a brief exemption period following conduct of mandatory inspections and the benefits of increased frequency of inspection, the FAA established the 100 cycle threshold. No consideration for crack growth time was given in the choice of this number nor was TSN considered as a possible reason for exempting parts from focused inspection. It is based strictly on keeping the frequency of mandatory inspection as high as practical and therefore increasing the probability of crack detection while providing a brief window of exemption from mandatory inspection if certain conditions are met. Therefore, the 100 cycle limit will remain in the compliance section of the AD and no exemption will be allowed for low TSN parts.

One commenter states that the mandatory manual chapters were modified to require new inspection requirements prior to issuance of the final rule AD and that the FAA should provide written notification to Flight Standards Offices that the inspections proposed in the proposed rule are not mandatory until the establishment of an effectivity date in a published final rule AD. Some confusion between Operators, Manufacturers and Principal Maintenance Inspectors was created when the mandatory manual sections were modified prior to the release of a final rule AD. The FAA concurs in part. The manuals were modified prior to issuance of the final rule to minimize implementation delays from lengthy original equipment manufacturer EM revision cycles. FAA will attempt a higher level of coordination of timing the manual revisions so that the revisions follow final rule ADs in the future. Such a notice, however, is beyond the scope of this AD and may well cause additional confusion rather than clarify the present situation.

One commenter states that the proposed rule should be revised to allow use of Foerster Defectometer eddy current instrument for Insp–02, as it is currently approved for use in Insp–03. 72–33–31 Insp–02 currently only requires that a certain probe and sensitivity standard be used to accomplish the inspection. The eddy current instrument to be used for 72–33–31 Insp–02 is specified in the PW Standard Practices manual, 70–37–02. The requirement for the Eddy Current signal instrument is that it be equivalent in performance to a Foerster Defectometer Model H 2.835. An eddy current signal instrument needs to be deemed equivalent to the Defectometer Model H 2.835 in order to be acceptable for 72–33–31 Insp–02. Therefore no changes are necessary to the AD.

One commenter states that AD 95–10–10 compliance requirements relative to the JT8D Engine Manual, P/N 481672, 72–33–31 Insp-03, as specified in the proposed rule should be clarified. The FAA does not concur that a change needs to be made to the AD, but offers the following explanation for clarification purposes. AD 95–10–10 is applicable to certain serial number fan hubs installed on JT8D engines. While the inspections required are similar to this AD, 95–10–10 also contains other overhaul requirements and very specific inspection intervals. This AD is intended to inspect all JT8D first and second stage compressor disks at every piece-part opportunity. The requirements of both ADs must be met regardless of the overlapping requirements.

One commenter states that ''XX'' in the inspection column of the Table in the Compliance Section under paragraph B needs clarification. The FAA concurs. At the time the proposed rule was published Insp-04 was not available. Chapter 5 of the Engine Manual was revised August 1, 1998, to include Insp-04. Inspection –XX has been changed to inspection number –04 for first stage compressor disks.

One commenter states that stage 2 compressor disks in the Table should be repositioned for clarity and Insp-02 should be included. The FAA concurs. Inspection number –XX has been replaced with inspection number –02 for second stage compressor disks.

One commenter states that the reference to Chapter 05–11–00 in Note 3 of the Compliance Section is incorrect. The FAA concurs. This final rule has been revised to reference Chapter 05–10–00.

No comments were received on the economic analysis contained in the proposed rule. Based on that analysis, the FAA has determined that the annual per engine cost of $420 does not create a significant economic impact on small entities.

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

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

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

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–12–03 Pratt & Whitney: Amendment 39–11187, Docket 98–ANE–48–AD.

Applicability: Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series turbofan engines, installed on but not limited to Boeing 727 and 737 series and McDonnell Douglas DC–9 series airplanes.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, revise the Time Limits Section (TLS) of the Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR Turbofan Engines Engine Manual (EM), part number 481672, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

“5. Critical Life Limited Part Inspection

A. Inspection Requirements:

(1) This section has the definitions for individual engine piece parts and the inspection procedures which are necessary when these parts are removed from the engine.

(2) It is necessary to do the inspection procedures of the piece parts in paragraph B when:

(a) The part is removed from the engine and disassembled to the level specified in paragraph B and

(b) The part has accumulated more than 100 cycles since the last piece part inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

(3) The inspections specified in this paragraph do not replace or make not necessary other recommended inspections for these parts or other parts.

B. Parts Requiring Inspection

Note: Piece part is defined as any of the listed parts with all the blades removed.

Engine manual description	Section	Inspection
Hub (Disk), 1st Stage Compressor:		
491201	72–33–31	–04,–02,–03
496501	72–33–31	–04,–02,–03
504101	72–33–31	–04,–02,–03
515201	72–33–31	–04,–02,–03
594301	72–33–31	–04,–02,–03
640501	72–33–31	–04,–02,–03
640601	72–33–31	–04,–02,–03
743301	72–33–31	–04,–02,–03
749701	72–33–31	–04,–02,–03
749801	72–33–31	–04,–02,–03
750001	72–33–31	–04,–02,–03
750101	72–33–31	–04,–02,–03
778901	72–33–31	–04,–02,–03
791401	72–33–31	–04,–02,–03
791501	72–33–31	–04,–02,–03
791601	72–33–31	–04,–02,–03
791701	72–33–31	–04,–02,–03
791801	72–33–31	–04,–02,–03
806001	72–33–31	–04,–02,–03
806101	72–33–31	–04,–02,–03
817401	72–33–31	–04,–02,–03
844401	72–33–31	–04,–02,–03
845401	72–33–31	–04,–02,–03
848001	72–33–31	–04,–02,–03
848101	72–33–31	–04,–02,–03
Disk, 2nd Stage Compressor:		
482502	72–33–33	–02
502502	72–33–33	–02
520602	72–33–33	–02
570302	72–33–33	–02
570402	72–33–33	–02
678202	72–33–33	–02
730202	72–33–33	–02
730302	72–33–33	–02
730402	72–33–33	–02
740502	72–33–33	–02
745702	72–33–33	–02
745902	72–33–33	–02
746002	72–33–33	–02
746802	72–33–33	–02
760402	72–33–33	–02
760502	72–33–33	–02
807502	72–33–33	–02
5002402–01	72–33–33	–02
790832 (Disk assembly).	72–33–33	–02

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the Time Limits section in the EM.

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

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

(d) Special flight permits may be used in accordance with § 21.197 and § 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirement of this AD can be accomplished.

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)] of this chapter must maintain records of the mandatory inspections that result from revising the Time Limits section of the Instructions for Continuous Airworthiness (ICA) and the air carrier’s continuous airworthiness program. Alternatively, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternative method in the air carrier’s maintenance manual required by § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)]; however, the alternative system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380 (a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(vi)]. All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine manuals.

(f) This amendment becomes effective on July 8, 1999.

Issued in Burlington, Massachusetts, on June 1, 1999.

Mark C. Fulmer,

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

[FR Doc. 99–14446 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket 98–ANE–43–AD; Amendment 39–11188; Ad 99–12–04]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney JT8D–200 series turbofan engines, that requires revisions to the engine manufacturer's Time Limits Section (TLS) of the JT8D–200 Turbofan Engine Manual to include enhanced inspection of selected critical life-limited parts at each piece-part exposure. This amendment will also require an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures. This amendment is prompted by a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts that indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions that if allowed to continue in service, could result in uncontained failures. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective July 8, 1999.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT8D–200 series turbofan engines was published in the **Federal Register** on July 28, 1998 (63 FR 40216). That action proposed to require, within the next 30 days after the effective date of this AD, revisions to the Time Limits Section (TLS) of the PW JT8D–200 Turbofan Engine Manual, and, for air carriers, the approved continuous airworthiness maintenance program. The manufacturer of JT8D–200 series turbofan engines has provided the Federal Aviation Administration (FAA) with a detailed proposal that identifies and prioritizes the critical life-limited rotating engine parts with the highest potential to hazard the airplane in the event of failure, along with instructions for enhanced, focused inspection methods. The enhanced inspections resulting from this AD will be conducted at piece-part opportunity, as defined in this AD, rather than specific inspection intervals.

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

One commenter supports the measures outlined in the proposed rule.

Several commenters ask that the FAA clarify the record keeping aspects of the mandatory inspections resulting from the required changes to the Original Equipment Manufacturer's manual and operator's continuous airworthiness maintenance program. Two commenters believe that paragraph (e) of the proposed rule is unclear and suggests that certain preamble language be added to it for clarity and that it be revised by eliminating the word ''or'' from the first sentence and beginning a second sentence with ''In lieu of the record * * *'' Two commenters state that the AD should be revised to clearly specify which types of maintenance records must be retained (i.e., inspection results, defect reporting requirements, date of performed maintenance, signature of the person performing the maintenance). These commenters believe that these revisions are necessary in order to avoid potential differences in interpretation between the air carriers and the FAA. And, one commenter states that the AD should clarify that there is no need for a special form to comply with the AD record keeping requirements. The FAA concurs in part. Generally, record keeping requirements are addressed in other regulations and this AD does not change those requirements. In order to allow flexibility from operator to operator, the FAA does not concur that the AD itself specify the precise nature of the records that will result from the required changes to the manufacturer's manual and operator's maintenance program. The FAA has, however, revised Paragraph (e) of this AD to clarify record keeping aspects of the new mandatory inspections.

One commenter requests that the FAA link the conduct of mandatory inspections on whether the subject part was removed from an engine while the engine was installed on the airplane or while the engine was removed and in an overhaul shop. The commenter wishes to exempt those parts that are removed from installed engines from the focused inspections. The FAA does not concur. The mandatory inspections are based on a single trigger. The trigger is a part being completely disassembled using the engine manual instructions (piece-part opportunity), and is not dependent on whether an engine is installed on the airplane. This final rule mandates that the definition of piece-part opportunity appears in the mandatory section of each affected engine manual. This final rule further mandates that an operator's continuous airworthiness maintenance program be modified to capture those engine manual changes.

One commenter suggests that language be added to the requirements adding a minimum cycles in service threshold after which mandatory inspections would be applicable. The FAA does not concur. The FAA is aware that cracks can be missed during part inspections and that each time a part is processed through an inspection line, the probability of detecting a crack is increased. Commonly used on-condition maintenance plans make it likely that a given part could be returned to service for thousands of cycles without the need for additional focused inspection. Recognizing two opposing aspects of part removal and inspection, i.e., a need for a brief exemption period following conduct of mandatory inspections and the benefits of increased frequency of inspection, FAA established the 100 cycle threshold. No consideration for crack growth time was given in the choice of this number nor was time-since-new (TSN) considered as a possible reason for exempting parts from focused inspection. It is based strictly on keeping the frequency of mandatory inspection as high as practical and therefore increasing the probability of crack detection while providing a brief window of exemption from mandatory inspection if certain conditions are met. Therefore, the 100 cycle limit will remain in the compliance section of the AD and no exemption will be allowed for low TSN parts.

One commenter states that the mandatory manual chapters were modified to require new inspection requirements prior to issuance of the final rule AD and that FAA should provide written notification to Flight Standards Offices that the inspections proposed in the proposed rule are not mandatory until the establishment of an effectivity date in a published final rule AD. Some confusion between Operators, Manufacturers and Principal Maintenance Inspectors was created when the mandatory manual sections were modified prior to the release of a final rule AD. The FAA concurs in part. The manuals were modified prior to issuance of the final rule to minimize implementation delays from lengthy original equipment manufacturer EM revision cycles. FAA will attempt a higher level of coordination of timing the manual revisions so that the revisions follow final rule ADs in the future. Such a notice, however, is beyond the scope of this AD and may well cause additional confusion rather than clarify the present situation.

One commenter suggested that the parts requiring focused inspection be identified by ''all'' rather than by specific part number. The FAA does not concur. The FAA intentionally allowed each manufacturer to choose a format that fits their products manual. Identification of parts requiring mandatory inspections has been accomplished by either part number identification or use of the word ''all''. Part number identification was chosen by some manufacturers since the processes and procedures needed to conduct new inspections were not yet developed for all parts of a certain type, i.e., fan disks/hubs. The FAA wants the manufacturers to have flexibility in managing how their manuals are structured within Air Transport Association code requirement.

One commenter states that a ''spot focused'' fluorescent-penetrant inspection (FPI) should be performed in the rivet area of the fan hub instead of removing rivets, the air seal, and the compressor duct to inspect the fan hub. The commenter believes that rivet removal and replacement may induce stresses and cause cracks. The FAA does not concur. Inspection of the entire fan hub (i.e., bore, all holes, fillet radii, rim slot bottom, upper lug surface, pressure face of dovetail slots) is needed to detect all possible crack indications. Although few cracks have been detected thus far, there is concern that other high stress areas (e.g. dovetail slots) may be affected. Furthermore, removal of the assembled parts (air seal and compressor duct) will provide assurance that liquids for inspection and cleaning will not become entrapped in the titanium hub.

One commenter states that the phrase ''by or related to the cause of its removal from the engine'' should be added for clarification to paragraph (2)(b) of Inspection Requirements, paragraph A, in the Compliance Section. The FAA concurs and the phrase has been added.

One commenter states that the affected assembly part number (P/N) in the Compliance Section, paragraph B, Parts Requiring Inspection Table, is in error and should be 5000421–01. The FAA concurs and the P/N has been revised.

One commenter states that AD 97–17–04 compliance requirements relative to the JT8D Engine Manual, P/N 773128, 72–33–31 Insp–02, as specified in the proposed rule should be clarified. The FAA does not concur that a change needs to be made to the AD, but offers the following explanation for clarification purposes. The inspection requirements of AD 97–17–04 remain intact and are not affected by this AD. While the inspection techniques are similar, this AD will require inspections at every piece-part opportunity without having to remove bushings. AD 97–17–04 requires inspections with bushings removed at fixed inspection intervals depending on part serial number.

One commenter states that an existing alternative method of compliance (AMOC) for removal of C1 hub bushings prior to eddy current inspection should be allowed for this AD. The FAA does not concur. Because this AD does not require the removal of bushings at every piece-part opportunity, no AMOC for an alternate bushing removal procedure is required.

One commenter states that the PW JT8D–200 Turbofan Engine Manual section reference in the Parts Requiring Inspection table is in error and should read 72–33–31. The FAA concurs and the table has been revised.

No comments were received on the economic analysis contained in the proposed rule. Based on the analysis, the FAA has determined that the annual per engine cost of $240 does not create a significant economic impact on small entities.

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

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

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

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–12–04 Pratt & Whitney: Amendment 39–11188. Docket 98–ANE–43–AD.

Applicability Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines, installed on but not limited to McDonnell Douglas MD80 series airplanes.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, revise the Time Limit Section (TLS) of the PW JT8D–200 Engine Manual (EM), Part Number 773128, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

''3. Critical Life Limited Part Inspection

A. Inspection Requirements

(1) This section has the definitions for individual engine piece-parts and the inspection procedures which are necessary when these parts are removed from the engine.

(2) It is necessary to do the inspection procedures of the piece-parts in Paragraph B when:

(a) The part is removed from the engine and disassembled to the level specified in paragraph B and

(b) The part has accumulated more than 100 cycles since the last piece part inspection, provided that the part is not damaged or related to the cause of its removal from the engine.

(3) The inspections specified in this section do not replace or make unnecessary other recommended inspections for these parts or other parts.

B. Parts Requiring Inspection.

Note: Piece part is defined as any of the listed parts with all the blades removed.

Description	Section	Inspection
Hub (Disk), 1st Stage Compressor:		
5000501–01 (Hub detail).	72–33–31	–02,–03
5000421–01 (Hub assembly).	72–33–31	–02,–03''

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the TLS of the PW JT8D–200 EM.

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

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

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

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)] of this chapter must maintain records of the mandatory inspections that result from revising the Time Limits section of the Instructions for Continuous Airworthiness (ICA) and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(vi)]. All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine manuals.

(b) This amendment becomes effective on July 8, 1999.

Issued in Burlington, Massachusetts, on June 1, 1999.

Mark C. Fulmer,

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

[FR Doc. 99–14447 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 5

Fees for Applications for Contract Market Designation

AGENCY: Commodity Futures Trading Commission.

ACTION: Final reduction of certain designation applications fees.

SUMMARY: The staff reviews periodically the Commission's actual costs of processing applications for contract market designation (17 CFR Part 5, Appendix B) and adjusts its schedule of fees accordingly. As a result of the most recent review, the Commission, as proposed on April 22, 1999 (64 FR 19730), is establishing reduced fees for a limited class of simultaneously submitted multiple contract designation application filings.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, (201) 418–5275, Three Lafayette Centre, 1155 21st, Street, NW., Washington, DC 20581. E-mail [Rshilts@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. History

On August 23, 1983, the Commission established a fee for contract market designation (48 FR 38214). The fee was based upon a three-year moving average of the actual costs and the number of contracts reviewed by the Commission during that period of time. The formula for determining the fee was revised in 1985. At that time, most of the designation applications were for futures contracts rather than option contracts, and the same fee was applied to both futures and option designation applications.

In 1992, the Commission reviewed its data on the actual costs for reviewing designation applications for both futures and option contracts and determined that the cost of reviewing a futures contract designation application was much higher than the cost of reviewing an option contract designation. It also determined that, when designation applications for both a futures contract and an option on that futures contract was submitted simultaneously, the cost for reviewing both together was lower than for reviewing the contracts separately. Based on that finding, three separate fees were established—one for futures alone, one for options alone, and one for combined futures and option contract applications. 57 FR 1372 (January 14, 1992). The combined futures/option designation application fee is set at a level that is less than the aggregate fee for separate futures and option applications to reflect the fact that the cost for review of an option is lower when submitted simultaneously with the underlying future and to create an incentive for contract markets to submit simultaneously applications for futures and options on that future.

A. Proposed Further Modifications to Fee Structure

In a **Federal Register** notice dated April 22, 1999 (64 FR 19730), the Commission proposed to establish reduced fees for certain types of simultaneously submitted multiple contract designation applications. The Commission did not receive any comments in response to that notice.

II. Final Fee Structure

The Commission has determined to modify, as proposed, its fee structure for the limited class of multiple designation applications submitted simultaneously relating to contracts: (i) which are cash settled based on an index representing measurements of physical properties or financial characteristics which are not traded per se in the cash market; (ii) which use the same procedures for determining the cash-settlement values for all contracts in the filing; (iii) as to which the procedure for determining the values which vary for the individual cash settlement prices is objective and the individual contract values represent a spatial or other variant of that procedure or a larger or smaller multiplier; and (iv) as to which all other times and conditions are the same.[1] Commission fees for simultaneous submission of such multiple cash-settled contracts would be equal to the prevailing applicable fee for the first contract plus 10 percent of that fee for each additional contract in the filing. This fee structure represents an extension of the policy adopted by the Commission in 1992 when it established reduced fees for option applications and for combined futures and option applications and would be consistent with the Commission's responsibility under the Independent Offices Appropriations Act (31 U.S.C. 9107 (1982)) to base fees on the costs to the Government.

The Commission believes that a 10 percent marginal fee for additional contracts in a filing is appropriate for applications submitted simultaneously that are eligible for the multiple-contract filing fee. Because the multiple-contract filing fee applies only to cash-settled contracts based on objectively determined index values such that each separate contract represents only a spatial or other variant of that process and because the index is a measurement of a physical property or a financial characteristic which is not traded per se in the cash market, the Commission's review likely will not require a separate detailed analysis of each of the contracts in the filing. Moreover, for contracts meeting the standard for the multiple contract filing fee, the Commission's review of the cash settlement mechanism would involve a single analysis of the nature of the index and the process by which the underlying index values are determined. Separate comprehensive evaluations for each individual index would not be required since the same calculations apply to each. Since the underlying instruments are not traded in the cash market, the Commission need not conduct separate reviews of the underlying cash markets or the reliability or transparency of prices for the individual commodities. Because each contract must use an identical cash-settlement procedure and all other material terms and conditions must be the same (except for the differentiated term or the specified contract multiplier), the analysis of the cash settlement procedure for one contract would apply in large part to each of the additional contracts. Finally, because each contract in a filing must be differentiated only with respect to a single term or contract size feature that is not likely to affect the integrity of the cash settlement mechanism, each separate contract would not require a separate comprehensive analysis to ascertain its compliance with the requirements for designation.

The Commission notes that, regardless of the fee assessed for designation applications, the Commission will continue to conduct the same comprehensive review to ensure that each proposed contract meets all requirements for designation set forth in the Commission's Guideline on Economic and Public Interest Requirements for Contract Market Designation, 17 CFR Part 5, Appendix A (''Guideline No. 1'').[2] However, as explained above, for the types of applications covered by the multiple contract filing fee, the Commission's analysis of the case settlement procedure in general and its review of the other material terms and conditions likely would be applicable to each contract in the filing. Only a limited incremental analysis would be required to assess whether each additional contract in such a filing meets the designation requirements of Guideline No. 1, resulting in a much higher degree of efficiency in reviewing the applications and substantially reducing the marginal cost for reviewing and processing the additional contracts. The Commission's extensive experience in reviewing new contract designation applications indicates that, for simultaneously submitted multiple contract filings meeting the specified standards, a fee for each additional contract equal to 10 percent of the single contract application fee would reflect the Commission's expected review costs for these types of applications. To the extent the Commission finds otherwise, this fee will be adjusted in subsequent years.

The Commission wishes to make clear that the reduced option fee for the limited class of multiple-designation applications applies only to options on futures applications and not to options on physicals applications.

Under the new procedures noted above, the Commission's multiple contract designation application fees for filings meeting the standard discussed above are as follows: For filings involving multiple cash-settled futures—$6,800 for the first contract, plus $680 for each additional contract; for filings involving multiple options on cash-settled futures—$1,200 for the first contract, plus $140 for each additional contract; and for filings involving multiple combined cash-settled futures and options on those futures—$7,500 for the first futures and option contract, plus $750 for each additional futures and option contract. To be eligible for the reduced fees, contract markets must label the submission as a multiple contract filing and identify the cash settlement procedure to be used and the nature of the differentiated term or the different contract size specifications and justify why the application qualifies for this reduced fee.

[1] In this regard, contracts having differentiated spatial features include contracts that are identical in all respects including the cash settlement mechanism but which may be based on the application of differing objectively determined values for different geographical areas. These may include contracts on weather-related data or vacancy rates for rental properties, where each individual contract is based on the value—temperature, local vacancy rate, etc.—for a specific city. To be eligible for the multiple contract filing fee, each contract must be cash-settled based on the same underlying data source and derived under identical calculation procedures such that the integrity of the cash settlement mechanism is not dependent on the individual contract specifications and that values which vary are derived objectively using the same source or type of data. Thus, for example, applications containing a number of similar cash-settled contracts based on indexes of government debt of different foreign countries would not be eligible for the reduced fee since the manipulation potential of each contract would be related to the liquidity of the underlying instruments and the individual trading practices and governmental oversight in each specific country, requiring separate analyses.

[2] Guideline No. 1 details the information that an applicant for contract market designation should include in order to demonstrate that the contract market meets the economic requirements for designation.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.*, requires agencies in proposing rules, to consider the impact of those rules on small businesses. The fees implemented in this release affect contract markets (also referred to as ''exchanges'') and a registered futures association. The Commission has previously determined that contract markets are not ''small entities'' for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Therefore, the Chairperson, on behalf of the Commission, certifies, pursuant to 5 U.S.C. 605(b), that the fees herein will not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC on June 2, 1999, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–14390 Filed 6–7–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 97F–0421]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending a final rule that appeared in the **Federal Register** of January 19, 1999 (64 FR 2854). The document amended the food additive regulations to provide for the safe use of di-*tert*-butyl-*m*-cresyl phosphonite condensation product with biphenyl for use as an antioxidant and/or stabilizer for olefin polymers intended for use in contact with food. The document was published with an error. This document corrects that error.

DATES: This regulation is effective January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 19, 1999 (64 FR 2854), FDA amended the food additive regulations to provide for the safe use of di-*tert*-butyl-*m*-cresyl phosphonite condensation product with biphenyl for use as an antioxidant and/or stabilizer for olefin polymers intended for use in contact with food. The nomenclature of the additive was modified to include the term ''meta'' (*m*). This term was placed between ''butyl'' and ''cresyl'' in the name of the subject additive and between ''butyl'' and ''cresol'' in the name of one of the starting materials to provide more accurate and descriptive names.

In the preferred chemical nomenclature, the addition of ''*m*'' necessitates the use of a different numbering convention in the name of the starting material than is used in the absence of ''*m*''. In the final rule, the agency inadvertently omitted this renumbering in the name of the starting material. Therefore, the agency is amending 21 CFR 178.2010 to correct the error.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

§ 178.2010 [Amended]

2. Section 178.2010 *Antioxidants and/or stabilizers for polymers* is amended in the table in paragraph (b) in the entry for ''di-*tert*-butyl-*m*-cresyl phosphonite * * *'' by removing ''2,4-di-*tert*-butyl-*m*-cresol'' and by adding in its place ''4,6-di-*tert*-butyl-*m*-cresol''.

Dated: June 1, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–14518 Filed 6–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Decoquinate; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending a final rule that provided for adding a dry powder containing decoquinate to whole milk to be fed to calves for prevention of coccidiosis. The document incorrectly referred to those calves as replacement calves in the heading of § 520.534(d) (21 CFR 520.534(d)) for conditions of use. This document amends the regulation to state that decoquinate is for use in calves.

EFFECTIVE DATE: March 2, 1999.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 2, 1999 (64 FR 10103), FDA added § 520.534 to reflect approval of Alpharma Inc.'s new animal drug application (NADA 141–060) for use of 0.8 percent decoquinate powder in whole milk for ruminating and nonruminating calves including veal calves. In the heading for § 520.534(d), the document incorrectly stated that decoquinate medicated milk was for use in replacement calves. This document amends the heading for § 520.534(d) to state that decoquinate is for use in calves by removing the word ''replacement''.

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.

§ 520.534 [Amended]

2. Section 520.534 *Decoquinate* is amended in the heading for paragraph

(d) by removing the phrase ''Replacement calves'' and adding the word ''*Calves*''.

Dated: May 25, 1999.

Margaret Ann Miller,

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

[FR Doc. 99–14517 Filed 6–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–125–FOR]

Pennsylvania Regulatory Program

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

ACTION: Final rule; correction.

SUMMARY: This document corrects and explains an OSM decision on provisions of a proposed amendment to the Pennsylvania regulatory program (hereinafter referred to as the Pennsylvania Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 et seq., as amended. OSM published it decision on the amendment in the March 26, 1999, **Federal Register** (64 FR 14610). On May 5, 1999, Pennsylvania submitted a letter requesting that OSM reconsider portions of this decision. Specifically, Pennsylvania requested that OSM rescind its disapprovals of Pennsylvania's definition of ''no-cost reclamation contract,'' a portion of the definition of ''government-financed construction contract,'' a portion of Section 4.8(e)(52 P.S. 1396.4h(e)) and all of Section 4.8(g)(52 P.S. 1396.4h(g)), as they pertain to no-cost contracts. Pennsylvania also requested that OSM rescind its requirements that Pennsylvania amend PA SMCRA to delete the specified provisions.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Third Floor, Suite 3C Harrisburg Transportation Center (Amtrack), 415 Market Street, Harrisburg, Pennsylvania 17101. Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION: By letter dated November 21, 1997 (Administrative Record N0. PA–855.00), the Pennsylvania Department of Environmental Protection (PADEP) submitted proposed program amendment No. 2 to the Pennsylvania Abandoned Mine Land Reclamation (AMLR) Plan. By letters dated October 8 and October 13, 1998, PADEP submitted portions of its state law which it believed provided specific authorization for the proposed changes to the AMLR Plan. (Administrative Record No. PA 855.12). On March 26, 1999, OSM approved portions of the amendment, but disapproved sections referencing no-cost reclamation contracts. (64 FR 14610). By letter dated May 6, 1999 (Administrative Record No. PA–855.17), the PADEP submitted a letter to OSM, requesting that OSM rescind its disapprovals of the portions of the statutory amendment pertaining to no-cost reclamation contracts. This document revises and explains OSM's decisions with respect to no-cost reclamation contracts. In March 26, 1999, **Federal Register**, Notice, OSM determined that:

> Any expenses incurred directly or indirectly by the AML agency, including the costs of project design, solicitation, management and oversight, qualify as government financing. However, Pennsylvania defines no-cost contracts as those contracts that do not involve the expenditure of any government funding, either as direct payments or as indirect expenses such as those listed above. Therefore, Pennsylvania's definition of ''government financed reclamation contract'' is less effective than the Federal definition of ''government-financed construction,'' at 30 CFR 707.5, to the extent that it would allow incidental coal extraction or coal refuse removal, without a permit, pursuant to no-cost contracts.

64 FR at 14616.

As a result of this determination, OSM disapproved the definition of the term ''no-cost reclamation contract,'' and also disapproved other portions of the statutory amendment which contained the term ''no-cost contract'' or ''no-cost reclamation contract.'' Finally, OSM required PADEP to amend its program to delete all statutory language in the amendment pertaining to ''no-cost reclamation contracts.'' 30 CFR 938.16 (cccc), (dddd), (eeee), and (ffff).

In discussions with OSM after publication of the March 26, 1999, decision, PADEP provided additional information pertaining to its definition of ''no-cost reclamation contracts.'' OSM requested that this information be provided in writing for further consideration. PADEP's letter dated May 6, 1999 (Administrative Record No. PA–855.17), explained that its definition of ''no-cost reclamation contract'' clearly envisions PADEP incurring indirect costs in reviewing information provided by a contractor, and in determining whether a contractor is eligible for a contract. PADEP also explained that the prohibition on the expenditure of Commonwealth funds, contained in the definition of ''no-cost reclamation contract'' refers only to ''what OSM considers direct expenditures. In Pennsylvania, 'expenditures of Commonwealth Funds' would be a direct payment of money to the contractor from the Commonwealth to perform the reclamation.'' Therefore, PADEP contended, only direct payments to contractors are prohibited, but indirect project costs can, and indeed must, be allowed. Since the definition of ''no-cost reclamation contract'' does not prohibit indirect costs, PADEP stated that the definition is no less effective than and in accordance with the federal definition of ''government financed construction '' at 30 CFR 707.5. Finally, the PADEP argued that if the definition of ''no-cost reclamation contract'' can be approved, then all of the statutory sections of the amendment which contain references to ''no-cost reclamation contracts'' should also be approved.

Upon further consideration, and in view of the May 5, 1999, clarification provided by the PADEP, OSM hereby rescinds the following disapprovals:

> 52 P.S. 1396.3, the definition of ''government-financed reclamation contract,'' paragraph (1)(i), the phrase ''including a reclamation contract where less than five hundred (500) tons is removed and the government's cost of financing reclamation will be assumed by the contractor under the terms of a no-cost contract''; and, paragraph (1)(ii), the phrase ''including where reclamation is performed by the contractor under the terms of a no-cost contract with the department, not involving any reprocessing of coal refuse on the project area or return of any coal refuse material to the project area.''

52 P.S. 1396.3, the definition of ''no-cost reclamation contract.''

> 52 P.S. 1396.4h(e), the following language: For no-cost reclamation projects in which the reclamation schedule is shorter than two (2) years the bond amount shall be a per acre fee, which is equal to the department's average per acre cost to reclaim abandoned mine lands; provided, however, for coal refuse removal operations, the bond amount shall only apply to each acre affected by the coal refuse removal operations. For long-term, no-cost reclamation projects in which the reclamation schedule extends beyond two (2) years, the department may establish a lesser bond amount. In these contracts, the department may in the alternative establish a bond amount which reflects the cost of the proportionate amount of reclamation which will occur during a period specified.

52 P.S. 1396.4h(g), in its entirety.

In addition, OSM is removing the required amendments at 30 CFR

938.16(cccc), (dddd), (eeee) and (ffff). The effect of these actions is that OSM is now approving the concept of ''no-cost reclamation contracts,'' and is also approving the statutory amendments referenced above, insofar as such contracts include indirect government financing. However, OSM's approval of these provisions is effective only to the extent that ''no-cost reclamation contracts'' which provide for the incidental extraction of coal, and which are less than 50% government financed, through indirect project financing, are treated in the same manner as Federally funded Title IV AML projects. Specifically, the projects must comply with the requirements of Subchapter R, Chapter VII of the Federal regulations, even where the projects receive state financing, but do not receive Federal financing.

The Federal regulations at 30 CFR part 938, codifying decisions concerning the Pennsylvania program, are being amended to implement this revised finding.

Section 938.15 Approval of Pennsylvania Regulatory Program Amendments is being amended in the table (third column, 64 FR at 14619) to show both the March 26, 1999, final publication of this amendment, and the date of the revision discussed in this notice.

Section 938.16 Required Regulatory Program Amendments is being amended to remove the required amendments at 30 CFR 938.16 (cccc), (dddd), (eeee) and (ffff).

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 19, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

PART 938—PENNSYLVANIA

1. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 938.15 is amended in the table by revising the entry having the original amendment submission date of October 8, 1998, to read as follows:

§ 938.15 Approval of Pennsylvania regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
October 8, 1998	March 26, 1999 and June 8, 1999	52 P.S. 1396.3, 1396.4h.

§ 938.16 [Amended]

3. Section 938.16 is amended by removing and reserving paragraphs (cccc), (dddd), (eeee), and (ffff).

[FR Doc. 99–14291 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–99–038]

RIN 2115–AE46

Speical Local Regulations for Marine Events; Hampton Offshore Challenge, Chesapeake Bay, Hampton, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being adopted for the Hampton Offshore Challenge, to be held on the waters of the Chesapeake Bay near Buckroe Beach, Hampton, Virginia. These regulations are needed to protect spectator craft and other vessels transiting the event area from the dangers associated with the event. This action is intended to enhance the safety of life and property during the event.

DATES: This temporary final rule is effective from 11:30 a.m. EDT (Eastern Daylight Time) to 4 p.m. EDT on June 11, 12 and 13, 1999.

ADDRESSES: Documents are indicated in this preamble are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6204.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer D. Merrill, Marine Events Coordinator, Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, Virginia 23703, (757) 483–8568.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with requirements of 5 U.S.C. 553(B), the Coast Guard finds that good cause exists for not publishing a NPRM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. Following normal rulemaking procedures would have been impractical because there is not sufficient time to publish a proposed rule in advance of the event or to provide for a delayed effective date. Immediate action is needed to protect vessel traffic from the potential hazards associated with this event.

Background and Purpose

U.S. Offshore Racing Association will sponsor the Hampton Offshore Challenge on June 11 and 12, 1999. The event will consist of 60 offshore powerboats conducting a high speed competitive race on the waters of the Chesapeake Bay near Buckroe Beach, Hampton, Virginia. A fleet of spectator vessels is anticipated for the event. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the Chesapeake Bay. The temporary special local regulations will be in effect from 11:30 a.m. EDT to 4 p.m., EDT on June 11 and 12, 1999 and will restrict general navigation in the regulated area during the event. In the event of inclement weather, the regulations will be in effect the next day. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of spectators and transiting vessels.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has been exempted from review of the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the regulated area will only be in effect for a short period of time and extensive advisories will be made to the affected maritime community so that they may adjust their schedules accordingly.

Small Entities

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

Because this temporary rule will only be in effect for a short period of time and extensive advisories will be made to the affected maritime community so that they may adjust their schedules accordingly, the Coast Guard expects the impact of this temporary rule to be minimal.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this temporary final rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this temporary rule will economically affect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this temporary final rule so that they can better evaluate its effects on them and participate in the rulemaking process. If you believe your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please submit a comment (see **ADDRESSES**) explaining your concerns.

Unfunded Mandates

Under section 201 of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531), the Coast Guard assessed the effects of this temporary final rule on State, local and tribal governments, in the aggregate, and the private sector. The Coast Guard determined that this regulatory action requires no written statement under section 202 of the UMRA (2 U.S.C. 1531) because it will not result in the expenditure of $100,000,000 in any one year by State, local and tribal governments, in the aggregate, or the private sector.

Collection of Information

This temporary rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that, under figure 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a marine event are excluded under that authority.

List of Subjects in 33 CFR Part 100

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

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

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

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

2. A temporary section, § 100.35–T05–038 is added to read as follows:

§ 100.35–T05–038 Hampton Offshore Challenge, Chesapeake Bay, Hampton, Virginia

(a) *Definitions:* (1) *Regulated area.* The waters of the Chesapeake Bay adjacent to Buckroe Beach commencing at a point on the shoreline at latitude 37°03′40″ North, longitude 76°16′55″ West, thence east southeast to latitude 37°03′13″ North, longitude 76°15′40″ West, thence south southwest parallel to the shoreline to longitude 37°00′04″ North, longitude 76°17′20″ West, thence west northwest to the shoreline at latitude 37°00′15″ North, longitude 76°18′13″ West. All coordinates reference Datum: NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

(b) *Special local regulations:* (1) All persons and/or vessels not authorized as participants or official patrol vessels are considered spectators. The ''official patrol'' consists of any Coast Guard, public, state, county or local law enforcement vessels assigned and/or approved by Commander, Coast Guard Activities Baltimore.

(2) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(3) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Effective dates.* This section is effective from 11:30 a.m. EDT. (Eastern Daylight Time) to 4 p.m. EDT on June 11 and 12, 1999. In the event of inclement weather, this section will be effective on June 13, 1999 at the same time and place.

Thomas E. Bernard,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 99–14516 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–99–039]

Special Local Regulations for Marine Events; Patapsco River, Baltimore, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements the special local regulations at 33 CFR 100.515 during a fireworks display to be held June 14, 1999, on the Patapsco River at Baltimore, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the fireworks display. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

EFFECTIVE DATES: 33 CFR 100.515 is effective from 6 p.m. EDT (Eastern Daylight Time) to 11 p.m. EDT on June 14, 1999.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. L. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The National Flag Day Foundation will sponsor a fireworks display on June 14, 1999 on the Patapsco River, Baltimore Maryland. The fireworks display will be launched from a barge positioned within the regulated area. In order to ensure the safety of participants and transiting vessels, 33 CFR 100.515 will be in effect for the duration of the event. Under provisions of 33 CFR 100.515, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Thomas E. Bernard,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 99–14515 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–99–036]

Special Local Regulations for Marine Events; The Great Chesapeake Bay Swim Event, Chesapeake Bay, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements the special local regulations at 33 CFR 100.507 for the Great Chesapeake Bay Swim Event to be held on June 13, 1999. These special local regulations are needed to provide for the safety of participants and spectators on the navigable waters during this event. The effect will be to restrict general navigation in the regulated area for the safety of participants in the swim, and their attending personnel.

EFFECTIVE DATE: 33 CFR 100.507 is effective from 7 a.m. EDT (Eastern Daylight Time) until 2 p.m. EDT, on June 13, 1999.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R.L. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Rd., Baltimore, MD 21226–1797, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The March of Dimes will sponsor the Great Chesapeake Bay Swim Event on the waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridge. Approximately 600 swimmers will start from Sandy Point State Park and swim between the spans of the William P. Lane Jr. Memorial Bridge to the Eastern Shore. A large fleet of support vessels will be accompanying the swimmers. Therefore, to ensure the safety of the participants and support vessels, 33 CFR 100.507 will be in effect for the duration of the event. Under provisions of 33 CFR 100.507, no vessels may enter the regulated area without permission of the Coast Guard patrol commander. Vessel traffic will be permitted to transit the regulated area as the swim progresses when the Patrol Commander determines it is safe to do so. As a result, maritime traffic should not be significantly disrupted.

Thomas E. Bernard,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 99–14514 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–98–048]

RIN 2115–AE47

Drawbridge Regulations; Grand Canal, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the Tortoise Island drawbridge across the Grand Canal at Brevard County, Florida. The current regulations require the bridge to open on signal on Friday and Saturday evenings and on evenings immediately preceding Federal holidays. However, the bridge owner has documented a very low volume of traffic on these evenings. This rule will change the opening requirement for the bridge on these evenings from on signal to giving 30 minutes notice. This change in opening requirements will reasonably meet the needs of vessel traffic.

DATES: This rule becomes effective July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Miss Evelyn Smart, Project Manager, Bridge Section, (305) 536–6546.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 28, 1998, the Coast Guard published a Notice of Proposed Rulemaking entitled Drawbridge Operation Regulations, Grand Canal, Florida, in the **Federal Register** (63 FR 45978). On February 9, 1999, the Coast Guard published a Supplemental Notice of Proposed Rulemaking entitled Drawbridge Operation Regulations; Grand Canal, Florida, in the **Federal Register** (64 FR 6290). The Coast Guard received two letters commenting on the supplemental proposal. No public hearing was requested, and none was held.

Background and Purpose

The Coast Guard completed an analysis of drawbridge openings after reviewing bridge logs provided by the Tortoise Island Homeowners Association in July, 1998. The analysis indicated that a low volume of boat traffic was experienced over an extended period of time. From January 1977 through December 1997, only 7 boats required an opening on weekends and on evenings preceding Federal holidays between the hours of 10 p.m. and 6 a.m.

The Coast Guard originally proposed changing the opening requirements for weekend evenings and evenings preceding Federal holidays to require 2 hour notice prior to opening. The Coast Guard continues to believe that low vessel traffic during the evening hours on weekends justifies a change in opening requirements for this bridge. However, to minimize the impact on navigation, the Coast Guard decreased its original proposed 2 hour notice requirement to 30 minutes advance notice for a bridge opening on Friday and Saturday nights and evenings preceding Federal holidays.

Discussion of Comments and Changes

Two letters were received in response to the public notice. The State of Florida, Department of Community Affairs stated in their letter that the proposal is consistent with the Florida Coastal Management Program. The National Marine Fisheries Service concluded in their letter that any adverse affects that might occur to living marine resources would be minimal and offered no objection. No objections were received from the marine public regarding the revised weekend evening restriction.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under Section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation. (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We concluded this because of a lack of demand for openings between 10 p.m. and 6 a.m. on weekends and on evenings preceding Federal holidays.

Small Entities

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

Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because of the exemption for tugs with tows.

Collection of Information

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

Federalism

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

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and has determined pursuant to Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation. A categorical exclusion determination for this rulemaking is available in the public docket for inspection and copying.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations

In consideration of the foregoing, the Coast Guard amends 33 CFR part 117, as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.285(b) to read as follows:

§ 117.285 Grand Canal.

* * * * *

(b) The draw of the Tortoise Island bridge, mile 2.6, shall open on signal; except that from 10 p.m. to 6 a.m. from Sunday evening through Friday morning, the draw shall open on signal if at least 2 hours advance notice is given. From 10 p.m. to 6 a.m. on Friday and Saturday and on evenings immediately preceding Federal holidays, the draw shall open on signal if at least 30 minutes advance notice is given.

Dated: May 20, 1999.

N.T. Saunders,

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

[FR Doc. 99–14510 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AJ64

Surviving Spouse's Benefit for Month of Veteran's Death

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulation governing payment of death benefits to an eligible surviving spouse for the month of the veteran's death. This amendment allows payment of such benefits at the rate that would have been paid to the veteran had he or she not died where the monthly amount of dependency and indemnity compensation or pension payable to the veteran's spouse is equal to the amount of benefits the veteran would have otherwise received for the month of his or her death. This amendment is required by statute.

DATES: *Effective Date:* June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Don England, Chief, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: Section 5111(a) of title 38, United States Code, prohibits payment of compensation, pension, or dependency and indemnity compensation (DIC) benefits for any period before the first day of the month following the month in which an award or increased award of benefits was effective. In effect, VA generally may not pay first-time or increased benefits for any part of the first calendar month of entitlement. (See also 38 CFR 3.31).

Section 5111(c) provides certain exceptions to the general prohibition in section 5111(a), including the following:

> (Section 5111) shall apply to payments made pursuant to section 5310 of this title only if the monthly amount of [DIC] or pension payable to the surviving spouse is greater than the amount of compensation or pension the veteran would have received, but for such veteran's death, for the month in which such veteran's death occurred.

38 U.S.C. 5111(c)(1).

Section 5310 of title 38, United States Code, provides authority under which VA may pay to a surviving spouse the amount of benefits which the veteran would otherwise have received for the month of his or her death. (When a veteran receiving compensation or pension dies, VA terminates his or her benefit payments effective the last day of the month prior to the month of death. See 38 U.S.C. 5112(b)(1).) Under section 5310(a), if a surviving spouse is entitled to certain death benefits for the month of the veteran's death, the amount of benefits payable for that month ''shall be not less'' than the amount of compensation or pension the veteran would have received if he or she had not died.

VA has implemented the provisions of section 5111(c)(1) at 38 CFR 3.20(b) and 3.31(c)(1). In a recent opinion (VAOPGCPREC 10–98), VA's General Counsel pointed out that language in 38 CFR 3.20(b) is inconsistent with 38 U.S.C. 5111(c)(1). Section 5111(c)(1) provides, with respect to payments under section 5310, that payment for the first calendar month of entitlement is prohibited only if the amount of DIC or death pension payable exceeds the amount of compensation or pension that would have been payable to the veteran. Section 3.20(b), however, provides that payment for the first calendar month is permitted only if the amount of compensation or pension that would have been payable to the veteran exceeds the amount of DIC or death pension payable. These two provisions give different results if the amount of DIC or death pension payable equals the amount of compensation or pension that would have been payable to the veteran. In this situation, the statute would allow payment for the month of death, but the regulation would not. To that extent, 38 CFR 3.20(b) is inconsistent with section 5111(c)(1) of the statute.

Accordingly, we are amending § 3.20(b) to make it consistent with the statute. It now provides that a surviving spouse may receive payment for the month of the veteran's death if the veteran's rate of benefits is equal to or greater than the rate of death pension or DIC payable to the surviving spouse.

This final rule simply corrects VA regulations to reflect statutory requirements. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Because no notice of proposed rule making was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612). Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 64.105 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: May 21, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.20 [Amended]

2. In § 3.20, the first sentence of paragraph (b) is amended by adding ''equal to or'' immediately after ''if such rate is''.

[FR Doc. 99–14141 Filed 6–7–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900–AH41

Service Connection Of Dental Conditions For Treatment Purposes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs adjudication regulations for determining whether dental conditions are service-connected for purposes of eligibility for outpatient dental treatment. This amendment clarifies requirements for service connection of dental conditions and provides that VA will consider certain dental conditions service-connected for treatment purposes if they are shown in service after a period of 180 days.

DATES: *Effective Date:* June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Lorna Fox, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7223.

SUPPLEMENTARY INFORMATION: On February 24, 1997, VA published in the **Federal Register** (62 FR 8201), a proposal to amend those sections of 38 CFR part 3 and part 4 that govern whether dental conditions are service-connected for purposes of eligibility for outpatient dental treatment under 38 U.S.C. 1712 (implemented by 38 CFR 17.161). Interested persons were invited to submit written comments, suggestions or objections. We received comments from Paralyzed Veterans of America and one individual.

Section 1712 of 38 U.S.C. states that veterans with noncompensable service-connected dental conditions are entitled to a one-time correction of the dental conditions by VA under certain circumstances. VA regulations at 38 CFR 3.381 and 3.382 previously stated that for purposes of outpatient dental treatment, service connection for certain noncompensable dental conditions is warranted only if the conditions are shown after a 'reasonable period of service.' We proposed to replace the subjective term ''reasonable period of service'' with the objective requirement of 180 days or more of active service.

One commenter stated that a 180 day requirement ''seems to clash significantly'' with both 38 U.S.C. 1111, which requires VA to consider every veteran to have been in sound condition when examined, accepted and enrolled for service, except as to defects, infirmities, or disorders noted at the time, and § 1153, which requires VA to consider preexisting injury or disease to have been aggravated by active military service where there is an increase in disability during such service that was not due to the natural progress of the disease. Section 1111 states that ''[f]or the purposes of section 1110 of this title,'' the presumption of soundness shall apply. Section 1110 of title 38, United States Code, applies to payment of compensation for disability. Section 1111 is therefore not applicable to determining eligibility to outpatient dental treatment under 38 U.S.C. 1712. In addition, section 1153 of title 38, United States Code, applies only to disabilities. Because noncompensable dental conditions are not considered to be disabilities (see former 38 CFR 4.149) section 1153 is also not applicable to 38 U.S.C. 1712 determinations. Therefore, we make no change based on this comment. We acknowledge that in the notice of proposed rulemaking, we stated that, for purposes of consistency with 38 CFR 3.304(b), VA was proposing to delete 38 CFR 3.381(d), which stated that the presumption of soundness does not apply to noncompensable dental conditions. 62 FR 8201, 8202 (1997). Notwithstanding this statement, as explained above, based upon the plain language of 38 U.S.C. 1110 and 1111, we do not believe that the presumption of soundness is applicable to determinations of service connection under § 3.381.

The commenter also states that VA has extended ''even further the 'reasonable period of service' requirement established in the (Court of Veterans Appeals) *Manio* decision which held, in essence, that 120 days, not 180 days as proposed, was sufficient to meet that requirement.'' As explained in the notice of proposed rulemaking, the Court of Veterans Appeals held in *Manio* v. *Derwinski*, 1 Vet. App. 140 (1991), that four months satisfied the reasonable-period-of-service requirement ''under the facts of that case.'' 62 FR 8202. In our view, 180 days better defines the former reasonable-period-of-service requirement than 120 days. In fact, we possibly could have further lengthened the period since, as stated in the proposal ''[d]ental caries and other dental pathology take time to develop, often a year or two in permanent teeth'' (62 FR 8202). Even so, we believe the 180 days is reasonable. This also is consistent with the fact that the Academy of General Dentistry recommends that a patient visit a dentist at least every six months so that the dentist can monitor the patient's oral health and help prevent problems from arising. Under these circumstances, it is more likely than not that caries or pathology which become apparent within the first 180 days of service pre-existed that service.

Another commenter stated that VA should amend the eligibility rules to allow outpatient dental care for veterans with wartime service who are receiving long-term nursing home care without regard to other eligibility requirements. While we sympathize with the health care needs of veterans receiving nursing care, the eligibility criteria for outpatient dental care are specified in 38 U.S.C 1712, which contains no provision regarding eligibility based on nursing home care. Since we are not free to create by regulation eligibility that is not authorized by statute, we make no change based on this comment.

VA appreciates the comments submitted in response to the proposed rule, which is now adopted without change.

The Secretary hereby certifies that this proposed amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), the proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109 and 64.110.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability Benefits, Health care, Pensions, Veterans.

38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: April 21, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.381 is revised to read as follows:

§ 3.381 Service connection of dental conditions for treatment purposes.

(a) Treatable carious teeth, replaceable missing teeth, dental or alveolar abscesses, and periodontal disease will be considered service-connected solely for the purpose of establishing eligibility for outpatient dental treatment as provided in § 17.161 of this chapter.

(b) The rating activity will consider each defective or missing tooth and each disease of the teeth and periodontal tissues separately to determine whether the condition was incurred or aggravated in line of duty during active service. When applicable, the rating activity will determine whether the condition is due to combat or other in-service trauma, or whether the veteran was interned as a prisoner of war.

(c) In determining service connection, the condition of teeth and periodontal tissues at the time of entry into active duty will be considered. Treatment during service, including filling or extraction of a tooth, or placement of a prosthesis, will not be considered evidence of aggravation of a condition that was noted at entry, unless additional pathology developed after 180 days or more of active service.

(d) The following principles apply to dental conditions noted at entry and treated during service:

(1) Teeth noted as normal at entry will be service-connected if they were filled or extracted after 180 days or more of active service.

(2) Teeth noted as filled at entry will be service-connected if they were extracted, or if the existing filling was replaced, after 180 days or more of active service.

(3) Teeth noted as carious but restorable at entry will not be service-connected on the basis that they were filled during service. However, new caries that developed 180 days or more after such a tooth was filled will be service-connected.

(4) Teeth noted as carious but restorable at entry, whether or not filled, will be service-connected if extraction was required after 180 days or more of active service.

(5) Teeth noted at entry as non-restorable will not be service-connected, regardless of treatment during service.

(6) Teeth noted as missing at entry will not be service connected, regardless of treatment during service.

(e) The following will not be considered service-connected for treatment purposes:

(1) Calculus;

(2) Acute periodontal disease;

(3) Third molars, unless disease or pathology of the tooth developed after 180 days or more of active service, or was due to combat or in-service trauma; and

(4) Impacted or malposed teeth, and other developmental defects, unless disease or pathology of these teeth developed after 180 days or more of active service.

(f) Teeth extracted because of chronic periodontal disease will be service-connected only if they were extracted after 180 days or more of active service.

(Authority: 38 U.S.C. 1712)

§ 3.382 [Removed and Reserved]

3. Section 3.382 is removed and reserved.

PART 4—SCHEDULE FOR RATING DISABILITIES

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

Authority: 38 U.S.C. 1155, unless otherwise noted.

§ 4.149 [Removed and Reserved]

5. Section 4.149 is removed and reserved.

[FR Doc. 99–14250 Filed 6–7–99; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH118–1a; FRL–6353–2]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: We, the United States Environmental Protection Agency (EPA), are approving the Ohio Environmental Protection Agency's (OEPA) September 16, 1998 and December 29, 1998, requests for revisions to the Ohio State Implementation Plan (SIP). These requests include an exemption for de minimis sources from the requirement to obtain a permit to operate (OAC 3745–15–05) and revises the permit to operate rule (OAC 3745–35–02). Revisions to OAC 3745–35–02 establish exemptions from the rule, revise the application filing deadline, and allow applicants the ability to demonstrate that their sources are in compliance through a compliance schedule when they are not in compliance at the time of permit issuance. These revisions will not inhibit OEPA from ensuring compliance with the national ambient air quality standards.

DATES: This rule is effective on August 9, 1999, unless EPA receives adverse written comments by July 8, 1999. If we receive adverse comment, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Region 5 at the address listed below.

Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please contact Steve Gorg or Genevieve Damico, Environmental Engineers, at 312–353–8641 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steve Gorg or Genevieve Damico, Environmental Engineers, Permits and Grants Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, 312–353-8641.

SUPPLEMENTARY INFORMATION:

This Supplementary Information section is organized as follows:

A. What action are we taking today?
B. Who is affected by this rulemaking action?
C. What are the revisions to OAC rule 3745–35–02?
D. What recordkeeping and reporting requirements are required of my facility to be exempted from the requirement to obtain a permit to operate?
E. Why can we approve this request?
F. What is the background of this rulemaking?

A. What Action Are We Taking Today?

We are approving OEPA's September 16, 1998 and December 29, 1998, requests for revisions to the Ohio SIP. These requests include an exemption for de minimis sources from the requirement to obtain a permit to operate (OAC 3745–15–05) and revision to the permit to operate requirement (OAC 3745–35–02).

B. Who Is Affected by This Rulemaking Action?

OAC 3745–35–02 applies to all new and existing sources, including those sources which are subject to EPA's New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS). Generally, this rule requires an owner of an air contaminant source (referred to in this notice as ''you''), to apply for and obtain a permit to operate from the OEPA.

Under OAC 3745–15–05, you are not required to get a permit to operate if your facility has potential emissions less than ten pounds per day, except when the Clean Air Act requirements limit or restrict your facility's emissions. This exemption does not apply if your facility:

(1) Is subject to a requirement of the SIP;
(2) Emits radionuclides;
(3) Has potential emissions of any air pollutant in excess of twenty-five tons per year, alone or in combination with a similar source at the same facility; or,
(4) Emits more than one ton per year of any one or a combination of hazardous air pollutants.

C. What Are The Revisions To OAC Rule 3745–35–02?

The revisions to OAC rule 3745–35–02 establish:

(1) Exemptions from the rule if you are:
(a) a source that is exempted under OAC 3745–31–03 (A)(1) or (A)(2);
(b) required to obtain a Title V permit as defined in Chapter 3745–77 of the OAC; or,
(c) a source that is exempt from getting a permit to operate under OAC 3745–15–05;
(2) An application filing date no later than thirty days after commencement of operation; and,
(3) The requirement to demonstrate that your facility will be in compliance with all applicable air pollution control laws through a compliance schedule that is at least as stringent as those laws, if you are not complying at the time of permit issuance.

D. What Recordkeeping and Reporting Requirements Are Required of My Facility To Be Exempted From The Requirement To Obtain a Permit To Operate?

If your facility meets the exemption criteria in OAC 3745–15–05, then you must:

(1) Keep records that prove actual emissions of any air contaminant from your facility did not exceed the de minimis level,
(2) Maintain records for two years; and
(3) Submit an exceedence report and an application for a permit to install if your facility exceeds the de minimis level.

E. Why Can We Approve This Request?

These revisions are approvable because:

(1) The revisions to OAC 3745–35–02 affect the Ohio state operating permit program and do not affect the requirements established by Title V of the Clean Air Act. If you are required to obtain a Title V permit, you must apply for such a permit under OAC 3745–77.
(2) OAC 3745–15–05 establishes exemptions for small sources of air pollution that have little or no adverse impact on air quality. This rule does not apply if your facility is subject to a requirement of the SIP.

F. What Is the Background of This Rulemaking?

OAC 3745–35–02 and 3745–15–05 became effective as a matter of Ohio State law on April 20, 1994. OEPA's original OAC 3745–35–02 was approved on June 10, 1982 (47 FR 25144).

EPA Action

In this rulemaking action, EPA approves OEPA's September 21, 1998 and January 8, 1999 request for revisions to OAC rule 3745–35–02 and OAC rule 3475–15–05, respectively. The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, should adverse written comments be filed, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision. This action will be effective August 9, 1999 without further notice unless EPA receives relevant adverse written comment by July 8, 1999. Should the Agency receive such comments, we will publish a withdrawal document informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on August 9, 1999.

A. Executive Order 12866

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

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks that may have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' This rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Ohio's audit privilege and immunity law (sections 3745.70–3745.73 of the Ohio Revised Code). EPA will be reviewing the effect of the Ohio audit privilege and immunity law on various Ohio environmental programs, including those under the Clean Air Act, and taking appropriate action(s), if any, after thorough analysis and opportunity for Ohio to state and explain its views and positions on the issues raised by the law. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any Ohio Clean Air Act program resulting from the effect of the audit privilege and immunity law. As a consequence of the review process, the regulations subject to the action taken herein may be disapproved, federal approval for the Clean Air Act program under which they are implemented may be withdrawn, or other appropriate action may be taken, as necessary.

H. 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 U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 9, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 20, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, and part 81 subpart c of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

2. Section 52.1870 is amended by adding (c)(119) and (c)(120) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(119) On September 21, 1998, Ohio submitted revisions to its Permit to Operate rules as a revision to the State implementation plan.

(i) Incorporation by reference

(A) Ohio Administrative Code 3745–35–02, adopted April 4, 1994, effective April 20, 1994.

(120) On January 3, 1999, Ohio submitted, as a State implementation plan revision, de minimus exemption provisions for its permitting rules.

(i) Incorporation by reference

(A) Ohio Administrative Code 3745–15–05, adopted April 4, 1994, effective April 20, 1994.

[FR Doc. 99–14052 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 011–0146; FRL–6353–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District, San Joaquin Valley Unified Air Pollution Control District, Siskiyou County Air Pollution Control District, and Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing limited approvals of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on March 18, 1999. This final action will incorporate these rules into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of sulfur dioxide (SO_2) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control the sulfur content of fuels within the South Coast Air Quality Management District and the Siskiyou County Air Pollution Control District, emissions of sulfuric acid mist within the San Joaquin Valley Unified Air Pollution Control District and emissions of sulfur dioxide in the Bay Area Air Quality Management District. Thus, EPA is finalizing a limited approval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions. There will be no sanctions clock as South Coast Air Quality Management District, San Joaquin Valley Unified Air Pollution Control District, Siskiyou County Air Pollution Control District, and Bay Area Air Quality Management District are in attainment for SO_2.

EFFECTIVE DATE: This action is effective on July 8, 1999.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109–7714.

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg Ave., Fresno, CA 93726.

Siskiyou County Air Pollution Control District, 525 South Foothill Dr., Yreka, CA 96097

South Coast Air Quality Management District, 21865 E. Copley Dr., Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1191.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: South Coast Air Quality Management District (SCAQMD) Rule 431.2, Sulfur Content of Liquid Fuels, San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4802, Sulfuric Acid Mist, Siskiyou County Air Pollution Control District (SCAPCD) Rule 4.14, Sulfur Content of Fuels and Bay Area Air Quality Management District (BAAQMD) Regulation 9 Rule 1, Sulfur Dioxide. SCAQMD Rule 431.2 and SCAPCD Rule 4.14 were submitted by the California Air Resources Board (CARB) to EPA on December 31, 1990, BAAQMD Regulation 9 Rule 1 was submitted by CARB to EPA on September 14, 1992, and SJVUAPCD Rule 4802 was submitted by CARB to EPA on November 18, 1993.

II. Background

On March 18, 1999 in 64 FR 13379, EPA proposed granting limited approval of the following rules into the California SIP: SCAQMD Rule 431.2, SJVUAPCD Rule 4802, SCAPCD Rule 4.14, and BAAQMD Regulation 9 Rule 1. SCAQMD Rule 431.2 was adopted by SCAQMD on May 4, 1990 and SCAPCD Rule 4.14 was adopted by SCAPCD on July 11, 1989. These rules were submitted by the CARB to EPA on December 31, 1990. SJVUAPCD Rule 4802 was adopted by SJVUAPCD on December 17, 1992 and was submitted by the CARB to EPA on November 18, 1993. BAAQMD Regulation 9 Rule 1 was adopted on May 20, 1992 and was submitted by the CARB to EPA on September 14, 1992. A detailed discussion of the proposed action for each of the above rules is provided in the proposed rule [1] (PR).

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the PR. EPA is finalizing the limited approval of these rules in order to strengthen the SIP. The PR identified the following rule deficiencies which should be corrected.

SCAQMD's Rule 431.2 should be corrected to remove Executive Officer discretion in approving alternate test methods. EPA also recommends that a reference to a CARB specification for motor vehicle diesel fuel be updated.

SJVUAPCD's Rule 4802 should be corrected to incorporate recordkeeping requirements. EPA also recommends correction of a typographical error found in the rule.

SCAPCD's Rule 4.14 should be corrected to incorporate recordkeeping requirements and test methods to determine compliance.

BAAQMD's Regulation 9 Rule 1 should be corrected to incorporate recordkeeping requirements, update the ground level sulfur dioxide limits and to update a cited test method which has been deleted.

SCAQMD, SJVUAPCD and SCAPCD should also include information on the length of time records are to be retained. A detailed discussion of the rule provisions and evaluations has been provided in the PR and in technical support documents (TSDs) available at EPA's Region IX office (TSD dated 2/12/99 for SCAQMD Rule 431.2 and TSD dated 2/19/99 for SJVUAPCD Rule 4802, SCAPCD Rule 4.14 and BAAQMD Regulation 9 Rule 1.)

III. Response to Public Comments

A 30-day public comment period was provided in 64 FR 13379. EPA received one comment letter on the PR from the South Coast Air Quality Management District. The comment has been evaluated by EPA and EPA's response is set forth below.

Comment: SCAQMD indicated that staff will address EPA's comments and consider the suggestions for strengthening the rule.

Response: EPA will work with SCAQMD in response to EPA's comments.

IV. EPA Action

EPA is finalizing a limited approval of the above-referenced rules. The limited approval of these rules is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rules strengthen the SIP. However, the rules do not meet the section 182(a)(2)(A) CAA requirement because of the rule deficiencies which were discussed in the PR. Thus, in order to strengthen the SIP, EPA is granting limited approval of these rules under sections 110(k)(3) and 301(a) of the CAA. This action approves the rules into the SIP as federally enforceable rules.

As stated in the proposed rule, there is no sanctions clock as SCAQMD, SJVUAPCD, SCAPCD, and BAAQMD are in attainment for SO_2. It should be noted that the rules covered by this FR have been adopted by the SCAQMD, SJVUAPCD, SCAPCD, and BAAQMD and are currently in effect in those districts. EPA's limited approval action will not prevent SCAQMD, SJVUAPCD, SCAPCD, BAAQMD or EPA from enforcing these rules.

V. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives

[1] The proposed rule was published on March 18, 1999 in 64 FR 13379.

considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 9, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Laura K. Yoshii,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(182)(i)(A)(*5*) and (c)(182)(i)(G), (c)(189)(i)(C)(*2*), and (c)(194)(i)(C)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(182) * * *

(i) * * *

(A) * * *

(*5*) Rule 431.2, amended on May 4, 1990.

* * * * *

(G) Siskiyou County Air Pollution Control District.

(*1*) Rule 4.14, adopted on July 11, 1989.

* * * * *

(189) * * *

(i) * * *

(C) * * *

(*2*) Regulation 9 Rule 1, amended on May 20, 1992.

* * * * *

(194) * * *

(i) * * *

(C) * * *

(*3*) Rule 4802, adopted on May 21, 1992, and amended on December 17, 1992.

* * * * *

[FR Doc. 99–14222 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211–0127c; FRL–6356–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; El Dorado County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This action redesignates the number of a paragraph in Title 40 of the Code of Federal Regulations that appeared in a direct final rule published in the **Federal Register** on March 30, 1999.

EFFECTIVE DATE: This action is effective on June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION: On March 30, 1999 at 64 FR 15129, EPA published a direct final rulemaking action approving El Dorado County Air Pollution Control District (EDCAPCD), Rule 239 of the California State Implementation Plan (SIP). This action contained amendments to 40 CFR part 52, subpart F. The amendments which incorporated material by reference into § 52.220, Identification of plan, paragraph (c)(256)(i)(D) are being redesignated as (c)(256)(i)(E) in this action.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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

List of Subjects in 40 CFR Part 52

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

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 25, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by redesignating paragraph (c)(256)(i)(D) as (c)(256)(i)(E).

[FR Doc. 99–14352 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 122–4086; FRL–6355–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Enhanced Inspection and Maintenance Program Network Effectiveness Demonstration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision supplement submitted by the Commonwealth of Pennsylvania on August 21, 1998. This supplement consists of a demonstration of the effectiveness of the Pennsylvania SIP's enhanced motor vehicle emissions inspection and maintenance (I/M) program.

It includes a demonstration of the effectiveness of Pennsylvania's I/M testing network to satisfy the requirements of the National Highway Systems Designation Act of 1995 (NHSDA). The effect of this action is to approve the Commonwealth's demonstration of the effectiveness of its I/M program testing network, and to remove all *de minimus* conditions related to EPA's approval of Pennsylvania's program under the NHSDA. There is one remaining major condition of EPA's January 28, 1997 approval of Pennsylvania's I/M program related to the methodology for conducting on-going evaluation of the enhanced I/M program. Pennsylvania addressed that condition in a separate SIP submittal made to EPA on November 26, 1998. EPA will take separate action upon that submittal.

EFFECTIVE DATE: This final rule is effective on July 8, 1999.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814–2176, or via e-mail at Rehn.Brian@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On September 16, 1998, EPA published a notice of direct final rulemaking (DFR) to approve the Commonwealth of Pennsylvania's August 21, 1998 I/M program SIP supplement (see 63 FR 49436). Pennsylvania's August 21, 1998 SIP supplement included the Commonwealth's enhanced I/M program network effectiveness demonstration, as required by the NHSDA. It also addressed seven *de minimus* I/M program deficiencies EPA identified in its January 28, 1997 interim conditional approval of Pennsylvania's I/M program SIP (see 62 FR 4004).

Opportunity for comment was provided, however, as EPA also published a proposed rule (63 FR 49517) in the same volume of the **Federal Register** in which the DFR appeared, proposing to approve the Commonwealth's August 21, 1998 SIP submission. The preamble of the DFR stated that in the event EPA received adverse comments, the DFR would be withdrawn and public comments would be considered pursuant to the proposed rule. Because EPA received four letters of adverse comment, it withdrew the DFR on October 21, 1998 (53 FR 56086). The public comments submitted relevant to the September 16, 1998 proposed rule (63 FR 49517) are addressed in the ''Summary of Public Comments/Response to Public Comments'' section of this document.

The rationale and the specifics of EPA's proposed action were explained in the September 16, 1998 DFR referenced in the accompanying notice of proposed rulemaking (NPR) and will not be restated.

II. Summary of the Public Comments/ Response to the Public Comments

This section discusses and summarizes the comments submitted during the comment period for the NPR published in the September 16, 1998 **Federal Register**. This section also contains EPA's formal response to those comments. Comments were submitted by the Clean Air Council, Gordon-Darby, Inc., the New Jersey Department of Environmental Protection (DEP), and by Francis W. Jackson (a private citizen of Pennsylvania). Only those comments relevant to EPA's September 16, 1998 proposed action to approve the Commonwealth's August 21, 1998 SIP supplement are addressed in today's rulemaking. Copies of the comment letters are available at the EPA Regional Office listed in the ADDRESSES section of this final rule. Comments have been summarized and grouped by commenter, and EPA's response directly follows each summarized comment.

New Jersey Department of Environmental Protection

Comment: The commenter states that any action by EPA to approve Pennsylvania's submittal weakens efforts by other states to implement cost-effective and environmentally defensible programs.

Response: EPA granted states flexibility to develop their respective enhanced I/M programs through its 1992 I/M Rule. This flexibility was further expanded in 1995 with passage of the NHSDA. This flexibility was intended to allow states to tailor programs unique to their needs, and to provide for cost-effective programs, while still achieving the desired emissions reduction benefits. EPA does not believe that approval of Pennsylvania's August 1998 SIP supplement jeopardizes efforts by other states to implement their chosen programs. EPA believes that the data submitted by Pennsylvania adequately supports the network effectiveness demonstration for the Commonwealth's chosen network. Other states are free to submit whatever data they believe is appropriate to support a network effectiveness demonstration for their chosen network.

Comment: The commenter states that given the national implications of EPA's approval action, it is incumbent upon EPA to seek all information supporting its action and to allow interested parties sufficient time to comment on Pennsylvania's program.

Response: At the request of a commenter, EPA extended the comment period on its proposed action to approve Pennsylvania's NHSDA demonstration SIP submittal to November 16, 1998, a full 30 days beyond the original deadline of October 16, 1998 specified in the September, 16 1998 NPR. EPA believes that this extended comment period was adequate to allow all interested parties to review the relevant materials and to submit their comments. EPA has taken into consideration all comments received during the extended comment period in its decisions related to this final rule.

Comment: The commenter states that Pennsylvania's NHSDA demonstration provides no qualitative or quantitative, incremental assessment of the program subsequent to implementation. The commenter further states that Pennsylvania's decision not to submit a program evaluation per the guidelines developed by the Environmental Council of States (or ECOS) would establish a precedent allowing other NHSDA states to follow suit and not to submit specific qualitative assessment information to either the participating ECOS or to EPA. The commenter further states that approval of Pennsylvania's demonstration would make it difficult for other states to retain the resources and support necessary to develop and submit meaningful, qualitative program evaluation information. Finally, the commenter states that EPA's approval of Pennsylvania's demonstration will not result in a meaningful quantitative ongoing program evaluation, as required by 40 CFR 51.353(c) and amended in 63 FR 1362.

Response: The Conference Report to the NHSDA directed EPA to approve, on an interim basis, any state program utilizing a decentralized test network, if the emissions reductions claimed by the state were based upon available information about actual effectiveness. Final approval of the proposed credit estimates would then be granted if the interim program demonstrated that the credits were appropriate.

The NHSDA does not require Pennsylvania to provide an incremental assessment of its program since the inception of the enhanced program. What is provided by the Commonwealth's program effectiveness demonstration is a description of the steps taken to implement the commitments contained in its ''Good Faith Estimate''—submitted in 1996 as a basis for interim approval of its program under the NHSDA. That ''Good Faith Estimate'' served as Pennsylvania's justification of its credit claims for its decentralized program. The August 1998 ''NHSDA Description of Program Effectiveness'' document describes Pennsylvania's efforts to ensure its program is operating as effectively as intended and supplies enhanced program operating data to substantiate Pennsylvania's claims for emission reduction credits from its program. The data program summary is based upon data gathered during the first year of operation, and includes: an overview of participating test stations, information on individual emissions inspectors, a summary of overt and covert audit efforts, a summary of remedial activities triggered by audits, and examples of the computerized record audit process.

EPA has not mandated the use of the guidelines developed by ECOS for NHSDA demonstrations. EPA made clear during the development of those guidelines that it could not bind states to comply with such voluntary guidelines. The Commonwealth has made it known to the participants of the ECOS process from the outset that it would not be bound by ECOS's guidelines. EPA believes that the Commonwealth's ''NHSDA Description of Program Effectiveness'' provides a reasonable assessment of its program to serve as the basis for EPA to determine that it demonstrates equivalency with a centralized program, per the requirements for such demonstrations in Section 348 of the NHSDA. The data is credible in that it provides actual data from the operation of the enhanced program. EPA believes this data supports approval of the Commonwealth's demonstration under section 348(c)(3) of the NHSDA.

With regard to the comment that Pennsylvania's approach to a NHSDA demonstration sets a precedent for future demonstrations, by this point in time most states with decentralized I/M programs developed pursuant to the NHSDA have already selected the methods for evaluation of their programs, and in most cases should have already submitted their demonstrations to EPA. EPA finds that the Commonwealth's demonstration provides actual data on the program elements found in its 1996 Good Faith Estimate. Moreover, EPA will review each affected state's NHSDA demonstration, individually, and render an objective finding based upon each state's submittal. Contrary to the notion that this demonstration allows other states to submit demonstrations that do not quantitatively evaluate incremental program benefits, EPA believes the statute does not expressly require or prohibit that type of demonstration in all cases.

Finally, EPA does not agree that approval of the Commonwealth's NHSDA demonstration will undermine efforts by Pennsylvania and other states to conduct meaningful ongoing evaluations of I/M programs and their benefits as required by 40 CFR 51.351(c). EPA revised those requirements on January 9, 1998 (see 63 FR 1362), and on October 30, 1998, EPA published guidance to provide options for states in choosing scientifically sound ongoing program evaluation methodologies. EPA fully expects states to comply with the revised requirements by selecting an approved methodology for conducting the ongoing program evaluations. On November 26, 1998, Pennsylvania submitted a SIP revision supplement consisting of its chosen methodology from the list of options published by EPA to comply with the ongoing I/M program evaluation requirements of 40 CFR 51.351(c). EPA will take separate action, in the near future, upon that submittal.

Comment: The commenter believes that states should not be allowed to avoid submitting meaningful information to demonstrate the effectiveness of their I/M programs—even in light of recent flexibility granted to states in designing and implementing I/M programs.

Response: EPA believes that the ongoing program evaluation, required by 40 CFR 51.351(c), in conjunction with the data analysis and reporting requirements of 40 CFR 51.366, will provide meaningful information about enhanced I/M program effectiveness. By approving Pennsylvania's NHSDA demonstration, EPA has in no way reduced or eliminated the Commonwealth's obligation to conduct ongoing enhanced I/M program evaluations under 40 CFR 51.351. Neither does the fact that EPA has provided states with flexibility in adopting and implementing enhanced I/M programs reduce those states' obligation to conduct ongoing enhanced I/M program evaluations under 40 CFR 51.351.

Clean Air Council

Comment: The commenter believes EPA should wait to approve Pennsylvania's I/M program because there is insufficient data to support finding that Pennsylvania's program should receive full credit. The Council recommends EPA withhold final rulemaking on the adequacy of Pennsylvania's program for at least six months, until the program can be better evaluated.

Response: The NHSDA established timeframes for the development and implementation of I/M programs by states, and the Clean Air Act establishes timeframes for EPA to take rulemaking action upon such programs. Pennsylvania submitted a redesigned I/M program SIP on March 22, 1996, under the authority granted by the NHSDA. EPA's January 28, 1998 rulemaking action to grant conditional interim approval of that SIP revision started an eighteen month interim approval period, under the authority of the NHSDA. During that period, the Commonwealth was to adopt final regulations, to commence operation of the enhanced I/M program, and to submit a demonstration of actual network effectiveness based upon data collected during the interim approval period.

Pennsylvania's interim approval period expired on August 28, 1998. The NHSDA provides for no extension of this interim approval period. Under the timeframes set forth by the NHSDA, EPA was therefore compelled to take expeditious action upon the Commonwealth's August 21, 1998 SIP amendment to prevent the lapsing of the interim approval under the NHSDA, which could result in the imposition of sanctions. EPA believes that it has enough information in the data submitted by Pennsylvania to determine the effectiveness of the Pennsylvania program.

Comment: Clean Air Council expresses concern that Pennsylvania is overemphasizing compliance assistance at the expense of program enforcement, thus jeopardizing the integrity of the program. The Clean Air Council is also concerned that Pennsylvania had not yet selected its methodology for performing the required ongoing program evaluations.

Response: EPA's I/M rule (40 CFR part 51, subpart S) requires the establishment of minimum penalties for violations of program rules and procedures that can be imposed against stations, contractors, and inspectors. Pennsylvania's regulation includes a penalty schedule which provides for minimum penalties against both enhanced I/M stations and inspectors. This schedule meets the minimum limits set forth in EPA's I/M rule, at 40 CFR 51.364. Pennsylvania also has the authority to temporarily suspend station and inspector licenses immediately upon discovery of program rule violations.

Use of auditing and follow-up enforcement serve to further ensure the integrity of the I/M program. Pennsylvania, through its oversight contractor MCI, uses professionals to conduct both overt and covert audits. Pennsylvania's ''NHSDA Description of Program Effectiveness'' document indicates that the Commonwealth conducted over 2,000 overt and covert audits between October, 1997 and August, 1998. Pennsylvania routinely conducts computerized record audits. Through these audits, Pennsylvania has uncovered violations stemming from activities classified as fraudulent, improper, and careless. While the Commonwealth has focused heavily on compliance assistance during the early stage of implementation, EPA finds that Pennsylvania has sufficient enforcement resources to oversee its decentralized network of testing stations and inspectors in a capable manner. The Commonwealth has acknowledged that it has been judicious in its use of its punitive enforcement authority during this early stage of enhanced program implementation. While a long-term strategy that relied too heavily upon compliance assistance versus more the punitive enforcement mechanisms available to the Commonwealth could jeopardize its program's integrity, there is no basis to find that Pennsylvania intends to so implement the enforcement of its enhanced I/M program once the program is fully established. Moreover, EPA does not agree with the commenter that Pennsylvania's enforcement history for the first year of program operation limits that program's network effectiveness with respect to requirements for the NHSDA demonstration. EPA believes the state should provide technical/remedial training assistance in the early stages to ensure smooth operation of the new program.

The commenter stated that Pennsylvania had not selected a methodology for its ongoing program effectiveness evaluation at the time of its August 1998 submittal, and that such information would be useful in evaluating network effectiveness. EPA's conditional interim approval of Pennsylvania's SIP did not require the submission of an ongoing program evaluation methodology until November 30, 1998, as codified at 40 CFR 52.2026(a)(2). At the time Pennsylvania submitted its network effectiveness demonstration, EPA had not yet issued guidance on alternative methods to conduct an ongoing program evaluation. Therefore, EPA cannot base its approval of Pennsylvania's NHSDA demonstration upon a lack of data from the Commonwealth's ongoing program evaluation. On October 30, 1998, EPA did publish guidance to provide options for states in choosing scientifically sound ongoing program evaluation methodologies. Pennsylvania submitted its choice of evaluation methodology to EPA on November 25, 1998. EPA will take separate action, in the near future, upon that submittal.

Gordon Darby

Comment: The Environmental Council of States (ECOS) has developed a program evaluation process that includes both qualitative and quantitative measures. State participation in this process is voluntary. The purpose of the ECOS process was to provide a framework to ensure consistent, technically credible state submittals. Pennsylvania participated in the ECOS group and helped develop the process, but decided it was not bound by the process. The commenter fears this decision may undermine other NHSDA states' efforts to submit qualitative, and subsequently, quantitative demonstrations of program effectiveness pursuant to the ECOS recommendations.

Response: This comment is similar to a comment submitted by the New Jersey DEP. See EPA's response to that comment for further information. Pennsylvania's participation in the ECOS process to develop demonstration guidelines does not mean that the Commonwealth was bound to follow the resulting ECOS guidelines. EPA does not support the commenter's position that failure by a state to abide by the non-binding peer criteria jeopardizes the credibility of that state's NHSDA demonstration. EPA cannot disapprove a state's SIP submission on the basis that it failed to meet voluntary procedures developed by a group of peer states. EPA's approval decision is based upon the merits of the Commonwealth's demonstration. EPA believes that the Commonwealth's submittal is adequate to serve as its program effectiveness demonstration.

Comment: The commenter states that, in the past, EPA has attempted to assist states in determining program effectiveness through audits and other technical assistance. The commenter then states that since passage of the NHSDA in 1995, EPA has largely allowed states to implement whatever type of program they want, with the provision that each state would need to later demonstrate the projected effectiveness. The commenter then states that EPA's proposal to approve Pennsylvania's NHSDA demonstration instead appears to allow Pennsylvania to avoid having to submit meaningful information regarding program effectiveness.

Response: Since the passage of the revised Clean Air Act in 1990 and the NHSDA in 1995, EPA has provided considerable assistance to states in order to secure the adoption and implementation of effective enhanced I/M programs in accordance with federal law. EPA does not find that applicable federal law mandates a ''one size fits all'' approach to the design of states' enhanced I/M programs. EPA does not interpret the NHSDA to require states to determine overall program effectiveness, since EPA has already determined the effectiveness of the model program supporting the performance standard. Rather, states must merely demonstrate that the unique flexibility options they have selected, with particular emphasis on test network type, have not adversely impacted the credits claimed for their programs in relation to the model program.

Comment: The commenter states that Pennsylvania's ''Good Faith Estimate'' ignores the repair side of the I/M equation, and that all of the data in its demonstration focuses on vehicle inspection results, with no data presented on even basic repair results. The commenter asserts, therefore, that it is not possible to verify that the ''enhanced'' Pennsylvania program is significantly reducing vehicle emissions beyond its previously enacted basic I/M program.

Response: Pennsylvania chose to study repair effectiveness indirectly, through comparison of initial and retest data on the number of vehicles that passed and failed. That analysis indicates that approximately 35% of vehicles that failed initial testing passed their first retest within 30 days of initial testing. This data seemingly indicates the percentage of vehicles getting effective repairs prior to their first retest. EPA does not interpret the NHSDA to specifically require states to directly study repair effectiveness, and to include such data in their NHSDA demonstrations.

Comment: The commenter takes exception to Pennsylvania's approach to evaluation of the program based upon MOBILE5 modeling because Pennsylvania has stated, in the past, that the current version of the MOBILE emissions estimation model does not reflect reality, particularly with relation to the model's 50% credit discount for test-and-repair programs. The commenter also states that the use of the MOBILE5 model to evaluate the program overlooks substantial recent data which suggests that MOBILE5 overpredicts I/M benefits, and that EPA is consequently working on major I/M credit changes for use in a future version of the model—MOBILE6. The commenter, therefore, believes that it does not make sense to evaluate any state's I/M program at this time using MOBILE5.

Response: Although EPA is in the process of updating the MOBILE emissions model, until EPA completes that process MOBILE5 remains an accepted program evaluation tool in its current version for use in determining compliance with the I/M performance standard, per the requirements of 40 CFR 51.351. States must correctly evaluate their programs under the NHSDA and cannot wait for EPA to complete its revision of the MOBILE model to begin program evaluation. Further, EPA believes that the commenter took Pennsylvania's statement in its ''NHSDA Description of Program Effectiveness'' out of context. EPA believes that Pennsylvania meant to state, as background information, that MOBILE5 was the tool used to determine Pennsylvania's credit presumptions for the program, prior to implementation of the program. EPA did not take the modeling of the performance standard into consideration in its deliberation upon Pennsylvania's NHSDA network effectiveness demonstration. EPA expects the ongoing program demonstration, required by 40 CFR 51.353, to serve as an additional program effectiveness evaluation tool. Additionally, information from the data analysis to be conducted and submitted to EPA under the requirements of 40 CFR 51.366 may also help to serve that role.

Comment: The commenter states that in the program effectiveness demonstration, Pennsylvania asserted that its program was unique and was still being phased-in, and therefore could not be compared to another state's test-only program. The commenter goes on to state that all inspection programs are different in various ways, but regardless of program design, states can be held to the same ultimate criterion—the degree of reduction achieved in average emissions. The commenter believes the [ECOS] concept of analyzing average emissions levels of vehicles having gone through the inspection program is fundamentally sound. The commenter states that Pennsylvania either does not understand or has misinterpreted the ECOS approach.

Response: Neither the statutes nor EPA's regulations mandate the use of ECOS's approach in conducting the demonstration required by the NHSDA. Pennsylvania chose not to utilize the ECOS model for such a demonstration, and whether or not the ECOS criteria is a sound approach is not an issue for decision under this rulemaking. Thus, whether all programs could be evaluated through an analysis of average emission reductions is not relevant to this rulemaking. The only issue is whether the data submitted supports Pennsylvania's program effectiveness claims. EPA has concluded that it does.

Comment: The commenter alleges that the Commonwealth's submittal cannot be justified on technical grounds, and takes exception to EPA's comment in the direct final rule that ''the variety of data supplied encompasses those implementation issues that most significantly impact program effectiveness.'' Moreover, the commenter feels that since no emissions data was included, it is impossible to determine to what degree vehicles are being repaired.

Response: EPA has analyzed the program data submitted as part of the Commonwealth's ''NHSDA Program Effectiveness Demonstration''. The data is set forth in detailed summaries of emissions test and retest results, and stratified by model year and test type. The data is separated by vehicles that undergo a retest, those that passed a retest, and those that failed a retest. Given that Pennsylvania's enhanced program had been implemented for less than one year at the time it was required to submit this demonstration under the NHSDA, EPA believes the Commonwealth has made a reasonable showing of data towards meeting NHSDA demonstration requirements, and that approval of Pennsylvania's program is warranted.

Comment: The commenter asserts that Pennsylvania's phase-in hydrocarbon (HC) and carbon monoxide (CO) standards for the Acceleration Simulation Mode (ASM) test are less stringent than the standards used in the previous basic idle test program, and that this is demonstrated by comparing the initial HC/CO fail rates of the two-speed idle (TSI) and ASM tests; the TSI rate is 6.0% while the ASM rate is 3.4%. The commenter goes on to state that while phase-in standards for nitrogen oxides, and final standards for all three pollutants represent increased test stringency, given other problems identified in the submittal, it appears that an increased failure rate is no guarantee of a more effective program.

Response: The initial phase-in ASM standards being used during the first phase of implementation of the Commonwealth's I/M program are based upon EPA's recommendation, to allow states time to phase in repair technician training and better overall repair effectiveness during the first cycle of program operation. EPA expected the use of these standards to result in relatively low failure rates. EPA agrees that pass/fail results do not, in and of themselves, guarantee an effective program. However, the purpose of the demonstration required under the NHSDA was not to compare the failure rates of the new enhanced I/M program to that of Pennsylvania's previously existing ''basic'' program. EPA approved Pennsylvania's use of phase-in standards in a separate rulemaking and those standards are not the subject of a today's rulemaking. Given all the differences between the design and implementation of the Philadelphia five-county area's previous idle program and its current phase-in ASM testing program, there is little value in comparing direct failure rates between the two. EPA believes it is too early in the life cycle of Pennsylvania's enhanced I/M program to make a judgement on the impacts of low failure rates.

Comment: The commenter states that no data are presented on whether the new test produces larger HC and CO emission reductions, on average, for vehicles that are repaired compared to repairs that occurred under the previous basic program. The commenter feels that failure rate data provides no insight into the degree of emissions reductions being achieved.

Response: While this type of evaluation would be beneficial in determining the quantitative benefits from an enhanced I/M program, the Agency does not believe such an analysis is required to satisfy the requirements of the NHSDA. While Pennsylvania's 1996 ''Good Faith Estimate'' is based upon specific improvements to Pennsylvania's existing basic I/M program, EPA did not evaluate the Commonwealth's ''NHSDA Program Demonstration'' on the basis of the level of improvement over the existing basic program. EPA believes that the enhanced program data submitted by the Commonwealth stands on its own for purposes of this demonstration, and supports the credit claims requested by the state.

Comment: Pennsylvania's test summary data indicate extremely low visual failure rates. Out of 1.6 million tests performed for the demonstration, only 0.1% failed for one of the five visual checks performed. Low failure rates are often an indication of poor or fraudulent inspector performance.

Response: EPA agrees that the visual inspection failure rates cited in the Commonwealth's ''NHSDA Description of Program Effectiveness'' are low. Pennsylvania's own NHSDA demonstration confirms, through state audit summaries, that visual inspections were often not done or not done properly. Pennsylvania is addressing this program implementation issue (versus NHSDA demonstration approval issue) of low visual failure rates through use of covert and overt audits, and stronger enforcement.

Comment: The commenter states that the data shows high retest failure rates, with roughly 38% of vehicles failing the post-repair retest. The commenter goes on to state that a high retest failure rate may indicate ineffective repairs. It is unknown how many of these vehicles received repair waivers, continued to try to pass the test, or ''disappeared'' from the program.

Response: The Commonwealth is still in the process of ramping up the program. EPA expects relatively low repair effectiveness for a newly enacted enhanced I/M program that employs a different test method. The Agency will further evaluate first and subsequent retest results, along with waiver issuance results, when it reviews the Commonwealth's ongoing program evaluation reports, per the requirements of 40 CFR 51.366.

Comment: The commenter states that Pennsylvania's data shows that a high number of vehicles ''disappear'' after failing an initial test (i.e., roughly 45% of all initially failing vehicles), and that it is unclear if this data might have been influenced by the improper categorization of initially tested vehicles versus retested vehicles, or vehicles that were waived (but not counted as such) prior to retest. Notwithstanding, the commenter asserts, the data suggests the program is not causing repair of nearly as many vehicles as the initial failure rates suggest. The commenter then states that Pennsylvania's submittal indicates that roughly 36% of vehicles that failed were repaired and retested within 30 days, which seems contrary to the expectation that the majority of vehicles in a test-and-repair program would receive repairs at the same station soon after the initial test.

Response: According to Pennsylvania's I/M regulations, if a vehicle does not have a valid emissions sticker, it cannot be operated within the I/M program area. It is expected that during the first year of implementation of an enhanced I/M program some vehicles will ''disappear'' because there is a culling out of the gross polluters from the fleet. Eventually, the road-side testing could assist in identifying legally registered vehicles operating in the area without valid emissions credentials.

Comment: The commenter expressed concern that EPA has accepted Pennsylvania's conclusions regarding the program summary data at face value without performing an independent analysis of the summary or raw test data. Also the commenter is troubled that EPA did not perceive issues with the Commonwealth's demonstration that could be garnered through a simple analysis of the presented summary data. The commenter believes there is a fundamental problem in trying to perform such a program evaluation in the total absence of vehicle-specific emissions data.

Response: EPA does not agree with the commenter that vehicle-specific emissions data is necessary to perform the demonstration required under section 348 of the National Highway Systems Designation Act. Summary data showing the results, on average, of the entire tested fleet can be used to perform such an analysis. We have reviewed the Commonwealth's demonstration and have determined that the program has met the spirit of the law in proving its program effectiveness. While we do not dispute the commenter's assertions that vehicle specific data is necessary to analyze the benefits of the program, such an analysis is not necessary to satisfy the requirements of the NHSDA for demonstration of the effectiveness of a decentralized testing network.

Francis W. Jackson

Comment: Mr. Jackson submitted comments relevant to the effectiveness of Pennsylvania's program in helping to attain the ozone standard, the cost-effectiveness of an ASM compared to 2-speed idle testing, as well as the cost-effectiveness of decentralized I/M to centralized I/M. Additionally, the commenter reflects upon Pennsylvania's selection of a method to conduct an ongoing program evaluation, to quantify the actual emissions benefits of the program, as required under 40 CFR 51.353(c). Finally, Mr. Jackson criticizes the choice of a decentralized I/M program, in light of other available control measures and based upon the contribution of highway mobile sources to total future ozone precursor emission inventories.

Response: Many of the comments submitted by Mr. Jackson were not the subject of EPA's September 16, 1998 proposed approval of Pennsylvania's SIP supplement to satisfy the program effectiveness requirements of the NHSDA. Many of his comments deal with issues associated with approval of Pennsylvania's enhanced I/M SIP, which was granted conditional interim approval on January 28, 1997 (see 62 FR 4004) and was not subject to further comment in this rulemaking. That previous conditional interim approval action was not subject to further comment in this rulemaking.

The NHSDA does not require states to demonstrate the absolute performance of their program, but instead requires a state to demonstrate that its decentralized program would achieve all or some of the benefits achieved by a model, centralized program, which Pennsylvania has done. The cost and the cost-effectiveness of Pennsylvania's program are not the subject of this rulemaking action. As previously noted, Pennsylvania has selected a methodology to conduct the required ongoing program evaluation to quantify the program's benefits. Pennsylvania submitted its choice of evaluation methodology to EPA on November 25, 1998. EPA will take separate action, in the near future, upon that submittal.

Comment: The commenter contends that Pennsylvania's demonstration supports effectiveness of program implementation, not program effectiveness. He goes on to state that program effectiveness is a measure of how well it cleans the air, the most important of which is how ASM contributes to Philadelphia's attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) by 2005—and at what cost.

Response: The Commonwealth's ''NHSDA Description of Program Effectiveness'' focuses upon Pennsylvania's implementation of those measures contained in its 1996 ''Good Faith Estimate'' which was submitted to and granted interim approval by EPA on January 28, 1997 (see 62 FR 4004) under the authority of the NHSDA. The Commonwealth's summaries of program data and program oversight data were submitted to show the results of the operation of the program during that interim approval period. In terms of the programs's effectiveness in continuing to achieve the expected emission reductions, that analysis must be analyzed in the biennial program evaluations required to be performed by 40 CFR 51.353. However, it is important to remember that the enhanced I/M program is only one of many control measures implemented to reduce ozone precursors, and it is not possible to monitor directly the benefits of any single emissions control strategy such as the I/M program in reducing ambient ozone levels.

Comment: The commenter cites Pennsylvania's ''Program Effectiveness Description'' (p. 1, para. 2) which states that its program achieves reductions equal to EPA's model program. He comments that Pennsylvania has not proved this assertion. The commenter further contends that the big issue is proving Pennsylvania has overcome the decentralized test-and-repair credit reductions that past (non-PA) decentralized and /or test-and-repair programs have demonstrated. The commenter also cites Pennsylvania's ''Program Effectiveness Description'' (p.1, para. 3) which indicates that captured program data clearly demonstrates that the program is achieving Pennsylvania's claimed benefits, and asserts that Pennsylvania's collected data is inadequate to directly compute achieved emissions reductions.

Response: EPA agrees with the commenter that the purpose of the NHSDA demonstration is to show that a State's decentralized program is as effective in achieving the emissions reduction benefits associated with a centralized or test-only program. However, the NHSDA did not set forth binding guidelines for how such a demonstration should be performed. Pennsylvania chose an approach to demonstrate the credibility of its program's design through implementation of measures in their ''Good Faith Estimate'' and through submission of data gathered from the first year of operation of the program. EPA believes it satisfies the statutory requirements for such demonstrations, as required by section 348(c)(3) of the NHSDA.

Comment: The commenter contends that ASM testing does little toward achieving the ozone standard for the Philadelphia area. Pennsylvania's demonstration indicates a failure rate of 11%, including gas cap and visual inspection failures. Very few cars fail the expensive ASM test.

Response: The period of evaluation took place during the start-up period of the program, and the results are based upon the use of phase-in standards for the ASM test. It is not unexpected for the failure rates to be low during such a period. EPA expects the ongoing program evaluation to show increased failure rates upon implementation of final tailpipe and evaporative testing standards. Again, the enhanced I/M program is only one of many control measures implemented to reduce ozone precursors, and it is not possible to monitor directly the benefits of the I/M program alone in reducing ambient ozone levels.

III. Final Action

EPA is approving Pennsylvania's August 21, 1998 SIP supplement as a revision to the Pennsylvania SIP. By doing so, EPA is approving the demonstration of the effectiveness of its decentralized program testing format submitted by Pennsylvania, entitled ''National Highway Systems Designation Act Good Faith Estimate Description of Program Effectiveness''. EPA's approval of this mandated demonstration, is being done pursuant to section 348 of the NHSDA and section 110(k) of the Clean Air Act. This approval removes the interim status of EPA's conditional interim approval of the Pennsylvania enhanced I/M SIP promulgated on January 28, 1997 (see 62 FR 4004). EPA's approval also serves to approve contractual materials and state documents that were submitted by Pennsylvania as part of its August 21, 1998 SIP supplement, for the purpose of remedying seven *de minimus* deficiencies identified by EPA in its January 28, 1997 interim conditional approval of Pennsylvania's I/M program SIP. For a detailed description of these submitted materials, see EPA's September 16, 1998 direct final rule (63 FR 49436). EPA received no adverse comments related to approval of these materials to remedy the related *de minimus* SIP deficiencies.

IV. Administrative Requirements

A. Executive Orders 12866

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

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is ''economically significant,'' as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this Pennsylvania I/M approval action must be filed in the United States Court of Appeals for the appropriate circuit by August 9, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 27, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

2. Section 52.2026 is amended by revising the introductory paragraph to read as follows:

§ 52.2026 Conditional approval.

The Commonwealth of Pennsylvania's March 27, 1996 submittal of its enhanced motor vehicle emissions inspection and maintenance (I/M) program; as amended on June 27, 1996, July 29, 1996, November 1, 1996, November 13, 1997, February 24, 1998, and August 21, 1998; is conditionally approved pending satisfaction of paragraph (a)(2) of this subsection.

* * * * *

(a) * * *

3. Section 52.2026 is further amended by removing and reserving paragraphs (b) (1), (5), (7), (8), (9), (10), and (14).

[FR Doc. 99–14357 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6355–5]

RIN 2060–AH47

National Emission Standards for Hazardous Air Pollutants Emissions: Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; extension of compliance.

SUMMARY: The EPA is taking direct final action to extend certain compliance dates contained in National Emissions Standards for Hazardous Air Pollutants Emissions: Group IV Polymers and Resins. The revisions concern extending the compliance dates specified in 40 CFR 63.1311(b) and (d)(6) for polyethylene terephthalate (PET) affected sources. We are approving these compliance extensions pursuant to Clean Air Act section 301(a)(1) to complete reconsideration of equipment leaks provisions and any necessary revision to the rule.

DATES: The direct final rule is effective on August 9, 1999, without further notice, unless the EPA receives adverse comment by July 8, 1999. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–45 (see docket section below), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. The EPA requests that a separate copy also be sent to the contact person listed below. Comments and data may also be submitted electronically by following the instructions provided in the SUPPLEMENTARY INFORMATION section. No Confidential Business Information (CBI) should be submitted through electronic mail.

Docket. The official record for this rulemaking has been established under docket number A–92–45 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments and data, which does not include any information claimed as CBI, is available for inspection between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in the ADDRESSES section. Alternatively, a docket index, as well as individual items contained within the docket, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Barnett, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5605.

SUPPLEMENTARY INFORMATION:

Electronic Filing

Electronic comments and data can be sent directly to the EPA at: a-and-r-docket@epamail.epa.gov. Electronic comments and data 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 diskette in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–92–45. Electronic comments may be filed online at many Federal Depository Libraries.

Electronic Availability

This document is available in docket number A–92–45 or by request from the

EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**), and is available for downloading from the Technology Transfer Network (TTN), the EPA's electronic bulletin board system. The TTN provides information and technology exchange in various areas of emissions control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,000 baud per second modem. For further information, contact the TTN HELP line at (919) 541–5348, from 1:00 p.m. to 5:00 p.m., Monday through Friday, or access the TTN web site at: http://www.epa.gov/ttn/oarpg.

Regulated entities.

Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Facilities that produce PET.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities regulated by the NESHAP addressed in this direct final rule. If you have questions regarding the applicability of the NESHAP addressed in this direct final rule to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rule'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the extension of the compliance dates specified in 40 CFR 63.1311 (b) and (d)(6) for polyethylene terephthalate (PET) affected sources if adverse comments are filed. This rule will be effective on August 9, 1999, without further notice, unless we receive adverse comment by July 8, 1999. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

The information presented in this preamble is organized as follows:

I. Background and Rationale

On September 12, 1996, the EPA promulgated 40 CFR part 63, subpart JJJ—Group IV Polymers and Resins NESHAP (61 FR 48208). 40 CFR 63.1331 establishes standards for equipment leaks based on the equipment leaks provisions from the Hazardous Organic NESHAP (HON), 40 CFR part 63, subpart H. The final rule required existing sources to comply with 40 CFR 63.1331 beginning March 12, 1997 (*see* 40 CFR 63.1311(d)).

Subsequent to the promulgation of the Group IV Polymers and Resins rule, the EPA promulgated changes to the equipment leak provisions of the HON. In addition, a petition was submitted to the EPA requesting reconsideration of the equipment leak provisions of the rule affecting PET facilities. As a result, the compliance date for 40 CFR 63.1331 for existing PET facilities has twice been extended and is currently September 12, 1999, which is three years after promulgation of the rule. After the last compliance extension, the effective date of the Group IV Polymers and Resins rule was changed to February 27, 1998 to comply with sections 801 and 802 of the Congressional Review Act.

The petition was submitted to the EPA by two PET manufacturers requesting reconsideration of the technical basis for estimates of emissions, emission reduction, and costs for equipment leaks emission control at PET affected sources. A second petition was subsequently filed by a third PET manufacturer requesting the same relief. The petitions summarize new information claimed by the petitioners to ''confirm the petitioners' comments made during the public comment period questioning the validity of the EPA's predictions of the costs and cost effectiveness of the leak detection and repair program.'' This new information, which the EPA did not have prior to promulgation of the final rule, includes data related to emissions and costs. The EPA elected to act upon the petitioners' requests to reconsider the equipment leak provisions of the 1996 rule, as it applies to PET affected sources.

The EPA's reconsideration has created uncertainty with regard to compliance requirements for the PET equipment leak provisions. Furthermore, the EPA's reconsideration has led the Agency to publish in the ''Proposed Rules'' section of today's **Federal Register** publication a proposal to deny the petitions. The EPA will consider public comments on this proposed denial and publish a final action on the petitions. Therefore, this period of uncertainty will continue until the EPA publishes a final decision on the petitions. For these reasons, the EPA is providing an extension of the compliance dates associated with the provisions of 40 CFR 63.1331, which regulate equipment leaks for PET affected sources, until such time as the EPA is able to take final action on the petitions for reconsideration. This extension applies to affected sources in the following regulated subcategories: (1) PET using a batch dimethyl terephthalate process; (2) PET using a continuous dimethyl terephthalate process; (3) PET using a batch terephthalic acid process; and (4) PET using a continuous terephthalic acid process. It does not affect any other provisions of the Polymers and Resins Group IV rule, or any other source categories or subcategories.

By this action the EPA is providing, pursuant to Clean Air Act section 301(a)(1), an extension of the compliance dates specified in 40 CFR 63.1311(b) and (d)(6), only as necessary to complete reconsideration and potential revision of the rule. The EPA intends to complete its reconsideration of the rule and, following the notice and comment procedures of Clean Air Act section 307(d), take appropriate action as expeditiously as possible. The EPA does not believe this extension will, as a practical matter, impact the overall effectiveness of the rule. The EPA will seek to ensure that the affected parties are not unduly prejudiced by the EPA's reconsideration. The compliance date will be extended until February 27, 2001 which is the latest compliance date permitted by section 112 of the Clean Air Act (in the absence of a one year extension).

II. Authority for Extension of the Compliance Date and Reconsideration

The extension of the compliance dates specified in 40 CFR 63.1311(b) and (d)(6) for PET affected sources is being undertaken pursuant to Clean Air Act section 301(a)(1). Reconsideration is being undertaken pursuant to Clean Air Act section 307(d)(7)(B). Reconsideration is appropriate if the grounds for an objection arose after the period for public comment and if the objection is of central relevance to the outcome of the rule.

The grounds for reconsideration of this rule arose after the public comment period. The emissions and cost data which serve as the bases for the summary of data provided by the petitioners became available after the close of the comment period on the rule. Therefore, the EPA is extending the compliance dates specified in 40 CFR 63.1311(b) and (d)(6) for PET affected sources in order to allow time to reconsider the provisions of 40 CFR 63.1331 as these provisions pertain to PET affected sources.

III. Impacts

The extension of the compliance date for equipment leaks at PET affected sources will not affect the eventual annual estimated emissions reduction or the control cost for the rule.

IV. Administrative

A. Paperwork Reduction Act

For the Group IV Polymers and Resins NESHAP, the information collection requirements were submitted to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act.* The OMB approved the information collection requirements and assigned OMB control number 2060–0351. 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 the EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The EPA has amended 40 CFR 9.1, to indicate the information collection requirements contained in the Group IV Polymers and Resins NESHAP.

This action has no impact on the information collection burden estimates made previously. Therefore, the ICR has not been revised.

B. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by OMB on the basis of the requirements of the Executive Order in addition to its normal review requirements. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Today's action does not fall within any of the four categories described above. Instead, the direct final rule will provide an extension of the compliance dates specified in 40 CFR 63.1311(b) and (d)(6) for PET affected sources. The direct final rule does not add any additional control requirements. Therefore, this direct final rule was classified ''non-significant'' under Executive Order 12866 and was not required to be reviewed by OMB.

C. Regulatory Flexibility

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant impact on a substantial number of small entities because the compliance extension would not impose any economic burden on any regulated entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objects of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's direct final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. Instead, this rule provides additional time to comply with some requirements of the Group IV Polymers and Resins NESHAP. In any event, the EPA has determined that this rule does not contain a Federal mandate that may result in expenditure of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector, in any one year. Thus today's direct final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

We also have determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule does not impose any enforceable duties on small governments, i.e., they own or operate no sources subject to this rule and therefore are not required to purchase control systems to meet the requirements of this rule.

E. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety aspects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final action is not subject to the Executive Order 13045 because it is not an economically significant regulatory action as defined in E.O. 12866, and it is based on technology performance and not on health or safety risks.

F. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act of 1995 (NTTAA) requires federal agencies to evaluate existing technical standards when developing new regulations. To comply with the NTTAA, the EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that the use of VCS in this direct final rule is impractical. The compliance extension of the Group IV Polymers and Resins NESHAP is merely a procedural action that does not require sources to take substantive steps that lend themselves to VCS.

G. Executive Order 12875—Enhancing Intergovernmental Partnership

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 12875 requires the EPA to provide to the Office of Management and Budget a description of the extent of the EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's direct final rule does not create a mandate on State, local or tribal governments. The direct final rule does not impose any enforceable duties on these entities. Rather, the rule extends certain regulatory requirements. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 13084 requires the EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's direct final rule does not significantly or uniquely affect the communities of Indian tribal governments. This direct final rule imposes no enforceable duties on these entities. Rather, the rule extends certain regulatory requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This direct final rule will be effective on August 9, 1999.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 28, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of Chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

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

Subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

2. Section 63.1311 is amended by revising paragraphs (b) and (d)(6) to read as follows:

§ 63.1311 Compliance schedule and relationship to existing applicable rules.

* * * * *

(b) New affected sources that commence construction or reconstruction after March 29, 1995 shall be in compliance with this subpart upon initial start-up or September 12, 1996, whichever is later, as provided in § 63.6(b), except that new affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is PET shall be in compliance with § 63.1331 upon initial start-up or February 27, 2001, whichever is later.

* * * * *

(d) * * *

(6) Notwithstanding paragraphs (d)(1) through (d)(4) of this section, existing affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is PET shall be in compliance with § 63.1331 no later than February 27, 2001.

* * * * *

[FR Doc. 99–14349 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6355–8]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Notice of acceptability.

SUMMARY: This document expands the list of acceptable substitutes for ozone-depleting substances (ODS) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program.

EFFECTIVE DATE: June 8, 1999.

ADDRESSES: Information relevant to this document is contained in Air Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone: (202) 260–7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Kelly Davis at (202) 564–2303 or fax (202) 565–2096, U.S. EPA, Stratospheric Protection Division, 401 M Street, S.W., Mail Code 6205J, Washington, D.C. 20460; EPA Stratospheric Ozone Protection Hotline at (800) 296–1996; EPA World Wide Web Site (http://www.epa.gov/ozone/title6/snap).

SUPPLEMENTARY INFORMATION:

I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- Listing of Unacceptable/Acceptable Substitutes—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.
- *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional 6 months.
- *90-day Notification*—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.
- *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.
- *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the Final Rulemaking (FRM) (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in the original rule for the SNAP program (59 FR 13044; March 18, 1994), EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Consequently, by this document EPA is adding substances to the list of acceptable alternatives without first requesting comment on new listings.

EPA does, however, believe that Notice-and-Comment rulemaking is required to place any substance on the list of prohibited substitutes, to list a substance as acceptable only under certain conditions, to list substances as acceptable only for certain uses, or to remove a substance from either the list of prohibited or acceptable substitutes. Updates to these lists are published as separate notices of rulemaking in the **Federal Register**.

The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to substitute manufacturers, but may include importers, formulators or end-users, when they are responsible for introducing a substitute into commerce.

EPA published documents listing acceptable alternatives on August 26, 1994 (59 FR 44240), January 13, 1995 (60 FR 3318), July 28, 1995 (60 FR 38729), February 8, 1996 (61 FR 4736), September 5, 1996 (61 FR 47012), March 10, 1997 (62 FR 10700), June 3, 1997 (62 FR 30275), February 24, 1998 (63 FR 9151), and May 22, 1998 (63 FR 28251), and published Final Rulemakings restricting or prohibiting the use of certain substitutes on March 18, 1994 (59 FR 13044), June 13, 1995 (60 FR 31092), May 22, 1996 (61 FR 25585), October 16, 1996 (61 FR 54029), January 26, 1999 (64 FR 3861), January 26, 1999 (64 FR 3865), and March 3, 1999 (64 FR 10374), April 28, 1999 (64 FR 22981).

II. Listing of Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for substitutes for class I and class II substances in the refrigeration and air conditioning; foam blowing; solvents cleaning; aerosols; and adhesives, coatings, and inks sectors. For copies of the full list of SNAP decisions in all industrial sectors, contact the EPA Stratospheric Protection Hotline at (800) 296–1996.

Parts A through E below present a detailed discussion of the substitute listing determinations by major use sector. The table summarizing today's listing decisions is in Appendix A. The comments contained in Appendix A provide additional information on a substitute, but for listings of acceptable substitutes, they are not legally binding under section 612 of the Clean Air Act. Thus, adherence to recommendations in the comments is not mandatory for use of a substitute. In addition, the comments should not be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA encourages users of acceptable substitutes to apply all comments to their use of these substitutes. In many instances, the comments simply allude to sound operating practices that have already been identified in existing industry and/or building code standards. Thus, many of the comments, if adopted, would not require significant changes in existing operating practices for the affected industry.

A. Refrigeration and Air Conditioning

1. Acceptable Substitutes

Under section 612 of the Clean Air Act, EPA is authorized to review substitutes for class I (CFC) and class II (HCFC) chemicals. The decisions set forth in this section A expand the acceptable listing for refrigerants.

In listing these refrigerants as acceptable, EPA anticipates that these refrigerants will be used in such a manner so that any recommendations specified in the manufacturers' Material Safety Data Sheets (MSDSs) are followed. EPA also anticipates that manufacturers, installers, servicers, building owners and other parties responsible for construction and maintenance of refrigeration and air-conditioning systems will follow all applicable standard industry practices and technical standards established by voluntary consensus standards organizations such as the American National Standards Institute (ANSI). The Agency also expects that refrigerating systems will conform to all relevant provisions of the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) standards, including Standard 15, Safety Code for Mechanical Refrigeration, which provides guidelines for the safety of persons and property on or near premises where refrigeration facilities are located. Finally, the Agency anticipates that any exposures by installers or servicers to refrigerants will conform to all applicable standards set by the U.S. Occupational Safety and Health Administration (OSHA) and will not exceed any acceptable exposure limits set by any voluntary consensus standards organization, including the American Conference of Governmental Industrial Hygienists' (ACGIH) threshhold limit values (TLVs) or the American Industrial Hygiene Association's (AIHA) workplace environmental exposure limits (WEELs).

(a) THR–04. The chemical blend submitted to EPA with the unregistered tradename THR–04 is acceptable as a substitute for R–502 in all end-uses. Tsinghua University of Beijing and the Beijing Inoue Qinghua Refrigeration Technology Company, the joint submitters of THR–04, claim that its composition is confidential business information. Fractionation and flammability testing have determined that although one constituent of the blend is flammable, THR–04 as blended is not, and further testing has shown that it does not become flammable after leakage. This blend contains an HCFC and for this reason is an ozone depleter. However, the HCFC is a class II ozone depleter and is an acceptable substitute for the class I ozone depleter, R–502. THR–04 contains a constituent with a high global warming potential (GWP). However, the potential of this constituent for contributing to global warming will be mitigated in each end-use through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act.

(b) HFC–236fa. HFC–236fa, when manufactured using any process that does not convert perfluoroisobutylene (PFIB) directly to HFC–236fa in a single step, is acceptable as a substitute for CFC–114 in non-mechanical heat transfer. HFC–236fa does not harm the ozone layer because it does not contain chlorine. Although HFC–236fa has an extremely high 100-year GWP of 6,300,[1] its lifetime is at least an order of magnitude shorter than that of perfluorocarbons (PFCs), which have comparable 100-year GWPs. For some specialized non-mechanical heat transfer end-uses, HFC–236fa is the only CFC–114 alternative that is safe for the ozone layer and is low in toxicity. HFC–236fa may not be vented when used as a refrigerant, in accordance with section 608(c)(2) of the Act. EPA has proposed new recycling regulations for non-ozone-depleting refrigerants (63 FR 32044; June 11, 1998). This proposal would extend to HFC and PFC refrigerants the requirements currently in place for class I (CFC) and class II (HCFC) refrigerants, including required service practices, certification programs for recovery/recycling equipment, reclaimers, and technicians, a prohibition on the sale of refrigerant to anyone but certified technicians, leak repair requirements, and safe disposal requirements. A fact sheet on the proposal is available from the EPA Ozone Hotline at (800) 296–1996 or on the world wide web at http://www.epa.gov/ozone/title6/608/subrecsm.html.

(c) HFE–7100. Hydrofluoroether (HFE–7100) ($C_4F_9OCH_3$; methoxynonafluorobutane, iso and normal) is an acceptable substitute for CFC–113 in non-mechanical heat transfer. HFE–7100 does not deplete the ozone layer since it does not contain chlorine or bromine. It has a 4.1 year atmospheric lifetime and a GWP of 500 over a 100-year time horizon. The GWP and lifetime for this HFE are lower than the GWP and lifetime for CFC–113, and this HFE exhibits low toxicity, with a WEEL of 750 ppm.

(d) HFC–23. HFC–23 is acceptable as a substitute for CFC–12 in very low-temperature refrigeration. (Readers of this section should also note the clarification of the definition of very-low-temperature refrigeration set forth in section 2 below.) HFC–23 has already been listed as an acceptable substitute for CFC–13, R–13B1, and R–503 in very-low-temperature refrigeration and industrial process refrigeration. It is non-flammable and does not deplete stratospheric ozone. However, HFC–23 has an extremely high 100-year GWP of 11,700 relative to CO_2 and an atmospheric lifetime of 264 years. Its GWP is the highest among the HFCs, and its lifetime is exceeded only by the PFCs. Consequently, EPA believes HFC–23 could contribute significantly to global warming. In addition, the long lifetime of HFC–23 means any global warming or other effects would be essentially irreversible. It is illegal to vent HFC–23 at any time when used as a refrigerant. The current regulations issued under section 608 of the CAA (58 FR 28660; May 14, 1993) do not require recycling and recovery of HFC–23, or

[1] GWPs and atmospheric lifetimes cited in this document are from the Intergovernmental Panel on Climate Change (IPCC) report entitled *Climate Change 1995—The Science of Climate Change,* IPCC Second Assessment Report. More recent values for GWPs and atmospheric lifetimes published in the *Scientific Assessment of Ozone Depletion: 1998,* World Meteorological Organization Global Ozone Research and Monitoring Project—Report No. 44, may be somewhat different than the values cited here but do not alter any of the technical or policy determinations by EPA in this rule.

leak repair for systems using HFC–23. In particular, EPA urges users to reduce leakage and recover and recycle HFC–23 during equipment servicing and upon the retirement of equipment and adhere to the amended leak repair provisions established in 60 FR 40419; August 8, 1995. EPA has proposed new recycling regulations for non-ozone-depleting refrigerants (63 FR 32044; June 11, 1998). This proposal would extend to HFC and PFC refrigerants the requirements currently in place for class I (CFC) and class II (HCFC) refrigerants, including required service practices, certification programs for recovery/recycling equipment, reclaimers, and technicians, a prohibition on the sale of refrigerant to anyone but certified technicians, leak repair requirements, and safe disposal requirements. A fact sheet on the proposal is available from the EPA Ozone Hotline at (800) 296–1996 or on the world wide web at http://www.epa.gov/ozone/title6/608/subrecsm.html.

(e) Motor Vehicle Air-Conditioning: thermal storage systems used in tractor trailers in conjunction with passenger compartment climate control systems that use a SNAP-accepted refrigerant. Thermal storage systems used in a tractor trailer in conjunction with a conventional motor vehicle air-conditioning system that already uses an acceptable substitute refrigerant, are acceptable as substitutes for CFC–12 in motor vehicle air conditioners. These systems have been developed for use in heavy duty trucks that contain sleeper compartments. Currently these trucks must continually idle while the vehicle is parked and the driver is resting in the sleeper compartment, to power a conventional air-conditioner or heater when cooling or heating comfort is needed. These thermal storage systems will allow the provision of cooling/heating comfort while the engine is off.

The thermal storage system uses water blended with small amounts of one or more of the SNAP acceptable HFC-based refrigerants such as HFC–134a. The blend is contained in a sealed storage device. The system consists of a packaged cool storage reservoir and a fuel-fired heater that generates cooling or heating capacity during the normal operation of the vehicle. This cooling or heating capacity becomes available for use in the passenger compartment at a desired time. The cooling capacity is generated by chilling a circulating coolant with air from the air conditioner, while the heating capacity is achieved by heating this same coolant with a fuel-fired heater. The coolant functions as a secondary fluid in a secondary-loop refrigeration system similar to chilled water in building chillers.

After reviewing the technology of the thermal storage system submitted in the SNAP application, EPA found no safety or environmental concerns associated with its use in trucks. EPA acknowledges the existence of such a system and recognizes the potential merits. This type of technology promises to significantly lower fuel consumption and reduce pollutant emissions, including nitrous oxides, carbon monoxide, carbon dioxide, sulfuric oxides, and particulate emissions.

2. Clarification

(a) Very-low-temperature refrigeration. In a previous rule (60 FR 31092; June 13, 1995), EPA stated in its definition of very-low-temperature refrigeration that ''[m]edical freezers, freeze-dryers, and other small appliances require extremely reliable refrigeration cycles. These systems must meet stringent technical standards that do not normally apply to refrigeration systems.'' EPA does not intend to limit the very-low-temperature refrigeration application to medical freezers, freeze-dryers and other small appliances. Larger systems may also fall within the definition of very-low-temperature refrigeration, as long as the systems or portions of the systems require very low temperatures in the vicinity of -80 degrees F or lower. Submitters to the SNAP program who believe that particular systems may qualify as very-low-temperature refrigeration and/or industrial process refrigeration should contact EPA for a determination prior to submitting substitute refrigerants for review under the SNAP program.

B. Foam Blowing

1. Acceptable Substitutes

(a) HFC–134a. HFC–134a is an acceptable substitute for HCFCs in all foam blowing end-uses. For end-uses other than rigid polyurethane and polyisocyanurate laminated boardstock, polystyrene extruded boardstock and billet foams, phenolic foams, and polyolefin foams, blends of HFC–134a with other acceptable substitutes are also acceptable substitutes for HCFCs. See the original SNAP rule (53 FR 13044) for a detailed explanation of the distinction among end-uses for which blends are acceptable without further review. HFC–134a has zero ODP, has a 100-year GWP of 1300, and is nonflammable. HFC–134a has low toxicity, with a WEEL of 1000 ppm.

(b) HFC–152a. HFC–152a is an acceptable substitute for HCFCs in all foam blowing end-uses. For end-uses other than rigid polyurethane and polyisocyanurate laminated boardstock, polystyrene extruded boardstock and billet foams, phenolic foams, and polyolefin foams, blends of HFC–152a with other acceptable substitutes are also acceptable substitutes for HCFCs. See the original SNAP rule (53 FR 13044) for a detailed explanation of the distinction among end-uses for which blends are acceptable without further review. HFC–152a is flammable; foams blown with HFC–152a will need to conform to building code requirements that relate to flammable materials. HFC–152a has zero ODP, a 100-year GWP of 140, and low toxicity. The WEEL for HFC–152a is 1000 ppm.

(c) Carbon Dioxide. Carbon Dioxide (CO_2) is an acceptable substitute for HCFCs in all foam blowing end-uses. For end-uses other than rigid polyurethane and polyisocyanurate laminated boardstock, polystyrene extruded boardstock and billet foams, phenolic foams, and polyolefin foams, blends of CO_2 with other acceptable substitutes are also acceptable substitutes for HCFCs. See the original SNAP rule (53 FR 13044) for a detailed explanation of the distinction among end-uses for which blends are acceptable without further review. CO_2 has zero ODP, a GWP of 1, low toxicity, and is nonflammable.

(d) Water. Water is an acceptable substitute for HCFCs in all foam blowing end-uses. For end-uses other than rigid polyurethane and polyisocyanurate laminated boardstock, polystyrene extruded boardstock and billet foams, phenolic foams, and polyolefin foams, blends of water with other acceptable substitutes are also acceptable substitutes for HCFCs. See the original SNAP rule (53 FR 13044) for a detailed explanation of the distinction among end-uses for which blends are acceptable without further review. Water has zero ODP and GWP, is not toxic, and is nonflammable.

2. Clarification

On September 5, 1996 (61 FR 47012), EPA listed proprietary blend 1 (PBA 1) as an acceptable substitute for CFCs and HCFCs in rigid polyurethane and polyisocyanurate laminated boardstock foam; rigid polyurethane appliance; rigid polyurethane slabstock and other; and rigid polyurethane spray and commercial refrigeration, and sandwich panels. At the time PBA 1 was submitted, the submitter's identification and the composition of PBA 1 were claimed as confidential business information. The confidentiality of the composition has been withdrawn, and

EPA now discloses that PBA 1 is formic acid. On February 28, 1998 (63 FR 9151), EPA listed formic acid as an acceptable substitute for CFC and HCFCs in polyurethane integral skin foam. In future lists of acceptable substitutes, EPA will combine these listings.

C. Solvents Cleaning

1. Acceptable Substitutes

(a) HFC–4310mee. HFC–4310mee is acceptable as a substitute for HCFC–141b in all solvents cleaning end-uses. HFC–4310mee is listed as acceptable subject to use conditions in the metals cleaning and aerosol solvent sectors (64 FR 22981, April 28, 1999) as a substitute for CFC–113 and methyl chloroform. It is already acceptable in electronics and precision cleaning subject to a 200 ppm time-weighted average workplace exposure standard and a 400 ppm workplace exposure ceiling (61 FR 54029; October 16, 1996).

This document clarifies that HFC–4310mee is also acceptable as a substitute for HCFC–141b. HCFC–141b is scheduled for complete phaseout in 2003 and is currently unacceptable for use in all sectors except for very specific aerosol uses. The exemptions to the ban under Clean Air Act section 610 include use for specific medical devices, aircraft maintenance, mold release agents, spinnerettes, document preservation sprays, photographic equipment, and wasp and hornet sprays used near high-tension wires (58 FR 69638; December 30, 1993). Note that the ban under section 610 is for all class II substances.

2. Clarification

(a) All Solvents Cleaning End-uses. (1) Benzotrifluoride (CAS# 98–08–8). This notice of clarification serves to list benzotrifluoride ($C_7H_5F_3$) as acceptable with an acceptable exposure limit (AEL) of 100 ppm. Monochlorotoluenes/ benzotrifluorides are acceptable subject to use conditions as substitutes for CFC–113 and MCF in all solvent end-uses. The category of monochlorotoluenes/ benzotrifluoride has been listed with a company-established acceptable exposure limit of 50 ppm workplace standard for monochlorotoluenes and a 25 ppm standard for benzotrifluoride (61 FR 25585; May 22, 1996). Of all the structures of commercial interest, the only chemical with an Occupational Safety and Health Administration (OSHA) standard is orthochlorotoluene, one of the monochlorotoluenes. This substance has an OSHA Permissible Exposure Level (PEL) of 50 ppm. Using this standard as a proxy, the Agency set a workplace standard of 50 ppm for monochlorotoluenes as a group. Benzotrifluoride does not have a PEL. Further testing has demonstrated that benzotrifluoride is one of the least toxic chemicals in the category of monochlorotoluenes/ benzotrifluoride. As such, the company-set acceptable exposure limit for benzotrifluoride is 100 ppm.

D. Aerosols

1. Acceptable Substitutes

(a) Aerosol solvents. (1) HFC–4310mee. HFC–4310mee is acceptable as a substitute for HCFC–141b in all aerosol solvent end-uses. For a complete discussion, please refer to the solvents cleaning section above.

2. Clarification

(a) Aerosol Solvents. (1) Benzotrifluoride (CAS# 98–08–8). This notice of clarification serves to list benzotrifluoride ($C_7H_5F_3$) as acceptable with an acceptable exposure limit (AEL) of 100 ppm. For a complete discussion, please refer to the solvent section above.

E. Adhesives, Coatings, and Inks

1. Clarification

(a) Benzotrifluoride (CAS# 98–08–8). This notice of clarification serves to list benzotrifluoride ($C_7H_5F_3$) as acceptable with an acceptable exposure limit (AEL) of 100 ppm. For a complete discussion, please refer to the solvent section above.

III. Additional Information

Contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday-Friday, between the hours of 10:00 a.m. and 4:00 p.m. (Eastern Standard Time). For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as all EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion World Wide Web site at ''http://www.epa.gov/ozone/title6/snap/'' and from the Stratospheric Protection Hotline whose number is listed above.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: May 27, 1999.

Paul Stolpman,

Director, Office of Atmospheric Programs, Office of Air and Radiation.

APPENDIX A—SUMMARY OF ACCEPTABLE DECISIONS

End-Use	Substitute	Decision	Comments
REFRIGERATION and AIR CONDITIONING SECTOR			
All R–502 end-uses	THR–04	Acceptable	EPA anticipates that manufacturers, installers and servicers of refrigeration and air-conditioning systems will follow all applicable standard industry practices and technical standards.
Non-mechanical heat transfer	HFC–236fa	Acceptable as a substitute for CFC-114 in non-mechanical heat transfer when manufactured using any process that does not convert perfluoroisobutylene (PFIB) directly to HFC–236fa in a single step.	EPA anticipates that manufacturers, installers and servicers of refrigeration and air-conditioning systems will follow all applicable standard industry practices and technical standards.

APPENDIX A—SUMMARY OF ACCEPTABLE DECISIONS—Continued

End-Use	Substitute	Decision	Comments
Non-mechanical heat transfer	HFE–7100	Acceptable	EPA anticipates that manufacturers, installers and servicers of refrigeration and air-conditioning systems will follow all applicable standard industry practices and technical standards.
Very-low-temperature refrigeration	HFC–23	Acceptable	This determination applies where the ozone-depleting substance being replaced is CFC–12. EPA anticipates that manufacturers, installers and servicers of refrigeration and air-conditioning systems will follow all applicable standard industry practices and technical standards.
Motor vehicle air conditioning	Thermal storage systems used in tractor trailers in conjunction with passenger compartment climate control systems that use SNAP-accepted refrigerants.	Acceptable	EPA anticipates that installers and servicers of refrigeration and air-conditioning systems will follow all applicable standard industry practices and technical standards.
FOAMS SECTOR			
HCFCs used in all end-uses but rigid polyurethane and polyisocyanurate laminated boardstock, polystyrene extruded boardstock and billet foams, phenolic foams, and polyolefin foams.	HFC–134a, HFC–152a, CO2, water (and blends of any of these with other fully acceptable substitutes).	Acceptable.	
HCFCs used in rigid polyurethane and polyisocyanurate laminated boardstock, polystyrene extruded boardstock and billet foams, phenolic foams, and polyolefin foams.	HFC–134a, HFC–152a, CO_2, water.	Acceptable.	
SOLVENTS SECTOR			
All end-uses	HFC–4310mee	Acceptable subject to a 200 ppm time-weighted average workplace exposure standard and 400 ppm workplace exposure ceiling.	
All end-uses	Benzotrifluoride	Acceptable with an acceptable exposure limit (AEL) of 100 ppm.	
AEROSOLS SECTOR			
Aerosol Solvents	HFC–4310mee	Acceptable subject to a 200 ppm time-weighted average workplace exposure standard and 400 ppm workplace exposure ceiling.	
Aerosol Solvents	Benzotrifluoride	Acceptable with an acceptable exposure limit (AEL) of 100 ppm.	
ADHESIVES, COATINGS, and INKS SECTOR			
All end-uses	Benzotrifluoride	Acceptable with an acceptable exposure limit (AEL) of 100 ppm.	

[FR Doc. 99–14356 Filed 6–7–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 85

[FRL–6352–1]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Status of Equipment Certified and Emissions Levels to be Used by Operators Using Compliance Option 2

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: In an amendment (63 FR 14626, March 26, 1998) to the rule regarding retrofit/rebuild requirements for 1993 and earlier model year urban buses, EPA stated that it would review retrofit/rebuild equipment that was certified by July 1, 1998 and publish the post-rebuild particulate matter (PM) emission levels for urban bus engines affected by the program. Post-rebuild levels are used by operators for calculating target emission levels of their fleets under compliance Option 2. Today's **Federal Register** document fulfills EPA's obligation to review equipment certified by July 1, 1998, and to publish the post-rebuild PM levels.

DATES: This document is effective as of June 8, 1999.

ADDRESSES: This document, as well as other materials relevant to the final rule, is contained in Public Docket A–91–28. This docket is located in room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 ''M'' Street, SW, Washington, DC 20460.

Dockets may be inspected from 8:00 am until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: William Rutledge, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460. Telephone: (202) 564–9297. Email: RUTLEDGE.WILLIAM@EPA.GOV.

SUPPLEMENTARY INFORMATION:

I. Background

Section 219(d) of the Clean Air Act requires EPA to promulgate regulations that require certain 1993 and earlier model year urban buses having engines replaced or rebuilt after January 1, 1995, to comply with an emission standard or control technology reflecting the best retrofit technology and maintenance practices reasonably achievable. On April 21, 1993, EPA published the final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359).

The Urban Bus Retrofit/Rebuild Program requires affected operators of urban buses to choose between two compliance options. Option 1 establishes particulate matter (PM) emissions requirements for each urban bus in an operator's fleet whose engine is rebuilt or replaced. These requirements are to be met by the use of certified PM-reducing equipment. Option 2 is a fleet averaging program that specifies annual target levels for average PM emissions from all the pre-1994 model year urban buses in an operator's fleet. The April 1993 final rule states that EPA will determine post-rebuild levels to be used by operators for calculating their target fleet emission levels under the Option 2 averaging program. These emission levels are to be linked to equipment that is certified for use under compliance Option 1 and that meets an appropriate maximum life cycle cost requirement. The linkage of Option 2's post-rebuild levels to equipment certified under Option 1 assures that the two compliance options will produce equivalent emissions reductions.

The final rule divided Option 2 into two phases, the first applicable to the calculations of target fleet emission levels for calendar years 1996 and 1997, and the second applicable to the calculations for 1998 and thereafter. In the preamble to the final rule, EPA stated that it would review the retrofit/rebuild equipment that was certified by July 1, 1994 and again by July 1, 1996, and publish the respective post-rebuild emission levels for urban bus engines affected by the program. These reviews and updates of post-rebuild levels were necessary because EPA expected increasing numbers of kits to be certified as the program progressed, but as stated in the preamble to the final rule, EPA believed that all equipment likely to be available under the program would be certified by July 1, 1996. EPA first published post-rebuild levels based on equipment certified by July 1, 1994 in a **Federal Register** document dated September 2, 1994 (59 FR 45626). EPA subsequently updated the post-rebuild levels, based on equipment certified by July 1, 1996, in a **Federal Register** document dated August 16, 1996 (61 FR 42764).

In an amendment to the rule (63 FR 14626; March 26, 1998), EPA provided for the review of equipment certified by July 1, 1998, and the corresponding revision of the post-rebuild levels as necessary. This amendment was necessary because certification of equipment was not proceeding at the pace originally expected, and EPA had certified several kits to the 0.10 g/bhp-hr standard after July 1996 that could not influence the post-rebuild levels revised in the August 16, 1996 **Federal Register** document. Today's corresponding post-rebuild level revision is necessary to assure that the two program compliance options remain equivalent in terms of emissions reductions. No further updates of the post-rebuild levels are contemplated, because most of the affected buses are expected to be retired from the fleet roughly by year 2008.

Today's **Federal Register** document fulfills EPA's obligation to review equipment certified by July 1, 1998, and to update the post-rebuild PM levels accordingly. The emission levels contained in today's document must be used by transit operators using Option 2 for determining their Target Level for the Fleet (TLF) for calendar years 2000 and thereafter, in accordance with 40 CFR 85.1403(c)(1)(iv). Operators using Option 2 are expected to take fleet actions no later than calendar year 1999 to ensure compliance with their TLF beginning in calendar year 2000.

Publication of today's document was delayed pending outcome of an Agency investigation concerning electronically-controlled engines equipped by the original manufacturers with strategies designed to decrease fuel consumption during certain driving modes that are not substantially included in the federal test procedure. The effect of such strategies is to substantially increase NOx emissions during these modes. Such electronic control strategies are considered by the Agency to be ''defeat devices'' as defined at 40 CFR 86.094–22, and thus would violate 40 CFR 85.1406 and 85.1408 if included in an urban bus retrofit application.

As a result of our concern about the harmful effect of these defeat devices, certification of kits designed to meet the 0.10 g/bhp-hr standard which happened to include these defeat devices, was made conditional. The conditions have been removed following the implementation of revisions to the fuel injection timing strategy of the kits to deal with the NOx emissions issue.

II. Review of Certified Equipment and Program Requirements

As of July 1, 1998, several equipment kits have been certified for 6V92TA engine models (both MUI and DDEC II) to meet the 0.10 g/bhp-hr standard for less than the applicable life cycle cost requirement ($7,940 in 1992 dollars). Other equipment has been certified for one engine model to meet the 25 percent reduction standard for less than the applicable life cycle cost requirement ($2,000 in 1992 dollars). The following briefly describes these equipment kits. The reader is directed to the referenced **Federal Register** cites for more information regarding the individual kits. In general, the following describes equipment certified between July 1, 1996 and July 1, 1998 to comply with either the 25 percent reduction or 0.10 g/bhp-hr standard, and to meet the appropriate life cycle cost requirements. A list of other equipment certified for the urban bus rebuild program is available from the contact listed above.

A. Engelhard Corporation's ETX™ Rebuild Kit for MUI Engines

Engelhard Corporation's ETX™ rebuild kit is the first kit certified to comply with both the 0.10 g/bhp-hr PM standard and the life cycle cost requirements. It applies to 1979 through 1989 model year Detroit Diesel Corporations 6V92TA MUI (mechanical unit injector) engines. Certification of the kit is described in a **Federal Register** document dated March 14, 1997 (62 FR 12166). The technology consists of an engine rebuild ''upgrade'' kit, a catalytic converter-muffler, and a proprietary coating (referred to as the GPX–5m) applied to piston crowns and cylinder head combustion chambers. The engine upgrade portion of the kit includes cylinder kits, cylinder heads, camshafts, turbocharger, blower and drive gear, fuel injectors, and gasket kit. This equipment triggered program requirements for the applicable engines under compliance Option 1.

Since certification of the ETX kit, competing kits, provided by both Johnson Matthey, Incorporated (JMI) and Detroit Diesel Corporation (DDC), have been certified to the 0.10 g/bhp-hr standard for these engines. The Johnson Matthey kit is described in a **Federal Register** document dated November 6, 1997 (62 FR 60079) and the Detroit Diesel kit is described in a document dated May 14, 1998 (63 FR 26798). An application submitted by Turbo-Dyne Incorporated has been summarized in the **Federal Register** (64 FR 19151; April 19, 1999) and is available for a 45-day public review period.

B. Engelhard Corporation's ETX Rebuild Kit for DDEC Engines

The Engelhard ETX rebuild kit for DDEC engines has similarities to the above-noted ETX kit for MUI engines, and is applicable to 1988 through 1993 model year, federal and California 6V92TA engines equipped with Detroit Diesel Electronic Control (DDEC). The kit is designed to update all DDEC engines to either 253 or 277 horsepower. The ETX kit uses many of the components of the DDC 6V92TA DDECII engine upgrade kit, along with an exhaust catalytic muffler, proprietary engine coatings on the cylinder head fire deck and piston crown, and an improved turbocharger. The kit is certified to comply with the 0.10 g/bhp-hr PM standard and is available for less than the life cycle cost limit of $7,940 (in 1992 dollars).

Certification of the DDEC ETX kit is described in a **Federal Register** document published on September 21, 1998 (63 FR 50225). This equipment triggered program requirements for operators using Option 1 to use equipment certified to the 0.10 g/bhp-hr standard when rebuilding or replacing the applicable engines on or after March 21, 1999.

EPA has also certified other kits to the 0.10 g/bhp-hr standard for the 6V92TA DDECII engines. Certification of a JMI CCT upgrade kit was announced in the **Federal Register** on December 3, 1998 (63 FR 66798), and certification of a DDC kit was announced on February 26, 1999 (64 FR 9500).

C. Engelhard Corporation's CMX Catalytic Muffler for Cummins' L10 EC

EPA certified the Engelhard CMX catalytic muffler to reduce PM emissions by 25 percent for 1992—1993 model year Cummins L10 EC (electronically controlled) engines. This certification was announced in a **Federal Register** document dated March 20, 1998 (63 FR 13660). This equipment triggers the 25 percent reduction standard for these engines under option 1 when rebuilt or replaced on or after September 21, 1998.

Currently, no other equipment has been certified under the urban bus program for these Cummins engines.

EPA has reviewed all equipment certified as of July 1, 1998. Table 1 lists the post-rebuild PM emission level for engine models affected by program regulations. In accordance with section 85.1403(c)(1)(iii), EPA selected 0.10 g/bhp-hr for the post-rebuild level if those engine models had equipment certified by July 1, 1998 to meet both the 0.10 g/bhp-hr standard and life cycle cost requirements. For those engine models for which no equipment was certified to the 0.10 g/bhp-hr standard as having complied with the applicable life cycle cost requirements by July 1, 1998, but for which equipment was certified by July 1, 1998 to meet the 25 percent reduction standard and to meet those applicable life cycle cost requirements, EPA selected as the lowest post-rebuild emission level (greater than 0.10 g/bhp-hr) certified for such equipment. For those engine models for which no equipment was certified by July 1, 1998, as meeting either the 25 percent or 0.10 g/bhp-hr emissions standards and life cycle cost requirements, the post-rebuild level has been selected to be equal to the pre-rebuild level as listed in 40 CFR 85.1403(c)(1)(iii). For engine models with a pre-rebuild level below 0.10 g/bhp-hr, the post-rebuild level has been selected to be equal to the pre-rebuild level listed in 40 CFR 85.1403(c)(1)(iii)(A).

Transit operators complying with Option 2 must use the applicable post-rebuild PM levels shown in Table 1 to calculate their TLF for calendar year 2000 and thereafter. The determination of which emission level (pre-rebuild or post-rebuild level) to use in the calculations must be made in accordance with 40 CFR 85.1403(c)(1)(iv), as amended on March 26, 1998. EPA will revise the instructions for the spreadsheet to reflect the new post-rebuild levels discussed in today's document. The instructions are available upon request from the contact listed above.

TABLE 1.—PM POST-REBUILD LEVELS (G/BHP-HR) FOR CALCULATING TLFS FOR CALENDAR YEAR 2000 AND THEREAFTERK [1]

Engine model	Model year	Pre-rebuild level	Post-rebuild level [2]	Engine code	Engine family
DDC 6V92TA MUI	1979–87	0.50	0.10	All ≤ 293 Hp	All.
	1988–1989	0.30	0.10	All ≤ 293 Hp	All.
DDC 6V92TA DDEC I	1986–89	0.30	0.23	All	All.
DDC 6V92TA DDEC II	1988–91 (w/out trap)	0.31	0.10	253 & 277 Hp	All.
	1992–93 (w/out trap)	0.25	0.10	253 & 277 Hp	All.
	1993 (w/ PM trap)	0.07	0.07	All	All.
DDC Series 50	1993	0.16	0.16	All	All.

TABLE 1.—PM POST-REBUILD LEVELS (G/BHP-HR) FOR CALCULATING TLFS FOR CALENDAR YEAR 2000 AND THEREAFTERK [1]—Continued

Engine model	Model year	Pre-rebuild level	Post-Rebuild level [2]	Engine code	Engine family
DDC 6V71N	1973–87	0.50	0.38	All	All.
DDC 6V71N	1988–89	0.50	0.38	All	All.
DDC 6V71T	1985–86	0.50	0.38	All	All.
DDC 8V71N	1973–84	0.50	0.38	All	All.
DDC 6L71TA	1990	0.59	0.59	All	All.
DDC 6L71TA	1988–89	0.31	0.23	All	All.
DDC 6V71TA DDEC	1990–91	0.30	0.23	All	All.
DDC 8V92TA	1979–87	0.50	0.38	All	8V92TA.
	1988	0.39	0.29	All	8V92TA.
DDC 8V92TA DDEC	1988	0.41	0.31	All	8V92TA–DDEC II.
DDC 8V92TA	1989	0.47	0.35	9E70	KDD0736FW89.
DDC 8V92TA	1989	0.39	0.29	9A90	KDD0736FW89.
DDC 8V92TA	1989	0.34	0.26	9G85	KDD0736FW89.
DDC 8V92TA DDEC	1989	0.41	0.31	1A	KDD0736FZH4.
DDC 8V92TA	1990	0.47	0.35	9E70	LDD0736FAH9.
DDC 8V92TA DDEC	1990	0.49	0.37	1A	LDD0736FZH3.
DDC 8V92TA DDEC	1991	0.25	0.19	1A or 5A	MDD0736FZH2.
DDC 8V92TA DDEC	1992–93	0.21	0.16	1D	NDD0736FZH1 & PDD0736FZH X.
DDC 8V92TA DDEC	1992–93	0.29	0.22	6A	NDD0736FZH 1 & PDD0736FZH X.
DDC 8V92TA DDEC	1992–93	0.20	0.15	5A	NDD0736FZH 1 & PDD0736FZHX.
DDC 8V92TA DDEC	1992–93	0.25	0.19	1A	NDD0736FZH 1 & PDD0736FZHX.
CUMMINS L–10	1985–1987	0.65	0.34	All	All.
	1988–1989	0.55	0.34	All	All.
	1990–1992	0.46	0.34	All	All.
L–10EC	1992	0.25	0.19	All	All.
Cummins L–10 EC w/trap.	1993	0.05	0.05	All	All.
Alternatively-Fueled Engines.	pre–1994	0.10	0.10	All	All.
Other Engines	pre–1988	0.50	0.50	All	All.
	1988–1993	Cert'n Level [3]	Cert'n Level [3]	All	All.

[1] In accordance with 40 CFR 85.1403(c)(1)(iv).
[2] The instructions for the spreadsheet list these levels as post-rebuild-3 levels. The instructions are available upon request from the contact listed above.
[3] Use the certification level determined under EPA's new engine certification program.

An urban bus operator choosing to comply with Option 2 must be able to demonstrate at all times in a specified year that its fleet level attained (FLA) is equal to or less than its TLF for that year. Using the formulas in 40 CFR 85.1403(c)(1) and the PM emissions levels (including the above post-rebuild levels) in accordance with section 85.1403(a)(1)(iv), operators choosing Option 2 must calculate their TLF for calendar year 2000 and thereafter. The FLA is calculated using the formula of 40 CFR 85.1403(c)(2) and the certification level of the specific equipment installed on each bus. In order to ensure it is in compliance with its TLF at the start of calendar year 2000 and thereafter, transit operators choosing to comply with Option 2 are expected to begin taking appropriate actions (such as installing certified equipment and/or retiring buses) no later than calendar year 1999.

Dated: May 21, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 99–13802 Filed 6–7–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–6354–3]

RIN 2040–AD07

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Measurement of Mercury in Water (EPA Method 1631, Revision B); Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final regulation amends the ''Guidelines Establishing Test Procedures for the Analysis of Pollutants'' under section 304(h) of the Clean Water Act by adding EPA *Method 1631, Revision B: Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry.* EPA Method 1631 measures mercury at the low levels associated with ambient water quality criteria (WQC). EPA has promulgated WQC for mercury at 12 parts-per-trillion (ppt) in the National Toxics Rule, and published a criterion for mercury at 1.3 ppt in the Water Quality Guidance for the Great Lakes System. The version of Method 1631 promulgated today includes changes to the method based on public comments at proposal (63 FR 28867, May 26, 1998). These changes increase measurement reliability at WQC levels. EPA recommends the use of clean sampling and laboratory techniques in conjunction with EPA Method 1631 to preclude contamination

at the low ppt levels necessary for mercury determinations. EPA has published guidance documents on sampling and clean rooms for trace metals, including mercury.

EFFECTIVE DATE: This regulation is effective July 8, 1999. For judicial review purposes, this final rule is promulgated as of 1:00 p.m. Eastern Standard Time on June 22, 1999 in accordance with 40 CFR 23.7.

The incorporation by reference of EPA Method 1631 is approved by the Director of the Federal Register July 8, 1999.

ADDRESSES: Copies of the public comments received, EPA responses, and all other supporting documents (including references included in this notice) are available for review at the U.S. Environmental Protection Agency, Water Docket, 401 M Street SW, Washington, DC 20460. For access to docket materials, call 202/260–3027 on Monday through Friday, excluding Federal holidays, between 9 a.m. and 3:30 p.m. Eastern Standard Time for an appointment.

Copies of EPA Method 1631 are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605–6000 or (800) 553–6847. The NTIS publication number is PB99–131989.

An electronic version of EPA Method 1631 also is available via the Internet at http://www.epa.gov/OST/Methods.

FOR FURTHER INFORMATION CONTACT: For information regarding EPA Method 1631 contact Maria Gomez-Taylor, Ph.D., Engineering and Analysis Division (4303), USEPA Office of Science and Technology, 401 M Street, SW, Washington, DC 20460; or call 202/260–1639.

SUPPLEMENTARY INFORMATION:

Potentially Regulated Entities

EPA Regions, as well as States, Territories and Tribes authorized to implement the National Pollutant Discharge Elimination System (NPDES) program, issue permits that comply with the technology-based and water quality-based requirements of the Clean Water Act. In doing so, the NPDES permitting authority, including authorized States, Territories, and Tribes, make a number of discretionary choices associated with permit writing, including the selection of pollutants to be measured and, in many cases, limited in permits. If EPA has ''approved'' standardized testing procedures (i.e., promulgated through rulemaking) for a given pollutant, the NPDES permit must include one of the approved testing procedures or an approved alternate test procedure. Regulatory entities may, at their discretion, require use of this method in their permits. Therefore, entities with NPDES permits could be affected by the standardization of testing procedures in this rulemaking, because NPDES permits may incorporate the testing procedures in today's rulemaking. In addition, when a State, Territory, or authorized Tribe provides certification of federal licenses under Clean Water Act section 401, States, Territories and Tribes are directed to use the standardized testing procedures. Categories and entities that may ultimately be affected include:

Category	Examples of potentially regulated entities
Regional, State and Territorial Governments and Indian Tribes	States, Territories, and Tribes authorized to administer the NPDES permitting program; States, Territories, and Tribes providing certification under Clean Water Act section 401; Governmental NPDES permittees.
Industry	Industrial NPDES permittees.
Municipalities	Publicly-owned treatment works with NPDES permits.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline of Preamble

I. Authority

Today's regulation is being promulgated pursuant to the authority of sections 301, 304(h), and 501(a) of the Clean Water Act (CWA), 33 U.S.C. 1314(h), 1361(a) (the ''Act''). Section 301 of the Act prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit issued under section 402 of the Act. Section 304(h) of the Act requires the Administrator of the EPA to ''promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit applications pursuant to section 402 of this Act.'' Section 501(a) of the Act authorizes the Administrator to ''prescribe such regulations as are necessary to carry out his function under this Act.'' EPA publishes CWA analytical method regulations at 40 CFR part 136. The Administrator also has made these test procedures applicable to monitoring and reporting of NPDES permits (40 CFR part 122, §§ 122.21, 122.41, 122.44, and 123.25), and implementation of the pretreatment standards issued under section 307 of the Act (40 CFR part 403, §§ 403.10 and 402.12).

II. Background

The details of EPA Method 1631 and its use in mercury determinations were given at proposal on May 26, 1998 (63 FR 28867). On March 5, 1999, EPA published a notice of data availability (NODA) with results from additional studies of municipal and industrial effluents using EPA Method 1631 (64 FR 10596). EPA conducted the additional studies in order to better respond to comments received on the May 26, 1998 proposal.

III. Summary of Final Rule

A. Introduction

Today's action makes available at 40 CFR part 136 an additional test procedure for measurement of mercury in aqueous samples. This rulemaking does not repeal any of the currently approved methods that measure mercury. For an NPDES permit, the permitting authority should decide the appropriate method based on the circumstances of the particular water sample measured. Use of EPA Method 1631 may be specified by the permitting authority when a permit is modified or reissued.

EPA does not intend for Method 1631 to be a *de facto* replacement for Method 245.1 or any of the other existing EPA-approved methods for measurement of mercury. EPA intends that permit writers specify the use of Method 1631 when measurement at very low levels is required, for example, to determine compliance with water quality-based effluent limitations duly established at very low levels.

B. Summary of EPA Method 1631

EPA Method 1631 has four procedural components: sample pretreatment; purge and trap; desorption; and detection by atomic fluorescence. In the sample pretreatment step, bromine monochloride (BrCl) is added to the sample to oxidize all forms of mercury to Hg(II). After oxidation, the sample is sequentially prereduced with $NH_2OH \cdot HCl$ to destroy free halogens, then reduced with $SnCl_2$ to convert Hg(II) to volatile Hg(0). The Hg(0) is purged from the aqueous solution with nitrogen onto a gold-coated sand trap. The trapped mercury is thermally desorbed from the gold trap into a flowing gas stream into the cell of a cold-vapor atomic fluorescence spectrometer. Quality is assured through calibration and testing of the oxidation, purging, and detection systems.

C. Sample Contamination

Trace levels of metals are ubiquitous in the environment. Therefore, the determination of trace metals at the levels of interest for water quality criteria necessitates the use of clean sample handling techniques to avoid ''false positive'' test results due to contamination in the course of sample collection, handling, or analysis. EPA has distributed several guidance documents that are designed to ensure that data results from the measurement of metals in aqueous test samples accurately reflect actual environmental levels. The guidance documents include: *Method 1669: Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels* (Sampling Guidance), EPA–821–R–96–001, July 1996; *Guidance on Establishing Trace Metals Clean Rooms in Existing Facilities,* EPA–821–B–96–001, January 1996; and *Guidance on Documentation and Evaluation of Trace Metals Data Collected for Clean Water Act Compliance Monitoring,* EPA–821–B–96–004, July 1996. The most serious problem faced by laboratories conducting metals analyses at these very low levels is the potential for sample contamination during sample collection and handling. Sample contamination with mercury is particularly difficult to control because of its ubiquity in the environment. For example, commonly used polyethylene sample containers are unacceptable for sample storage because atmospheric mercury may diffuse through the walls of the container causing sample contamination. The Sampling Guidance details rigorous sample handling and quality control (QC) procedures to assure that reliable data are obtained for mercury at the levels of interest for water quality criteria. EPA recommends that the procedures described in the Sampling Guidance be followed when performing low level, trace metals analyses and has incorporated certain essential elements of the Guidance in the method.

D. Quality Control

EPA Method 1631 contains all of the standardized QC tests proposed in EPA's streamlining initiative (62 FR 14976, March 28, 1997) and used in test procedures in 40 CFR part 136, appendix A. Today's rule requires an initial demonstration of laboratory capability which consists of: (1) A method detection limit (MDL) study to demonstrate that the laboratory is able to achieve the MDL and minimum level of quantification (ML) specified in EPA Method 1631; and (2) an initial precision and recovery (IPR) test, consisting of analyses of four reagent water samples spiked with mercury, to demonstrate the laboratory's ability to generate acceptable precision and recovery.

Today's rule also requires ongoing QC tests for each analytical batch, (i.e., a set of 20 samples or less pretreated at the same time):

- Verification of calibration of the purge and trap and atomic fluorescence systems to assure that instrument response has not deviated significantly from the instrument response obtained during calibration.
- Analysis of a matrix spike (MS) and matrix spike duplicate (MSD) to demonstrate method accuracy and precision and to monitor matrix interferences.
- Analysis of reagent and bubbler blanks to demonstrate freedom from contamination.
- Analysis of a quality control sample (QCS) and ongoing precision and recovery (OPR) samples to demonstrate that the method remains under control.

EPA Method 1631 contains QC acceptance criteria for all QC tests. Compliance with these criteria will allow a data user to evaluate the quality of the results. These QC acceptance criteria will increase the reliability of results and provide a means for laboratories and data users to monitor analytical performance, thereby providing a basis for sound, defensible data.

E. Performance Based Measurement System

On March 28, 1997, EPA proposed a rule (62 FR 14976) to streamline approval procedures and use of analytic methods in water programs through implementation of a performance-based approach to environmental measurements. On October 7, 1997, EPA published a document of the Agency's intent to implement a Performance Based Measurement System (PBMS) in all media programs to the extent feasible (62 FR 52098). EPA's water program offices are developing plans to implement PBMS. EPA anticipates that the final rule to implement PBMS in water programs will be published in 1999 based on the March 28, 1997 proposed rule. Consistent with Agency PBMS implementation plans, EPA Method 1631 incorporates QA and QC acceptance criteria to serve as a basis for assessment of method performance. When PBMS is in place, EPA Method 1631 would serve as a reference method for demonstrating equivalency when modifications are made.

EPA Method 1631 also employs a performance-based approach to the sample preparation and trapping systems. Analysts are allowed to modify the sample preparation and trapping aspects of the method provided all the specified performance criteria are demonstrated and documented. The method also allows the use of alternate reagents and hardware provided that the analyst demonstrates equivalent or superior performance and meets all QC acceptance criteria.

Demonstrating equivalency involves two sets of tests, one set with reference standards and the other with the sample matrix. The equivalency procedures include performance of the IPR test using reference standards to demonstrate that the results produced with the modified procedure would meet or exceed the QC acceptance criteria in EPA Method 1631. In addition, if the detection limit would be affected by a modification, performance of an MDL study is required to demonstrate that the modified procedure could achieve an MDL less than or equal to the MDL in EPA Method 1631 or, for those instances in which the regulatory compliance limit is greater than the ML in the method, one-third the regulatory compliance limit. For a discussion of these levels, see EPA Method 1631 or the March 28, 1997 proposed rule at 62 FR 14976.

IV. Changes to EPA Method 1631 Since Proposal

The Agency has revised EPA Method 1631, Revision A based on comments received on the proposal (63 FR 28868, May 26, 1998) and the NODA (64 FR 10596; March 5, 1999). The significant modifications in EPA Method 1631, Revision B are the change of the sample holding time (from 6 months to 28 days), the change of the MS/MSD performance criteria (for recovery from 75–125 percent to 71–125 percent recovery), and a change in reporting requirements.

A. Holding Time Change

EPA proposed the 6 month holding time for preserved aqueous samples to be analyzed by EPA Method 1631. Because the 6 month holding time was not evaluated in the method validation study supporting the proposal, EPA requested data that would support the 6 month holding time. Data were not available. Therefore, in the version of EPA Method 1631 being approved for use today, EPA has set the holding time to 28 days, the prescribed holding time listed in Table II at 40 CFR part 136.

B. Performance Criteria Change

The MS/MSD recovery limits in the proposed version of EPA Method 1631 were 75–125 percent. The interlaboratory method validation study produced MS/MSD limits of 71–119 percent. In response to comments on the proposal, EPA acknowledges that the lower limit produced in the interlaboratory study is more appropriate and has changed this limit to 71 percent in the version of EPA Method 1631 approved for use today.

C. Reporting Requirements Change

1. Reporting of Data That Failed To Meet QC Acceptance Criteria

In order to clarify the Agency's intent regarding data that do not meet the method QC acceptance criteria or that indicate the analytical system is not in control, EPA has adopted suggestions from commenters that these data should not be reported or otherwise used for permitting or regulatory compliance purposes. This modification addresses concerns that regulated entities could be adversely affected by data not meeting performance criteria, for example, via compliance monitoring. EPA also has added a statement to section 13.2 of the method that any decision not to report data from an analytical system that is out of control does not provide relief from a permit's underlying requirement to submit timely reports.

2. Reporting of Blank Results

In today's rule, EPA has expanded reporting of blank results to include reagent blanks and field blanks so that a regulatory authority may consider field blank contamination in any compliance determination. To facilitate assessment of the presence and extent of contamination, the Agency has revised EPA Method 1631 to require reporting of the mercury concentration in field blanks as well as in reagent blanks. Today's rule, however, does not require blank subtraction. Regulatory authorities or other data users may subtract the concentration of mercury in field blanks or reagent blanks if subtraction is warranted on a case-by-case basis. Today's rule does nothing, however, to preclude the reporting of blank-subtracted results in addition to the separate reporting of results from samples and from blanks.

3. Reporting Laboratory-Specific MDLS and MLS

EPA has removed the option for laboratories to calculate their own lower MDLs and MLs in the version of EPA Method 1631 being approved for use today. EPA believes this will avoid confusion and preclude lower MDLs and MLs from being used for NPDES permitting or regulatory compliance determinations.

D. Other Changes and Improvements

1. Changes To Method Implementation

Minor technical improvements were made to EPA Method 1631 to clarify method implementation. Changes and improvements include:

- Revision to sections 7.9, 7.10 and 10.1.1.2 to include two working standards (0.10 ng/mL and 10.0 ng/mL) in order to correct inaccurate standard concentration levels.
- Language changes in sections 4.4.1 and 9.3.4.1 to address iodide interferences that have been identified and assessed since proposal. This modification required the addition of a reference supporting the handling of iodide interferences. The additional reference has been added to EPA Method 1631 as Reference 10.
- Revisions to sections 9.4.2.2 and 11.1.1.2 to include a requirement that a reagent blank include the same amount of reagent as the sample being analyzed.
- Revisions to section 11.1.1.2 to include recommendations to assure that complete oxidation has occurred.
- Where appropriate, the word ''analyst'' was changed to ''laboratory'' to acknowledge that various sections of EPA Method 1631 may be performed by different analysts in the same laboratory.

2. Corrections To Method

Minor changes were made to correct typographical and information errors. Nearly all of the corrections are the result of comments and include:

- In section 9.1.2.1, ''less than'' was changed to ''less than or equal to.'' A method modification must achieve an MDL ''less than or equal to'' one-third the compliance limit or the MDL.
- In section 12.4.1, > 0.2 ng/L has been corrected to < 0.2 ng/L.
- In Table 2, (s) has been corrected to RSD for precision.
- In Table 1, the lowest ambient water quality criterion has been corrected from 1.8 ng/L (human health criterion) to 1.3 ng/L (wildlife criterion).

The lowest WQC for the Great Lakes is 1.3 ng/L, the criterion for wildlife protection (see Table 4 to 40 CFR part 132).

• In section 4.2, Reference 5 has been changed to Reference 9, which is a paper discussing contamination of samples by dental work containing mercury amalgam fittings.

• References 10 through 20 in the proposed version of EPA Method 1631 have been changed to References 11 through 21 in the final version to include the addition of a new Reference 10 addressing handling of samples containing iodide interferences.

3. Clarifying Statements

As a result of comments:

• In section 4.3.8.5, a statement was added to clarify that reagents can be a source of contamination.

• Sections 4.3.8.2 and 5.3 were modified to clarify the meaning of ''high'' concentration of mercury and to caution that samples containing mercury concentrations greater than 100 ng/L should be diluted prior to bringing them into the clean room or laboratory dedicated to processing trace metals samples and that samples containing μg/L concentrations of mercury should be treated as hazardous.

4. Additions To Health and Safety Monitoring and Waste Management

Today's version of EPA Method 1631 includes two additions made to address and clarify health and safety monitoring and waste management.

• In section 5.2, EPA added a recommendation that personal hygiene monitoring should be performed using Occupational Safety and Health Administration (OSHA) or National Institute of Occupational Safety and Health (NIOSH) approved personal hygiene monitoring methods.

• In section 15.1, a reference was added to address waste management techniques: *Environmental Management Guide for Small Laboratories* (EPA 233–B–98–001). None of the changes or improvements to the Method discussed above warrant re-proposal because these changes merely respond to public comment to clarify, correct minor errors, or otherwise improve the Method. None of these changes impair method performance or reliability.

V. Public Participation and Response to Comments

The Agency proposed EPA Method 1631 (''Method 1631''; or ''the Method'') on May 26, 1998 (63 FR 28867). The comment period closed on July 27, 1998. In addition to providing notice of the Method, the proposal also solicited information and data that might be relevant to the Agency's decisionmaking. EPA both received information and data and developed additional data confirming the proposal. EPA issued a notice of data availability (NODA) and request for comment on these data (64 FR 10596; March 5, 1999). The NODA comment period closed on April 5, 1999. During the NODA comment period, EPA again solicited additional data and information on EPA Method 1631.

EPA received more than 500 detailed comments from approximately 30 commenters. Comments ranged from praise and support for EPA Method 1631 to concern about the possible setting of compliance limits at the MDL or ML and suggestions for improving the technical details of the method. EPA appreciates the constructive comments and suggestions and believes that today's version of EPA Method 1631 will provide reliable data for compliance monitoring. A summary of the significant comments is presented below, followed by EPA's response. See the Docket for a complete summary of the detailed comments and more extensive responses.

A significant report received during the comment period was provided by the Department of Environmental Protection (DEP) in the State of Maine titled: ''Mercury in Wastewater: Discharges to the Waters of the State'' (the ''Maine Report''). The Maine Report gives details and results of analysis of 104 ambient water samples and more than 150 wastewater samples (primarily effluents) using the proposed version of EPA Method 1631. The Maine Report is exemplary in that it allowed Maine's DEP to assess the presence and concentration of mercury Statewide, and will allow the State of Maine to focus its resources on problem areas within the State. The Maine Report is also significant because it provided a comprehensive ''real world'' assessment of the measurement capability of EPA Method 1631. The Maine Report demonstrates that EPA Method 1631 can be applied successfully to determination of mercury in a wide variety of effluents and ambient waters. Of particular interest is that, of 104 ambient water samples tested, no sample contained mercury at a concentration greater than 7 ng/L. Of the more than 100 effluent samples tested, only one contained mercury above the 200 ng/L level that previously approved methods for mercury could have measured. EPA has placed a copy of the Maine Report in the Docket for today's final rule. EPA recommends that all persons interested in making reliable mercury measurements in ambient water and discharges read the Maine Report. EPA publicly thanks the State of Maine and particularly the Department of Environmental Protection for its contribution. Comments and responses are organized and presented by subject area.

1. Support for EPA Method 1631

Comment: Commenters strongly support the need to reliably measure mercury levels in ambient waters. The method is technically sound and the chemistry behind the method is superb. The Agency should move aggressively to implement this method. Permitting authorities and others should take the necessary steps to see its adoption and use. EPA Method 1631 will: (1) Allow gathering of the type of information crucial to understanding mercury in the environment; (2) allow better analytical information on the levels of mercury in various waters to help decide if and where source reduction efforts would be most effective; (3) allow facilities to better assess actual discharges and progress in reducing mercury in effluents; (4) allow permitting authorities to establish appropriate limits based on ecological or human health endpoints, rather than being limited by the less-sensitive analytical techniques routinely utilized; (5) allow agencies to better monitor response of ambient waters to mercury reduction initiatives; (6) be useful for situations in which an authority or facility believes that results obtained with currently approved methods do not reflect actual levels because of contamination during sample collection, handling, and analysis; and (7) allow the State of Wisconsin to meet the recommendations of the ''Wisconsin Strategy for Regulating Mercury in Wastewater.'' The Wisconsin strategy recommends development of better analytical capability to adequately quantify the level of mercury at effluent levels that have the potential to cause environmental degradation.

Response: EPA appreciates the support and, in particular, the recognition that a method for measuring mercury at ambient water quality criteria levels is overdue, that the method is based on sound science, and that EPA Method 1631 will protect dischargers from false reports that mercury is present in an effluent when, in fact, inadequate sampling and laboratory procedures accounted for the mercury measured in the sample.

2. Practicality and Cost

Impractical and Costly

Comment: The required use of EPA Method 1631 would impose an economic burden on industry, would force purchase of expensive new equipment, and would require a significant increase in operating expenses. The cost of a Class 100 clean room is $50,000–$200,000. The analytical equipment will cost $10,000–$45,000. Fluoropolymer bottles will cost an estimated $7,200. The bottle cleaning protocol would require dedicated laboratory space and staff. Additional cost will be incurred for training.

Response: Not every facility will need to create a clean room and bottle cleaning capacity, because commercial laboratories are available and can supply clean bottles. In a study conducted by Ford Motor Company, the cost per sample analysis was in the range of $50–$80. EPA's experience is that costs per sample typically range between $50 to $110. EPA does not believe that this cost is unreasonable. If a facility desires to establish a laboratory for analysis using EPA Method 1631, however, EPA has provided guidance for establishment of ''clean spaces'' that will minimize costs in establishing a ''clean'' facility (see References 6 and 7 in Method 1631).

Lack of Laboratory Capability

Comment: Relatively few laboratories nationwide currently have the expertise and infrastructure to conduct analysis using this Method.

Response: Not every laboratory will need to establish the capability to conduct EPA Method 1631. Analytical costs are likely to decrease as demand for and use of the Method increases. Today more than ever, laboratories and other businesses respond rapidly to new business opportunities. Therefore, the Agency anticipates that capacity will develop rapidly as the demand increases for analyses by EPA Method 1631.

Sampling With EPA Method 1669

Comment: Required use of the radical field sampling procedures in EPA Sampling Method 1669 to support EPA Method 1631 would significantly increase cost and staff necessary to sample for mercury analysis alone. One additional sampling person (for clean hands/dirty hands) and ultraclean sampling protocols will cost approximately $34,000.

Response: Once sampling personnel become familiar with the ''clean hands/dirty hands'' technique and procedures recommended in EPA Methods 1631 and 1669, sampling for mercury can proceed quickly and efficiently. EPA does not believe that full-time sampling personnel will be needed. EPA anticipates that samples may need to be collected monthly, quarterly, or yearly, depending on the facility and whether mercury is measured at levels of concern. Therefore, the actual incremental cost for collection of samples using the techniques suggested in EPA Method 1669 will be small.

3. EPA Method 1631 Represents a Significant Regulatory Action

Significant Regulatory Action Under Executive Order 12866

Comment: The proposed rule is a ''Significant Regulatory Action'' under Executive Order 12866 (58 FR 51735, Oct. 4, 1993).

Response: It has been determined that this rule is a significant regulatory action and was, therefore, reviewed by the Office of Management and Budget (OMB).

Cost Increase Stated in Great Lakes Guidance

Comment: EPA acknowledged in Table 5–13 of *Assessment of Compliance Costs Resulting from Implementation of the Final Great Lakes Water Quality Guidance* (the ''Assessment Document'') that the annual cost could increase by $569.8 million if future MDLs became 10 times lower and could increase by $882.5 million if future MDLs became 100 times lower. EPA Method 1631 lists an MDL 1000 times lower. This rule should be subject to OMB review.

Response: The estimated compliance cost increases in the Assessment Document referred to future MDLs for all toxic pollutants (not just mercury) assuming MDLs might be used as compliance limits (and the MDL used for compliance evaluation). The Assessment Document states that the minimum level (ML), not the MDL, should be used for compliance evaluation when the WQBEL is below the detection or quantitation limit of the most sensitive analytical method. Today's rule implicates neither of these limits (MDL nor ML) because EPA Method 1631 allows reliable measurements below the lowest ambient water quality criterion (1.3 ng/L) in the final Great Lakes Water Quality Guidance. The Assessment Document presumed that costs would increase if dischargers were required to meet discharge requirements at the lower MDLs, not that it would cost these amounts if EPA allowed use of another method for the measurement of mercury. In any event, EPA evaluated compliance costs in the Great Lakes rulemaking because it would result in establishment of standards of compliance. Today's rule does not set standards of compliance, only standards of measurement and analysis. This rule is considered a significant regulatory action and was, therefore, reviewed by OMB.

Unfunded Mandates Reform Act

Comment: The Unfunded Mandates Reform Act (UMRA; 25 U.S.C. 1531, Subchapter II), requires assessment of the effects of regulatory actions on the private sector and preparation of a statement containing qualitative/quantitative cost-benefit analysis if costs are expected to exceed $100 million. EPA should perform the cost and benefit assessments because existing permits require the use of the most sensitive test procedure.

Response: EPA acknowledges that some permits may require the permittee to use the most sensitive test procedure available at the time of permit issuance, for example, when the limit is below detection of approved methods. Today's rulemaking does not automatically change permits issued prior to today. The only costs associated with today's rule are analytical costs, not compliance costs. Today's rule is not subject to the requirements of sections 202 and 205 of UMRA because it does not contain a Federal mandate that could result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA estimates the incremental analytical costs associated with the use of EPA Method 1631 instead of another approved method for mercury to be less than $2.6 million per year. EPA believes that this rule does not impose any regulatory requirements that might significantly or uniquely affect small governments because the rule approves an additional test procedure for the measurement of mercury that might be regulated by some other action (e.g., a permit that implements a State-adopted water quality standard).

Regulatory Flexibility Analysis

Comment: The Regulatory Flexibility Act (RFA) requires description of impact of regulatory actions on small entities. EPA is incorrect in stating that the rule will not have a significant economic impact on small facilities. Commenters request that the rule be subject to OMB review and a regulatory flexibility analysis.

Response: In section VI.C. of the proposal, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certified that this rule will not have a significant economic impact on a substantial number of small entities. This regulation approves an additional test procedure (analytical method) for the measurement of mercury which may be required in the implementation of the CWA (e.g., issuance of permits and/or establishment of WQS). EPA Method 1631 is not a *de facto* replacement for EPA Method 245.1 or any of the other existing EPA-approved methods. EPA anticipates that permit writers will only require the use of EPA Method 1631 if there is a need to assess effluents or ambient water at the low levels EPA Method 1631 can measure or after a determination that a discharge causes, has a reasonable potential to cause, or contribute to an excursion from a water quality criterion for mercury. EPA further anticipates that the incremental analytical costs that may potentially be incurred by any small entity with low mercury limits will be at most $600 per year, assuming monthly monitoring.

4. Regulatory implications

Support for Use in Permitting

Comment: EPA should require immediate implementation of the new method and should require States to begin requiring it for NPDES compliance as soon as possible.

Response: Today's rule authorizes use of EPA Method 1631 but does not require its use for compliance monitoring or any other uses. The Agency developed EPA Method 1631 to enable reliable measurement of water samples at the levels established in water quality criteria. Consequently, EPA expects that when the measurement sensitivity of EPA Method 1631 is necessary to assess and implement water quality controls (including compliance monitoring), EPA Method 1631 will be used. If and when other methods for measuring mercury at these low levels are promulgated in 40 CFR part 136 or are approved under the procedures at 40 CFR 136.4 and 136.5, the permitting authority would have discretion to determine which method is most appropriate under the circumstances.

States that are authorized to administer the NPDES program must require use of 40 CFR part 136 methods. EPA recognizes that States may need to follow State procedures to adopt changes to 40 CFR part 136 before they can require use of a newly promulgated method and allows States a reasonable time to accomplish this. See 40 CFR 123.62(e). EPA regulations do not require that permits be reopened to include a new analytical method. Instead, the permitting authority may have the opportunity to reopen the permit or to wait until the permit is reissued to include a new or more sensitive analytical method. See 40 CFR 122.62(a)(2).

Best Available Sensitivity

Comment: EPA failed to acknowledge that many existing permits require the permittee to use the test method with the lowest detection level.

Response: EPA recommends that EPA Method 1631 be used only for situations in which mercury may be known or thought to be the cause of an environmental or human health problem, or for investigations directed at determining whether a problem exists, in the same way that EPA recommends that other test methods be used. EPA Method 1631 is being made available for use when it is necessary to measure mercury concentrations at low levels. As previously explained, existing permit requirements to use the most sensitive method available may only incorporate the most sensitive method at the time the requirement was imposed, not methods adopted in the future.

Reporting vs. Use of Data

Comment: EPA Method 1631 states that results need not be reported for regulatory compliance purposes if the results do not satisfy QC acceptance criteria. The Inter-Industry Analytical Group (IIAG) suggests that EPA change the phrase to read: ''. . . may not be reported or otherwise used for permitting or regulatory compliance purposes.'' IIAG also requests that EPA clarify that results from tests performed with an analytical system that is not in control also should not be reported or otherwise used for permitting or regulatory compliance purposes.

Response: EPA has adopted IIAG's suggested wording, and changed relevant text in EPA Method 1631 accordingly. The wording changes clarify the Agency's intent that data that fail to meet the Method's QC acceptance criteria are not reliable measurements of mercury.

Iodide Interference

Comment: The Inter-Industry Analytical Group (IIAG) comments that EPA fails to give adequate consideration to interferences and cites, as an example, an iodide interference problem encountered by GPU Nuclear Co. (GPU) using EPA Method 245.1. GPU attributes this interference to formation of a stable complex of iodide and mercury that prevents reduction of mercury to its elemental form with the stannous chloride ($SnCl_2$) reductant. ($SnCl_2$ also is used in EPA Method 1631). GPU has overcome the problem by addition of a small amount of sodium tetrahydroborate to aid in reduction of mercury.

Response: EPA did not claim that EPA Method 245.1 was free from test interference. The claim was made concerning EPA Method 1631. EPA Method 1631 uses different chemistry than EPA Method 245.1. In EPA Method 1631, mercury is oxidized to Hg(II) with bromine monochloride, pre-reduced with ammonium hydroxide hydrochloride ($NH_2OH{\cdot}HCl$) to destroy free halogens, then reduced with $SnCl_2$. The $NH_2OH{\cdot}HCl$ likely plays the same role as the sodium tetrahydroborate in GPU's procedure. EPA has now received a report that high concentrations of iodide (>40 mg/L) can interfere in the determination of mercury using EPA Method 1631. These high concentrations can occur in in-process streams and influents, but normally would not be encountered in treated effluents. To allow for the possibility that high concentrations of iodide, however, and the possibility that other substances could interfere in the determination of mercury using EPA Method 1631, today's version of EPA Method 1631 acknowledges that test interference remain a slight possibility.

Variability and Regulatory Decisions

Comment: The Inter-Industry Analytical Group (IIAG) comments that EPA's QC acceptance criteria and other variability must be taken into account in regulatory decisions. IIAG cites the QC acceptance criteria for the matrix spike and matrix spike duplicate (MS/MSD) in EPA Method 1631 and questions EPA's rationale for determining that such a wide range of performance is acceptable, given the harsh regulatory consequences associated with excursion of permit limitations. IIAG states that EPA must explain why such variability is acceptable and how regulators are required to account for that variability in their permitting and/or compliance decisions.

Response: EPA disagrees that QC acceptance criteria are ''wide.'' These criteria are consistent with, or narrower than, other methods for measuring pollutants at these levels (see for example the QC acceptance criteria for EPA Methods 608 and 1613 at 40 CFR part 136, appendix A). The QC acceptance criteria recognize the variability expected to occur among laboratories. The EPA developed the criteria from multiple, single-laboratory data and verified the data in the interlaboratory study. The Agency used the laboratory data to develop the QC acceptance criteria in today's rule.

Regarding accounting for variability in permitting and compliance decisions, EPA's technology-based rules do account for analytical variability because measurement variability is a component of the overall variability encountered to develop the rule (including field measurement). Therefore, no additional allowance for analytical variability is appropriate. For water quality uses, accommodation for the effect of analytical variability is less routinized. In the Technical Support Document (TSD) for Water Quality-based Toxics Control (EPA/505/2–90-001), EPA noted that accounting for analytical variability in establishing permitting requirements can result on the one hand, in failure to be adequately protective of the wasteload allocation or, on the other hand, to be overly conservative. Therefore, EPA recommended against any additional allowance for analytical variability. However, EPA currently is developing guidance on accounting for analytical variability in permitting in the context of the whole effluent toxicity program. When finalized, that guidance may provide the basis for revising the position taken in the TSD with respect to accounting for analytical variability in general.

5. Retention of Approved Methods and Approval of Additional Methods

Support as Additional Method, With Qualification

Comment: Commenters support approval of EPA Method 1631 if it is an addition to the list of approved methods and not a replacement for existing methods, especially if a laboratory can demonstrate that it can achieve low ng/L detection limits (including needed sensitivity) with one of the presently approved methods.

Response: Today's rule approves EPA Method 1631 as an additional method that can be used when measurement of mercury at water quality criteria levels is needed. EPA doubts that a laboratory can achieve the low levels (including needed sensitivity) with one of the presently approved methods. Typically, the MDL of a method should be an order of magnitude (factor of 10) below the level desired for measurement (e.g., a regulatory compliance limit, or any water quality criterion) so that contamination can be detected and the effects of contamination evaluated. If the detection limit is at or near the level desired for measurement, it would be difficult to determine if the presence of the substance is real or is attributable to contamination. The capabilities of EPA Method 1631 enable such an evaluation.

Support Continued Use of Approved Methods

Comment: EPA should continue to allow the use of other approved methods. Withdrawal of existing methods (EPA 245.1, 245.5, Standard Method 3112B, ASTM D3223–91, USGS I–3462–85, and AOAC-International 977.2) would be disastrous. There would be serious adverse economic ramifications if EPA Methods 245.1 and 245.2 are withdrawn. EPA Method 1631 should not be imposed on the private sector as the sole method. The option of using less sensitive methods should remain where EPA Method 1631 sensitivity is not needed.

Response: Based on comments received and the points made in those comments, today's rule allows continued use of the presently approved methods for determination of mercury when those methods achieve the desired measurement objective.

Performance-Based Measurement System

Comment: The performance-based measurement system (PBMS) as applied in proposal allows for sample preparation and trapping modifications, but does not allow for use of atomic absorption. EPA should accept application of PBMS for a different absorbance technique when it can achieve needed sensitivity.

Response: EPA proposed to implement PBMS in its water measurement programs (62 FR 14975, March 28, 1997) but has not yet promulgated a final PBMS rule. EPA anticipates that the final rule will allow use of alternate determinative techniques such as atomic absorption. Until a final rule is promulgated, however, methods approved at 40 CFR part 136 must be used according to their terms. Approval of the use of alternate procedures, such as alternate determinative techniques, can be requested through the alternate test procedure provisions described at 40 CFR 136.4 and 136.5.

6. Application to Wastewater Matrices

Inapplicable to Effluent

Comment: EPA Method 1631 is not applicable to the determination of mercury in effluents. The Method should contain a statement that it is not intended for the determination of concentrations normally found in industrial discharges. Language in an earlier version of EPA Method 1631 (January 1996) stated that ''this method is not intended for determination of metals at concentrations normally found in treated and untreated discharges from industrial facilities.''

Response: When the Agency first began development of EPA Method 1631, the method description contained the statement that it was applicable to ambient monitoring but that it was not intended for application to industrial discharges. Since then, however, in studies of POTWs along the Great Lakes, in the interlaboratory validation study, and in other recent studies (Results of Method 1631 Application to Effluent Matrices (March 1999) and Application of Method 1631 to Industrial and Municipal Effluents (December 1998)), EPA has found that mercury could be reliably measured at low levels in municipal and industrial discharges. For this reason, and because some States requested EPA support to develop the method for measurement of municipal and industrial discharges, the Agency expanded EPA Method 1631 to cover wastewaters. The statement regarding restricted use of EPA Method 1631 was deleted from the January 1996 version.

Testing One Effluent Is Inadequate

Comment: Testing one effluent at one level by a few laboratories is not an appropriate inter-laboratory study for general NPDES application.

Response: The Agency validated EPA Method 1631 on one filtered and one unfiltered wastewater matrix in the interlaboratory validation study. Subsequently the Agency gathered additional effluent data in response to comments regarding the method's applicability to wastewaters generally. EPA made these data available in a notice of data availability on March 5, 1999 (64 FR 10596). These data demonstrate that EPA Method 1631 is applicable for measurement of municipal and industrial effluents.

7. Detection and Quantitation

MDL Is Flawed

Comment: Several commenters state that Agency estimates of detection and quantitation in EPA Method 1631 are flawed. The estimates cannot be achieved in real world use. The estimates are scientifically unsound. The estimates are neither realistic nor reproducible. The estimates use an inappropriate multiplication factor. They overestimate the certainty associated with measurements. The estimates are not representative of expected performance by qualified laboratories. They are not a valid statistical basis for predicting laboratory performance. The estimates were based on spikes into reagent water instead of wastewaters. The estimates do not consider effluent characteristics. The estimates are based on a protocol that has never been subjected to peer review and public comment. The estimates do not reflect the performance capability of laboratories that will be performing compliance monitoring.

Response: EPA disagrees that the MDLs and MLs in EPA Method 1631 were developed inappropriately. EPA Method 1631 employs the method detection limit (MDL) (see 40 CFR part 136, appendix B). The MDL is defined as the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte. The MDL procedure is not designed to control ''false positives'' or ''false negatives,'' allow for repetitive testing, or predict laboratory performance. However, since the variability of the blank is expected to be approximately equal to the variability at the MDL, measurement results greater than the MDL are unlikely to be obtained when measuring samples that do not contain the substance of interest. In effect, the MDL can be used to control the rate of ''false positives.'' Reagent water is the matrix used for determining the MDL performance measure of a method because (1) reagent water is available to all laboratories, (2) reagent water allows determination of the lowest concentration of a substance that can be detected absent matrix interferences, and (3) there is no matrix that represents all wastewater matrices. Application of the MDL procedure to particular methods has been subject to peer review and public comment with every MDL that EPA publishes in nearly every chemical-specific method proposed in the **Federal Register** since 1984. The MDL procedure has widespread acceptance and use throughout the analytical community. No other detection or quantitation limit procedure or concept has achieved this level of acceptance and use.

EPA Method 1631 incorporates the concept of a minimum level of quantitation (ML), which is the lowest level at which an analytical system is expected to give a recognizable signal and acceptable calibration point. In 1994, EPA revised its use of the ML concept to 10 times the standard deviation associated with the MDL in order to be more consistent with the limit of quantitation (LOQ) of the American Chemical Society (ACS). The LOQ is based on a standard deviation of replicate measurements on a blank, which is expected to be approximately equal to the standard deviation of replicate measurements at the MDL. Therefore, EPA expects the ML to be approximately equal to the LOQ. Because the MDL is established at 3.14 times the standard deviation associated with the MDL and the ML is 10 time the standard deviation associated with the MDL, the multiplier between the MDL and ML is 3.18. EPA believes that this multiplier is consistent with other multipliers selected for the purpose of quantitation and that this multiplier is therefore appropriate. Readers are referred to the response to comments document in the Docket for today's rulemaking for a more detailed response.

EPA plans to continue to examine the issues of detection and quantitation. The Agency initiated a study recently to examine the effects of error from various analytical systems on detection and quantitation, and plans to involve the public in the application of the data being gathered to develop an improved approach, if such an approach is found to exist.

Use of the MDL/ML Concepts Violate Administrative Procedure Act

Comment: Commenters opposed EPA's proposed detection and quantitation levels because EPA did not provide the opportunity for review and comment on the basis for the proposed decisions. EPA's proposal neither describes the origin of the MDL nor explains why the Agency believes that it is an acceptable basis for developing detection levels for use in compliance determinations.

Response: The MDL concept origin is an article published in the peer-reviewed scientific literature in 1981 (*Environmental Science and Technology* 15 1426–1435). The MDL procedure has been used in EPA's various environmental programs since it was published at 40 CFR Part 136, Appendix B in 1984. The MDL procedure is accepted and used by nearly all organizations making environmental measurements. Recently, EPA has undertaken data gathering that should allow re-examination of detection and quantitation limits. When this study is complete, EPA will decide if the MDL and ML continue to be appropriate or if other concepts are appropriate for EPA's scientific and regulatory purposes. EPA has involved, and will continue to involve, stakeholders in this process and in EPA's final decision. Until other detection and quantitation limit concepts are shown to be more appropriate, EPA will continue to use the MDL and ML for the reasons stated at the beginning of this response, in other responses, and in other rules.

MDL Violates A 1985 Judicial Settlement

Comment: A commenter noted that, in a judicial settlement in 1985, EPA agreed that the MDL procedure published at 40 CFR part 136, appendix B, was intended to apply exclusively to the subset of the test methods that the Agency published at 40 CFR part 136, appendix A, in 1984. Thus, the commenter argues that, if EPA uses the MDL procedure for the purpose of deriving a detection level for EPA Method 1631, the Agency must provide the public an opportunity to review and comment on that decision. As justification for use of the MDL, EPA gave the reasons that (1) laboratories that participated in the EPA Method 1631 study were able to calculate an MDL at least as low as that achieved in an earlier study, and (2) the MDL is well below the lowest water quality criterion (WQC) in the National Toxics Rule and listed in the final water quality guidance for the Great Lakes System. The commenter argues that these reasons may be desirable but that they are irrelevant for determining an appropriate detection level. The commenter argues that EPA must first confirm that good laboratories can achieve that level.

Response: The commenter is correct that, in 1985, EPA agreed in a settlement that the MDL procedure at 40 CFR part 136, appendix B, was applicable to the 40 CFR part 136, appendix A methods only. The settlement, however, did not restrict future application of the MDL procedure, nor did it restrict any person's right to challenge the Agency's reliance on the MDL procedure in any future rulemaking. EPA provided the opportunity for comment on use of the MDL in EPA Method 1631. EPA believes that the interlaboratory validation study of EPA Method 1631 confirms that good laboratories can achieve the detection and quantitation levels that EPA established for EPA Method 1631.

Effluent Study Offers No Support for the MDL Performance Measure in EPA Method 1631

Comment: If the intent of EPA's effluent study was to determine whether MDL calculations are influenced by the sample matrix, EPA should have used a matrix more representative of real world samples rather than the City of Eugene's POTW effluent. The mercury level in the City's effluent was lower than in any of the other effluents used in EPA's study.

Response: Step 3(b) of the MDL procedure at 40 CFR part 136, appendix B requires that the measured level of analyte be less than five times the MDL. The MDL in EPA Method 1631 is 0.2 ng/L. Five times the MDL is 1.0 ng/L and therefore the concentration of mercury in the MDL study needed to be in the range of 0.2 to 1.0 ng/L. The measured level of mercury in the City of Eugene's POTW effluent was 0.56 and 0.72 ng/L, based on data collected prior to the MDL study. Therefore, the mercury concentration of the City's sample was in the appropriate range for the MDL study.

8. Clean techniques

Clean Techniques Should Be Required

Comment: The rule should require clean sampling, handling, and analysis when EPA Method 1631 is used and the Agency should develop a comprehensive database on the level of contamination that may arise. A commenter provided a list of sections in EPA Method 1631 that allow discretion but that the commenter believes must be made mandatory to assure reliable and reproducible results, for example, if government inspectors measure the same sample effluents. The commenter argues that EPA must explain its rationale for deciding that certain clean techniques are mandatory and to justify its decision that other techniques are not mandatory and, therefore, can be left to the discretion of enforcement officials. The only exception to required use of clean techniques should be that permittees should have complete discretion as to the use of such techniques because the failure to use such techniques can only result in mercury results higher than the level actually present in an effluent.

Response: During the development of EPA Method 1631, the Agency found some researchers using very extensive measures for clean sampling, including the wearing of clean room caps, suits, booties, and shoulder-length gloves in addition to hand-length gloves. On the other hand, EPA found other researchers wearing shorts, tee shirts, and hand-length gloves only. Because the Agency sought to maximize the flexibility of capable personnel, EPA provided the Sampling Guidance (EPA Method 1669) to indicate measures to prevent and preclude contamination. The sampling guidance is not mandatory for use with EPA Method 1631 because some permittees and sampling teams are capable of reliable sample collection without the measures detailed in the guidance. The rigor of clean sample collection techniques is determined by the required measurement objective or regulatory level (i.e., the lower the desired level, the more critical is the adherence to rigorous clean sampling protocols). Those elements of clean sampling, handling, and analysis that the Agency believes are necessary to assure reliable and reproducible results have been incorporated into EPA Method 1631. For example, the use of clean gloves by all sampling personnel and the use of metal-free apparatus are requirements specified in the method. In addition, the QC requirements in the method are designed to detect potential contamination that may arise in the field, during transport, or in the laboratory.

Regarding development of a comprehensive database, the Agency does not see the need to develop a database on the level of contamination that may arise. In both EPA Method 1631 and the Sampling Guidance (EPA Method 1669), EPA is very explicit that contamination is a concern and, consequently, the Agency provided appropriate measures to minimize contamination.

EPA includes a number of mandatory steps in a method when it believes those steps are necessary to provide reliable analytical results. If EPA were to justify every discretionary aspect of a method (indicated by the words "should," or "may," and other words denoting suggestions) for every method or guidance document that the Agency develops, method and document development would grind to a halt. Parametric studies of every variable that could possibly influence the outcome of a method or use of a document would become cost-prohibitive. The list of discretionary techniques in EPA Method 1631 that the commenter suggests should be evaluated would require 20 parametric studies.

Clean Techniques Should Not Be Required

Comment: Clean techniques should not be required. There is no documentation in the record that clean field blanks and clean samples can be collected. This casts doubt on the ability of laboratories and permittees to use this method in day-to-day activities designed to meet Clean Water Act requirements. Clean techniques are an unnecessary expense because detection levels this low are not needed for personal or environmental protection. EPA Method 1631 is able to detect such low levels that sample collection and analysis must occur in pristine environments to prevent false positives.

Response: Clean techniques are not required but are recommended for low level mercury measurements associated with WQ criteria. EPA cautions, however, that contamination has been identified as a potential problem in collecting samples for mercury prior to the advent of clean techniques. Use of these techniques, as detailed in the sampling guidance (EPA Method 1669) and in the technical literature (see references 2–9 of EPA Method 1631), has allowed collection of samples free of contamination at ng/L levels. EPA urges use of clean techniques, as appropriate, to preclude contamination. As stated earlier, those elements of clean sampling, handling, and analysis that the Agency believes are necessary to assure reliable and reproducible results have been incorporated into EPA Method 1631.

Although EPA agrees that clean techniques should not be (and are not) required, EPA disagrees with the commenters assertion that the record contains no documentation that clean field blanks and clean samples can be collected. The EPA Method 1631 Interlaboratory Study included the collection of field samples for use in the study, and results from background and QC analyses demonstrated the ability to collect clean field blanks and samples. Following proposal of the method, EPA also collected additional effluent data and made those data, including QC results, available in the Docket and through a notice of data availability (64 FR 10596). These data provide further demonstration that clean field blanks and clean samples can be collected.

9. Corrections to statements in proposal

Holding Time

Comment: Proposed EPA Method 1631 lists a holding time of 6 months. EPA used a period of only one month, however, to evaluate the stability of the samples. Please provide the basis for the large variation in holding times between EPA Method 1631 (6 months), EPA Method 245.1 (28 days), and draft EPA Method 245.7 (72 hours). EPA must have data to support the specified maximum holding time and will need to change holding time in CFR if EPA Method 1631 is approved.

Response: EPA specified the maximum holding time at 6 months in the proposed version of EPA Method 1631 based on statements by a number of laboratories involved in development of EPA Method 1631 that samples could be held for this period. EPA requested data that would support the 6 month holding time. Data were not forthcoming. Therefore, in today's version of Method 1631, EPA has specified a maximum holding time of 28 days, consistent with Table II at 40 CFR part 136.

Lowest Water Quality Criterion

Comment: The lowest water quality criterion (WQC) for the Great Lakes Water Quality Guidance is not 1.8 ng/L. It is 1.3 ng/L, the criterion for wildlife protection (see Table 4 to 40 CFR part 132). Waters of the United States frequently exceed these levels even where there is no direct industrial or municipal discharge.

Response: EPA stands corrected. EPA recognizes that waters of the United States can exceed Great Lakes WQC levels, even where there is no industrial or municipal discharge. That possibility, however, does not affect the substance of today's rule.

10. Quality Control

Excessive quality ControL

Comment: The quality control (QC) in EPA Method 1631 is excessive, unreasonable, far more rigorous than in currently approved methods, and demonstrates the inappropriateness of this method for general application.

Response: The QC in EPA Method 1631 is consistent with the other 40 CFR part 136, appendix A methods and consistent with requirements for other environmental analytical chemistry methods. EPA believes that the QC requirements are necessary to ensure the reliability of data results and that these requirements are not onerous.

Insufficient Quality Control

Comment: Without addition of more comprehensive QC for background, mercury determinations at low ppt levels are subject to unknown and unacceptable bias and imprecision. Additional validation and modification to the QA/QC are necessary for the method to realize its potential of being a rugged method capable of providing reliable quantification of mercury at sub-ng/L concentrations.

Response: Bubbler blanks, reagent blanks, and method blanks serve as checks on contamination. The MDL performance capacity of Method 1631 is 0.2 ng/L. This MDL enables detection of contamination at sub-ng/L concentrations, should such contamination occur. A discharger or laboratory is not precluded from performing additional QC if it desires.

Method Performance

Comment: A commenter argues that EPA must assure that the irreducible performance limitations inherent in all methods will not act to penalize persons for lawful conduct. EPA cannot provide such assurances absent adequate performance data, which can only be derived from properly conducted method validation studies. If EPA determines that a test method has been adequately validated, EPA must publish performance characteristics along with the method.

Response: EPA conducted a validation study on EPA Method 1631. Published method performance characteristics associated with the Method include: (1) A method detection limit (MDL) and minimum level of quantitation (ML) in Table 1, (2) quality control (QC) acceptance criteria in Table 2, and (3) precision and recovery data for six sample types in Table 3. These data more than adequately support the adequacy of the Agency's validation of EPA Method 1631.

11. Blanks and Contamination

Reagent Blanks

Comment: Reagent blanks also should be subtracted from sampling results. Otherwise, inaccurate, high results will be reported.

Response: Section 12.4 in EPA Method 1631 asks for separate reporting of results for samples and blanks, unless otherwise requested or required by a regulatory authority or in a permit. The reason for separate reporting is so that a regulatory authority can assess if results for samples are attributable to contamination and the extent to which contamination is affecting the measurement. There is no prohibition in EPA Method 1631 against reporting blank-subtracted results, provided, of course that results for blanks and samples are reported separately.

Bubbler and Reagent Blanks Inadequate

Comment: Bubbler blanks and reagent blanks only demonstrate that the analytical system is uncontaminated. Analysis of field or equipment blanks should not be used to demonstrate laboratory capabilities.

Response: EPA agrees that bubbler blanks and reagent blanks are used to demonstrate that the analytical system is uncontaminated. EPA disagrees that field blanks or equipment blanks should not be used to demonstrate laboratory capabilities. The laboratory is responsible for determining and reporting field contamination and for demonstrating that equipment blanks are free from contamination. Section 9.4 of EPA Method 1631 also contains a statement ''it is suggested that additional blanks be analyzed as necessary to pinpoint sources of contamination in, and external to, the laboratory.'' Both field and laboratory contamination sources may affect the analytical results.

Blank Subtraction

Comment: It should be acceptable to subtract field blank results in addition to reagent and bubbler blanks. EPA must require correction for reagent blanks.

Response: EPA has revised section 12.4 of the method to ask for reporting the concentration of mercury in field blanks but has not required blank subtraction so that a regulatory authority can assess if results for samples are attributable to contamination and the extent to which contamination is affecting the measurement. A regulatory authority or other data user may subtract the concentration of mercury in field blanks or reagent blanks if it believes this subtraction is appropriate. Today's rule does not preclude the reporting of blank-subtracted results provided that results for samples and blanks are reported separately.

Sample-Specific Reagent Concentrations

Comment: The reagent blank does not address sample-specific variation in reagent concentrations. Section 11.1.1.2 states that sewage effluent will require high levels of bromine monochloride (BrCl). The increased requirement for BrCl for samples high in organic materials could increase the background contribution if the BrCl contains trace amounts of mercury. This could lead to a high bias for mercury in samples that require high levels of BrCl. EPA Method 1631 states that BrCl cannot be purified (section 9.4.2.3).

Response: EPA agrees and has added the requirement that whatever concentration or amount of reagent that is added to the sample must also be added to the reagent blank in order to identify the reagent as a potential source of contamination. Regarding the statement in EPA Method 1631 that BrCl cannot be purified, EPA believes that this statement is true. BrCl, however, is made in the laboratory from several reagents that can be obtained in highly purified form. The resulting BrCl will then be very pure.

12. Validation Study

Insufficient Validation

Comment: Insufficient method validation has been provided to justify method use for routine NPDES purposes.

Response: The validation steps performed with EPA Method 1631 are the same as EPA has performed with many other methods. The Agency validated EPA Method 1631 first in multiple single-laboratory studies and then further validated the method in an interlaboratory study. EPA followed ASTM Practice D 2777 in the interlaboratory validation study design. Some members of the ASTM Committee D–19 on water reviewed the interlaboratory study plan and contributed to the study. In response to commenters concerned about the application of EPA Method 1631 to NPDES effluents, EPA gathered data on application of EPA Method 1631 to effluents and made these data available to commenters for review prior to today's final rule (64 FR 10596).

Validation Under Routine Conditions

Comment: Validation data results were not obtained under normal, routine analytical operations. EPA Method 1631 should not be promulgated until it is validated using commercial laboratories able to sample and analyze waste streams using ultra-clean techniques. The fact that EPA Method 1631 has been subjected to the required validation studies alone does not ensure that it is ready for widespread application.

Response: Commercial laboratories were included in the interlaboratory method validation study and all laboratories involved in the study perform mercury analyses routinely using the techniques in EPA Method 1631. It is not necessary for commercial laboratories involved in the analysis of samples for mercury to be able to sample waste streams, although some do. All laboratories involved in the interlaboratory study analyze waste streams and all of the laboratories involved in the study determined their respective detection limits. EPA believes that the fact that EPA Method 1631 has been subjected to the required validation ensures that it is ready for widespread application. Over time, commercial laboratories will develop capacity to conduct EPA Method 1631 just as they have for other, previously approved test methods.

Additional Interlaboratory Studies

Comment: EPA's intralaboratory (i.e., within laboratory) studies reported in the Docket with the NODA failed to evaluate the matrix issue in a ''real-world'' interlaboratory context. EPA did not assess interlaboratory precision and bias in studies included with the NODA. EPA's data are insufficient to characterize precision and bias of mercury measurements in industrial effluents. Although the study included analysis of mercury samples by multiple laboratories, none of the samples was split between laboratories. The studies should have been designed to determine interlaboratory and multi-matrix precision, accuracy, and sensitivity of EPA Method 1631.

Response: Assessing interlaboratory precision and bias was not an objective of the additional studies. EPA assessed interlaboratory precision in the interlaboratory validation study and published performance data for the interlaboratory validation study in the report that was included in the Docket at proposal. In comments on EPA's proposal of EPA Method 1631 on May 26, 1998 (63 FR 28867), commenters expressed concern that only one municipal secondary effluent had been analyzed to determine precision and bias and that no industrial wastewater samples were analyzed. They argued that it was unreasonable for EPA to adopt a method with no data on the applicability to a wide variety of wastewater matrices. In response to those concerns, the Agency applied EPA Method 1631 to a wide variety of wastewater matrices, including industrial wastewater samples. EPA gathered data generated from the analyses of several different types of effluent samples in order to determine whether the results from that study meet the quality control (QC) acceptance criteria from the proposed method. EPA developed the QC acceptance criteria as a means of assuring the appropriate levels of precision and bias. Re-evaluation of precision and bias would be unnecessary if the QC acceptance criteria remained appropriate.

The commenters claim that EPA Method 1631 was validated inadequately because EPA did not conduct interlaboratory method validation studies on a wide variety of wastewater matrices containing naturally occurring mercury levels near the ML of EPA Method 1631. EPA disagrees. The ASTM guidelines recommend the use of reagent water as a reference matrix in at least one environmental sample matrix other than the reference matrix. EPA included a municipal effluent in the interlaboratory validation study. It would be impractical to use a wide variety of wastewater matrices with natural concentration near the ML of EPA Method 1631 because the levels in the sample are unknown prior to analysis. EPA followed ASTM and AOAC guidelines for the interlaboratory method validation study conducted prior to proposal. EPA believes that the Agency has fully addressed commenters' requests for additional data on the application of EPA Method 1631 to wastewaters. Commenters that have requested that EPA conduct extensive interlaboratory studies were involved in, and had the opportunity to contribute to, EPA's interlaboratory method validation study at the time it was conducted. These commenters chose not to contribute to a more extensive study or conduct studies on their own.

EPA reiterates that the main objective in conducting the additional studies was to demonstrate that effluent samples containing mercury at or near the ambient water quality criteria levels given in the National Toxics Rule (40 CFR 131.36) and in the Water Quality Guidance for the Great Lakes System (40 CFR part 132) could be analyzed with little or no difficulty. Data included in the Docket with the NODA and data provided by the State of Maine demonstrate that these measurements can be made reliably, claims from commenters about interlaboratory variability, precision, accuracy, and sensitivity notwithstanding.

Insufficient Concentrations

Comment: A commenter argued that EPA failed to validate EPA Method 1631 at a sufficient number of concentrations. The commenter cites a report prepared by the Electric Power Research Institute (EPRI) in which consultants to EPRI cite ASTM Practice D 2777–96 as the need to validate the method using samples spiked at multiple levels.

Response: EPRI and EPA collaborated on the study design for the EPA Method 1631 interlaboratory validation study. EPA shared data from the study with EPRI's consultants immediately after these data were verified and validated. The consultants acknowledge the collaboration in the attachment to the comment. At the outset of the study, EPA and EPRI agreed on the limitations of the study, including that there were insufficient resources to test every matrix at multiple levels. In the study, EPA validated EPA Method 1631 at multiple levels in reagent water and in freshwater collected near Port Washington, Wisconsin. To support today's final rule, EPA has gathered additional data on a variety of complex effluents using EPA Method 1631 and evaluated them at the low concentration levels of interest (i.e., low parts per trillion). These data represent the application of the Method to ''real world'' effluent samples. The data results demonstrate that Method 1631 can be successfully applied to effluents because all of the matrix spike and matrix spike duplicate (MS/MSD) recoveries were within the QC acceptance criteria in EPA Method 1631, with the exception of two samples that were spiked at inappropriate levels.

EPA Did Not Follow Voluntary Consensus Standards Bodies (VCSB) Procedures

Comment: A commenter claims that EPA failed to use available standards and practices from VCSBs to design its method validation study as required by the National Technology Transfer and Advancement Act (NTTAA) and Office of Management and Budget (OMB) Circular A–119. The commenter asserts that NTTAA makes no distinction between technical standards that are themselves scientific tests (i.e., analytical methods) and standards used in the evaluation of the effectiveness and reliability (i.e., validation) of those tests. The commenter states that EPA claims to have complied with NTTAA by developing a new mercury method that had not yet been developed by a VCSB and that EPA incorrectly claims to have followed VCSB standards for the design and conduct of its validation study.

Response: EPA agrees that NTTAA and OMB Circular A–119 require federal agencies to consider available VCSB standards and practices. NTTAA requires federal agencies to consult with VCSBs and other organizations when such participation is in the public interest and is compatible with agency missions, authorities, priorities, and budget resources. If compliance with the requirement to use VCSB standards and practices is inconsistent with applicable law or otherwise impractical, a federal agency may elect to develop technical standards not developed or adopted by VCSBs if the head of the agency or department transmits to OMB an explanation of the reasons for using other standards.

EPA disagrees with the commenter's statement that we failed to use available standards and practices from VCSBs to design its method validation study. EPA designed the interlaboratory study with participation by the Electric Power Research Institute (EPRI) and its consultants. Individuals in EPRI are members of ASTM Committee D–19 on water. Committee D–19 developed Practice D 2777. The Agency followed Practice D 2777 in the study design. Practice D 2777 requires the use of at least one representative (''reference'') sample matrix which is the same for all laboratories and recommends the use of at least one environmental sample matrix. Reagent water is recommended as the reference sample matrix. In a memorandum attached to the comment, the only statement suggesting that EPA did not follow Practice D 2777 in the study design is a statement that Practice D 2777 requires Youden pairs at a minimum of three concentrations per matrix. EPA included four concentration pairs in reagent water (and an unspiked pair), four concentration pairs for freshwater, and one concentration pair each for marine (one pair filtered and one pair unfiltered) and for a municipal effluent (one pair filtered and one pair unfiltered). EPA believes that the design of its validation study follows ASTM Practice 2777–96. EPRI members were aware of the resource limitations of the study and agreed that the design's limited number of Youden pairs and blind duplicate samples would not negate the usefulness of study results.

Performance Data Are Inadequate and Misleading

Comment: A commenter argues that EPA's performance information is inadequate and misleading because it fails to include regression equations. Stakeholders need a means to predict how EPA Method 1631 will perform at any particular level within its working range. EPA has provided regression equations in other methods. EPA inexplicably departed from this practice. The commenter further argues that EPA's performance information is inadequate and misleading because the EPA Method 1631 acceptance criteria are inconsistent with study results. For example, test data can be used if the initial precision and recovery falls within the range of 79–121 percent which is broader than the capability (86–113 percent) demonstrated by the EPA Method 1631 interlaboratory study. EPA must explain the difference in the final rule, if only to avoid confusion in the interpretation of EPA Method 1631 data.

Response: EPA disagrees that the performance information is inadequate and misleading. As EPA has stated elsewhere in these responses, EPA has no knowledge of use of regression equations in the interpretation of data by dischargers or others. Regression equations are redundant with QC acceptance criteria. Regression equations can be used to calculate expected method performance at a given concentration. The expected performance can, in turn, be used to determine if a laboratory's performance is equivalent to the performance of laboratories in the interlaboratory study. On the other hand, laboratories that practice a method that contains QC acceptance criteria recognize these criteria as absolute standards of performance within which the method must operate. Calculating another standard of performance, as the commenter suggests, would be redundant. Further, because the QC acceptance criteria are an absolute standard, laboratories can be held accountable. If they fail to meet this standard, corrective action would be required followed by reanalysis of samples after the QC acceptance criteria are met. Standards of performance derived from regression equations do not ensure this result.

The difference between the QC acceptance criteria listed in proposed EPA Method 1631 and in Table 11 of the interlaboratory study report are attributable to EPA's decision to not tighten the acceptance criteria from the draft method published in 1995 (EPA 821–R–96–027). EPA is concerned that any method that is iteratively tested may result in ever tightening QC acceptance criteria because succeeding data gathered with the method will likely fall within these criteria. EPA therefore retained the QC acceptance criteria from the draft method in the version of EPA Method 1631 proposed. In contrast, EPA has widened the QC acceptance criteria for the matrix spike and matrix spike duplicate (MS/MSD) between the proposed version and today's version. The reason for this widening is that the data gathered in the interlaboratory study demonstrated that the QC acceptance criteria for the MS/MSD were too restrictive. Making certain QC acceptance criteria unreasonably restrictive is onerous upon laboratories, especially new laboratories beginning to practice a method. Therefore, for EPA Method 1631, the Agency decided not to tighten the QC acceptance criteria for the IPR and OPR, and loosened the QC acceptance criteria for the MS/MSD.

Mercury Forms and Species

Comment: Mercury exists in many forms and states. The interlaboratory validation study failed to consider molecular diversity of mercury.

Response: EPA Method 1631 determines total mercury. The oxidation step in EPA Method 1631 oxidizes all commonly occurring forms and species to Hg(II) which is subsequently reduced to volatile Hg(0) so that it can be purged from solution and determined.

13. Technical details of EPA Method 1631

UV Oxidation

Comment: EPA must study and validate EPA Method 1631 with UV oxidation on a range of industrial effluents and sewage samples, including ''microbially-rich'' samples. Results of the commenters' studies suggest that UV photo-oxidation can increase recoveries in some effluents. The use of UV oxidation makes measurement of mercury method-defined.

Response: In section 3.1 of EPA Method 1631, the Agency suggests use of UV oxidation for microbially-rich samples. EPA has added recommendations for determining complete oxidation. These recommendations should aid in recovery of mercury from some samples, as the commenter suggests. Regarding all interferences not being oxidizable, the commenter provided no example of a non-oxidizable interference that could occur in wastewaters.

Regarding the use of UV oxidation making mercury a ''method-defined analyte,'' mercury could become method-defined in EPA Method 1631 only if it were not recovered reliably from a large number of samples. For the few number of samples in which incomplete oxidation can occur to make consideration of mercury as ''method-defined,'' the additional recommendations should now assure complete oxidation so that mercury does not need to be considered ''method-defined.'' Total mercury can be determined reliably.

Safety

Comment: There are safety hazards inherent in the practice of EPA Method 1631. The preparation of bromine monochloride (BrCl) is more hazardous than preparation of potassium permanganate (KmnO4). A significant amount of hot acid is involved in cleaning bottles/glassware. Laboratory ovens will be destroyed or serve as a source of contamination as a result of cleaning bottles that need to sit overnight at 60–70 °C with HCl. Further clarification and explanation is requested on what is required for laboratory personal hygiene monitoring.

Response: Section 5 of EPA Method 1631 is dedicated to safety issues, and the sampling guidance (EPA Method 1669) contains additional information on safety. Section 7.6 of EPA Method 1631 explicitly states that BrCl must be prepared under a hood because copious quantities of free halogens are generated. The sampling guidance contains detailed procedures for bottle cleaning including suggestions for a heated acid vat in which bottles may be cleaned. Use of metal ovens for heating acids is not suggested for the reason that the commenter states. EPA Method 1631 is performance-based, however, and allows laboratories to modify the cleaning protocols so long as the modified protocols are capable of yielding uncontaminated equipment blanks.

Regarding personal hygiene monitoring, EPA has added the statement to EPA Method 1631 to recommend that the personal hygiene monitoring be performed using Occupational Safety and Health Administration (OSHA) or National Institute of Occupational Safety and Health (NIOSH) approved personal hygiene monitoring methods.

14. Miscellaneous

Toxicity Limit

Comment: The fact that EPA has established toxicity limits at extremely low levels by a means not based on laboratory analyses does not mean that analytical technology can be developed.

Response: EPA believes that ambient water quality criteria and health effects-based limits can best be supported by gathering of data at levels represented by these criteria and limits, the means for establishing these limits notwithstanding. EPA will continue to strive to develop the analytical technology that will allow reliable measurements at these levels.

Dissolved Mercury Only

Comment: EPA should clarify that EPA Method 1631 applies to dissolved mercury only. If the total digestion is performed, naturally occurring sediments may contribute significant analyte concentrations to a result.

Response: Today's rule approves use of EPA Method 1631 for determination of dissolved and total mercury. If a sample contains suspended material such as sediment, it is intended that the mercury attached to or contained in the sediment be included in the measurement.

Ambient Criterion Based on Methyl Mercury

Comment: The ambient water quality criterion of 12 ng/L for mercury is based on methyl mercury. EPA incorrectly implied in the proposal that EPA Method 1631 should be used to show compliance with the methyl mercury-based 12 ng/L standard, and should remove reference to this standard if the method is finalized.

Response: The criterion continuous concentration (CCC) of 12 ng/L is for total recoverable mercury in water (40 CFR 131.36(b)(1)). Today's rule approves EPA Method 1631 so that reliable measurements of mercury can be made at this level, the basis for the standard notwithstanding. Both ''total'' and ''dissolved'' mercury measurements can be made with this method.

Grab Samples

Comment: The commenter requests that EPA provide a note in 40 CFR Part 136 that requires only grab samples should be collected when using EPA Method 1631 because of potential contamination with compositing sampling procedures.

Response: EPA has not mandated use of grab samples because EPA does not wish to discourage use of automated compositing equipment or sampling by other means, although EPA cautions that precluding contamination using these methods is more difficult than with collection of grab samples.

Implementation

Comment: A commenter argues that the rulemaking for EPA Method 1631 also must provide an objective and clear description regarding how the Method is to be implemented in practice.

Response: The meaning of the comment is unclear. If the commenter means that the details of EPA Method 1631 are inadequate and the procedures in EPA Method 1631 need to be developed further, EPA believes that the validation study demonstrates that the procedures in EPA Method 1631 are more than adequate for implementation of EPA Method 1631 in practice.

If the commenter means that EPA must examine the impact of the measurements made by the method on the regulatory process, EPA believes that this activity is outside the scope of method development, validation, and approval. EPA's regulations for water pollution control are based on wastewater treatment and water quality considerations as required by the Clean Water Act. EPA Method 1631 is simply a tool to measure total mercury in aqueous samples.

Personnel Qualifications

Comment: A commenter argues that EPA should specify the minimum qualifications for persons performing EPA Method 1631. Section 4.3.2 of EPA Method 1631 states that it is imperative that the procedures be carried out by well-trained, experienced personnel.

Response: Section 1.10 states that EPA Method 1631 ''should be used only by analysts who are experienced in the use of CVAFS techniques and who are trained thoroughly in the sample handling and instrumental techniques described in this Method. Each analyst who uses this Method must demonstrate the ability to generate acceptable results using the procedure in section 9.2.''

VI. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action.'' As such, this action was submitted to OMB for review. OMB made no suggestions or recommendations on this rule.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that significantly or uniquely may affect small governments, including tribal governments, it must have developed under section 203 of UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule does not contain a federal mandate (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector that may result in expenditures of $100 million or more in any one year. EPA has determined that this rule contains no regulatory requirements that significantly or uniquely might affect small governments. As discussed below under the Regulatory Flexibility Act, the economic impact on small entities is anticipated to be small. This rule makes available a testing procedure which would be used at the discretion of the permitting authority when compliance with State-adopted water quality standards necessitates a more sensitive method than those previously approved. This rule would impose no enforceable duty on any state, local or tribal governments or the private sector, nor would it significantly or uniquely affect them. It would not significantly affect them because any incremental costs incurred are small and it would not uniquely affect them because it would affect all size entities based on whether testing for mercury is otherwise required by a regulatory authority. Further, monitoring for small entities is generally expected to be less frequent than monitoring for larger entities. Therefore, today's rule is not subject to the requirements of sections 202, 203 and 205 of UMRA.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA generally is required to conduct a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of rulemaking. However, under section 605(b) of the RFA, if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare a regulatory flexibility analysis. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This regulation approves a testing procedure for the measurement of mercury which EPA anticipates will be used by regulatory authorities when a permit limit has been set below the level of detection of previously approved methods. In developing this regulation, EPA considered the effects on small entities. Section 601(6) of the RFA defines small entity as small business, small governmental jurisdiction, and small organization. The small entities that might be affected by this rule include small governmental jurisdictions (that own POTWs) and small businesses with discharge permits for mercury at or below 200 ng/L. Of the 477 entities that we have identified with mercury limits at or below 200 ng/L, 143 are businesses, 38 are drinking water treatment plants in Puerto Rico, and 296 are POTWs.

To evaluate the potential impact on small businesses, EPA first assumed that all of the 143 businesses were small. EPA assigned to each identified facility the approximate average revenue for a small business in the SIC code to which that facility belongs. If the facility is classified as a ''major'' discharger in the Permit Compliance System (PCS), EPA assumed incremental analytical monitoring costs of $5,200 per year. This assumption is based upon weekly monitoring for mercury at two sample locations using Method 1631, and assumes each facility will incur an incremental cost of $50 per sample (the high end of the range of incremental costs). If the facility is classified as a ''minor'' discharger in PCS, EPA assumed incremental analytical monitoring costs of $600 per year. This assumption is based upon monthly monitoring for mercury at one sample location using Method 1631, and again assumes each facility will incur the high end incremental cost of $50 per sample. EPA then calculated the ratio of costs (using these upper-bound assumptions) to the assigned revenue to derive an upper-bound estimate of the impacts. The ratio is above 0.5 percent for only three facilities—''major'' facilities, which may not be small businesses—and in all cases is below 4 percent. On average, the impacts were much lower. Specifically, the mean ratio for all of the facilities is 0.17 percent and the median ratio is 0.06 percent. Although PCS contains limitations data for over 20 percent of the ''minor'' dischargers, EPA believes that ''minor'' dischargers without limitations data in PCS would have a similarly low level of impact. No ''minor'' discharger is expected to experience an impact of more than 0.5 percent of revenues.

Small governments are those representing jurisdictions of less than 50,000 people. The 38 drinking water plants in Puerto Rico are state-owned and thus are not small governments. To evaluate the impact on small POTWs, EPA looked at the potential impacts on two sizes of POTWs to represent both ''major'' and ''minor'' dischargers potentially affected by the regulation. Based on national estimates from the Census of Governments, local governments collect $79.31 per person in sewerage charges, which EPA assumed to be the average per capita revenue for POTWs from the population that they serve. On average, a POTW has a flow of 100 gallons per day for each person that it serves. EPA assumed that a POTW serving 1,000 people (having a flow of 100,000 gallons per day) would have revenues of $79,310 and incur costs of $600 (using the same assumptions as for ''minor'' businesses), which is 0.76 percent of its revenue. Similarly, EPA estimated that a POTW serving 10,000 people (having a flow of 1 million gallons per day, and thus being a major discharger) would have revenue of $793,100 and incur costs of $5,200 (using the same assumptions as for ''major'' businesses), which is only 0.66 percent of revenue.

Based upon these estimates, EPA concludes that this rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

This rule contains no information collection requirements. Therefore, no information collection request has been submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

E. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective July 8, 1999.

F. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. EPA's search of the technical literature revealed that there are no consensus methods for determination of mercury at these trace levels, although the American Society of Testing and Materials (ASTM) potentially is in the process of developing an analytical method for the determination of trace levels of mercury. If ASTM or another voluntary consensus standard body approves such a method and EPA believes that the method is suitable for compliance monitoring and other purposes, EPA will promulgate the method in a subsequent rule. As mentioned earlier, the Agency followed ASTM's Practice D 2777 (a voluntary consensus standard) in the design of EPA's interlaboratory method validation study for EPA Method 1631.

G. Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks,'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. Although it has been determined that this rule is a ''significant regulatory action'' under E.O. 12866, it is not economically significant and, therefore, E.O. 13045 does not apply. In addition, this rule does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 12875

Under Executive Order 12875, ''Enhancing the Intergovernmental Partnership,'' EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. States have been particularly supportive of EPA's efforts to approve a more sensitive test method for mercury. The rule does not impose any enforceable duties on these entities. This rule makes available a testing procedure for use when testing is otherwise required by a regulatory agency. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

I. Executive Order 13084

Under Executive Order 13084, ''Consultation and Coordination with Indian Tribal Governments,'' EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

As described under the Regulatory Flexibility Analysis, today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Further, this rule does not impose substantial direct compliance costs on Tribal governments. This rule makes available a testing procedure which would be used when testing is otherwise required by a regulatory agency to demonstrate compliance with water quality-based permit limits for mercury. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 136

Environmental protection, Analytical methods, Incorporation by reference, Monitoring, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: May 28, 1999.

Carol M. Browner,

Administrator.

In consideration of the preceding, USEPA amends 40 Code of Federal Regulations part 136 as follows:

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

1. The authority citation of 40 CFR part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a), Pub. L. 95–217, Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3, paragraph (a), Table IB.—List of Approved Inorganic Test Procedures, is amended by revising entry 35 to read as follows:

§ 136.3 Identification of test procedures.

(a) * * *

* * * * *

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, units and method	Reference (method number or page)				
	EPA [1,35]	STD methods 18th ed.	ASTM	USGS [2]	Other
* *	*	*	*	*	*
35. Mercury—Total,[4] mg/L:					
Cold vapor, manual, or	245.1	3112 B	D3223–91	I–3462–85	[3] 977.22
Automated	245.2				
Oxidation, purge and trap, and cold vapor atomic fluorescence spectrometry (ng/L).	[43] 1631				
* *	*	*	*	*	*

Table 1B Notes:

[1] ''Methods for Chemical Analysis of Water and Wastes,'' Environmental Protection Agency, Environmental Monitoring Systems Laboratory—Cincinnati (EMSL–CI), EPA–600/4–79–020, Revised March 1983 and 1979 where applicable.

[2] Fishman, M.J., et al. ''Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments'', U.S. Department of the Interior, Techniques of Water—Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

[3] ''Official Methods of Analysis of the Association of Official Analytical Chemists,'' methods manual, 15th ed. (1990).

[4] For the determination of total metals the sample is not filtered before processing. A digestion procedure is required to solubilize suspended material and to destroy possible organic-metal complexes. Two digestion procedures are given in ''Methods for Chemical Analysis of Water and Wastes, 1979 and 1983.'' One (Section 4.1.3), is a vigorous digestion using nitric acid. A less vigorous digestion using nitric and hydrochloric acids (Section 4.1.4) is preferred; however, the analyst should be cautioned that this mild digestion may not suffice for all sample types. Particularly, if a colorimetric procedure is to be employed, it is necessary to ensure that all organo-metallic bonds be broken so that the metal is in a reactive state. In those situations, the vigorous digestion is to be preferred making certain that at no time does the sample go to dryness. Samples containing large amounts of organic materials may also benefit by this vigorous digestion, however, vigorous digestion with concentrated nitric acid will convert antimony and tin to insoluble oxides and render them unavailable for analysis. Use of ICP/AES as well as determinations for certain elements such as antimony, arsenic, the noble metals, mercury, selenium, silver, tin, and titanium require a modified sample digestion procedure and in all cases the method write-up should be consulted for specific instructions and/or cautions.

Note to Table IB Note 4: If the digestion procedure for direct aspiration AA included in one of the other approved references is different than the above, the EPA procedure must be used. Dissolved metals are defined as those constituents which will pass through a 0.45 micron membrane filter. Following filtration of the sample, the referenced procedure for total metals must be followed. Sample digestion of the filtrate for dissolved metals (or digestion of the original sample solution for total metals) may be omitted for AA (direct aspiration or graphite furnace) and ICP analyses, provided the sample solution to be analyzed meets the following criteria:

a. has a low COD (<20),
b. is visibly transparent with a turbidity measurement of 1 NTU or less,
c. is colorless with no perceptible odor, and
d. is of one liquid phase and free of particulate or suspended matter following acidification.

* * * * *

[35] Precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotometric SDDC method for arsenic are provided in Appendix D of this part titled, ''Precision and Recovery Statements for Methods for Measuring Metals.''

* * * * *

[43] The application of clean techniques described in EPA's draft Method 1669: *Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels* (EPA–821–R–96–011) are recommended to preclude contamination at low-level, trace metal determinations.

3. Section 136.3 is amended by adding new paragraph (40) to read as follows:

§ 136.3 Identification of test procedures.

(a) * * *

(b) * * *

* * * * *

(40) USEPA. 1999. Method 1631, Revision B, ''Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry.'' May 1999. Office of Water, U.S. Environmental Protection Agency (EPA 821–R–99–005). Available from: National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Publication No. PB99–131989. Cost: $25.50. Table IB, Note 43.

* * * * *

[FR Doc. 99–14220 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 239

[FRL–6354–7]

Adequacy of State Permit Programs Under RCRA Subtitle D

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to streamline the approval process for specified States permit programs for solid waste disposal facilities other than municipal solid waste landfills (MSWLFs) that receive conditionally exempt small quantity generator (CESQG) hazardous waste. States whose subtitle D MSWLF permit programs or subtitle C hazardous waste management programs have been reviewed and approved or authorized by the Agency are eligible for this streamlined approval process if their State programs require the disposal of CESQG hazardous waste in suitable facilities. EPA is issuing an adequacy determination to the following State programs: Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

Elsewhere in the proposed rule section of today's **Federal Register**, EPA is proposing the program adequacy of these States and soliciting comment on this decision. If relevant adverse comments are received, EPA will withdraw this direct final rule of program adequacy and address the comments in a subsequent final rule document. EPA will not give additional opportunity for comment. If EPA receives relevant adverse comment concerning the adequacy of only certain State programs, the Agency's withdrawal of the direct final rule will only apply to those State programs. Comments on the inclusion or exclusion of one State permit program will not affect the timing of the decision on the other State permit programs.

DATES: This final rule will become effective September 7, 1999, unless EPA receives relevant adverse comment by July 8, 1999. Should the Agency receive such relevant adverse comments, EPA will withdraw this direct final rule and give timely notice in the **Federal Register**.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–98–SAPF–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, D.C. 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–98–SAPF–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460.

Public comments are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. For information on accessing paper and/or electronic copies of the document, see the **SUPPLEMENTARY INFORMATION** section.

Supporting materials for the final determination for Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont are available for viewing by contacting Cynthia Greene, US EPA Region 1, 90 Canal Street, Boston, MA 02203, phone 617/565–3165.

Supporting materials for the final determination for New York are available for viewing by contacting John Filippelli, US EPA Region 2, 290 Broadway, New York, NY 10007–1866, phone 212/637–4125.

Supporting materials for the final determination for Pennsylvania, West Virginia, and Virginia are available for viewing by contacting Mike Giuranna, US EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029, phone 215/814–3298.

Supporting materials for the final determination for Florida, Georgia, Kentucky, North Carolina, and Tennessee are available for viewing by contacting Patricia Herbert, US EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, Atlanta, GA 30303–3104, phone: 404/562–8449.

Supporting materials for the final determination for Illinois, Michigan, Minnesota, Ohio, and Wisconsin are available for viewing by contacting Mary Setnicar, US EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604–3590, phone 312/886–0976.

Supporting materials for the final determination for Louisiana and Oklahoma are available for viewing by contacting Willie Kelley, US EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733, phone: 214/665–6760.

Supporting materials for the final determination for Colorado, North Dakota, South Dakota, Utah, and Wyoming are available for viewing by contacting Gerald Allen, Region 8, US EPA 999 18th Street, Suite 500, Denver, CO 80202–2466, phone 303/312–7008.

Supporting materials for the final determination for Arizona and California are available for viewing by contacting Steve Wall, US EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, phone 415/744–2123.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800/553–7672 (hearing impaired). In the Washington, D.C., metropolitan area, call 703/412–9810 or TDD 703/412–3323.

For information on specific aspects of this direct final rule, contact Allen Geswein, Municipal and Industrial Solid Waste Division of the Office of

Solid Waste (mail code 5306W), U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, D.C. 20460; 703/308–7261, [GESWEIN.ALLEN@ EPAMAIL.EPA.GOV].

SUPPLEMENTARY INFORMATION: The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** as outlined in **DATES** above or in a response to comments document placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

A. Background

Section 4010(c) of the Resource Conservation and Recovery Act (RCRA) requires the U.S. Environmental Protection Agency (EPA) to revise the criteria for facilities that accept household hazardous waste and conditionally exempt small quantity generator (CESQG) hazardous waste or both. On October 9, 1991, EPA issued revised Criteria for Municipal Solid Waste Landfills (MSWLFs) (40 CFR part 258). MSWLFs typically receive both household hazardous waste and CESQG hazardous waste. On July 1, 1996, EPA issued the revised Criteria for Classification of Solid Waste Disposal Facilities and Practices to address solid waste disposal facilities other than MSWLFs that facilities receive CESQG waste (40 CFR part 257, subpart B).

RCRA section 4005, as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop permitting programs or other systems of prior approvals and conditions to ensure that solid waste disposal units that receive household hazardous waste and CESQG hazardous waste or both comply with the revised Federal criteria under part 257, subpart B. Section 4005 also requires EPA to determine the adequacy of State permit programs. To fulfill this need, the Agency issued the State Implementation Rule (SIR) on October 23, 1998 (63 FR 57026) to give a process for approving State municipal solid waste permit programs. The SIR specifies the needs that State MSWLF permit programs must satisfy to be determined adequate. The SIR also addresses the processes that should be used for approving State programs for non-MSWLFs that receive CESQG hazardous waste.

Throughout this document, the term ''approved State'' refers only to a State that has received approval for its MSWLF permit program under subtitle D (40 CFR part 258) and the term ''authorized State'' refers only to a State that has an authorized hazardous waste landfill permit program under subtitle C (40 CFR part 264). Today's final adequacy determination is intended to give a streamlined approval process to address, as a group, those State programs that require the disposal of CESQG hazardous waste in suitable facilities and whose subtitle D MSWLF permit programs or subtitle C hazardous waste management programs have been reviewed and approved or authorized by the Agency. Today's direct final rule notice applies to the following State programs: Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

Programs developed by these States for permitting either hazardous waste facilities or MSWLFs have been reviewed and approved or authorized by the Agency. The regulatory programs are more comprehensive and are equal to or more stringent than the part 257, subpart B criteria.

The Agency has determined that the above States have submitted the documentation that would have been needed for the determination of permit program adequacy under 40 CFR part 257, subpart B. Further, the Agency has determined that the technical review conducted for either ''approval'' of MSWLF permitting programs or ''authorization'' of hazardous waste permitting programs can substitute for the technical review of the standards for 40 CFR part 257, subpart B and their implementation by the States.

The States that are today receiving a final determination of adequacy had previously submitted documentation of State statutory authorities and requirements that regulate solid waste disposal units that may receive CESQG waste. Each State has sent a letter requesting EPA's determination of permit program adequacy under subtitle C or subtitle D, as appropriate. Each State has submitted a written statement from the State Attorney General certifying that the laws, regulations, and guidance cited in the State's submission would be fully enacted and fully effective when the ''authorization'' or ''approval'' of the permit program became effective. The State legal certification served as the foundation for ensuring that the State permit program or other system of prior approvals and conditions had adequate authority to ensure compliance with the hazardous waste or MSWLF regulations, as appropriate. This certification could have been signed by the independent legal counsel for the State, rather than the Attorney General, provided that such counsel had the full authority to represent independently the lead State Agency in court on all matters pertaining to the State program.

The technical requirements for part 257, subpart B are location restrictions, ground-water monitoring, corrective action, and recordkeeping requirements. These requirements have been met by the State programs listed in today's final determination.

Today's determination includes ''authorized'' States that have laws, regulations, or guidance in place requiring that CESQG hazardous waste be managed in a RCRA subtitle C facility (see 61 FR 34264). These ''authorized'' States are California, Colorado, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, New Hampshire, North Carolina, North Dakota, Oklahoma, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, West Virginia, Wisconsin, and Wyoming. Arizona, Virginia, and New York are ''approved'' States that require CESQG waste to be disposed of in a MSWLF meeting or exceeding the requirements of 40 CFR part 258 (see 61 FR 34264). For all cases, the State regulations have been reviewed by EPA, found to be equal to or more stringent than 40 CFR part 257, subpart B and approved. Most State program regulations contain additional requirements and are more stringent.

The States covered by today's approval have permit programs or other systems of prior approval for all waste disposal units that may receive CESQG hazardous waste in their jurisdictions. These States provide for public participation in permit issuance and enforcement as specified in the SIR rule. Finally, EPA believes that these States have sufficient compliance monitoring and enforcement authorities to take action against any owner or operator that fails to comply with regulations applicable to waste disposal units that may receive CESQG hazardous waste.

B. Decision

After reviewing the States' previous submissions for approval under subtitle D (40 CFR part 258) and authorization under subtitle C (40 CFR part 264), the Agency concludes that the above States meet all of the statutory and regulatory requirements established by RCRA. Accordingly, the above States are granted a final determination of adequacy for all portions of their permit program for solid waste disposal units that may receive CESQG hazardous waste.

RCRA section 4005(a) provides that citizens may use the citizen suit provisions of RCRA section 7002 to enforce the Federal Criteria for Classification of Solid Waste Disposal Facilities and Practices in 40 CFR part 257, subpart B independent of any State enforcement program. As explained in the preamble to 40 CFR part 257, subpart B, EPA expects that any owner or operator complying with the provisions of a State program approved by EPA that requires that CESQG hazardous waste be disposed of in either a subtitle C facility or a subtitle D MSWLF would be in compliance with the Federal Criteria. See 61 FR 34264 (July 1, 1996).

In the future, approval for State permit programs for non-MSWLF units that accept CESQG hazardous waste and meet the 40 CFR part 257, subpart B requirements, will follow the procedures outlined in the SIR and will be done on an individual State basis.

Today's action will become effective ninety (90) days from the date of publication if no adverse comments are received.

Related Acts of Congress and Executive Orders

We have evaluated these streamlined approvals in relation to a number of statutory provisions and executive orders which apply to rules. These evaluations are summarized below, and further analysis and explanation can be found in the proposed rule published elsewhere in todays **Federal Register**.

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.'' It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination. This rule does not impose any new burdens on small entities. It merely confirms existing needs for the disposal of CESQG waste under state law. This proposal does not impose any new cost burdens. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not need a regulatory flexibility analysis.

C. The Paperwork Reduction Act

Today's final rule is in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* We found that no information is being collected from the States for this direct final rule, so we do not need to prepare an Information Collection Request (ICR).

D. The Unfunded Mandates Reform Act

The Agency's analysis of compliance with UMRA found that today's direct final rule imposes no enforceable duty on any State, local or tribal governments or the private sector; thus today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13045

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

F. National Technology Transfer and Advancement Act

This direct final rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

G. Executive Order 12875

Today's direct final rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Executive Order 13084

Today's direct final rule does not significantly or uniquely affect the communities of Indian tribal governments. There is no impact to tribal governments as the result of the State plan approvals. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. Executive Order 12898: Environmental Justice

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

The Agency does not believe that today's direct final rule granting State permit program approval will have a disproportionately high and adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community.

J. The Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective September 7, 1999.

Authority: This document is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6946.

Dated: May 28, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–14347 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 8, 31, 71, 91, and 107

[USCG–1999–5004]

RIN 2115–AF74

Alternate Compliance Program; Incorporations by Reference

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule.

SUMMARY: By this direct final rule, the Coast Guard is amending part 8 of Title 46, Code of Federal Regulations, to add recently approved incorporations by reference. We also insert the address and telephone numbers of the Coast Guard office identified in several parts as the source for additional information to facilitate our Alternate Compliance Program. This rule makes no substantive changes to current regulations. It enables continuation of the Alternate Compliance Program (ACP), which was developed to reduce redundant vessel inspections without jeopardizing safety. The final rule on the ACP was published in the **Federal Register** (62 FR 67526) on December 24, 1997.

DATES: This rule is effective on September 7, 1999, unless a written adverse comment, or written notice of intent to submit an adverse comment, reaches the Docket Management Facility on or before August 9, 1999. If an adverse comment, or notice of intent to submit an adverse comment, is received, the Coast Guard will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: You may mail your comments to the Docket Management Facility, (USCG–1999–5004), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001, or deliver them to room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, contact Jaideep Sirkar, Naval Architecture Division (G–MSE–2), via: E-mail jsirkar@comdt.uscg.mil; telephone (202) 267–6925; or fax (202) 267–4816. For questions on viewing, or submitting material to, the docket, contact Carol Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (USCG–1999–5004) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES.** Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Regulatory Information

The Coast Guard is publishing a direct final rule, the procedures of which are outlined in 33 CFR 1.05–55, because no adverse comment is anticipated. If no adverse comment or written notice of intent to submit an adverse comment is received within the specified comment period, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, the Coast Guard will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if the Coast Guard receives a written adverse comment or written notice of intent to submit an adverse comment, the Coast Guard will publish a document in the **Federal Register** announcing withdrawal of all or part of this direct final rule. If an adverse comment applies to an amendment, paragraph, or section of this rule and it is possible to remove that provision without defeating the purpose of this rule, the Coast Guard may adopt as final those parts of this rule on which no adverse comment was received. The provision of this rule that was the subject of an adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of an adverse comment, the Coast Guard will publish a separate Notice of Proposed Rulemaking (NPRM) and provide a new opportunity for comment. A comment is considered ''adverse'' if the comment explains why this rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.

Background and Purpose

Under regulations in 46 CFR parts 8, 31, 71, 91, and 107, owners and operators may submit their vessels for inspection by a recognized classification society. The classification society surveys such vessels and documents compliance with applicable international requirements, class rules, and its U.S. supplement. The cognizant U.S. Coast Guard Officer in Charge, Marine Inspection, may then issue certificates of inspection based upon classification society reports documenting vessels are classed and that they comply with all applicable requirements.

Discussion of Rule

This rule does not change any substantive requirements of existing regulations. The purpose of this rulemaking is to add several recently approved sets of classification society rules and the supplements for these rules to the ACP regulations. Adding these rules and supplements through incorporation by reference is essential for the continued viability and validity of the ACP regulations.

Incorporation by Reference

The Director of the Federal Register has approved the material in 46 CFR 8.110(b) for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. You may inspect all material at the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC and at the U.S. Coast Guard, Office of Design and Engineering Standards (G–MSE), 2100 Second St., SW., Washington, DC 20593–0001. You may obtain copies from either the American Bureau of Shipping (ABS)-Two World Trade Center, 106th Floor, New York, NY 10048, or Lloyd's Register of Shipping (LR)-100 Leadenhall Street, London EC3A 3BP.

STATUTES AND ORDERS ON THE REGULATORY PROCESS

Statute or order	Does the statute or order require an analysis or statement for this rulemaking?	If so, where do we discuss the analysis or statement?
Regulatory Planning and Review (Analysis of costs and benefits)—E.O. 12866; DOT Order 2100.5.	Yes	See ''Regulatory Evaluation'' in this preamble.
Civil Justice Reform—E.O. 12988	No. This rule meets the applicable standards in E.O. 12988, sections 3(a) and (b)(2), to minimize litigation, eliminate ambiguity, and reduce burden.	
Regulatory Flexibility Act—5 U.S.C. 604(a) and 605(b)	Yes	See ''Small Entities'' in this preamble.
Paperwork Reduction Act of 1995—44 U.S.C. 3501–3520.	No. This rule contains no new collection-of-information requirements.	
Federalism—E.O. 12612	No. This rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.	
Unfunded Mandates Reform Act of 1995, sec. 202—2 U.S.C. 1532.	No. No written statement is necessary because this rule does not impose an unfunded mandate that may result in the expenditure of $100M or more in any one year.	
Enhancing the Intergovernmental Partnership (unfunded mandates for State, local, or tribal governments)—E.O. 12875.	No. This rule does not impose on any State, local, or tribal government a mandate that is not required by statute and that is not funded by the Federal government.	
Interference with Constitutionally Protected Property Rights (taking of private property)—E.O. 12630.	No. This rule does not effect a taking of private property or otherwise have taking implications under E.O. 12630.	
Protection of Children from Environmental Health Risks and Safety Risks—E.O. 13045.	No. This rule is not an economically significant rule and does not concern an environmental risk to health or a risk to safety disproportionately affecting children.	
National Environmental Policy Act—42 U.S.C. 4321–4347.	Yes	See ''Environment'' in this preamble.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. It will not impose any costs on the public, because it enables a voluntary alternative to another prescribed method of inspection.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not change any requirements in the regulations. It is simply updating information to facilitate continuation of the Coast Guard's existing Alternate Compliance Program. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Comments submitted in response to this finding will be evaluated under the criteria in the ''Regulatory Information'' section of this preamble.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraphs (34) (d) and (e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This exclusion is in accordance with section 2.B.2. and figure 2–1 concerning regulations that are based on vessel inspection and equipment aspects. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 8

Administrative practice and procedure, Incorporation by reference, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

46 CFR Part 31

Marine safety, Reporting and recordkeeping requirements, Tank vessels.

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 107

Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, under the authority of 46 U.S.C. 3306, the Coast Guard amends 46 CFR parts 8, 31, 71, 91, and 107 as follows:

PART 8—VESSEL INSPECTION ALTERNATIVES

1. The authority citation for part 8 continues to read as follows:

Authority: 46 U.S.C. 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub L. 104–324, 110 Stat. 3901; 46 U.S.C. 3703; 49 CFR 1.45, 1.46.

2. Revise § 8.110(b) to read as follows:

§ 8.110 Incorporation by reference.

(a) * * *

(b) The material incorporated by reference in this subchapter and the sections affected are as follows:

American Bureau of Shipping (ABS)—Two World Trade Center, 106th Floor, New York, NY 10048.

Rules for Building and Classing Steel Vessels, 1996—31.01–3(b), 71.15–5(b), 91.15–5(b)

Rules for Building and Classing Steel Vessels, 1997—31.01–3(b), 71.15–5(b), 91.15–5(b)

Rules for Building and Classing Steel Vessels, 1998—31.01–3(b), 71.15–5(b), 91.15–5(b)

Rules for Building and Classing Mobile Offshore Drilling Units, 1998—107.205(b)

U. S. Supplement to ABS Rules for Steel Vessels for Vessels on International Voyages, 21 October 1996—31.01–3(b), 71.15–5(b), 91.15–5(b)

U.S. Supplement to ABS Rules for Steel Vessels for Vessels on International Voyages, 1 August 1997—31.01–3(b), 71.15–5(b), 91.15–5(b)

U.S. Supplement to ABS Rules for Mobile Offshore Drilling Units, 1 June 1998—107.205(b)

American National Standards Institute (ANSI)—11 West 42nd St., New York, NY 10036.

ANSI/ASQC Q9001—1994, Quality Assurance in Design, Development, Production and Servicing, 1994—8.230

Lloyd's Register of Shipping (LR)—100 Leadenhall Street, London EC3A 3BP.

Rules and Regulations for the Classification of Ships, 1998—31.01–3(b), 71.15–5(b), 91.15–5(b)

Lloyd's Register of Shipping Supplemental Requirements, 19 September 1998—31.01–3(b), 71.15–5(b), 91.15–5(b)

PART 31—INSPECTION AND CERTIFICATION

3. The authority citation for part 31 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub L. 104–324, 110 Stat. 3901; 46 U.S.C. 3703, 5115, 8105; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR 1971—1975 Comp. P. 793; 49 CFR 1.46.

4. Revise § 31.01–3(b) to read as follows:

§ 31.01–3 Alternate compliance.

(a) * * *

(b) For the purposes of this section, a list of authorized classification societies, including information for ordering copies of approved classification society rules and supplements, is available from Commandant (G–MSE), 2100 Second St., SW., Washington, DC 20593–0001; telephone (202)267–6925; or fax (202)267–4816. Approved classification society rules and supplements are incorporated by reference into 46 CFR 8.110(b).

PART 71—INSPECTION AND CERTIFICATION

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

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub L. 104–324, 110 Stat. 3901; 46 U.S.C. 3703, 5115, 8105; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp. 351; 49 CFR 1.46.

6. Revise § 71.15–5(b) to read as follows:

§ 71.15–5 Alternate compliance.

(a) * * *

(b) For the purposes of this section, a list of authorized classification societies, including information for ordering copies of approved classification society rules and supplements, is available from Commandant (G–MSE), 2100 Second St., SW., Washington, DC 20593–0001; telephone (202)267–6925; or fax (202)267–4816. Approved classification society rules and supplements are incorporated by reference into 46 CFR 8.110(b).

PART 91—INSPECTION AND CERTIFICATION

7. The authority citation for part 91 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub L. 104–324, 110 Stat. 3901; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR 1971—1975 Comp., P. 793; 49 CFR 1.46.

8. Revise § 91.15–5(b) to read as follows:

§ 91.15–5 Alternate compliance.

(a) * * *

(b) For the purposes of this section, a list of authorized classification societies, including information for ordering copies of approved classification society rules and supplements, is available from Commandant (G–MSE), 2100 Second St., SW., Washington, DC 20593–0001; telephone (202)267–6925; or fax (202)267–4816. Approved classification society rules and supplements are incorporated by reference into 46 CFR 8.110(b).

PART 107—INSPECTION AND CERTIFICATION

9. The authority citation for part 107 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub L. 104–324, 110 Stat. 3901; 46 U.S.C. 5115; 49 CFR 1.45, 1.46; § 107.05 also issued under authority of 44 U.S.C. 3507.

10. Revise § 107.205(b) to read as follows:

§ 107.205 Alternate compliance.

(a) * * *

(b) For the purposes of this section, a list of authorized classification societies, including information for ordering copies of approved classification society rules and supplements, is available from Commandant (G–MSE), 2100 Second St., SW., Washington, DC 20593–0001; telephone (202)267–6925; or fax

(202)267–4816. Approved classification society rules and supplements are incorporated by reference into 46 CFR 8.110(b).

Dated:May 21, 1999.

J.P. High,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–14087 Filed 6–7–99; 8:45 am]

BILLING CODE 4190–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 99–121]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, we reconsider, on our own motion, the Commission's decision governing the amount of money that may be collected during the second six months of 1999 and the first six months of 2000 to fund the second year of the federal universal service support mechanisms for schools, libraries, and rural health care providers. In this Order, we direct the Universal Service Administrative Company (USAC or the Administrator) to collect no more than $562.5 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the schools and libraries universal service support mechanism, and to limit collections to no more than $3 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the rural health care universal service support mechanism.

DATES: Effective June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Matthew Vitale, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on May 28, 1999. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room, CY–A257, 445 Twelfth Street, SW, Washington, DC 20554.

I. Introduction

1. In this Order, we reconsider, on our own motion, the Commission's decision governing the amount of money that may be collected during the second six months of 1999 and the first six months of 2000 to fund the second year of the federal universal service support mechanisms for schools, libraries, and rural health care providers. We find that we should set the collection rate for the schools and libraries support mechanism at the $2.25 billion cap adopted in the *Universal Service Order*, 62 FR 32862 (June 17, 1997), and that we should modify the collection rate for the rural health care support mechanism by setting a collection level of $12 million. Although we modify the collection rate for the rural health care support mechanism, we do not revise the annual $400 million cap for the rural health care support mechanism adopted in the *Universal Service Order*. In addition, we do not revise the rules of priority adopted in the *Fifth Order on Reconsideration*, 63 FR 43088 (August 12, 1998), and the *Eleventh Order on Reconsideration* to govern the schools and libraries support mechanism.

2. In this Order, we direct the Universal Service Administrative Company (USAC or the Administrator) to collect no more than $562.5 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the schools and libraries universal service support mechanism, and to limit collections to no more than $3 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the rural health care universal service support mechanism. Furthermore, we direct USAC neither to commit nor disburse more than $2.25 billion for the schools and libraries support mechanism during the third and fourth quarters of 1999 and the first two quarters of 2000 or more than $12 million for the third and fourth quarters of 1999 and the first and second quarters of 2000 for the rural health care support mechanism.

II. Collections During the Second Funding Year

9. The Commission is committed to setting collection levels for the second funding year at an amount that will ensure that the Administrator is able to allocate support to schools and libraries at a level that is equal to or greater than the level of support that was allocated in the first funding year. Accordingly, given this commitment and estimated demand at $2.435 billion, we believe that the collection level should be set at the $2.25 billion cap recommended by the Joint Board on Universal Service in the *First Recommended Decision*, 61 FR 63778 (December 2, 1996), and adopted by the Commission in the *Universal Service Order*. Consistent with the Commission's conclusion in the *Universal Service Order*, we believe that setting the collection level at $2.25 billion reasonably balances the desire to provide support to eligible schools and libraries against the costs associated with establishing larger support mechanisms. While we recognize that some applicants' needs will not be met in full (i.e., for funding of all internal connection requests), a collection rate of $2.25 billion will be sufficient to fund fully all requests for priority one services (telecommunications services and Internet access) and to fund fully requests by the neediest schools and libraries for internal connections to the same level of discount as was funded in the first program year. This approach is consistent with the Commission's commitment to ensuring that support will be directed toward the most economically disadvantaged schools and libraries, as well as those located in rural areas. Accordingly, we direct USAC to collect only as much as required by demand, but in no event more than $562.5 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the schools and libraries universal service support mechanism. We also direct the Administrator to commit to applicants no more than $2.25 billion for disbursement during the second half of 1999 and the first half of 2000 to support the schools and libraries support mechanism.

10. We have determined that demand for funding will not increase significantly during the second funding year of the rural health care support mechanism. As projected by USAC, we anticipate that demand is not likely to exceed $12 million total annual support for the second funding year. We conclude therefore that we should establish a maximum collection level at $12 million for the third and fourth quarters of 1999 and the first and second quarters of 2000. This collection level is consistent with projected demand, and there is no evidence that eligible health care providers will require funding beyond this level for the second funding year. Accordingly, we direct USAC to limit collections to no more than $3 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 for the rural health care universal service support mechanism. We also direct USAC to commit to applicants no more than $12 million for disbursement during the second half of 1999 and the

first half of 2000 to support the rural health care support mechanism.

III. Regulatory Flexibility Analysis

A. Final Regulatory Analysis

13. In compliance with the Regulatory Flexibility Act (RFA), this Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *Universal Service Order*, and the Supplemental Final Regulatory Flexibility Analyses in the *Fifth Reconsideration Order* and the *Eighth Order on Reconsideration*, 63 FR 70564 (December 21, 1998), only to the extent that changes to the Order adopted here on reconsideration require changes in the conclusions reached in the FRFA and the two previous Supplemental FRFAs. In the previous analyses, we sought written public comment on the potential economic impact on small entities.

1. Need for and Objectives of This Order

14. The Commission is required by section 254 of the Act to promulgate rules to implement promptly the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules whose principal goal is to reform our system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. In this Order, we reconsider one aspect of those rules. We reconsider, on our own motion, the amounts that will be collected during the second six months of 1999 and the first six months of 2000 for the schools and libraries and rural health care support mechanisms.

2. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Order Will Apply

15. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''

16. In the FRFA of the *Universal Service Order*, we estimated and described in detail the number of small entities that might be affected by the new universal service rules. The rules adopted in this Order, however, would affect primarily schools, libraries, and rural health care providers. Moreover, the adopted rules will allow schools, libraries, and rural health care providers to benefit more fully from the schools and libraries and rural health care universal service support mechanisms, constituting a positive economic impact on these small entities.

17. As noted, small entities includes ''small businesses,'' ''small organizations,'' and ''small governmental jurisdictions.'' All three types of small entities may also constitute schools, libraries, or rural health care providers for the purpose of this analysis. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. As for ''small organizations,'' as of 1992, there were approximately 275,801.

18. Also, as the Commission specifically noted in the *Universal Service Order*, the SBA defined small elementary and secondary schools and small libraries as those with under $5 million in annual revenues. The Commission has further estimated that there are fewer than 86,221 public and 26,093 private schools and fewer than 15,904 libraries that may be affected by the decisions and rules adopted in the Universal Service Order. We believe that these same small entities may be affected potentially by the rules adopted in this Order.

19. In addition, the Commission noted in the *Universal Service Order* that neither the Commission nor the SBA has developed a definition of small, rural health care providers. Section 254(h)(5)(B) defines the term ''health care provider'' and sets forth the seven categories of health care providers eligible to receive universal service support. We estimated that there are fewer than 12,296 health care providers potentially affected by the rules in the *Universal Service Order*. We note that these small entities may potentially be affected by the rules adopted in this Order.

3. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

20. The modifications to the Commission's rules that are set forth in this Order relate only to actions that need to be taken by the Administrator of the universal service support mechanisms. As a result, we do not anticipate any additional burdens or costs associated with these proposed rules on any entities, including on small entities.

4. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

21. In the FRFA to the *Universal Service Order*, the Commission described the steps taken to minimize the significant economic impact on a substantial number of small entities consistent with stated objectives associated with the Schools and Libraries section, the Rural Health Care Provider section, and the Administration section of the *Universal Service Order*. As described, our current action to amend our rules will benefit schools, libraries, and rural health care providers, by ensuring that funds are allocated first to the neediest schools and libraries and that schools, libraries, and rural health care providers will be able to receive any support approved by the Administrator that is not the subject of an appeal. We believe that these amended rules fulfill the statutory mandate to enhance access to telecommunications services for schools, libraries, and rural health care providers, and fulfill the statutory principle of providing quality services at ''just, reasonable, and affordable rates,'' without imposing unnecessary burdens on schools, libraries, rural health care providers, or service providers, including small entities.

22. *Report to Congress*. The Commission will send a copy of the Twelfth Order on Reconsideration in CC Docket No. 96–45, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Twelfth Order on Reconsideration in CC Docket No. 96–45, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Twelfth Order on

Reconsideration in CC Docket No. 96–45, and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

IV. Ordering Clauses

23. Accordingly, it is ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403, and 405, 47 CFR 1.108, and section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and 47 CFR Part 54, are revised as set forth, effective upon publication in the **Federal Register**.

24. *It is furthered ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Twelfth Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Healthcare providers, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 54 as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Revise § 54.507(a)(1) to read as follows:

§ 54.507 Cap.

(a) * * *

(1) No more than $562.5 million shall be collected or spent per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the schools and libraries universal service support mechanism. No more than $2.25 billion shall be collected or disbursed during the twelve month period from July 1, 1999 through June 30, 2000.

* * * * *

3. Revise § 54.623(a) to read as follows:

§ 54.623 Cap.

(a) *Amount of the annual cap.* The annual cap on federal universal service support for health care providers shall be $400 million per funding year, with the following exceptions. No more than $3 million shall be collected or spent per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 for the rural health care universal service support mechanism. No more than $12 million shall be committed or disbursed during the twelve month period from July 1, 1999 through June 30, 2000.

* * * * *

[FR Doc. 99–14488 Filed 6–7–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 803 and 852

RIN 2900–AJ06

VA Acquisition Regulations; Improper Business Practices and Personal Conflicts of Interest; Solicitation Provisions and Contract Clauses

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs Acquisition Regulations (VAAR) concerning the requirement to include an Ethics in Government Act certification in solicitations. This amendment is necessary to delete this requirement due to the Clinger-Cohen Act, Section 4301, which stipulates that all certification requirements not required by law be eliminated from agency supplemental acquisition regulations. The implementing regulations of the procurement integrity provisions of the Act have eliminated any requirement for such certifications in solicitations. Therefore, since the certification is not required by law, it must be removed from the VAAR.

DATES: *Effective Date:* June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Rita Williams, Office of Acquisition and Materiel Management, Acquisition Policy Team (95A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8774.

SUPPLEMENTARY INFORMATION: On April 7, 1998, we published in the **Federal Register** (63 FR 16955) a proposal to eliminate the Ethics in Government Act certification requirement from solicitations in accordance with the Clinger-Cohen Act, 41 U.S.C. 425. Comments were solicited concerning the proposal for 60 days, ending June 7, 1998. We did not receive any comments. The information presented in the proposed rule document still provides the basis for this final rule. Therefore, based on the rationale set forth in the proposed rule document, we are adopting the provisions of the proposed rule as a final rule with no changes, except for nonsubstantive changes to reflect the date of this final rule.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602, since it does not contain any substantive provisions. This final rule would not cause a significant effect on any entities. This final rule deletes a requirement for contracting officers to include a particular provision in solicitations, internal guidance which does not impact the public. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

OMB Review

This document has been reviewed by OMB pursuant to Executive Order 12866.

List of Subjects

48 CFR Part 803

Antitrust, Conflict of Interests, Government procurement.

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

Approved: March 17, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR Chapter 8 is amended as follows:

PART 803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1. The authority citation for part 803 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

803.101–3 [Amended]

2. In section 803.101–3, paragraph (c) is removed.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

852.203–70 [Removed]

4. Section 852.203–70 is removed.

[FR Doc. 99–14142 Filed 6–7–99; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1537 and 1552

[FRL–6353–9]

Acquisition Regulation: Service Contracting—Avoiding Improper Personal Services Relationships

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this rule to amend the EPA Acquisition Regulation (EPAAR) (48 CFR Chapter 15) to emphasize the proper relationship between the Government and its contractors in its non-personal services contracts. The Agency recognizes that regardless of the express terms of its contracts, if a contract is administered improperly, an improper personal services relationship can be the result. This rule is designed to ensure that the manner in which contracts are administered will not create an improper employer-employee relationship.

EFFECTIVE DATE: July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Jean A. Rellins, U.S. EPA, Office of Acquisition Management, (3802R), 401 M Street, SW, Washington, D.C. 20460, Telephone: (202) 564–4434.

SUPPLEMENTARY INFORMATION:

A. Background.

Recent Agency audits have indicated a vulnerability in the manner in which Agency contracts have been administered which could create the existence of improper personal services relationships. This rule amends the EPAAR to emphasize the proper relationship between the Government and its contractors in the Government's non-personal services contracts. The Agency recognizes that regardless of the express terms of its contracts, if a contract is administered improperly, improper personal services relationship can be the result. Accordingly, the Agency is trying to highlight the nature of the proper relationship to ensure that the manner in which contracts are administered will not create an improper employer-employee relationship. No public comments were received.

B. Executive Order 12866

This rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

D. Regulatory Flexibility Act

The EPA certifies that this rule does not exert a significant economic impact on a substantial number of small entities. The requirements to contractors under the rule impose no reporting, record-keeping, or any compliance costs.

E. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA),

Public Law 104–4, establishes requirements for Federal agencies to assess the impact of their regulatory actions on State, local, and tribal governments, and the private sector. This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate affect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

G. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d)(15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective July 8, 1999.

Authority: The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390.

List of Subjects in 48 CFR Parts 1537 and 1552

Government procurement.

Therefore, 48 CFR Chapter 15 is amended as set forth below:

1. The authority citation for Parts 1537 and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended.

PART 1537—[AMENDED]

2. Section 1537.110 is amended to add paragraph (g) to read as follows:

1537.110 Solicitation provisions and contract clauses.

* * * * *

(g) To ensure that Agency contracts are administered so as to avoid creating an improper employer-employee relationship, contracting officers shall insert the contract clause at 48 CFR 1552.237–76, ''Government-Contractor Relations'', in all solicitations and contracts for non-personal services that exceed the simplified acquisition threshold.

PART 1552—[AMENDED]

3. Add 1552.237–76 to read as follows:

1552.237–76 Government-Contractor Relations.

As prescribed in 1537.110(g), insert the following clause:

Government-Contractor Relations (June 1999)

(a) The Government and the Contractor understand and agree that the services to be delivered under this contract by the contractor to the Government are non-personal services and the parties recognize and agree that no employer-employee relationship exists or will exist under the contract between the Government and the Contractor's personnel. It is, therefore, in the best interest of the Government to afford both parties a full understanding of their respective obligations.

(b) Contractor personnel under this contract shall not:

(1) Be placed in a position where they are under the supervision, direction, or evaluation of a Government employee.

(2) Be placed in a position of command, supervision, administration or control over Government personnel, or over personnel of other Contractors under other EPA contracts, or become a part of the Government organization.

(3) Be used in administration or supervision of Government procurement activities.

(c) Employee relationship. (1) The services to be performed under this contract do not require the Contractor or his/her personnel to exercise personal judgment and discretion on behalf of the Government. Rather the Contractor's personnel will act and exercise personal judgment and discretion on behalf of the Contractor.

(2) Rules, regulations, directives, and requirements that are issued by the U.S. Environmental Protection Agency under its responsibility for good order, administration, and security are applicable to all personnel who enter the Government installation or who travel on Government transportation. This is not to be construed or interpreted to establish any degree of Government control that is inconsistent with a non-personal services contract.

(d) Inapplicability of employee benefits. This contract does not create an employer-employee relationship. Accordingly, entitlements and benefits applicable to such relationships do not apply.

(1) Payments by the Government under this contract are not subject to Federal income tax withholdings.

(2) Payments by the Government under this contract are not subject to the Federal Insurance Contributions Act.

(3) The Contractor is not entitled to unemployment compensation benefits under the Social Security Act, as amended, by virtue of performance of this contract.

(4) The Contractor is not entitled to workman's compensation benefits by virtue of this contract.

(5) The entire consideration and benefits to the Contractor for performance of this contract is contained in the provisions for payment under this contract.

(e) Notice. It is the Contractor's, as well as, the Government's responsibility to monitor contract activities and notify the Contracting Officer if the Contractor believes that the intent of this clause has been or may be violated.

(1) The Contractor should notify the Contracting Officer in writing promptly, within _______ (to be negotiated and inserted into the basic contract at contract award) calendar days from the date of any incident that the Contractor considers to constitute a violation of this clause. The notice should include the date, nature and circumstance of the conduct, the name, function and activity of each Government employee or Contractor official or employee involved or knowledgeable about such conduct, identify any documents or substance of any oral communication involved in the conduct, and the estimate in time by which the Government must respond to this notice to minimize cost, delay or disruption of performance.

(2) The Contracting Officer will promptly, within _______ (to be negotiated and inserted into the basic contract at contract award) calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer will either:

(i) Confirm that the conduct is in violation and when necessary direct the mode of further performance,

(ii) Countermand any communication regarded as a violation,

(iii) Deny that the conduct constitutes a violation and when necessary direct the mode of further performance; or

(iv) In the event the notice is inadequate to make a decision, advise the Contractor what additional information is required, and establish the date by which it should be furnished by the Contractor and the date thereafter by which the Government will respond.

[(End of Clause)

Dated: May 14, 1999.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 99–14066 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990527145-9145-01; I.D. 052199B]

RIN 0648-AM71

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Minimum Size Limit

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

ACTION: Emergency interim rule; request for comments and a notice of closure.

SUMMARY: NMFS issues an emergency interim rule to increase the minimum size limit for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico from 15 inches (38.1 cm) to 18 inches (45.7 cm) for persons subject to the bag limit, as requested by the Gulf of Mexico Fishery Management Council (Council). In addition, NMFS closes the recreational red snapper fishery in the EEZ of the Gulf of Mexico effective 12:01 a.m., local time, August 29, 1999. The intended effect of the increase in the minimum size limit is to reduce the rate of harvest, and, thereby, extend the season for the recreational red snapper fishery. NMFS believes that an extended season will increase social and economic benefits from the red snapper fishery.

DATES: This rule is effective June 4, 1999 through 12:01 a.m., local time, August 29, 1999. The closure of the recreational fishery for red snapper in the EEZ of the Gulf of Mexico is effective 12:01 a.m., local time, August 29, 1999, through December 31, 1999.

ADDRESSES: Comments on this emergency interim rule must be mailed to, and copies of documents supporting this action may be obtained from, the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Roy Crabtree, 727-570-5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The 1996 revisions of the Magnuson-Stevens Act require NMFS to close the Gulf of Mexico recreational red snapper fishery when the recreational quota (currently 4.47 million lb)(2.03 million kg) is caught. The recreational fishery was closed on November 27 in 1997 and on September 29 in 1998. Under the existing 4–fish bag limit and 15–inch (38.1–cm) minimum size limit, NMFS, using the length-based simulation model (LSIM), projects that the 1999 quota will be caught on August 4, 1999. Consequently, under the existing bag and minimum size limits, the fishery would close at 12:01 a.m. on August 5, 1999. The Council has requested an emergency increase in the minimum size limit to reduce catch rates and extend the recreational season. The Council's request is based on testimony by representatives of the for-hire industry who believe that an extension of the season would benefit the industry. The industry, using the LSIM, specifically requested that the season be extended through August 28 by increasing the minimum size limit to 18 inches. Further, the industry specifically requested no decrease in the bag limit or increase in the minimum size limit beyond 18 inches due to a belief that such measures would significantly reduce the number of recreational fishing trips on for-hire vessels.

The Council considered several options for extending the season, including various reductions in the bag limit and various increases in the minimum size limit. However, after reviewing the LSIM analysis, the Council ultimately recommended an 18–inch (45.7–cm) size limit as the best alternative for extending the season, the means most acceptable to industry for extending the season through August 28, and a measure supported by many red snapper recreational fishermen who have agreed to comply voluntarily with an 18 inch size limit starting on June 1 until an emergency rule can be implemented.

Using the LSIM, NMFS projects that with implementation of an 18–inch (45.7–cm) minimum size limit in early June, implementation of the proposed specifications currently under review that would establish a zero-fish bag limit for captain and crew, and voluntary compliance by many fishermen starting on June 1, the quota will be caught on or about August 28, 1999. This action will have negligible biological effects on the Gulf red snapper stock and will not adversely affect the current rebuilding schedule for this overfished stock.

Accordingly, NMFS is increasing the minimum size limit to 18–inches (45.7 cm) effective on June 4, 1999 through 12:01 a.m., local time, on August 29, 1999. The Gulf of Mexico recreational red snapper fishery will close at 12:01 a.m., local time, on August 29, 1999, and remain closed through December 31, 1999.

Criteria for Issuing an Emergency Rule

This emergency interim rule meets NMFS policy guidelines for the use of emergency rules (62 FR 44421, August 21, 1997), because the emergency situation results from recent, unforeseen events, or recently discovered circumstances. Also, it realizes immediate benefits from the emergency rule that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the normal rulemaking process.

Recent, Unforeseen Events or Recently Discovered Circumstances

The Council, at its May 10–13, 1999, meeting, learned that if no action was taken, the projected closing date for the 1999 recreational red snapper season is August 5. This closure would result in roughly a 5-month closed season for the remainder of 1999. When combined with the proposed January-February closure from the red snapper regulatory amendment, the recreational red snapper fishery has the potential to be closed for nearly 7 consecutive months. For this action to be effective in reducing the rate of harvest, extending the fishing season, and preventing some of the potential economic hardships and disruptions to the recreational red snapper fishery, it should be implemented in early June. To be effective by then, an emergency interim rule is needed.

Immediate Benefits

A closure of the recreational fishing season for 5, or possibly 7 months, is a substantial foregone economic opportunity. This closure could conceivably disrupt not only charter and headboat operators, but the entire coastal tourist industry, as well as recreational fishermen who arrange fishing vacations months in advance. Such a lengthy closure could cause some charter and tourist-related businesses to cease operations permanently. The shortened season has the potential for adverse social impacts on communities dependent on recreational for-hire vessels. The loss of recreational fishing-related employment opportunities during the closure affects not only the vessel operators, but also deckhands, marinas, and such tourist-related businesses as hotels and restaurants. Due to the uncertainty over whether the recreational red snapper season will be open, potential fishers may decide not to plan a fishing vacation along the Gulf coast. Thus, the minimum size limit increase, and the resulting extended season, has immediate benefits that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration under the normal rulemaking process.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency interim rule is necessary to minimize significant adverse social and economic impacts that would occur with an earlier closure of the recreational fishery for red snapper. The AA has also determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This emergency interim rule has been determined to be significant for purposes of E.O. 12866.

NMFS prepared an economic evaluation of the regulatory impacts associated with this emergency interim rule, which is summarized as follows.

Assuming that anglers do not cancel their fishing trips in response to the increase to an 18–inch (45.7–cm) minimum size limit and that anglers are not able to replace previously legal smaller fish with fish 18 inches (45.7 cm) or longer, and compatible regulations are in effect in state waters by July 15, 1999, this emergency interim rule will allow approximately 24 additional fishing days in August, producing a projected closure at 12:01 a.m., local time, August 29, 1999. These additional fishing days will allow an additional 56,000 angler trips to harvest red snapper, of which 29,000 (53 percent) are for-hire angler trips. These additional trips equal a 14–percent increase in red snapper angler effort over the status quo level of effort.

The regulatory changes proposed by this rule would be applicable to angling activities in the EEZ. Typically, regulations in state jurisdictional waters are adjusted to match those of the EEZ in order to simplify the regulatory environment and to achieve the maximum benefit of the measures. Due to the differing procedural requirements each state must undertake in order to implement new fishery management regulations, however, it may not be possible for all states to adopt compatible regulations under the time frame established by this rule. Thus, it is possible that the red snapper recreational fishery could continue to operate in some areas under a 15–inch (38.1–cm) minimum size limit for some portion of June through the remaining open season.

The legal minimum size limit for red snapper has been 15 inches (38.1 cm), total length, since the beginning of the 1995 fishing season. From 1995 through 1998, approximately 80 percent of the red snapper harvested by charter and private/rental boats combined were under 18 inches (45.7 cm) (individually, 82 percent for charter boats and 70 percent for private/rental boats), while 66 percent of headboat red snapper have been under 18 inches (45.7 cm). These rates are likely influenced to some degree by responsible angling through cessation of effort once the bag limit has been achieved, i.e., no highgrading. However, 75 percent of charter and private/rental anglers who caught red snapper, landed fewer than the 5–fish bag limit during 1995–97, while 56 percent landed fewer than the 4–fish bag limit in 1998. This strongly suggests that the 15–inch (38.1–cm) minimum size limit is effective in restricting harvest and that increasing the minimum size limit to 18 inches (45.7 cm) will further restrict it.

With a 15–inch (38.1 cm) minimum size limit, approximately 165,000 red snapper angler trips would be expected to occur from June 1 through August 4. It is likely that some anglers will cancel their trips because of the minimum size increase given their inability to catch the bag limit under the less restrictive 15–inch (38.1 cm) size limit. However, what portion of the trips will be canceled is unknown. Given that some trips will be canceled, the full benefits in terms of additional trips of extending the season are not likely to materialize. Further, the inability to monitor precisely the in-season harvest, to determine the reductions in harvest rate due to trip cancellation, means that the season cannot be further lengthened in response to any reduced harvest rate.

Further loss in fishing benefits will accrue as a result of this rule to those anglers who, while continuing to fish for red snapper, are no longer able to harvest previously legal fish and thus have lower quality or less successful fishing trips. Additionally, anglers who continue to fish but switch their efforts to other species will also experience a loss in fishing benefits since it can be assumed that their previous choice of red snapper was due to higher perceived benefits associated with that species.

Insufficient data exist at this time with which to estimate the rates of trip cancellation or target substitution, the changes in value associated with additional or reduced quality red snapper trips, or the changes in value associated with substitute target trips. To the degree that the number of trips gained exceeds the number canceled, however, the for-hire businesses will experience an increase in producer surplus (profits). With respect to the recreational angler, however, while it is assumed that the value gained associated with any additional trip taken, regardless of the fishing quality received, exceeds the loss in value associated with a reduced quality or substitute target fishing trip, it is not possible to determine whether total trips gained will exceed the total trips canceled or whether the combined value (consumer surplus) of trips gained will exceed that lost across all lower quality trips. Thus, fishery-wide, considering total economic value in the form of both consumer and producer surplus, it is not possible to estimate the net economic effect of this rule. However, based on testimony by for-hire industry representatives requesting the minimum size increase to 18 inches to extend the season through August 28, the Council and NMFS assume that the net economic impact will be positive.

This emergency interim rule does not create additional reporting, recordkeeping or other compliance requirements. Accordingly, there are no cost increases that can be ascribed to compliance requirements.

Copies of the economic evaluation are available (see **ADDRESSES**).

If action were not taken to increase the red snapper minimum size limit from 15 inches (38.1 cm) to 18 inches (45.7 cm) for persons subject to the bag limit, the recreational fishery would be expected to close earlier in the fishing season and at a time that would forfeit some of the prime red snapper recreational fishing opportunities. This would result in unnecessary adverse impacts on those entities dependent on the red snapper recreational fishery, including the associated fishing communities. An increase in the minimum size limit is expected to slow the rate of harvest, extend the fishing season, and allow recreational fishers to harvest the available quota during the period, which should increase social and economic benefits for the year. Accordingly, under authority set forth at 5 U.S.C. 553(b)(B), the AA finds that these reasons constitute good cause to waive the requirement to provide prior notice and the opportunity for prior public comment, as such procedures would be contrary to the public interest. For these same reasons, under 5 U.S.C. 553(d)(3), the AA finds for good cause that a 30-day delay in the effective date of this rule would be contrary to the public interest. NMFS will advise the affected public of the effective date of this rule through timely distribution of news releases and immediate broadcasts over NOAA weather radio.

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

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 3, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.37, paragraph (d)(3) is suspended and paragraph (d)(7) is added to read as follows:

§ 622.37 Minimum sizes.

* * * * *

(d) * * *

(7) Red snapper—18 inches (45.7 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.39 (b)(1)(vi) and 15 inches (38.1 cm), TL, for a fish taken by a person not subject to the bag limit.

* * * * *

[FR Doc. 99–14473 Filed 6–3–99; 12:43 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 109
Tuesday, June 8, 1999

FEDERAL TRADE COMMISSION

16 CFR Part 23

Guides for the Jewelry, Precious Metals and Pewter Industries

AGENCY: Federal Trade Commission.

ACTION: Proposed rule; request for public comments.

SUMMARY: In response to a petition from the Jewelers Vigilance Committee and the Diamond Manufacturers and Importers Association of America, jewelry trade associations, the Federal Trade Commission (Commission) is requesting public comments on proposed revisions to two sections of the Guides for the Jewelry, Precious Metals and Pewter Industries (Jewelry Guides or Guides) to provide for the disclosure to consumers of laser-drilling of diamonds. One section addresses disclosure of treatments to diamond jewelry products. The other section addresses disclosure of treatments to gemstone jewelry products.

DATES: Written comments will be accepted until July 8, 1999.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room H–159, Washington, DC 20580. Comments about these proposed changes to the Guides should be identified as ''Guides for the Jewelry, Precious Metals and Pewter Industries—16 CFR Part 23—Comment.''

FOR FURTHER INFORMATION CONTACT: Robin Rosen Spector, Attorney, Federal Trade Commission, Washington, DC 20580, (202) 326–3740, <jewelry@ftc.gov>.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Guides for the Jewelry, Precious Metals and Pewter Industries, 16 CFR Part 23, address claims made about precious metals, diamonds, gemstones and pearl products. The Guides also provide guidance as to when certain disclosures should be made about certain products if the failure to make such disclosure would be an unfair or deceptive trade practice.[1] On May 30, 1996 (61 FR 27212), the Commission announced comprehensive revisions to the Jewelry Guides. These revisions included new sections providing for the disclosure of certain treatments to diamond jewelry products (§ 23.13) and the disclosure of certain treatments to gemstone jewelry products (§ 23.22).[2]

On December 9, 1998, the Jewelers Vigilance Committee (JVC), a jewelry trade association, in conjunction with the Diamond Manufacturers and Importers Association of America (DMIA), petitioned the Commission to revise § 23.13 to provide for the additional disclosure of a diamond treatment called laser-drilling.[3] The Guides currently state that it is not unfair or deceptive to fail to disclose this treatment. The Commission solicits comment on proposed changes to this provision of the Guides. The Commission also solicits comment on proposed changes to § 23.22 of the Guides that addresses gemstone treatments.

II. Proposed Changes to § 23.13

The JVC petition requests an amendment to § 23.13 of the Guides to provide for disclosure of laser-drilling of diamonds. Laser-drilling involves the use of a laser beam to improve the appearance of diamonds having black inclusions. The laser beam is directed at the black inclusion and then acid is forced through the tunnel made by the laser beam to remove the inclusion or alter it so it is not visible to the naked eye. The Commission determined, based on the record before it in 1996, that the failure to disclose laser-drilling was not unfair or deceptive. Therefore, § 23.13 of the Guides, which discusses diamond treatments, does not provide for disclosure of laser-drilling.

The JVC petition asserts that the Guides should be amended to provide for disclosure of laser-drilling for several reasons. Although previously various segments of the industry held different views regarding the appropriateness of disclosure, there is now industry consensus in favor of disclosure. Sixteen trade associations joined the JVC in endorsing mandatory disclosure.[4] In addition, according to the petition, the jewelry industry has adopted policies requiring the disclosure of laser-drilling at all levels of the transaction up to the point of sale to the consumer. Because of these policies, disclosure of laser-drilling to consumers would not be costly for retailers and would not inhibit advertising or result in additional costs passed on to consumers. Although industry self-regulation could also address consumer disclosure, the petition asserts that providing for disclosure in the Guides is important because, due to industry reliance on the guides, it would promote greater industry compliance.

The JVC petition explains that laser-drilling technology has improved in recent years making it increasingly difficult for consumers to detect the process, especially when diamonds are mounted in jewelry.[5] In addition, according to the petition, the majority of diamonds sold are smaller stones, from .35 to .75 carats, and laser-drilling is especially difficult to detect in such stones. Further, smaller stones such as these are typically sold without grading reports that might otherwise reveal any laser drilling.

According to the petition, consumers may suffer economic injury from the

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[1] The Federal Trade Commission issues industry guides to provide guidance for the public to conform with legal requirements. Industry guides are administrative interpretations of the laws the FTC administers. Industry guides explain how to describe products truthfully and non-deceptively and identify practices the Commission considers unfair or deceptive.

[2] Diamond and gemstone jewelry products are often treated or enhanced to improve their beauty or durability.

[3] This petition is on the public record and copies are available by contacting the Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580. A copy of the petition also has been posted on the Commission's website at <www.ftc.gov>.

[4] The trade associations that joined the petition are: World Federation of Diamond courses; Diamond Manufacturers and Importers Association of America; International Diamond Manufacturers Association; Diamond Promotion Services; Diamond Dealers Club of New York; Gemological Institute of America; International Society of Appraisers; Jewelers of America; American Gemstone Society; American Gem Society; United States Carat Club; International Confederation of Jewelry, Silverware, Diamonds, Pearls and Stones; American Gemstone Trade Association; Manufacturing Jewelers and Suppliers of America; International Standards Organization; and Diamond High Council.

[5] New technology results in smaller, shorter, thinner tunnels that are far harder to detect under a loupe, which a consumer might use to examine a stone.

purchase of laser-drilled stones. The petition explains that laser-drilling affects the diamond's value, and a laser-drilled stone is worth less than a non-treated stone of the same clarity rating. The petition explains that because laser-drilling is not being disclosed, some consumers may falsely believe that a laser-drilled stone is as valuable as a non-treated stone of the same clarity rating.

Finally, the petiton notes that the Guides provide for disclosure of other permanent process because they are non-natural, artificial procedures that affect the value of the product. For example, the Guides provide that cultured pearls be identified as such. A cultured pearl is created by a mollusk, but with human intervention. As a result of this human intervention, cultured pearls are worth less than natural pearls and the fact that the pearl is cultured must be disclosed. The petition asserts that the Guides should recognize the same distinction between untreated and laser-drilled diamonds.

The Commission has tentatively concluded that the petition demonstrates, contrary to the record before the Commission in 1996, that the failure to disclose laser-drilling is an unfair or deceptive trade practice. The Commission therefore proposes revising § 23.13 of the Jewelry Guides to provide that it is unfair or deceptive to fail to disclose laser-drilling. The Commission also proposes adding a phrase to § 23.13 regarding the permanence of the treatments enumerated in the section that should be disclosed. Currently, § 23.13 provides that certain treatments should be disclosed and the fact that the treatment ''is or may not be permanent'' also should be disclosed. The Commission therefore proposes adding the phrase ''if such is the case'' after ''permanent'' in this section. If this phrase is not added the Guides would provide for disclosure that laser-drilling is not permanent, when in fact it is permanent.

III. Proposed Changes to § 23.22

Section 23.22 of the Guides provides that it is unfair or deceptive to fail to disclose that a gemstone has been treated in any manner that is not permanent or that creates special care requirements and to fail to disclose that the treatment is not permanent, if such is the case. In light of the petition's evidence about laser-drilling, the Commission is seeking public comment on whether consumers may be injured by non-disclosure of permanent gemstone treatments that do not create special care requirements in the same manner that they may be injured by nondisclosure of laser-drilling. The Commission is seeking comment on whether there are treatments that create a disparity in the value of treated stones as compared to non-treated stones, and, whether consumers, acting reasonably under the circumstances, can detect such treatments.

The Commission seeks comment on whether § 23.22 of the Jewelry Guides should be revised to advise that permanent treatments that do not require special care should be disclosed if the treatment has a significant effect on the stone's value, and if a consumer, acting reasonably under the circumstances, could not ascertain that the stone has been treated.

IV. Request for Comment

The Commission seeks public comment on the proposed changes to §§ 23.13 and 23.22 of the Guides discussed above. The Commission also requests comment on the following specific questions:

1. Is it a prevalent practice in the jewelry industry to require disclosure of laser-drilling at all levels of the transaction up to the point of sale to the consumer?

2. Would a provision in the Jewelry Guides to disclose laser-drilling to consumers inhibit advertising or create additional costs for retailers that could be passed on to consumers in the form of significantly higher prices?

3. Is there a disparity in value between a laser-drilled diamond and a non-treated diamond of the same clarity rating?

4. Should the Jewelry Guides provide guidance as to how laser-drilling should be disclosed to consumers? If so, what guidance should be provided?

5. Gemstone treatments that are permanent and do not create special care requirements currently do not have to be disclosed under the Jewelry Guides. Is there a disparity in value between a gemstone treated in a manner that is permanent and does not require special care and one that is not treated? How many different gemstones and gemstone treatments fall into this category?

6. Does industry policy provide for disclosure of permanent gemstone treatments that do not create special care requirements?

7. Would guidance in the Jewelry Guides calling for disclosure of permanent gemstone treatments that do not require special care inhibits advertising or create additional costs for retailers that could be passed on to consumers in the form of significantly higher prices? Would this guidance adversely impact competition in the jewelry industry in any way?

List of Subject in 16 CFR Part 23

Advertising, Labeling, Trade practices, Watches and jewelry.

The Commission proposes to amend Chapter I of Title 16 of the Code of Federal Regulations as follows:

PART 23—GUIDES FOR THE JEWELRY, PRECIOUS METALS, AND PEWTER INDUSTRIES

1. The authority citation for part 23 continues to read as follows:

Authority: Sec. 6, 5, 38 Stat. 721, 719; 15 U.S.C. 46, 45.

2. Revise § 23.13 to read as follows:

§ 21.13 Disclosing existence of artificial coloring, infusing, etc.

If a diamond has been treated by artificial coloring, tinting, coating, irradiating, heating, by the use of nuclear bombardment, by the introduciton or infusion of any foreign substance, or by laser-drilling, it is unfair or deceptive not to disclose that the diamond has been treated and that the treatment is not or may not be permanent, if such is the case.

3. Revise § 23.22 to read as follows:

§ 23.22 Deception as to gemstones.

It is unfair or deceptive to fail to disclose that a gemstone has been treated in any manner that is not permanent or that creates special care requirements, and to fail to disclose that the treatment is not permanent, if such is the case. The following are examples of treatments that should be disclosed because they are usually not permanent or create special care requirements: coating, impregnation, irradiating, heating, use of nuclear bombardment, application of colored or colorless oil or epoxy-like resins, wax, plastic, or glass, surface diffusion, or dyeing. This disclosure may be made at the point of sale, except that disclosure should be made in any solicitation where the product can be purchased without viewing (e.g., direct mail catalogs, on-line services), and in the case of televised shopping programs, on the air. If special care requirements for a gemstone arise because the gemstone has been treated, it is recommended that the seller disclose the special care requirements to the purchaser. Permanent treatments that do not create special care requirements should be disclosed if the treatment has a significant effect on the stone's value, and if a consumer, acting reasonably under the circumstances, could not ascertain that the stone has been treated.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 99–14505 Filed 6–7–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter IX

[Docket No. FR–4423–N–04]

Negotiated Rulemaking Committee on Capital Fund Allocation; Meetings

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Negotiated Rulemaking Committee meetings.

SUMMARY: This document announces the fourth, fifth, and sixth meetings of the Negotiated Rulemaking Committee on Capital Fund Allocation. These meetings are sponsored by HUD for the purpose of discussing and negotiating a proposed rule that would change the current method of determining the payment of capital funds to public housing agencies (PHAs).

DATES: The fourth committee meeting will be held on June 17 and June 18, 1999. The fifth committee meeting will be held on June 23 and June 24, 1999. The sixth committee meeting will be held on July 8 and July 9, 1999.

On the first day of each meeting, the meeting will begin at approximately 9:30 am and run until completion. On the second day of each meeting, the meeting will begin at approximately 9:00 am and run until approximately 5:00 pm.

ADDRESSES: The fourth and fifth committee meetings will take place at the Channel Inn Hotel, 650 Water Street, SW., Washington, DC 20024; telephone 1–800–368–5668 or (202) 554–2400.

The sixth committee meeting will take place at the Hyatt Dulles Hotel, 2300 Dulles Corner Boulevard, Herndon, VA 22071.

FOR FURTHER INFORMATION CONTACT: William Flood, Director, Office of Capital Improvements, Public and Indian Housing, Room 4134, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500; telephone (202) 708–1640 ext. 4185 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On April 26, 1999 (64 FR 20234), HUD announced in the **Federal Register** the establishment of the Negotiated Rulemaking Advisory Committee on Capital Fund Allocation. The purpose of the committee is to discuss and negotiate a proposed rule that would change the current method of determining the allocation of capital funds to public housing agencies (PHAs).

The fourth, fifth, and sixth meetings of the negotiated rulemaking committee will take place as described in the **DATES** and **ADDRESSES** section of this document.

The agenda planned for the committee meetings includes: (1) Discussion of issues related to the development of a Capital Fund formula; (2) development of draft regulatory language; (3) development of agenda for future meetings; and (4) the scheduling of future meetings.

In accordance with the General Services Administration (GSA) regulations implementing the Federal Advisory Committee Act, HUD normally publishes a **Federal Register** meeting announcement at least 15 calendar days before the date of an advisory committee meeting). The GSA regulations, however, also provide that an agency may give less than 15 days notice if the reasons for doing so are included in the **Federal Register** meeting announcement. (See 41 CFR 10–6.1015(b).) Due to the difficulty in obtaining suitable hotel and conference room accommodations in the Washington, DC area during June, 1999, it has not been possible for HUD to announce the date and location of the fourth committee meeting before today. Given the October 1, 1999 statutory deadline for implementation of the Capital Fund formula, HUD believes it is imperative that the negotiations for development of the formula not be delayed. Failure to publish the Capital Fund final rule on a timely basis will delay the provision of capital subsidies to PHAs. Accordingly, rather than defer the negotiations, HUD has decided to proceed with the fourth committee meeting on June 17 and June 18, 1999.

The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this document. Summaries of committee meetings will be available for public inspection and copying at the address in the same section.

Dated: June 2, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–14455 Filed 6–7–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter IX

[Docket No. FR–4459–N–05]

Negotiated Rulemaking Committee on Section 8 Housing Certificate Fund Rule; Meetings

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Negotiated Rulemaking Committee meetings.

SUMMARY: On May 18, 1999, HUD announced in the **Federal Register** the second, third, fourth, and fifth meetings of the Negotiated Rulemaking Committee on Section 8 Tenant-based Contract Renewal Allocation. At that time, HUD was not yet able to provide the locations for the third, fourth and fifth committee meetings. The purpose of this document is to announce the location of these meetings.

DATES: The meeting dates announced in the May 18, 1999 document remain unchanged. The third committee meeting will be held on June 21 and June 22, 1999. The fourth committee meeting will be held on July 19 and July 20, 1999. The fifth committee meeting will be held on August 19 and 20, 1999. All meetings will begin at approximately 9:00 am and conclude at approximately 5:00 pm.

ADDRESSES: The third, fourth, and fifth committee meeting will take place at the Hilton Washington Dulles Airport Hotel, 13869 Park Center Road, Herndon, VA 20171; telephone (703) 478–2900 (this is not a toll-free telephone number).

FOR FURTHER INFORMATION CONTACT: Robert Dalzell, Senior Program Advisor, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Room 4204, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1380 (this is not a toll-free telephone number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal

Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On April 26, 1999 (64 FR 20232), HUD announced in the **Federal Register** the establishment of the Negotiated Rulemaking Advisory Committee on Section 8 Tenant-Based Contract Renewal. The purpose of the committee is to discuss and negotiate a rule that would change the current method of distributing funds to public housing agencies (PHAs) for purposes of renewing assistance contracts in the tenant-based Section 8 program.

On May 18, 1999 (64 FR 26923), HUD announced in the **Federal Register** the second, third, fourth, and fifth meetings of the negotiated rulemaking committee. At that time, HUD was not yet able to provide the locations for the third, fourth and fifth committee meetings. The purpose of this document is to announce the location of these meetings. The third, fourth, and fifth meetings of the negotiated rulemaking committee will take place as described in the **DATES** and **ADDRESSES** section of this document.

The agenda planned for the meetings includes: (1) Discussion of issues relating to the development of the proposed rule; (2) development of draft regulatory language; (3) development of agenda for future meetings; and (4) the scheduling of future meetings.

The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this document. Summaries of committee meetings will be available for public inspection and copying at the address in the same section.

Dated: June 2, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–14457 Filed 6–7–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–4425–N–04]

Negotiated Rulemaking Committee on Operating Fund Allocation; Meetings

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Negotiated Rulemaking Committee meetings.

SUMMARY: This document announces the fourth, fifth, and sixth meetings of the Negotiated Rulemaking Committee on Operating Fund Allocation. These meetings are sponsored by HUD for the purpose of discussing and negotiating a proposed rule that would change the current method of determining the payment of operating subsidies to public housing agencies (PHAs). This document also announces two changes to the membership of the negotiated rulemaking committee.

DATES: The fourth committee meeting will be held on June 15 and June 16, 1999. The fifth committee meeting will be held on July 7 and July 8, 1999. The sixth committee meeting will be held on August 11 and August 12, 1999.

On the first day of each meeting, the meeting will begin at approximately 9:30 am and run until completion. On the second day of each meeting, the meeting will begin at approximately 8:30 am and run until approximately 4:00 pm.

ADDRESSES: The fourth, fifth, and sixth committee meetings will take place at the Hyatt Dulles Hotel (Concorde Ballroom), 2300 Dulles Corner Boulevard, Herndon, VA 22071.

FOR FURTHER INFORMATION CONTACT: Joan DeWitt, Director, Funding and Financial Management Division, Public and Indian Housing, Room 4216, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1872 ext. 4035 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of HUD has established the Negotiated Rulemaking Committee on Operating Fund Allocation to negotiate and develop a proposed rule that would change the current method of determining the payment of operating subsidies to PHAs. The establishment of the committee is required by the Quality Housing and Work Responsibility Act of 1996 (Pub.L. 105–276, approved October 21, 1998; 112 Stat. 2461) (the ''Public Housing Reform Act''). The Public Housing Reform Act makes extensive changes to HUD's public and assisted housing programs. These changes include the establishment of an Operating Fund for the purpose of making assistance available to PHAs for the operation and management of public housing. The Public Housing Reform Act requires that the assistance to be made available from the new Operating Fund be determined using a formula developed through negotiated rulemaking procedures. The general effective date for the formula (the beginning date of the fiscal year for which PHAs will determine their subsidy eligibility using the new formula) is October 1, 1999.

On March 16, 1999 (64 FR 12920), HUD announced in the **Federal Register** the establishment of HUD's Negotiated Rulemaking Committee on Operating Fund Allocation. The March 16, 1999 document also announced the membership list of the negotiated rulemaking committee.

II. Changes in Committee Membership

The following changes have been made to the membership of the negotiated rulemaking committee:

1. The Wilmington, DE Housing Authority is no longer a member of the committee. The Executive Director of the Housing Authority has been suspended from his position by the Authority's Board of Commissioners. Further, the Board's need to focus on internal administrative affairs prevents it from devoting the necessary time to fully participate on the negotiated rulemaking committee. Given the committee's need to develop an operating fund formula by the statutory deadline of October 1, 1999, HUD determined that it was necessary to remove the Housing Authority from the committee membership.

2. The National Organization of African-Americans in Housing (NOAAH) has been added to the committee membership. HUD invited NOAAH to be a member following the membership withdrawal of the Wilmington, DE Housing Authority. NOAAH had advised HUD of its interest in membership prior to final selection of members and had been placed on a list of potential alternates. HUD determined that NOAAH's unique purpose and subject matter competencies merited an invitation for committee membership.

III. Upcoming Meetings of the Negotiated Rulemaking Committee

To date there have been three meetings of the negotiated rulemaking committee. The fourth, fifth, and sixth committee meetings will take place as described in the DATES and ADDRESSES section of this document.

The agenda planned for the committee meetings includes: (1) Workgroup sessions to discuss various issues related to the implementation of an operating fund formula; (2) full committee discussions of the work-products developed by the workgroups; (3) development of draft regulatory language; and (4) the scheduling of future meetings, if necessary.

In accordance with the General Services Administration (GSA) regulations implementing the Federal Advisory Committee Act, HUD normally publishes a **Federal Register** meeting announcement at least 15 calendar days before the date of an advisory committee meeting). The GSA regulations, however, also provide that an agency may give less than 15 days notice if the reasons for doing so are included in the **Federal Register** meeting notice. (See 41 CFR 10–6.1015(b).) Due to the difficulty in obtaining suitable hotel and conference room accommodations in the Washington, DC area, it has not been possible for HUD to announce the date and location of the fourth committee meeting before today. Given the strict statutory deadline for implementation of the Operating Fund formula, HUD believes it is imperative that the negotiations for development of the formula not be delayed. Failure to publish the Operating Fund final rule on a timely basis will delay the provision of operating subsidies to PHAs. Accordingly, rather than defer the negotiations, HUD has decided to proceed with the committee meeting scheduled for June 15 and June 16, 1999.

The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the FOR FURTHER INFORMATION section of this notice. Summaries of committee meetings will be available for public inspection and copying at the address in the same section.

Dated: June 2, 1999.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–14456 Filed 6–7–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

RIN 1210–AA48

Plans Established or Maintained Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Negotiated rulemaking committee notice of meeting.

SUMMARY: The Department of Labor's (Department) ERISA Section 3(40) Negotiated Rulemaking Advisory Committee (Committee) was established under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act (the FACA) to develop a proposed rule implementing the Employee Retirement Income Security Act of 1974 (ERISA), as amended. The purpose of the proposed rule is to establish a process and criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA. The proposed rule will also provide guidance for determining when an employee benefit plan is established or maintained under or pursuant to such an agreement. Employee benefit plans that are established or maintained for the purpose of providing benefits to the employees of more than one employer are ''multiple employer welfare arrangements'' (MEWAs) under section 3(40) of ERISA, and therefore are subject to certain state laws, unless they meet one of the exceptions set forth in section 3(40)(A). At issue in this regulation is the exception for plans or arrangements that are established or maintained under one or more agreements which the Secretary finds to be collective bargaining agreements. It is the view of the Department that it is necessary to distinguish organizations that provide benefits through collectively bargained employee representation from organizations that are primarily in the business of marketing commercial insurance products.

DATES: The Committee will meet from 9:00 am to approximately 5:00 pm on each day on Wednesday, July 7, 1999, and Thursday, July 8, 1999.

ADDRESSES: This Committee meeting will be held at the offices of the Federal Mediation and Conciliation Service (FMCS), 2100 K Street, NW, Room 200, Washington, DC 20427. All interested parties are invited to attend this public meeting. Seating is limited and will be available on a first-come, first-serve basis. Individuals with disabilities wishing to attend who need special accommodations should contact, at least 4 business days in advance of the meeting. Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346). The date, location and time for subsequent Committee meetings will be announced in advance in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346). This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Minutes of all public meetings and other documents made available to the Committee will be available for public inspection and copying in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC from 8:30 a.m. to 4:30 p.m. Any written comments on these minutes should be directed to Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346). This is not a toll-free number.

AGENDA: The Committee will continue to discuss the possible elements of a process and potential criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA, (29 U.S.C. 1002(40)). Discussion of these issues is intended to help the Committee members define the scope of a possible proposed rule.

Members of the public may file a written statement pertaining to the subject of this meeting by submitting 15 copies on or before Tuesday, June 29, 1999, to Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives wishing to address the Committee should forward their request to Ms. Goodwin or telephone (202) 219–4600. During each day of the negotiation session, time permitting, there shall be time for oral public comment. Members of the public are encouraged to keep oral statements brief, but extended written statements may be submitted for the record.

Organizations or individuals may also submit written statements for the record without presenting an oral statement. 15 copies of such statements should be sent to Ms. Goodwin at the address above. Papers will be accepted and included in the record of the meeting if received on or before June 29, 1999.

Signed at Washington, DC, this 1st day of June, 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–14466 Filed 6–7–99; 8:45 am]

BILLING CODE 4510–29–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH 118–1b; FRL–6353–3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of revisions to the Ohio State Implementation Plan (SIP) for rules 3745–15–05 (De Minimis exemption) and 3745–35–02 (Permits to Operate) of the Ohio Administrative Code (OAC).

In the final rules section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless EPA receives relevant adverse written comment. Should EPA receive such comment, we will publish a timely withdrawal informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on the proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document, and no further action will be taken. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before July 8, 1999.

ADDRESSES: Written comments may be mailed to J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Region 5 at the address listed below.

Copies of the materials submitted by the Ohio Environmental Protection Agency may be examined during normal business hours at the following location: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Steve Gorg or Genevieve Damico, Environmental Engineers, Permits and Grants Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, 312–353–8641.

SUPPLEMENTARY INFORMATION:

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: May 20, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–14053 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6355–4]

RIN 2060–AH47

National Emission Standards for Hazardous Air Pollutants Emissions: Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of compliance.

SUMMARY: The EPA is proposing to extend certain compliance dates contained in National Emissions Standards for Hazardous Air Pollutants Emissions: Group IV Polymers and Resins. The revisions concern an extension of the compliance dates specified in 40 CFR 63.1311(b) and (d)(6) for polyethylene terephthalate (PET) affected sources. We are proposing these compliance extensions pursuant to Clean Air Act section 301(a)(1) to complete reconsideration of equipment leak provisions and any necessary revision to the rule.

In the ''Rules and Regulations'' section of the **Federal Register**, we are approving the extension of compliance dates as a direct final rule without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we received adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: *Comments.* Written comments must be received by July 8, 1999, unless a hearing is requested by June 18, 1999. If a hearing is requested, written comments must be received by July 23, 1999.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than June 18, 1999. If a hearing is held, it will take place on June 23, 1999, beginning at 10:00 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–45 (see docket section below), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below. Comments and data may also be submitted electronically by following the instructions provided in the SUPPLEMENTARY INFORMATION section. No Confidential Business Information (CBI) should be submitted through electronic mail.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Maria Noell, U.S. Environmental Protection Agency, MD–13, Research Triangle Park, N.C. 27711, telephone (919) 541–5607.

Docket. The official record for this rulemaking has been established under docket number A–92–45 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments and data, which does not include any information claimed as CBI, is available for inspection between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in the ADDRESSES section. Alternatively, a docket index, as well as individual items contained within the docket, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Barnett, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5605, fax number (919) 541–3470, and electronic mail: barnett.keith@epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Filing

Electronic comments and data can be sent directly to the EPA at: a-and-r-docket@epamail.epa.gov. Electronic comments and data 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 diskette in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–92–45. Electronic comments may be filed online at many Federal Depository Libraries.

Electronic Availability

This document is available in docket number A–92–45 or by request from the EPA's Air and Radiation Docket and Information Center (see ADDRESSES), and is available for downloading from the Technology Transfer Network (TTN), the EPA's electronic bulletin board system. The TTN provides information and technology exchange in various areas of emissions control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,000 baud per second modem. For further information, contact the TTN HELP line at (919) 541–5348, from 1:00 p.m. to 5:00 p.m., Monday through Friday, or access the TTN web site at: http://www.epa.gov/ttn/oarpg.

Regulated Entities

Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Facilities that produce PET.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities regulated by the NESHAP addressed in this notice. If you have questions regarding the applicability of the NESHAP addressed in this notice to a particular entity, consult the person listed in the preceding FOR FURTHER INFORMATION CONTACT section.

For further information, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Administrative

A. Paperwork Reduction Act

For the Group IV Polymers and Resins NESHAP, the information collection requirements were submitted to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*. The OMB approved the information collection requirements and assigned OMB control number 2060–0351. 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 the EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The EPA has amended 40 CFR 9.1, to indicate the information collection requirements contained in the Group IV Polymers and Resins NESHAP.

This action has no impact on the information collection burden estimates made previously. Therefore, the ICR has not been revised.

B. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by OMB on the basis of the requirements of the Executive Order in addition to its normal review requirements. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Today's action does not fall within any of the four categories described above. Instead, the proposed rule will provide an extension of the compliance dates specified in 40 CFR 63.1311(b) and (d)(6) for PET affected sources. The proposed rule does not add any additional control requirements. Therefore, this proposed rule was classified ''non-significant'' under Executive Order 12866 and was not required to be reviewed by OMB.

C. Regulatory Flexibility

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because rather than imposing additional requirements, this proposed rule provides additional time for compliance while the EPA completes reconsideration and any necessary revision to parts of the Group IV Polymers and Resins NESHAP. Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objects of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. Instead, this proposed rule provides additional time to comply with some requirements of the Polymers and Resins IV NESHAP. In any event, the EPA has determined that this rule does not contain a Federal mandate that may result in expenditure of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector, in any one year. This rule is not subject to the requirements of sections 202 and 205 of the UMRA.

We also have determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule does not impose any enforceable duties on small governments, i.e., they own or operate no sources subject to this rule and therefore are not required to purchase control systems to meet the requirements of this rule.

E. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety aspects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed action is not subject to the Executive Order 13045 because it is not an economically significant regulatory action as defined in E.O. 12866, and it is based on technology performance and not on health or safety risks.

F. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act of 1995 (NTTAA) requires federal agencies to evaluate existing technical standards when developing new regulations. To comply with the NTTAA, the EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that the use of VCS in this proposed rule is impractical. The compliance extension of the Group IV Polymers and Resins NESHAP is merely a procedural action that does not require sources to take substantive steps that lend themselves to VCS.

G. Executive Order 12875—Enhancing Intergovernmental Partnership

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 12875 requires the EPA to provide to the Office of Management and Budget a description of the extent of the EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's proposed rule does not create a mandate on State, local or tribal governments. The proposed rule does not impose any enforceable duties on these entities. Rather, the proposed rule extends certain regulatory requirements. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 13084 requires the EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This proposed rule imposes no enforceable duties on these entities. Rather, the proposed rule extends certain regulatory requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 28, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–14350 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6355–6]

RIN 2060–AH47

National Emission Standards for Hazardous Air Pollutants: Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed denial of petition for reconsideration and notice of public hearing.

SUMMARY: Promulgated standards for the Group IV Polymers and Resins were published in the **Federal Register** on September 12, 1996. Two sets of petitioners have petitioned the EPA to reconsider the equipment leak standards contained in the promulgated rule as they pertain to polyethylene terephthalate (PET) facilities. After consideration of the petitioners' comments and data, and a reanalysis of the equipment leak program, the EPA has determined to retain without modification the equipment leak provisions of the promulgated rule.

Today's notice provides the opportunity to provide public comment on the new equipment leak analysis, which was conducted based on comments and additional data provided by the petitioners.

DATES: Comments. Comments must be received on or before August 9, 1999. For information on submitting electronic comments see the **SUPPLEMENTARY INFORMATION** section of this document.

Public Hearing. A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the EPA's decision to retain the equipment leak standards based on the comments and data provided by the petitioners and on the reanalysis incorporating those comments and data. If anyone contacts the EPA requesting to speak at a public hearing by July 1, 1999, a public hearing will be held on July 8, 1999, beginning at 9:30 a.m. Persons interested in attending the hearing or wishing to present oral testimony should contact Ms. Maria Noell at (919) 541–5607, Organic Chemicals Group (MD–13). If held, the public hearing will take place at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102) Attention: Docket No. A–92–45, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to Mr. Keith Barnett, US EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, telephone (919) 541–5605, fax (919) 541–3470, and electronic mail: barnett.keith@epa.gov. Comments and data may also be submitted electronically by following the instructions listed in **SUPPLEMENTARY INFORMATION.** No confidential business information (CBI) should be submitted through electronic mail.

Technical Memoranda. The ''Summary of Responses to Petitioners' Comments'' memo may be obtained electronically from the EPA's Technology Transfer Network (TTN) (see **SUPPLEMENTARY INFORMATION** for access information.)

Docket. A docket, No. A–92–45, containing information considered by the EPA in the development of the standards for the Group IV Polymers and Resins, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday at the EPA's, Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, first floor, 401 M Street SW, Washington, D.C. 20460. The proposed and promulgated regulations, the Basis and Purpose Document for the promulgated rule, Summary of Responses to Petitioners' Comments, (Docket Item VI–B–19), Equipment Leak Analysis for PET Facilities Subject to the Group IV Polymers and Resins NESHAP (Docket Item VI–B–20), and other supporting information are available for inspection and copying. Alternatively, a docket index, as well as individual items contained with the docket, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying. The docket index is also available electronically on the Virtual Air Toxics Website at http://www.epa.gov/ttn/uatw/pr4/pr4pg.html.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Barnett, US EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, telephone (919) 541–5605, fax (919) 541–3470, and electronic mail: barnett.keith@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Facilities manufacturing polyethylene terephthalate (PET) using a batch dimethyl terephthalate (DMT) process, PET facilities using a continuous DMT process, PET facilities using a batch terephthalic acid (TPA) process, and PET facilities using a continuous TPA process.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the Group IV Polymers and Resins standard. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated, you should carefully examine the applicability criteria in § 63.1310 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic Filing

Electronic comments and data can be sent directly to the EPA at: a-and-r-docket@epamail.epa.gov. Electronic comments and data 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 diskette in Wordperfect 5.1 or 6.1, or ASCII file formats. All comments and data in electronic form must be identified by the docket number A–92–45. No Confidential Business Information (CBI) should be submitted through electronic mail. Electronic comments may be filed online at many Federal Depository Libraries.

Electronic Activity

This notice is available through the Technology Transfer Network (TTN) web site at http://www.epa.gov/ttn/oarpg. The TTN Web site is a collection of related web sites containing information about many areas of air pollution science, technology, regulation, measurement, and prevention. The telephone number to access the OAQPS TTN via modem is (919) 541–5742. The TTN operates 24 hours a day, except on Mondays, when it is inaccessible from 8:00 a.m. to noon, East Coast Time. For further information and general questions regarding the TTN, call the TTN help line (919) 541–5384 or Mr. Hersch Rorex (919) 541–5637. This notice is also available in Docket No. A–92–45 (see **ADDRESSES**).

The following outline is provided to aid in reading this notice. The information presented in this notice is organized as follows:

I. Background

A. 1995 Proposed Rule

National Emission Standards for Hazardous Air Pollutants (NESHAP) for Group IV Polymers and Resins were proposed in the **Federal Register** (FR) on March 29, 1995 (60 FR 16090). The proposed standards included requirements for the control of emissions from equipment leaks. Under the proposed standards for equipment leaks, both existing and new PET facilities would be required to implement a leak detection and repair (LDAR) program. With a few exceptions, the LDAR program proposed was the same as that specified in the National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks (40 CFR part 63, subpart H; referred to hereafter as the HON) and the National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (40 CFR part 63, subpart I). Under the proposed standards, work practice requirements to reduce emissions from equipment that is in organic hazardous air pollutants (HAP) service for 300 or more hours per year were specified. The proposed standards defined ''in organic HAP service'' as being in contact with or containing process fluid that contains a total of 5 percent or more total HAP. The proposed standards applied to valves, pumps, compressors, connectors, pressure relief devices, open-ended valves or lines, sampling connection systems, instrumentation systems, agitators, surge control vessels, bottoms receivers, and closed-vent systems and control devices.

B. Public Comments on 1995 Proposed Rule

Comments were received on the 1995 proposed rule, including comments on the equipment leak program. A summary of comments and responses to those comments can be found in ''Hazardous Air Pollutant Emissions from Process Units in Thermoplastics Manufacturing Industry—Basis and Purpose Document for Final Standards, Summary of Public Comments and Responses,'' (EPA–453/R–96–001b, May 1996).

Overall, commenters had several objections concerning the proposed provisions as applied to PET affected sources. Commenters stated that emissions and emission reductions were overestimated; that little environmental benefit could be expected as a result of implementing an equipment leak program; that the proposed provisions were not cost effective (largely due to the overestimation of emissions and emission reductions); and that the recordkeeping and reporting requirements were excessive.

In response to these comments, the EPA reevaluated the emission estimates, costs, and cost effectiveness of the proposed equipment leak standards for each PET subcategory. Based on the comments and reanalysis, the EPA made changes to the proposed rule, which are summarized in the following section.

C. 1996 Promulgated Rule

On September 12, 1996, the final rule for the Group IV Polymers and Resins source category was published in the **Federal Register** (61 FR 48208). In general, with regard to equipment leaks, subject facilities were required to comply with the HON. A few differences from the HON were included in the final rule. These differences, most of which were in response to comments received during the public comment period, included:

1. For PET affected sources using a continuous TPA high viscosity process with multiple end finishers, the final rule does not require an equipment leak program.

2. The final rule exempts from the equipment leak standards any PET Thermoplastic Product Production Unit (TPPU) in which all of the components are either in vacuum service or in heavy liquid service (or some combination of vacuum service and heavy liquid service).

3. Indications of liquids dripping from bleed ports on pumps and agitators at facilities producing polystyrene resins are excluded from the definition of a leak.

4. A submittal of an Initial Notification is not required.

5. 150 days (rather than 90 days) are allowed to submit the Notification of Compliance Status.

6. PET facilities are not required to provide a list of identification numbers for components in heavy liquid service, pressure relief devices in liquid service, and instrumentation systems.

7. The final rule clarifies that, for the components identified above under Item 6, leaks are to be determined exclusively through the use of visual, audible, olfactory, or any other detection methods, but that Method 21 is not to be used.

8. Bottoms receivers and surge control vessels are not regulated under the equipment leak provisions, but instead are regulated as storage vessels.

II. Petitions for Reconsideration

Following promulgation of this rule, the EPA received two petitions for reconsideration regarding the LDAR provision of the rule.[1] The petitioners also supplied additional data to the EPA in support of their petitions. The EPA held meetings with both sets of petitioners to discuss their petitions.

The two primary concerns expressed by these petitioners were:

1. Light liquid LDAR program is more costly than estimated, is not cost effective, and thus should not be required.

2. No substantive cost effectiveness analysis was performed on the heavy liquid LDAR program, which was added between proposal and promulgation; thus, EPA failed to meet its obligation under section 112(d)(2) of the Clean Air Act.

The petitioners requested that the EPA redo its analysis and believes that

[1] The EPA also received petitions regarding other sections of the rule and is responding to these separately.

such reanalysis would result in action to delete the equipment leak provisions from the Group IV Polymers and Resins rule.

A summary of the reanalysis conducted in the response to the petitions is presented below in Section III, Reanalysis of Equipment Leak Program. The following paragraphs summarize the major comments made by the petitioners and the EPA's response to those comments. For more comments and responses, please see the ''Summary of Responses to Petitioners' Comments'' memo in Docket A–92–45.

A. Emission Estimation

Comment: Two petitioners claim that the EPA's average SOCMI emission factors significantly overestimate equipment leak emissions and that baseline emissions would be more accurately predicted using the average emission factors identified in the 1993 Protocol document for components located at ethylene oxide/butadiene (EO/BD) process units (Protocol for Equipment Leak Emission Estimates, EPA–453/R–93–026, June 1993, page B–53).

Response: This comment is essentially identical to comments presented during the public comment period on the proposed rule. However, these petitioners provide for the first time equipment leak rate data compiled from several of their non-PET facilities that they believe are representative of leak rates at their PET facilities. The petitioners then calculate average leak rates based on these leak frequencies and compare them to several average leak rates reported in the 1993 Protocol document, including those based on the EO/BD data, on the EPA 24-unit study, and the combined EO/BD and EPA 24-unit study data (which makes up the SOCMI data set). A comparison of the average leak rates appears to show that the petitioners' non-PET facilities are emitting at a rate lower than the average SOCMI factors.

When developing the rule, the EPA provided each company, including the petitioners, with the opportunity to comment on the estimated emissions from equipment leaks, which were based on the average SOCMI emission factors. Most of the companies disagreed with the estimates, either stating they were too high or providing their own estimates. Two companies found no reason to dispute the EPA estimate. Two petitioners responded by providing emission estimates and detailed component counts for some of their facilities. However, for two of their facilities they used EPA SOCMI emission factors to estimate their equipment leak emissions. A third petitioner, in contrast, provided no comments on the procedure for calculating uncontrolled emissions from equipment leaks and stated the information on the component counts and their stream composition was unavailable at that time.

In responding to the petitioners' comments, the EPA performed the equipment leak reanalysis using revised emission factors for the petitioners' facilities based on the equipment leak frequency rates presented by the petitioners. In addition to the petitioners, only one other company submitted data from which facility-specific leak frequencies could be derived. The EPA used these data to calculate facility-specific emission factors for the reanalysis for that facility. The leak frequency rates and the resulting facility-specific emission factors were not extended to analyses of other companies' facilities for several reasons: (1) The other companies either have not questioned the EPA emission estimates or have concurred with them, (2) the equipment leak programs to control emissions employed by the petitioners at their facilities may not represent programs practiced by other companies, and (3) several companies stated that they do not have any equipment leak programs.

It is important to note that the EPA is using the petitioners' leak frequency rates for analysis purposes only in responding to the petitioners' comments, and is not accepting them as valid. The level of detail associated with the leak frequency rates and inconsistencies in the presentation of the data (as discussed in the following paragraph) make it impossible to verify the accuracy of the leak rate data. In addition, there is no certainty that these leak frequency rates are applicable to the petitioners' PET facilities, because the monitoring and repair program in place for the submitted data at the time of the reported initial measurements may not reflect the uncontrolled leak frequency from the PET facility.

Two petitioners submitted information on the equipment leak frequencies for a number of non-PET facilities. Upon request, they also provided data to support those reported leak frequencies. In reviewing the supporting data, there appear to be a number of inconsistencies, some of which would affect the estimated leak frequency. For example, in the information submitted by one petitioner these inconsistencies include: (1) The number of leaking components reported in the summarization table do not match the monitoring results in the audit report; (2) start dates do not match between the summarization table and the audit report; (3) total number of components in the summarization table do not always match the number tested in the audit report; and (4) it is unclear what ''net'' readings refer to and it is possible that this is an incorrect accounting of leakers. In another petitioner's data, concerns are: (1) the data sheets do not match the numbers in the screening results table; and (2) it is unclear what ''adjusted'' readings, which are presented for many of the process units and their leaking components, refer to and it is possible that this is an incorrect accounting of leakers. Notwithstanding these technical uncertainties, the EPA has used the petitioners' leak frequency rates in the reanalysis.

Comment: Two petitioners state that one reason their baseline emissions are so much lower than predicted by the SOCMI emission factors is that since the 1970s a greater emphasis has been placed on repairing leaking equipment identified through sensory means, and that this is part of the normal practice at their facilities.

Response: This comment is essentially identical to one submitted by one of the petitioners in response to the proposed rule. While these two petitioners state that they currently have in place a program that repairs leaks through coordination with their maintenance staff, they do not provide any information documenting the effectiveness of a sensory program relative to a monitoring program for components in gas/vapor or light liquid service. But whatever their effectiveness, the EPA has used their data in the reanalysis.

Comment: One petitioner claims that the EPA had information that industry-run LDAR programs were practiced in PET facilities and that by ignoring these programs the EPA over-estimated the number of leaking components.

Response: In response to an EPA request to identify equipment leak programs prior to the 1995 proposal, most PET companies (including the petitioners for all of their facilities) indicated that they did not have an equipment leak program or did not respond. Two companies stated that they repair leaks on a visual-detection basis. None of the companies provided any data to quantify the impact on emissions as a result of these visual-detection programs. In addition, none of the companies described such programs in any detail. Therefore, prior to the public comment period, there was insufficient information for the EPA either to describe these visual-based equipment leak programs or to quantify their effectiveness. During the public comment period, the EPA received additional statements (but no data or descriptions) from several commenters (including the petitioners) that there were industry-run LDAR programs. In fact, one of the petitioners stated during the public comment period that the MACT floor determination was flawed because the proposed equipment leak standards only require what PET TPA facilities are currently doing for components in heavy liquid service. Notwithstanding such statements, industry did not provide the EPA with information or data to describe the programs or to quantify the emission reduction associated with industry-run LDAR programs. In the absence of such information or data, the EPA could not incorporate these programs in its estimate of baseline emissions.

Comment: One petitioner states that the EPA did not use emission estimates provided by the industry, that the EPA assumed all vapor components to be methanol, and that the EPA failed to revise the emission factor for vapor ethylene glycol, resulting in an overestimation of emissions from these components.

Response: The petitioner correctly states that the EPA did not use emission estimates provided by the industry for equipment leaks. As the EPA explained in supporting technical documentation:

Emissions data provided by industry for equipment leaks were not used. Instead, emissions were estimated by determining the equipment component counts at each facility (e.g. valves in gas service, pumps in light liquid service) and applying the appropriate emission factors for each component category. Emission factors reported in the EPA's protocol document for equipment leaks were used. This approach to estimating emissions for equipment leaks was taken to provide a consistent baseline for estimating the impacts of various leak detection and repair (LDAR) programs in use for various subcategories and to compensate for the fact that equipment leaks data provided by industry was not complete. For the several facilities that provided specific and clear information, the estimate of emissions was adjusted to account for low organic HAP concentrations and reduced hours of operations.

The supporting technical documentation lays out the procedures for the design and costing of condensers to control styrene and methanol emissions from polystyrene and PET process vents. These systems are not applied to equipment leak emissions. At proposal and promulgation, the EPA assumed all vapor service components at PET DMT facilities were in methanol service, and applied a recovery credit to these components based on the value of methanol. The EPA did not make any assumptions at proposal and promulgation as to what compound was contacting the gas/vapor service components at PET TPA facilities. The EPA did use the same emission factors to estimate emissions from gas/vapor service components at both DMT and TPA facilities.

Based on comments received during the public comment period, the EPA responded by revising the emission factors for components in heavy liquid service. No data have been provided to indicate that it is inappropriate to use the emission factor for components in vapor service where the contact compound is ethylene glycol in the vapor phase.

Based on the available data, the EPA believes the approach used by the Agency to estimate emissions is reasonable.

Comment: One petitioner claims that the EPA has stated that LDAR programs for heavy liquid components have no measurable effect on heavy liquid component emissions. The petitioner then states that they must use zero for heavy liquid component emission reductions.

Response: The EPA believes that there will be an emissions reduction for heavy liquid components as a result of the Group IV Polymers and Resins NESHAP, and that the petitioner misinterpreted the information. The requirements of the rule for heavy liquid components specify that if an operator sees, smells, or hears a leak, they are required to tag the component and complete repairs within 15 days. The current industry practice is to identify leaks through the same methods as specified in the rule, but they have no specific time limit for repairs. The EPA believes it is reasonable to conclude that imposing specific time limits for repairs will result in repairs being completed in a more timely fashion, thereby reducing emissions.

The comments provided by this petitioner indicate that they do not currently keep records on repairs of heavy liquid components. Therefore, it is not possible based on currently available data to determine the average repair times under current industry practice. If data were available, then it would be possible to quantify an emissions reduction.

In the case of open-ended lines and sampling connections in heavy liquid service, the emission reductions have been quantified. The equipment leak program requires all open-ended lines regardless of type of service to be capped, etc., and all sampling connections to be controlled to a ''zero HAP emissions'' level.

Comment: One petitioner states that the number of gas/vapor components at continuous TPA facilities is very small (11 at the petitioner's facility) and, therefore, the benefits derived from a LDAR program for these components are negligible.

Response: The EPA agrees that the emission reduction benefit may vary depending on the number of components subject to a LDAR program and that the amount of emission reduction will vary from facility to facility. However, in determining the benefits to be derived from an equipment leak program, the EPA looks at all of the facilities in the category or subcategory and all of the components from which emission reduction may be achieved. This type of approach has been consistently applied in the MACT program (i.e., impacts and cost effectiveness has been determined across a category or subcategory, not on an individual facility basis). Based on this analysis, the EPA has determined that the amount of emission reduction and the cost to achieve that emission reduction is reasonable.

B. Cost Estimation

Comment: Two petitioners claim that the EPA has underestimated the costs of implementing an equipment leak program based on Method 21 screening. Specifically, the petitioners claim that the EPA did not reflect fixed costs or costs associated with including heavy liquid components in the equipment leak program and that the EPA underestimated the costs associated with performing Method 21 monitoring.

Response: The EPA acknowledges that specific cost elements were left out of the costing performed at proposal and promulgation. Revised costing was conducted and includes additional elements. Responses to specific cost items identified by these two petitioners are found in Tables 2 and 3 to the ''Summary of Responses to Petitioners' Comments'' memo.

Comment: Two petitioners claim that the cost analysis contains fundamental technical errors that result in the EPA's grossly underestimating the cost of compliance with the LDAR program for PET facilities.

Response: These two petitioners identify a number of errors that did occur in the regulatory cost analysis. These errors are corrected in the revised costing. Table 4 in the ''Summary of Responses to Petitioners' Comments'' memo presents each item claimed by the petitioners as to being in error or insufficiently explained and EPA's response to these items.

Comment: According to two petitioners two significant errors occur in the EPA's cost effectiveness analysis. First, they assert that a valve monitoring frequency of 12 times per year could be required to maintain a leak frequency of 1 percent, versus the 4 times a year used in EPA's analysis. Second, they state that the EPA used an incorrect value for the leak frequency used to calculate repair costs. The petitioners claim that, by themselves, these errors underestimate the costs of the equipment leak program based on Method 21 screening by 100%.

Response: The EPA believes that the petitioners misstated the requirements of the rule. The comment implies that a facility must maintain a leak frequency of one percent. This is incorrect. A facility is not required to maintain a specified leak frequency for valves. The rule states that the required monitoring frequency varies from annual to monthly depending on the actual leak frequency found when monitoring is performed. Also, in order for a facility to be allowed to monitor on a quarterly basis, they must have a measured leak frequency of less than 2 percent, not the 1 percent value stated in the comment. The leak frequency is calculated as a rolling average of the last two consecutive monitoring periods.

The value quoted by the petitioners to support their contention that monthly monitoring of valves would be required, 2.42 percent, was taken from information developed only for the purpose of estimating emissions from equipment leak programs currently in place. It does not reflect the percentage of valves we anticipate will leak when this rule is in place.

Finally, these petitioners estimated the initial leak frequency for valves in their facilities under their current practices to be 3.02 and 1.48 percent, respectively, using a leak definition of 500 ppmv. The EPA believes it is reasonable to assume based on these current leak frequencies that once the LDAR program is implemented the leak frequencies the facilities can expect to measure will be well below 2 percent.

The EPA agrees that the wrong subsequent leak frequencies were used to calculate repair costs and has revised them in the new cost analysis. The effect of this single change increases costs minimally.

Comment: Two petitioners claim that the EPA failed to conduct a cost analysis for heavy liquid components. The petitioners state that no cost estimates are included for LDAR monitoring, maintenance, repair, or administrative costs. The petitioners also state that, in assuming these costs are zero (or impose no additional costs) without performing any type of analysis, the EPA has failed to meet its obligation under section 112(d)(2) of the CAA. According to the petitioners, the costs associated with a heavy liquid LDAR program are significant, and do not result in cost effective emission reduction.

Response: The EPA agrees that the costing conducted at proposal and promulgation did not include costs for the implementation of the heavy liquid portion of the rule for valves, pumps, and connectors. In the new analysis, costing for these heavy liquid components is now explicitly included. Please refer to the ''Equipment Leak Analysis for PET Facilities Subject to the Group IV Polymers and Resins NESHAP'' memo in the docket.

Also, specific cost items identified by the petitioners are addressed in Table 3 in the ''Summary of Responses to Petitioners' Comments'' memo.

Comment: One petitioner states that emissions reductions at its facility would be approximately 0.29 Mg per year at a cost of approximately $26,000 per Mg of emission reduction and that this cost figure ($26,000 per Mg) is ''many times the amount found by EPA to be unacceptably costly.''

Response: The EPA has re-estimated emission reductions and costs for this petitioner's facility as well as for all of the other facilities. The EPA used the information provided by the petitioner in estimating the components that would be affected by the equipment leak program and for which emission reductions could be quantified. The EPA also reanalyzed costs at this facility.

Based on this reanalysis, the cost effectiveness value of the LDAR program for this facility estimated by the EPA is much lower than that estimated by the petitioner. More details on the differences in the EPA and petitioner analyses may be found in the memo ''Summary of Responses to Petitioners' Comments'' in Docket A–92–45.

C. Heavy Liquid Components

Comment: Two petitioners claim that the EPA promulgated LDAR requirements for heavy liquid service components that are different from the proposed rule without providing affected parties the opportunity to provide input. These two petitioners also claim that the EPA has violated the legal requirements for rulemaking by making a change that ''is not a logical outgrowth of the proposed rules.'' Thus, EPA must provide opportunity for public comment on this ''new substantive'' requirement for components in heavy liquid service.

Response: It is not necessary to address this comment because the new analysis (as presented in the ''Equipment Leak Analysis for PET Facilities Subject to the Group IV Polymers and Resins NESHAP'' memo) and this **Federal Register** notice provide public notice and opportunity for comment. The EPA also notes that one of these petitioners, in its comments on the 1995 proposed rule, specifically suggested that the EPA allow the use of a leak detection and repair approach that would utilize visual inspection of process lines, and later informed the EPA that visual inspection would be acceptable to them.

Comment: Two petitioners asked the EPA to consider two alternative programs for heavy liquid components—a ''minimal'' program and a ''more conservative'' program—and determine which would be sufficient to meet the requirements for heavy liquid components.

Response: Although not required to do so, the EPA reviewed the two programs and has determined that the minimal program as laid out by the petitioners is sufficient to meet the requirements set forth in the rule for components in heavy liquid service. (See Table 3 in the ''Summary of Responses to Petitioners' Comments'' memo for more details.)

Comment: One petitioner states the major cost for the LDAR program will be ensuring compliance with recordkeeping and repair scheduling requirements for heavy liquid ethylene glycol components. The petitioner also states that they already maintain all of the equipment components listed in the standard, but do not keep records or track repair deadlines. According to the petitioner, one employee on a full-time basis will be required to ensure compliance with recordkeeping and scheduling to log and track monitoring and perform repairs. They claim that a current employee cannot be used, during periods of maintenance turn around or upsets, because he would not be available to perform the regulatory requirements. They also assume one full-time employee would be required because of the number of heavy liquid components at the facility (close to 80,000). Furthermore, maintenance employees would have to be trained on procedures for complying with the MACT equipment leak program, which requires that repairs be documented and components tagged for tracking purposes.

Response: As noted earlier, the EPA agrees that a number of cost components associated with the heavy liquid portion of the equipment leak program were left out of the costing done at proposal and promulgation. The EPA has addressed the petitioner's concerns in the revised costing and believes that the costs associated with the heavy liquid component program have been adequately addressed.

Comment: One petitioner claims that the EPA has stated that the MACT equipment leak program will have no measurable effect on emissions from heavy liquid components, but has insisted that the petitioner implement a heavy liquid program that will cost more than the gas/vapor portion of the program. They noted a compliance cost of $2.50 per heavy liquid component for initial identification in the spreadsheet used for costing at proposal, but the EPA assumed no components in heavy liquid service, and a pre-existing LDAR program in place. Therefore, no costs incur as a result of the rule. This petitioner states that they have over 80,000 components in heavy liquid service. Using a compliance cost of $2.50 per component results in an annual cost of $200,000 for their facility, which is more than the estimated cost for the Method 21 monitoring program, and no emission reduction is obtained for this cost.

Response: The EPA agrees that a one-time, initial cost to identity components affected by the rule should be attributed to the heavy liquid portion of the rule as it affects valves, pumps, and connectors in heavy liquid service. In the revised costing, the EPA is using other petitioners' suggested cost of $1.13 per heavy liquid component (see Table 3 in the ''Summary of Responses to Petitioners' Comments'' memo). This cost covers identifying all equipment in heavy liquid service, including redoing or developing P&ID drawings at least to the extent that equipment in heavy liquid service with greater than 5% HAP would be differentiated. Although the rule does not require redoing or developing P&ID drawings, the EPA is using the petitioners' estimate to provide a conservative estimate of this cost item. Based on the component counts provided by the petitioner for this facility, the estimated one-time cost for this facility is $86,000 (76,047 components x $1.13 per component). This is equivalent to an annualized cost of approximately $12,000 per year, which is approximately 35% of the estimated annualized cost for the rest of the equipment leak program (before emission reduction credits) at the petitioner's facility.

The EPA disagrees that there will be no emissions reduction for heavy liquid components as a result of the Group IV Polymers and Resins NESHAP. The current programs have no specific time limit for repairs. The program in the rule has specific time limits for repairs. The EPA believes it is reasonable to conclude that repairs will be accomplished in a more timely fashion, thereby reducing emissions. However, it is not possible to quantify the reduction based on currently available information because the petitioners do not keep records and track repair times in their current programs. If these data were available, then an emissions reduction could be estimated.

Based on this reanalysis, which is based on costs suggested by the petitioners, the EPA concludes that the costs of the heavy liquid component program implementation will not be more expensive than the gas vapor portion of the program, and that there will be an emissions reduction that occurs as a result of the heavy liquid component requirements in the LDAR program.

III. Reanalysis of Equipment Leak Program

The petitioners claimed that a number of errors exist in the analyses conducted by the EPA to support the proposed and promulgated rule. The EPA carefully reviewed each claimed error and where found to be accurate, the EPA has corrected the errors identified by the petitioners in the reanalysis. The EPA also carefully evaluated and considered all of the comments and data provided by the petitioners. Many of the comments were found to have merit and, in such instances, the EPA incorporated the comment or data or portions thereof directly into the reanalysis. The major changes made to the analysis as a result of the petitioners' comments and data are as follows:

1. Corrected several errors identified by the petitioners including:

- The estimate of the number of leakers at a facility that must be repaired after each periodic monitoring with a LDAR program in place is based on the number of components and the subsequent leak frequency for the components. The subsequent leak frequency is that leak frequency experienced immediately prior to LDAR monitoring. In the previous analyses, the EPA used the average leak frequencies to determine the number of components repaired instead of the subsequent leak frequencies. In the reanalysis, the subsequent leak frequencies have been used.
- The cost estimate for the annual monitoring of components is based, in part, on the number of times per year the components are monitored. Under the HON LDAR program, connectors are to be monitored once per year. In the costing spreadsheets used for DMT-based facilities at promulgation, the monitoring frequency was incorrectly set at zero (0). In the reanalysis, the correct monitoring frequency of once per year (1) has been used.
- Part of the costs of an equipment leak program are contained in a ''miscellaneous'' category. The costing algorithms used for the PET facilities originated with the HON equipment leak costs. In the HON costing, the miscellaneous costs associated with pumps is calculated using a factor of 0.8. In the PET costing algorithms used at promulgation, a miscellaneous cost factor for pumps of 0.4 was used. In the reanalysis, the correct miscellaneous cost factor of 0.8 has been used.
- Part of the equipment leak costing program is an estimate of the costs to cap open-ended lines. This cost is estimated by multiplying the number of open-ended lines by the cost for a cap for each line. For several facilities, the equation for calculating this cost was missing in the costing spreadsheets used at promulgation. This error has been corrected in the reanalysis.

2. For the petitioners' facilities and for one other, revised emission factors were used based on the leak frequency data provided by these companies. The revised emission factors result in lower emission and emission reduction estimates than would be estimated using the average SOCMI emission factors for the same components.

3. The costing spreadsheets used at promulgation did not estimate costs for valves, pumps, and connectors in heavy liquid service. The costing spreadsheets used in the reanalysis include several cost items for these heavy liquid components including: (1) A location and identification cost, (2) tagging cost, (3) planning and training cost, and (4) data entry cost.

4. At proposal and promulgation, recordkeeping and reporting costs were reported in Part A to the Supporting Statement and were not included in the costing spreadsheets. Under the reanalysis, recordkeeping and reporting costs are included in the costing spreadsheets. The estimated costs used were based on data supplied by two petitioners for facilities with 500 or more components subject to Method 21 monitoring. A lower estimate was used

for facilities with fewer than 500 components subject to Method 21.

5. At proposal and promulgation, no costs were estimated for the use of a database system (computer, software) to record and track the information required by the equipment leak program. In the reanalysis, facilities with 500 or more components subject to Method 21 monitoring were assumed to purchase a computer and the software necessary to record and track the information required by the equipment leak program. For facilities with fewer than 500 components, the reanalysis assumes a facility will use log sheets and have assigned costs for such data logging.

In addition, the EPA has made several changes to the analysis that are not identified by the petitioners or are a variation on the comments provided by the petitioners. These include:

1. A recovery credit for ethylene glycol was incorporated for PET facilities using the terephthalic acid process. Previously, only a credit was included for methanol, which is a primary HAP emitted from facilities using the dimethyl terephthalate process in producing PET.

2. Database systems costs, trip charges, administration and reports, planning and training, and trips by subcontractors were shared amongst multiple subcategories at the same facility. The number of pumps, valves, and connectors in gas/vapor and light liquid service were used to ratio these costs.

3. No costs were determined attributable to the actual repair of leaking heavy liquid components because these would normally be repaired already by the facility when found leaking.

4. Facilities with fewer than 500 components subject to Method 21 monitoring were judged to use in-house personnel to conduct the equipment leak program, while those with more than 500 components subject to Method 21 monitoring were judged to use subcontractor personnel to conduct the equipment leak program.

5. An algorithm was used to determine whether it was less expensive for a facility to purchase or rent a monitoring instrument. The EPA found that is was less expensive for the facilities in this category to rent a monitoring instrument. This is consistent with the petitioners' costs in which they indicate the rental of an instrument when using a subcontractor to conduct the equipment leak program.

Finally, in conducting the reanalysis, the EPA continued to evaluate the equipment leak program on a subcategory basis rather than a facility-wide basis. Some costs were shared (as noted above) across a facility, but the cost effectiveness of the equipment leak program was evaluated on a subcategory basis.

IV. Results and Conclusion

The following table compares the cost effectiveness estimates for the four PET subcategories at proposal and promulgation and as a result of the reanalysis. As can be seen in the table, the cost effectiveness value of the equipment leak program has increased for all four PET subcategories from the analysis conducted in support of the promulgation package. For DMT facilities, the cost effectiveness value increased between 3 and 4 times. For TPA continuous facilities, the cost effectiveness value increased less than 10 percent, while the cost effectiveness value for TPA batch facilities doubled. The primary reason for the smaller increase in cost effectiveness values for the TPA facilities is due to the recovery credit offsetting the increased cost due to the explicit incorporation of costs for heavy liquid components.

SUMMARY OF COST EFFECTIVENESS VALUES OF EQUIPMENT LEAK PROGRAM FOR GROUP IV RESINS

[$/Mg of Emission Reduction]

Process subcategory	Petition reanalysis	Promulgation	Proposal
DMT-Batch	2,350	687	1,057
DMT-Continuous	1,400	357	803
TPA-Continuous	1,800	1,630	1,203
TPA-Batch	1,600	806	2,430

Based on the results of the new analysis, the EPA still judges the equipment leak program as promulgated to be cost effective for PET facilities. Therefore, the EPA has determined that there is no need to remove the equipment leak standards from the promulgated rule for Group IV Polymers and Resins and no need to modify any provisions within the equipment leak program of 40 CFR part 63, subpart H.

V. Solicitation of Comments

The EPA solicits comments from interested persons on any aspect of the revised cost analysis for equipment leak programs at PET facilities and the EPA's proposed decision to retain without modification the equipment leak provisions of the rule for PET facilities. The EPA is specifically requesting factual information that may support either the approach taken in the revised equipment leak analysis or an alternate approach. In order to receive proper consideration, documentation or data should be provided.

VI. Administrative Requirements

A. Paperwork Reduction Act

For the Group IV Polymers and Resins NESHAP, the information collection requirements were submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB approved the information collection requirements and assigned OMB control number 2060–0351. 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 the EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The EPA has amended 40 CFR 9.1, to indicate the information collection requirements contained in the Group IV Polymers and Resins NESHAP.

Today's action has no impact on the information collection burden estimates made previously. Therefore, the ICR has not been revised.

B. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by OMB on the basis of the requirements of the Executive Order in addition to its normal review requirements. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Today's action does not fall within any of the four categories described above. Instead, it proposes to deny a request to change an existing rule. The proposed action does not add any additional control requirements. Therefore, this is not a ''significant regulatory action'' within the meaning of Executive Order 12866 and was not required to be reviewed by OMB.

C. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety aspects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed action is not subject to the Executive Order 13045 because it is not an economically significant regulatory action as defined in E.O. 12866, and it is based on technology performance and not on health or safety risks.

D. Regulatory Flexibility

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Today's action will not impact any facilities defined as small entities under the Regulatory Flexibility Act. Therefore, I certify this action will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objects of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This action does not impose any enforceable duties on State, local, or tribal governments, i.e., they own or operate no sources subject to the Group IV Polymers and Resins NESHAP and therefore are not required to purchase control systems to meet the requirements of this NESHAP. Regarding the private sector, today's action will affect only 23 existing facilities nationwide. The EPA projects that annual economic effects will be far less than $100 million. Thus, today's action is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA).

We also have determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule does not impose any enforceable duties on small governments, i.e., they own or operate no sources subject to this rule and therefore are not required to purchase control systems to meet the requirements of this rule.

F. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 12875 requires the EPA to provide to the Office of Management and Budget a description of the extent of the EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's action does not create a mandate on State, local or tribal governments. This action does not impose any enforceable duties on State, local or tribal governments, because they do not own or operate any sources subject to the Group IV Polymers and Resins NESHAP and therefore are not required to purchase control systems to meet the requirements of this NESHAP. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to today's action.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The Group IV Polymers and Resins NESHAP includes technical standards. Therefore, the EPA searched for applicable voluntary consensus standards by searching the National Standards System Network (NSSN) database. The NSSN is an automated service provided by the American National Standards Institute for identifying available national and international standards.

The EPA searched for methods potentially equivalent to the methods required by the Group IV Polymers and Resins NESHAP, all of which are methods previously promulgated by the EPA. The NESHAP includes methods that measure: (1) Determination of excess air correction factor (%O_2)(EPA Method 3B); (2) sampling site location (EPA Method 1 or 1A); (3) volumetric flow rate (EPA Methods 2, 2A, 2C, or 2D); (4) gas analysis (EPA Method 3); (5) stack gas moisture (EPA Method 4); (6) concentration of organic HAP (EPA Method 18 or 25A); and (7) organic compound equipment leaks (EPA Method 21). These EPA methods are found in appendix A to part 60.

No potentially equivalent methods for the methods in the rule were found in the NSSN database search. Therefore, the EPA proposed to use the methods listed above. The EPA welcomes comment on this aspect of the rule and specifically invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in the Group IV Polymers and Resins NESHAP. Methods submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, appendix A was used).

H. Executive Order 13084—Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 13084 requires the EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action imposes no enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to today's action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 28, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–14351 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–6354–8]

Revisions to the Unregulated Contaminant Monitoring Regulation for Public Water Systems; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the proposed rule published in the **Federal Register** on April 30, 1999, at 64 FR 23398 regarding Revisions to the Unregulated Contaminant Monitoring Regulation for Public Water Systems. This correction indicates the proper paragraph references in the proposal at § 141.40(a)(4) and (5).

DATES: The proposed rule being corrected today is open to public comment until June 14, 1999.

ADDRESSES: Send written comments to the Comment Clerk, docket number W–98–02, U.S. Environmental Protection Agency, Water Docket (MC 4101), 401 M Street, SW, Washington, DC 20460. Please submit an original and three copies of your comments and enclosures (including references). Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

Comments may also be submitted electronically to ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number W–98–02. Comments and data will also be accepted on disks in WordPerfect in 5.1 format or ASCII file format. Electronic comments on the proposal being corrected today may be filed online at many Federal Depository Libraries.

The full record for the proposal has been established under docket number W–98–02 and includes supporting documentation as well as printed, paper versions of electronic comments. The full record is available for inspection from 9 a.m. to 4 p.m. Monday through Friday, excluding legal holidays at the Water Docket, East Tower Basement, USEPA, 401 M Street, SW, Washington DC. For access to docket materials, please call (202) 260–3027 between 9 a.m. and 3:30 p.m, Eastern Time, Monday through Friday, to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Charles Job, Standards and Risk

Management Division, Office of Ground Water and Drinking Water (MC–4607), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460, (202) 260–7084. General information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time.

Correction

In the proposed rule FR Doc. 99–10001, beginning on page 23398 in the issue of April 30, 1999, make the following corrections on page 23454:

§ 141.40 [Corrected]

1. In column one, in § 141.40(a)(4)(i)(A), the reference ''paragraph (e)'' is corrected to read ''paragraph (a)(5)''.

2. In column one, in § 141.40(a)(4)(ii), the reference ''paragraph (d)(1)'' is corrected to read ''paragraph (a)(4)(i)''.

3. In column one, in § 141.40(a)(4)(iii) introductory text, the reference ''paragraph (d)(1)'' is corrected to read ''paragraph (a)(4)(i)''.

4. In column three, in § 141.40(a)(5)(ii) introductory text, the reference ''paragraph (e)(1)'' is corrected to read ''paragraph (a)(5)(i)''.

Dated: May 28, 1999.

J. Charles Fox,

Assistant Administrator for Water.

[FR Doc. 99–14353 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 239

[FRL–6354–6]

Adequacy of State Permit Programs Under RCRA Subtitle D

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to streamline the approval process for specified States permit programs for solid waste disposal facilities, other than municipal solid waste landfills (MSWLFs), that receive conditionally exempt small quantity generator (CESQG) hazardous waste. States whose subtitle D MSWLF permit programs or subtitle C hazardous waste management programs have been reviewed and approved, or authorized by the Agency, are eligible for this streamlined approval process, if their State programs require the disposal of CESQG hazardous waste in suitable facilities. EPA is issuing an adequacy determination to the following State programs: Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

Elsewhere in the Final Rule section of today's **Federal Register**, EPA is issuing a direct final rule that sets forth the Agency's determination of program adequacy which will be effective in ninety (90) days. EPA views this as a noncontroversial action that declares that specific State programs for disposal of CESQG waste meet all of the statutory and regulatory needs set up under RCRA. Thus, we expect no adverse comments. A detailed rationale for this decision is in the preamble to the final rule notice of program adequacy. If no relevant adverse comments are received in response to the direct final rule, no further action is needed on this document. If EPA receives relevant adverse comments, EPA will withdraw the direct final rule and discuss the comments in a later final rule. This is your only chance to comment. If EPA receives relevant adverse comment concerning the adequacy of only certain State programs, the Agency's withdrawal of the direct final rule will only apply to those State programs. Comments on the inclusion or exclusion of one State permit program will not affect the timing of the decision on the other State permit programs.

DATES: Comments on today's proposed rule must be submitted on or before July 8, 1999.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–98–SAPF–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, D.C. 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–98–SAPF–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460.

Public comments are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. More copies cost $0.15/page. For information on accessing paper and electronic copies of the document or both, see the Supplementary Information section.

Supporting materials for the proposed rule relating to the programs for Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont are available for viewing by contacting Cynthia Greene, US EPA Region 1, 90 Canal Street, Boston, MA 02203, phone 617/565–3165.

Supporting materials for the proposed rule relating to the program for New York are available for viewing by contacting John Filippelli, US EPA Region 2, 290 Broadway, New York, NY 10007–1866, phone 212/637–4125.

Supporting materials for the proposed rule relating to the program for Pennsylvania, Virginia and West Virginia are available for viewing by contacting Mike Giuranna, US EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029, phone 215/814–3298.

Supporting materials for the proposed rule relating to the programs for Florida, Georgia, Kentucky, North Carolina, and Tennessee are available for viewing by contacting Patricia Herbert, US EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, Atlanta, GA 30303–3104, phone: 404/562–8449.

Supporting materials for the proposed rule relating to the programs for Illinois, Michigan, Minnesota, Ohio, and Wisconsin are available for viewing by contacting Mary Setnicar, US EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604–3590, phone 312/886–0976.

Supporting materials for the proposed rule relating to the programs for Louisiana and Oklahoma are available for viewing by contacting Willie Kelley, US EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733, phone: 214/665–6760.

Supporting materials for the proposed rule relating to the programs for Colorado, North Dakota, South Dakota, Utah, and Wyoming are available for viewing by contacting Gerald Allen, US EPA 999, Region 8, 18th Street, Suite 500, Denver, CO 80202–2466, phone 303/312–7008.

Supporting materials for the proposed rule relating to the programs for Arizona and California are available for viewing by contacting Steve Wall, US EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, phone 415/744–2123.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, D.C., metropolitan area, call 703 412–9810 or TDD 703 412–3323.

For information on specific aspects of this proposed rule, contact Allen Geswein, Municipal and Industrial Solid Waste Division of the Office of Solid Waste (mail code 5306W), U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, D.C. 20460; 703/308–7261, [*GESWEIN.ALLEN@EPAMAIL.EPA.GOV*].

SUPPLEMENTARY INFORMATION: The official record for this action will be kept in paper form. So, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record kept at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** as outlined in **DATES** above or in a response to comments document placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

Background

As set out in detail in the related direct final rule, EPA has decided that specific State permit programs for facilities receiving CESQG waste meet the needs for program approval under RCRA section 4005(c)(1)(C). Today's notice applies to the following State programs: Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. Programs developed by these States for permitting either hazardous waste facilities or MSWLFs have been reviewed and approved or authorized by the Agency. The regulatory programs are more comprehensive and are equal to or more stringent than the part 257, subpart B revised criteria for facilities receiving CESQG hazardous waste. The Agency has found that the above States have already submitted the documentation that would have been needed for the determination of permit program adequacy under RCRA section 4005(c)(1)(C). Further, the Agency has found that the technical review conducted for either ''approval'' or ''authorization'' can substitute for the technical review of the standards for 40 CFR part 257, subpart B.

Additional Information

For more information, see the corresponding direct final rule published elsewhere in the rule section of this **Federal Register**. If you wish to comment, you should review the preamble discussion in that section of today's **Federal Register**.

Related Acts of Congress and Executive Orders

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.'' It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination. This rule does not impose any new burdens on small entities. It merely confirms existing needs for the disposal of CESQG waste under state law. This proposal does not impose any new cost burdens. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not need a regulatory flexibility analysis.

C. The Paperwork Reduction Act

Today's proposal is in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* We found that no information is being collected from the States for this proposed rule, so we do not need to prepare an Information Collection Request (ICR).

D. The Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The Agency's analysis of compliance with UMRA found that today's proposed rule imposes no enforceable duty on any State, local or tribal governments or the private sector; thus today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13045

''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

G. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's proposed rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. There is no impact to tribal governments as the result of the State plan approvals. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. Executive Order 12898: Environmental Justice

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

The Agency does not believe that today's proposed rule granting State permit program approval will have a disproportionately high and adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community.

Authority: This proposed rule is issued under the authority of sections 2002 and 4005 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912 and 6945.

Dated: May 28, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–14348 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1815

NASA Structured Approach for Profit or Fee Objective

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: This proposed NASA FAR Supplement (NFS) revision modifies the agency's structured approach for developing a profit or fee objective. This change eliminates the element of cost approach currently prescribed for establishing profit and fee objectives and focuses on performance risk analysis which requires the evaluation of specific technical, management and cost risk factors; provides a new method for determining contract type risk and introduces a working capital adjustment provision; and retains with modification the Other Considerations factor contained in the structured approach currently prescribed. The new form for developing the profit/fee objectives, NASA Form 634, is provided for information at the end of the proposed rule as an attachment to the preamble. An electronic version is also available at http://ec.msfc.nasa.gov/hq/library/NF634-2.xlc.

DATES: Comments should be submitted on or before August 9, 1999.

ADDRESSES: Interested parties should submit written comments to Donna Fortunat, NASA Headquarters, Office of Procurement, Analysis Division (Code HC), Washington, DC 20546. Comments may also be submitted by e-mail to donna.fortunat@hq.nasa.gov.

FOR FURTHER INFORMATION CONTACT: Donna Fortunat, NASA Headquarters, Code HC, Washington, DC 20546, telephone: (202) 358–0426; email: donna.fortunat@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

Background

FAR 15.404–4(b)(1)(i) requires agencies to use a structured approach for determining profit or fee prenegotiation objectives. This proposed revision to the NASA structured approach method uses a performance risk method for calculating profit and fee objectives instead of the currently used cost element approach. The revised approach is expected to provide more appropriate emphasis on the nature of the goods and services being acquired and on the risks inherent in delivering those goods and services and thereby prove to be more effective in motivating and rewarding contractor performance. In addition, the revised policy provides a common framework for NASA and industry to evaluate potential risk and profitability in a way that is relevant to both parties. FAR 15.404–4(b)(2) permits agencies to use another agency's structured approach and the changes in this revised policy represent an Agency adaptation of DoD's alternate structured approach.

Impact

Regulatory Flexibility Act

An initial Regulatory Flexibility Analysis has not been prepared because the proposed change is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Most small entities receive contracts based on competition and are not subject to the structured fee process.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in CFR Part 1815

Government Procurement

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR Part 1815 is proposed to be amended as follows:

PART 1815—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR Part 1815 continues to read as follows:

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

2. Sections 1815.404–4, 1815.404–470, and 1815.404–471 are revised and sections 1815.404–471–1, 1815.404–471–2, 1815.404–471–3, 1815.404–471–4, and 1815.404–471–5 are added to read as follows:

1815.404–4 Profit. (NASA supplements paragraphs (b) and (c))

(b)(1)(i)*(a)* The NASA structured approach for determining profit or fee objectives, described in 1815.404–471 shall be used to determine profit or fee objectives in the negotiation of contracts greater than or equal to $100,000 that use cost analysis and are:

(1) Awarded on the basis of other than full and open competition (see FAR 6.3);

(2) Awarded under NASA Research Announcements (NRAs) and Announcements of Opportunity (AO's); or

(3) Awarded under the Small Business Innovative Research (SBIR) or the Small Business Technology Transfer Research (STTR) programs.

(b) The rate calculated for the basic contract may be used on all actions under the contract, provided that conditions affecting profit or fee do not change.

(c) Although specific agreement on the applied weights or values for individual profit or fee factors shall not be attempted, the contracting officer may encourage the contractor to—

(1) Present the details of its proposed profit amounts in the structured approach format or similar structured approach; and

(2) Use the structured approach method in developing profit or fee objectives for negotiated subcontracts.

(ii) The use of the NASA structured approach for profit or fee is not required for:

(a) Architect-engineer contracts;

(b) Management contracts for operation and/or maintenance of Government facilities;

(c) Construction contracts;

(d) Contracts primarily requiring delivery of materials supplied by subcontractors;

(e) Termination settlements; and

(f) Contracts having unusual pricing situations when the procurement officer determines in writing that the structured approach is unsuitable.

(c)(2) Contracting officers shall document the profit or fee analysis in the contract file.

1815.404–470 NASA Form 634.

NASA Form (NF) 634 shall be used in performing the analysis necessary to develop profit or fee objectives.

1815.404–471 NASA structured approach for profit or fee objective.

1815.404–471–1 General.

(a) The structured approach for determining profit or fee objectives (NF 634) focuses on three profit factors:

(1) Performance risk;

(2) Contract type risk including working capital investment; and

(3) Other Considerations which may be considered by the contracting officer to account for special circumstances

that are not adequately addressed in the performance risk and contract type risk factors.

(b) The contracting officer assigns values to each profit or fee factor; the value multiplied by the base results in the profit/fee objective for that factor. Each factor has a normal value and a designated range of values. The normal value is representative of average conditions on the prospective contract when compared to all goods and services acquired by NASA. The designated range provides values based on above normal or below normal conditions. In the negotiation documentation, the contracting officer need not explain assignment of the normal value, but must address conditions that justify assignment of other than the normal value.

1815.404–471–2 Performance Risk

(a) *Risk Factors.* Performance risk addresses the contractor's degree of risk in fulfilling the contract requirements. It consists of three risk factors:

(1) Technical—the technical uncertainties of performance;

(2) Management—the degree of management effort necessary to ensure that contract requirements are met; and

(3) Cost control—the contractor's efforts to reduce and control costs.

(b) *Risk factor weighting, values and calculations.* A weighting and value is assigned to each of the risk factors to determine a profit/fee objective.

(c) *Values.* The normal value is 6 percent and the designated range is 4 percent to 8 percent.

(d) *Evaluation criteria for technical risk factor.*

(1) In determining the appropriate value for the technical risk factor, the contracting officer shall review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Contracting officers shall consider the—

(i) Technology being applied or developed by the contractor;

(ii) Technical complexity;

(iii) Program maturity;

(iv) Performance specifications and tolerances;

(v) Delivery schedule; and

(vi) Extent of a warranty or guarantee.

(2) *Above normal conditions indicating substantial technical risk.*

(i) The contracting officer may assign a higher than normal value in those cases where there is a substantial technical risk, such as when—

(A) The contractor is either developing or applying advanced technologies;

(B) Items are being manufactured using specifications with stringent tolerance limits;

(C) The efforts require highly skilled personnel or require the use of state-of-the-art machinery;

(D) The services or analytical efforts are extremely important to the government and must be performed to exacting standards;

(E) The contractor's independent development and investment has reduced the Government's risk or cost;

(F) The contractor has accepted an accelerated delivery schedule to meet the Government's requirements; or

(G) The contractor has assumed additional risk through warranty provisions.

(ii) The contracting officer may assign a value significantly above normal. A maximum value may be assigned when the effort involves—

(A) Extremely complex, vital efforts to overcome difficult technical obstacles that require personnel with exceptional abilities, experience, and professional credentials;

(B) Development or initial production of a new item, particularly if performance or quality specifications are tight; or

(C) A high degree of development or production concurrency.

(3) *Below normal conditions indicating lower than normal technical risk.*

(i) The contracting officer may assign a lower than normal value in those cases where the technical risk is low, such as when the—

(A) Acquisition is for off-the-shelf items;

(B) Requirements are relatively simple;

(C) Technology is not complex;

(D) Efforts do not require highly skilled personnel;

(E) Efforts are routine; or

(F) Acquisition is a follow-on effort or a repetitive type acquisition.

(ii) The contracting officer may assign a value significantly below normal. A minimum value may be justified when the effort involves—

(A) Routine services;

(B) Production of simple items;

(C) Rote entry or routine integration of Government-furnished information; or

(D) Simple operations with Government-furnished property.

(e) *Evaluation criteria for management risk factor.*

(1) In determining the appropriate value for the management risk factor, the contracting officer shall review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Contracting officers shall—

(i) Assess the contractor's management and internal control systems using contracting office information and reviews made by contract administration offices;

(ii) Assess the management involvement expected on the prospective contract action; and

(iii) Consider the degree of cost mix as an indication of the types of resources applied and value added by the contractor.

(2) *Above normal conditions indicating substantial management risk.*

(i) The contracting officer may assign a higher than normal value when the management effort is intense, such as when—

(A) The contractor's value added is both considerable and reasonably difficult; or

(B) The effort involves a high degree of integration and coordination.

(ii) The contracting officer may justify a maximum value when the effort—

(A) Requires large-scale integration of the most complex nature;

(B) Involves major international activities with significant management coordination; or

(C) Has critically important milestones.

(3) *Below normal conditions indicating lower than normal management risk.*

(i) The contracting officer may assign a lower than normal value when the management effort is minimal, such as when—

(A) The program is mature and many end item deliveries have been made;

(B) The contractor adds minimum value to an item;

(C) The efforts are routine and require minimal supervision;

(D) The contractor fails to provide an adequate analysis of subcontractor costs; or

(E) The contractor does not cooperate in the evaluation and negotiation of the proposal.

(ii) The contracting officer may assign a value significantly below normal. A minimum value may be assigned when—

(A) Reviews performed by the field administration offices disclose unsatisfactory management and internal control systems (e.g., quality assurance, property control, safety, security); or

(B) The effort requires an unusually low degree of management involvement.

(f) *Evaluation criteria for cost control risk factor.*

(1) In determining the appropriate value for the cost control risk factor, the contracting officer shall—

(i) Evaluate the expected reliability of the contractor's cost estimates (including the contractor's cost estimating system);

(ii) Evaluate the contractor's cost reduction initiatives (e.g., competition advocacy programs);

(iii) Assess the adequacy of the contractor's management approach to controlling cost and schedule; and

(iv) Evaluate any other factors that affect the contractor's ability to meet the cost targets (e.g., foreign currency exchange rates and inflation rates).

(2) *Above normal conditions indicating substantial cost control risk.*

(i) The contracting officer may assign a value higher than normal value if the contractor can demonstrate a highly effective cost control program, such as when—

(A) The contractor provides fully documented and reliable cost estimates;

(B) The contractor has an aggressive cost reduction program that has demonstrable benefits;

(C) The contractor uses a high degree of subcontract competition; or

(D) The contractor has a proven record of cost tracking and control.

(3) *Below normal conditions indicating lower than normal cost control risk.*

(i) The contracting officer may assign a lower than normal value in those cases where the contractor demonstrates minimal concern for cost control, such as when—

(A) The contractor's cost estimating system is marginal;

(B) The contractor has made minimal effort to initiate cost reduction programs;

(C) The contractor's cost proposal is inadequate; or

(D) The contractor has a record of cost overruns or the indication of unreliable cost estimates and lack of cost control.

1815.404–471–3 Contract type risk and working capital adjustment.

(a) *Risk factors.* The contract type risk factor focuses on the degree of cost risk accepted by the contractor under varying contract types. The working capital adjustment is an adjustment added to the profit objective for contract type risk. It applies to fixed-price type contracts that provide for progress payments. Though it uses a formula approach, it is not intended to be an exact calculation of the cost of working capital. Its purpose is to give general recognition to the contractor's cost of working capital under varying contract circumstances, financing policies, and the economic environment. This adjustment is limited to 4 percent.

(b) *Risk factor values and calculations.* A risk value is assigned to calculate the profit or fee objective for contract type. A contract length factor is assigned and applied to costs financed when a working capital adjustment is appropriate. This calculation is only performed when the prospective contract is a fixed-price contract containing provisions for progress payments.

(c) *Values: Normal and designated ranges.*

Contract type	Note	Normal value (percent)	Designated range (percent)
Firm-fixed-price, no financing	(1)	5	4 to 6.
Firm-fixed-price with performance-based payments	(6)	4	2.5 to 5.5.
Firm-fixed-price with progress payments	(2)	4	3 to 5.
Fixed-price-incentive, no financing	(1)	3	2 to 4.
Fixed-price-incentive, with performance-based payments	(6)	2	.5 to 3.5.
Fixed-price, redeterminable	(3)	0	0.
Fixed-price-incentive, with progress payments	(2)	2	1 to 3.
Cost-plus-incentive-fee	(4)	1	0 to 2.
Cost-plus-award fee	(4)	.75	.5 to 1.5.
Cost-plus-fixed fee	(4)	.5	0 to 1.
Time-and-materials	(5)	.5	0 to 1.
Labor-hour	(5)	.5	0 to 1.
Firm-fixed-price, level-of-effort, term	(5)	.5	0 to 1.

(1) ''No financing,'' means that the contract either does not provide progress or performance based payments, or provides them only on a limited basis. Do not compute a working capital adjustment.

(2) When progress payments are present, compute a working capital adjustment.

(3) For purposes of assigning profit values, treat a fixed-price redeterminable contract as if it were a fixed-price-incentive contract with below normal provisions.

(4) Cost-plus contracts shall not receive the working capital adjustment.

(5) These types of contracts are considered cost-plus-fixed-fee contracts for the purposes of assigning profit values. Do not compute the working capital adjustment. However, higher than normal values may be assigned within the designated range to the extent that portions of cost are fixed.

(6) When performance-based payments are used, do not compute a working capital adjustment.

(d) *Evaluation criteria. (1) General.* The contracting officer shall consider elements that affect contract type risk such as—

(i) Length of contract;

(ii) Adequacy of cost projection data;

(iii) Economic environment;

(iv) Nature and extent of subcontracted activity;

(v) Protection provided to the contractor under contract provisions (e.g., economic price adjustment clauses);

(vi) The ceilings and share lines contained in the incentive provisions; and

(vii) The rate, frequency, and risk to the contractor of performance-based payments, if provided.

(2) *Mandatory.* The contracting officer shall assess the extent to which costs have been incurred prior to definitization of the contract. When costs have been incurred prior to definitization, generally regard the contract type risk to be in the low end of the designated range. If a substantial portion of the costs have been incurred prior to definitization, the contracting officer may assign a value as low as 0 percent regardless of contract type.

(3) *Above normal conditions.* The contracting officer may assign a higher than normal value when there is substantial contract type risk. Conditions indicating higher than normal contract type risk are—

(i) Efforts where there is minimal cost history;

(ii) Long-term contracts without provisions protecting the contractor, particularly when there is considerable economic uncertainty;

(iii) Incentive provisions that place a high degree of risk on the contractor;

(iv) Performance-based payments totaling less than the maximum allowable amount(s) specified at FAR 32.1004(b)(2); or

(v) An aggressive performance-based payment schedule that increases risk.

(4) *Below normal conditions.* The contracting officer may assign a lower than normal value when the contract type risk is low. Conditions indicating lower than normal contract type risk are:

(i) Very mature product line with extensive cost history;

(ii) Relatively short-term contracts;

(iii) Contractual provisions that substantially reduce the contractor's risk, e.g. economic price adjustment provisions;

(iv) Incentive provisions that place a low amount of risk on the contractor; and

(v) A performance-based payment schedule that is routine with minimal risk.

(e) *Costs financed.* (1) Costs financed equal the total costs multiplied by the percent of costs financed by the contractor.

(2) Total costs may be reduced as appropriate when—

(i) The contractor has little cash investment (e.g., subcontractor progress payments are liquidated late in the period of performance); or

(ii) Some costs are covered by special funding arrangements, such as advance payments.

(3) The portion financed by the contractor is generally the portion not covered by progress payments, i.e., 100 percent minus the customary progress payments rate. (For example, if a contractor receives progress payments at 75 percent, the portion financed by the contractor is 25 percent. On contracts that provide progress payments to small business, use the customary progress payment rate for large businesses.)

(f) *Contract length factor.* (1) This is the period of time that the contractor has a working capital investment in the contract. It—

(i) Is based on the time necessary for the contractor to complete the substantive portion of the work;

(ii) Is not necessarily the period of time between contract award and final delivery, as periods of minimal effort should be excluded;

(iii) Should not include periods of performance contained in option provisions when calculating the objective for the base period; and

(iv) Should not, for multiyear contracts, include periods of performance beyond that required to complete the initial year's requirements.

(2) The contracting officer—

(i) Should use the following to select the contract length factor:

Period to perform substantive portion (in months)	Contract length factor
21 or less	.40
22 to 27	.65
28 to 33	.90
34 to 39	1.15
40 to 45	1.40
46 to 51	1.65
52 to 57	1.90
58 to 63	2.15
64 to 69	2.40
70 to 75	2.65
76 or more	2.90

(ii) Should develop a weighted average contract length when the contract has multiple deliveries; and

(iii) May use sampling techniques provided they produce a representative result.

(3) Example: A prospective contract has a performance period of 40 months with end items being delivered in the 34th, 36th, 38th and 40th months of the contract. The average period is 37 months and the contract length factor is 1.15.

1815.404–471–4 Other Considerations.

(a) Other Considerations may be included by the contracting officer to account for special circumstances, such as contractor efficiencies or unusual acceptance of contractual or program risks that are not adequately addressed in the structured approach calculations described in 1815.404–471–2 or 1815.404–4713. The total adjustment resulting from Other Considerations may be positive or negative but in no case should the total adjustment exceed +/−5 percent.

(b) The contracting officer shall analyze and verify information provided by the contractor that demonstrates that the special circumstances being recognized under this section—

(1) Provide substantial benefits to the Government under the contract and/or overall program;

(2) Have not been recognized in the structured approach calculations; and

(3) Represent unusual and innovative actions or acceptance of risk by the contractor.

(c) Examples of special circumstances include, but are not limited to the following:

(1) Consistent demonstration by the contractor of excellent past performance within the last three years, with a special emphasis on excellence in safety, may merit an upward adjustment of as much as 1 percent. Similarly, an assessment of poor past performance, especially in the area of safety, may merit a downward adjustment of as much −1 percent. This consideration is especially important when negotiating modifications or changes to an ongoing contract.

(2) Extraordinary steps to achieve the Government's socio-economic goals, environmental goals, and public policy goals established by law or regulation that are sufficiently unique or unusual may merit an upward adjustment of as much as .5 percent. Similarly, for non-participation in or violation of Federal programs, the contracting officer may adjust the objective by as much as −.5 percent. However, this consideration does not apply to the utilization of small disadvantaged businesses. Incentives for use of these firms may only be structured according to FAR 19.1203 and 19.1204(c).

(3) Consideration of up to 2 percent should be given when contract performance requires the expenditure of significant corporate capital resources. Conversely, unusual requests for use of government facilities and property may merit a downward adjustment of as much as −2 percent.

(4) Cost efficiencies arising from innovative product design, process improvements, or integration of a life cycle cost approach for the design and development of systems that minimize maintenance and operations costs, that have not been recognized in Performance Risk or Contract Type Risk, may merit an upward adjustment. This factor is intended to recognize and reward improvements resulting from better ideas and management that will benefit the Government in the contract and/or program.

(5) A negative consideration may be appropriate when the contractor is expected to obtain spin-off benefits as a direct result of the contract, for example, products with commercial application.

1815.404–471–5 Facilities capital cost of money.

(a) When facilities capital cost of money is included as an item of cost in the contractor's proposal, it shall not be included in the cost base for calculating profit/fee. In addition, a reduction in the profit/fee objective shall be made in the amount equal to the facilities capital cost of money allowed in accordance with FAR 31.205–10(a)(2).

(b) CAS 417, cost of money as an element of the cost of capital assets under construction, should not appear in contract proposals. These costs are included in the initial value of a facility for purposes of calculating depreciation under CAS 414.

BILLING CODE 7510–01–P

Attachment: NASA FORM 634

Note: This form will not appear in the CFR, but is provided for information as an attachment to the preamble.

File: 634Fortunat.xls	**Structured Approach**	Printed (date):	24-May-99
Version:030299 win97	**Profit/Fee Objective**	Printed (time):	04:12:20 PM

1. CONTRACTOR	**4. RFP/CONTRACT NUMBER**
2. BUSINESS UNIT	**5. CONTRACT TYPE**
3. ADDRESS	

CONTRACTOR EFFORT

COST CATEGORY	**OBJECTIVE**
6. MATERIAL	$ -
7. SUBCONTRACTS	-
8. DIRECT LABOR	-
9. INDIRECT EXPENSES	-
10. OTHER DIRECT CHARGES	-
11. SUBTOTAL COSTS	$ -
12. GENERAL AND ADMINISTRATIVE	$ -
13. SUBTOTAL: (BASE USED TO CALCULATE PROFIT/FEE)	$ -
14. COST OF MONEY	$ -
15. TOTAL COST OBJECTIVE	$ -

WEIGHTED GUIDELINE PROFIT FACTORS

CONTRACTOR RISK FACTOR	ASSIGNED WEIGHTING (a)	ASSIGNED VALUE (Range = 4% to 8% normal = 6%) (b)	CALCULATED % (c)	Base (from block 13) (d)	PROFIT/FEE OBJECTIVE (e)
16. TECHNICAL	0.0%	-	0.0%		
17. MANAGEMENT	0.0%	-	0.0%		
18. COST CONTROL	0.0%	-	0.0%		
Total assigned weight (100%)	0.0%				
19. COMPOSITE PERFORMANCE RISK			0.0%	$ -	$ -
			ASSIGNED VALUE		
20. CONTRACT TYPE RISK			0.0%	$ -	$ -
	COSTS FINANCED		**LENGTH FACTOR**	**INTEREST FACTOR**	
21. WORKING CAPITAL	$ -		0.00	0.0%	$ -

OTHER CONSIDERATIONS		Weight Range max of 5% total	WEIGHT DESIGNATED	Base	
22. Past Performance (within last 3 years)		-1% to +1%	0.0%		
23. Socio-economic, Environmental, Public Policy Implementation		- .5% to + .5%	0.0%		
24. Facility and Property Investment		-2% to +2%	0.0%		
25. Other Innovations & Efficiencies		Discretionary	0.0%		
Subtotal Other Considerations		Max Total = 5%l	0.0%	$ -	$ -
			For weight designations	26. Subtotal Profit Obj:	$ -
			above, use decimals inputs.	Cost of Money Offset	$ -
			Example: .005 = .5%.	27. Total Profit Objective	$ -

Composite Comparisons	
24. FEE % OF TOTAL COST (without COM offset -- cost of money is not subtracted from fee)	0.00%
25. (FEE less COM) % OF TOTAL COST OBJECTIVE (cost of money IS subtracted from fee)	0.00%

NASA FORM 634 XXX 1999; PREVIOUS EDITIONS ARE OBSOLETE

[FR Doc. 99–14452 Filed 6–7–99; 8:45 am]

BILLING CODE 7510–01–C

Notices

Federal Register

Vol. 64, No. 109

Tuesday, June 8, 1999

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Research, Education, and Economics; Notice of Strategic Planning Task Force Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: The United States Department of Agriculture announces a meeting of the Strategic Planning Task Force on Research Facilities.

SUPPLEMENTARY INFORMATION: The Strategic Planning Task Force on Research Facilities, currently consisting of 14 members, is scheduled to meet for the eighth of eight planned meetings. The meeting is scheduled to be held at the Hyatt Regency, Washington, D.C. The meeting will be a review of the data collected by the Task Force and will continue discussion of the draft report.

TIMES AND DATES: June 24, 1999, beginning at 8:00 a.m., and June 25, 1999, beginning at 8:00 a.m.

PLACE: Hyatt Regency, 400 New Jersey Avenue, NW., Washington, D.C. 20001.

TYPE OF MEETING: Open to the public.

COMMENTS: The public may file written comments before or after the meeting with the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mitch Geasler, Project Director, Strategic Planning Task Force on Research Facilities, Room 344–A Jamie L. Whitten Building, USDA, 1400 Independence Avenue, SW., Washington, D.C. 20250–0113. Telephone 202–720–3803.

Done at Washington, D.C., this 1st day of June.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 99–14410 Filed 6–7–99; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

John Day/Snake Resource Advisory Council, Hells Canyon Subgroup

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hells Canyon Subgroup of the John Day/Snake Resource Advisory Council will meet on June 24, 1999 at the Imnaha Church at Imnaha, Oregon and June 25, 1999 at the Joseph United Methodist Church at the corner of Third and Lake Streets in Joseph, Oregon. On June 24, 1999, the meeting will begin at 9:00 a.m. and continue until 5:00 p.m. On June 25, 1999, the meeting will begin at 7:30 a.m. and will continue until 12:00 p.m. Agenda items to be covered include: (1) Presentations and discussions by the three topic groups, Recreation, Healthy, Sustainable Ecological Ecosystem and Heritage Resources. (2) Open public forum. All meetings are open to the public. Public comments will be received at 1:00 p.m. on June 24, 1999 at the Imnaha Church.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kendall Clark, Area Ranger, USDA, Hells Canyon National Recreation Area, 88401 Highway 82, Enterprise, OR 97828, 541–426–5501.

Dated: May 28, 1999.

Kendall Clark,

Area Ranger.

[FR Doc. 99–14434 Filed 6–7–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Proposed Posting of Stockyards

The Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

GA–224 Dixie Livestock Market, Inc., Oak Park, Georgia
NC–174 Taylorsville Auction Service, Taylorsville, North Carolina
NC–175 Benson Horse Auction, Benson, North Carolina

Pursuant to the authority under Section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Office of Policy/Litigation Support, Grain Inspection, Packers and Stockyards Administration, Room 3418–South Building, U. S. Department of Agriculture, Washington, D.C. 20250, by June 23, 1999.

All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Office of Policy/Litigation Support during normal business hours.

Done at Washington, D.C. this 12th day of May 1999.

Michael J. Caughlin, Jr.,

Director, Office of Policy/Litigation Support, Packers and Stockyards Programs.

[FR Doc. 99–14408 Filed 6–7–99; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Extend and Revise a Currently Approved 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 an extension for and revision to a currently approved information collection, the Aquaculture Survey.

DATES: Comments on this notice must be received by August 12, 1999 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: Aquaculture Survey.

OMB Number: 0535–0150.

Expiration Date of Approval: May 31, 2000.

Type of Request: Intent to extend and revise a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production. The Aquaculture Survey collects information on trout sales, catfish processed, inventory, acreage, and sales. The Aquaculture Survey is being revised to obtain 99 percent coverage of sales and decrease overall frequency of data collection.

Eighteen states are currently in the trout program representing approximately 90 percent of sales. Eight states are being added to the program to increase sales coverage to approximately 99 percent. The trout questionnaire is being revised to collect distributed fish as a separate item. The trout inventory and sales data will be published on a calendar basis instead of a fiscal year basis.

The catfish program is also being revised to represent 99 percent of sales. Currently, the four major catfish producing states are surveyed quarterly and 11 are surveyed annually. Under the revised program the four major states will be surveyed semiannually and 12 states will be surveyed annually. Data collection in the four major states will be discontinued for April and October.

Survey results are used by government agencies in planning farm programs. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 2,125.

Estimated Total Annual Burden on Respondents: 825 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: 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, DC, May 19, 1999.

Rich Allen,

Associate Administrator, National Agricultural Statistics Service.

[FR Doc. 99–14409 Filed 6–7–99; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to the Natural Resources Conservation Service's National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture, New York State Office.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices, Section IV of the New York State NRCS Field Office Technical Guide (FOTG) for review and comment.

SUMMARY: It is the intention of NRCS to issue a new conservation practice standard in its National Handbook of Conservation Practices. This new standard is: Agricultural Fuel Storage Facility (NY701).

DATES: Comments will be received on or before July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Richard D. Swenson, State Conservationist, Natural Resources Conservation Service, (NRCS), 441 S. Salina Street, Fifth Floor, Suite 354, Syracuse, New York, 13202–2450.

A copy of this standard is available from the above individual.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agricultural Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 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.

Dated: May 25, 1999.

Joseph R. DelVeccho,

Assistant State Conservationist, Natural Resources Conservation Service, Syracuse, NY.

[FR Doc. 99–14413 Filed 6–7–99; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Census Bureau

Annual Retail Trade Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before August 9, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ronald L. Piencykoski, Bureau of the Census, Room 2626–FOB 3, Washington, D.C. 20233–6500, (301) 457–2660.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Annual Retail Trade Survey (ARTS) provides a sound statistical basis for the formation of policy by other government agencies. It provides continuing and timely national statistics on retail trade augmenting the period between economic censuses and is a continuation of similar retail trade surveys conducted each year since 1951 (except 1954). The data collected—annual sales, purchases, end-of-year inventories, and accounts receivables—are applicable to a variety of public and business needs. The estimates of purchased merchandise are used by the Bureau of Economic Analysis (BEA) to estimate trade margins on commodities sold in calculating the personal consumption portion of the Gross Domestic Product (GDP). Accounts receivable balances are used by the Federal Reserve Board in measuring consumer credit. Businesses use these data to determine market share and to compare results.

The ARTS sample consists of all firms operating retail establishments within the U.S. whose probability of selection is determined by sales size, as reported in the Monthly Retail Trade Survey (MRTS). An additional panel of cases who report only in the annual survey are also canvassed. Estimates developed in the ARTS are used to benchmark the monthly sales and inventories series.

We currently publish retail sales and inventory estimates on the Standard Industrial Classification (SIC) basis. Starting in the spring of 2001, we will publish on the North American Industry Classification System (NAICS). The SIC definition of retail trade and the NAICS definition of retail trade are substantially different. The SIC defines retailers as establishments engaged in selling merchandise for personal or household consumption and rendering services incidental to the sale of the goods. NAICS distinguishes retailers from wholesalers based on what the establishment does rather than to whom the establishment sells. Retailers are defined as those establishments that sell merchandise and attract customers using methods such as advertising, point-of-sale location, and display of merchandise. A store retailer has a selling place open to the public, merchandise on display or available through sales clerks, facilities for making cash or credit card transactions, and service provided to retail customers. NAICS will change the information that is currently available with reclassifications, definitional changes, and movement of activities in or out of retail trade.

Conversion from the SIC to NAICS will significantly affect selected industries within the retail trade.

—A new sector called Accommodation and Food Services is created and will be canvassed in the ARTS. Restaurants move from retail trade into this new sector. We will continue to collect monthly sales from restaurants and publish a separate Food Services Total. Accommodations will move from the Service Annual Survey into the ARTS and will be collected and published under this new sector
—The redefinition of the boundary between the retail and wholesale sectors, as described above, will move establishments from the wholesale sector to the retail sector. Preliminary results from the 1997 Economic Census indicate about 15 percent of establishments classified under SIC in the wholesale sector will move to the retail sector under NAICS. We expect the most movement in Automotive parts, accessories, and tire stores; computer and software stores; Farm supplies dealers; Office supplies and stationery stores; and Fuel oil dealers
—Retail Bakeries (without seating) will move to the manufacturing sector
—Pawn Shops will move to the finance sector
—Mobile Home Dealers, which are currently included in Building Materials, will be included in Miscellaneous Store Retailers
—Computer and Software Stores will be recognized as separate industries under NAICS because of growing interest among public and private data users
—The Durable and Nondurable aggregate totals will be eliminated from publication under NAICS
—Under NAICS, we will discontinue collecting inventories from the food service subsector. We will collect and publish inventories only for the Retail Sector
—Under NAICS, all auxiliary facilities such as warehouses are classified based on the primary activity. Under SIC, warehouses are classified based on the industry classification of the establishments they primarily serve. We will continue to publish the warehouse inventory of retailers in its respective kind-of-business

In addition to the change to NAICS, the Census Bureau will begin collecting Internet sales separately starting in 2000 for data years 1998 and 1999. Currently, online sales are included with catalog sales in our overall retail estimates. With the dramatic growth of sales on the Internet, and the impact of those sales on retail activity, we propose to add several new questions to our survey instruments. We plan to ask all firms if and when they began selling through an Internet site and to separately report the value of their Internet sales included in total sales for data years 1998 and 1999. The ARTS will ensure that sales transactions ordered and paid for online are captured and published separately and made available to the public in early 2001. We are also proposing more detailed questions of our non-store retailers, one asking for a dollar volume breakout along major merchandise lines for both total and Internet sales, and another concerning the amount of Internet sales destined for shipment outside the United States. In addition to these Internet questions, we also plan to ask computer stores and non-store retailers to provide a percentage breakout of their total sales by class of customer. We will of course test all proposed questions with a sample of respondents to determine the feasibility and to estimate any additional reporting burden.

II. Method of Collection

We will collect this information by mail, FAX and telephone follow-up.

III. Data

OMB Number: 0607–0013.
Form Number: SA–44, SA–44A, SA–45, SA–44C, SA–45C, and SA–721 under NAICS. B–151, B–151A, B–151D, B–153, and B–153D under SIC.
Type of Review: Regular Submission.
Affected Public: Retail Businesses.
Estimated Number of Respondents: 20,960 under NAICS. 23,700 under SIC.
Estimated Time Per Response: .4333 hrs (26 minutes) under NAICS .4142 hrs (25 minutes) under SIC.
Estimated Total Annual Burden Hours: 9,082 hours under NAICS 9,817 hours under SIC.
Estimated Total Annual Cost: The cost to the respondent is estimated to be $160,388, based on an annual response burden of 9,082 hours and a rate of $17.66 per hour to complete the form.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13, U.S.C., Sections 182, 224, and 225.

IV. Request for 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 2, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–14479 Filed 6–7–99; 8:45 a.m.]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand

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

SUMMARY: In response to requests by producers/exporters of subject merchandise and by a group of U.S. importers, the Department of Commerce is conducting an administrative review of the antidumping duty order on canned pineapple fruit from Thailand. This review covers five producers/exporters of the subject merchandise. The period of review is July 1, 1997, through June 30, 1998.

We preliminarily determine that sales have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price and the normal value.

Interested parties are invited to comment on the preliminary results. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Kris Campbell, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0650 or (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations provided in 19 CFR part 351 (1998).

Background

On July 18, 1995, we published in the **Federal Register** the antidumping duty order on canned pineapple fruit from Thailand (60 FR 36775). On July 1, 1998, we published in the **Federal Register** the notice of ''Opportunity to Request an Administrative Review'' of this order, covering the period July 1, 1997, through June 30, 1998 (63 FR 35909).

The following producers/exporters of canned pineapple fruit requested a review in accordance with 19 CFR 351.213(b)(2): Vita Food Factory (1989) Co. Ltd. (Vita); Kuiburi Fruit Canning Co. Ltd. (KFC); Siam Fruit Canning (1988) Co. Ltd. (SIFCO); Siam Food Products Co. Ltd. (SFP); The Thai Pineapple Public Co. Ltd. (TIPCO); Malee Sampran Public Co. Ltd. (Malee); and Dole Food Company Inc., Dole Packaged Foods Company and Dole Thailand Ltd. (collectively, Dole).

In addition, on July 29, 1998, U.S. importers Heartland Foods Inc., J.A. Kirsch Corp., Kompass Food Trading International, Mandi Foods, Inc., North East Marketing Co., Port Royal Sales, Ltd., Rykoff-Sexton, Inc., and Summit Import Corp., requested a review of Vita in accordance with 19 CFR 351.213(b)(3). We did not receive a request for a review from the petitioners.[1]

On August 27, 1998, we published the notice of initiation of this antidumping duty administrative review covering the period July 1, 1997, through June 30, 1998 (63 FR 45796).

Partial Rescission of Antidumping Duty Administrative Review

On August 27 and October 30, 1998, Malee and Dole, respectively, withdrew their requests for review. Because there was no other request for a review of Malee or of Dole, and because both their letters withdrawing their requests for a review were timely filed, we are rescinding the review with respect to both Malee and Dole in accordance with 19 CFR 351.213(d)(1).

Scope of the Review

The product covered by this review is canned pineapple fruit (CPF). For purposes of the review, CPF is defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (i.e., juice-packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, our written description of the scope is dispositive.

Verification

As provided in section 782(i)(3) of the Act, we verified information provided by Vita and KFC. We used standard verification procedures, including on-site inspection of the respondent producers' facilities and examination of relevant sales and financial records. Our verification findings are outlined in the verification reports placed in the case file in Room B–099 of the Main Commerce Building.

Comparisons

We compared the export price (EP) to the normal value (NV), as described in the *Export Price* and *Normal Value* sections of this notice. We first attempted to compare contemporaneous sales[2] in the U.S. and comparison markets of products that were identical with respect to the following characteristics: Weight, form, variety, and grade. Where we were unable to compare sales of identical merchandise, we compared U.S. products with the most similar merchandise sold in the comparison market based on the characteristics listed above, in that order

[1] Maui Pineapple Company and the International Longshoremen's and Warehousemen's Union.

[2] For all companies, we matched U.S. and comparison market sales using invoice date as the date of sale for both markets.

of priority. Where there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (CV), in accordance with section 773 (a)(4) of the Act.

Export Price

For the price to the United States, we used EP as defined in section 772(a) of the Act. We determined the EP for each company as follows.

TIPCO

We calculated an EP for all of TIPCO's sales because the merchandise was sold either directly by TIPCO or indirectly through its U.S. affiliate, TIPCO Marketing Co. (TMC), to the first unaffiliated purchaser in the United States prior to importation, and constructed export price (CEP) was not otherwise warranted based on the facts of record. Sales through TMC involved direct shipment from TIPCO to the unaffiliated customer, without any merchandise entering TMC's physical inventory. Further, TMC's involvement in the sales process for indirect sales was limited to that of a processor of sales documentation. *See, e.g., Certain Corrosion Resistant Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review,* 63 FR 12725, 12738 (March 16, 1998). We calculated EP based on the packed FOB or CIF price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses (including brokerage and handling, port charges, stuffing expenses, and inland freight), international freight, U.S. customs duties, and U.S. brokerage and handling.

SFP

We calculated an EP for all of SFP's sales because the merchandise was sold directly by SFP to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. SFP has one employee located in the United States who acts only as a processor of sales-related documentation and as a communication link with U.S. customers regarding SFP's U.S. sales. The merchandise was shipped directly to the unaffiliated customer in the United States. The information on the record indicates that SFP's Bangkok office is responsible for confirming orders and for issuing the invoice direct to the customer.

We calculated EP based on the packed FOB price to unaffiliated purchasers for exportation to the United States. We made deductions from the starting price for discounts in accordance with 19 CFR 351.401(c). We also made deductions for foreign inland movement expenses and international freight in accordance with section 772(c)(2)(A) of the Act.

Vita

We calculated an EP for all of Vita's sales because the merchandise was sold directly by Vita to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated EP based on the packed FOB or C&F price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses (inland freight to the port of exportation) and international freight.

KFC

We calculated an EP for all of KFC's sales because the merchandise was sold directly by KFC to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated EP based on the packed, FOB or C&F price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses (including inland freight, terminal and handling charges, container freight station charges, and port documentation charges) and international freight.

SIFCO

We calculated an EP for all of SIFCO's sales because the merchandise was sold directly by SIFCO to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated EP based on the packed, FOB price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign inland freight.

Normal Value

A. Selection of Comparison Markets

Based on a comparison of the aggregate quantity of home market sales and U.S. sales, we determined that the quantity of foreign like product each respondent sold in the exporting country did not permit a proper comparison with the sales of the subject merchandise to the United States because the quantity of each company's sales in its home market was less than 5 percent of the quantity of its sales to the U.S. market. *See* section 773(a)(1) of the Act. Therefore, for each respondent, in accordance with section 773(a)(1)(B)(ii) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in each respondent's largest third-country market, *i.e.*, Germany for Vita and SIFCO, the United Kingdom for SFP, and Canada for TIPCO and KFC.

B. Cost of Production Analysis

Pursuant to section 773(b)(1) of the Act, we initiated a cost of production (COP) investigation of sales by Vita, TIPCO and SFP in the comparison market. Because we disregarded sales that failed the cost test in the last completed review of TIPCO and SFP, we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act.

In the 1996–97 administrative review, the first segment of the proceeding in which Vita was involved, we initiated a below-cost inquiry on Vita pursuant to an adequate below-cost allegation submitted by the petitioners. While Vita submitted a response to the sales portions of the questionnaire (sections A–C), it did not respond to our requests for COP data (section D), nor did it respond to any of our supplemental questionnaires. As a result, we determined Vita's antidumping rate for the 1996–97 period based on adverse facts available, using the highest calculated rate from the less-than-fair-value (LTFV) investigation. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand*, 63 FR 43661, 43663—66 (August 14, 1998). The Department's determination in the previous review, including the fact that we had initiated a below-cost inquiry on Vita, and that we applied total adverse facts available to Vita for, *inter alia,* failing to respond to the Department's cost questionnaire, provides the Department with a basis to infer that sales at prices below COP would have been disregarded in that review. Therefore, pursuant to section 773(b)(2)(A)(ii) of the Act, we also have reasonable grounds to believe or suspect that sales by Vita of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP.

We conducted the COP analysis as described below.

1. Calculation of COP/Fruit Cost Allocation

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of the costs of materials, fabrication, selling, general and administrative expenses (SG&A), and packing costs. We relied on the submitted COPs except in the specific instances noted below, where the submitted costs were not appropriately quantified or valued.

The Department's long-standing practice, now codified at section 773(f)(1)(A) of the Act, is to rely on a company's normal books and records if such records are in accordance with home country generally accepted accounting principles (GAAP) and reasonably reflect the costs associated with production of the merchandise. In addition, as the statute indicates, the Department considers whether an accounting methodology, particularly an allocation methodology, has been historically used by the company. *See* section 773(f)(1)(A) of the Act. In previous segments of this proceeding, the Department has determined that joint production costs (i.e., pineapple and pineapple processing costs) cannot be reasonably allocated to canned pineapple on the basis of weight. *See Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand*, 60 FR 29553, 29561 (June 5, 1995)), and *Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand*, 63 FR 7392, 7398 (February 13, 1998).[3] For instance, cores and shells are used in juice production, while trimmed and cored pineapple cylinders are used in CPF production. Because these various parts of a pineapple are not interchangeable when it comes to CPF versus juice production, it would be unreasonable to value all parts of the pineapple equally by using a weight-based allocation methodology. Several respondents that revised their fruit cost allocation methodologies during the 1995–96 POR changed to weight-based methodologies and did not incorporate any measure of the qualitative factor of the different parts of the pineapple. As a result, such methodologies, although in conformity with Thai GAAP, do not reasonably reflect the costs associated with production of CPF. Therefore, for companies whose fruit cost allocation methodology is weight-based, we requested that they recalculate fruit costs allocated to CPF based on a net realizable value (NRV) methodology. Consistent with prior segments of this proceeding, the NRV methodology that we requested respondents to use was based on company-specific historical amounts for sales and separable costs during the five-year period of 1990 through 1994. We made this request of all companies in this review except for KFC. Because KFC already allocates fruit costs on a basis that reasonably takes into account qualitative differences between pineapple parts used in CPF versus juice products in its normal accounting records, we have not required KFC to recalculate its reported costs using the NRV methodology.

We made the following company-specific adjustments to the cost data submitted in this review.

KFC

While KFC provided its historical NRV data as requested, it demonstrated at verification that its normal methodology is to allocate fruit costs on a revenue basis. Therefore, we have valued KFC's fruit costs using the company's historical allocation methodology.

SIFCO

Because in the last completed review of SIFCO we did not disregard any below-cost sales, we did not require SIFCO to respond to Section D of our questionnaire. However, as part of its variable manufacturing cost, SIFCO reported that it calculates fruit costs based on a weight-based methodology. Therefore, we have recalculated SIFCO's fruit costs using the historical five-year NRV data.

SFP

SFP's reported fruit costs are based on NRV data for the 1990–1994 period used in previous reviews. However, in calculating its cost allocation using the historic NRV data, SFP altered the Department's methodology by incorporating volume-based weighting factors. Since the SFP approach is not based solely on value ratios and thus introduces the distortions that the Department has found inherent in weight-based cost allocations, we have recalculated SFP's reported fruit costs using the same 1990–1994 NRV cost allocation employed in the previous review, which is based on value ratios alone.

2. Test of Comparison Market Sales Prices

As required under section 773(b) of the Act, we compared the adjusted weighted-average COP for each respondent to the comparison market sales of the foreign like product, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the revised COP to the comparison market prices, less any applicable movement charges, taxes, rebates, commissions and other direct and indirect selling expenses.

Unlike in past segments of the proceeding, we have not deducted from the COP the value of certain tax certificate revenues. Based on a letter we reviewed from the Thai government and statements made by Vita officials at verification,[4] the value of these tax certificates appears to be determined by the Thai government based simply on a percentage of a company's export revenue. Vita officials stated that this revenue is not related in any way to cost of production, and we found no evidence that it is tied to any duty drawback scheme. Instead, we found that this revenue is paid to companies upon the export of domestically-produced merchandise. Therefore, no adjustment was made to our dumping calculation for this payment.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were made at prices below the COP, we disregarded the below-cost sales because: (1) Such sales were found to be made within an extended period of time in "substantial quantities" in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on comparisons of price to weighted-average COPs for the POR, we

[3] The Court of International Trade (CIT) ruled in favor of the respondents who challenged the Department's position that joint production costs cannot be reasonably allocated to canned pineapple on the basis of weight. *The Thai Pineapple Public Co. Ltd., et al. v. United States*, 946 F. Supp. 11 (CIT 1996). That decision is currently being reviewed by the Court of Appeals for the Federal Circuit.

[4] See Memorandum to office director from case analysts: *Verification of the Sales and Cost Information in the Response of Vita Food Factory (1989) Co., Ltd. (Vita) in the 1997–98 Administrative Review of Canned Pineapple Fruit from Thailand*, June 1, 1999.

determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain CPF products, TIPCO, SFP, and Vita made comparison market sales at prices below the COP within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

C. Calculation of Normal Value Based on Comparison Market Prices

We determined price-based NVs for each company as follows. For all respondents, we made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and we deducted movement expenses consistent with section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the ''commission offset''). Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to normal value for the lesser of (1) the amount of the commission paid in the U.S. market, or (2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to normal value following the same methodology. Company-specific adjustments are described below.

TIPCO

We based third-country market prices on the packed, FOB prices to unaffiliated purchasers in Canada. We adjusted for the following movement expenses: brokerage and handling, port charges, stuffing expenses and foreign inland freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses and bank charges) and adding U.S. direct selling expenses (credit expenses and bank charges).

SFP

We based third-country market prices on the packed, FOB or C&F prices to unaffiliated purchasers in the United Kingdom. We adjusted for the following movement expenses: foreign inland freight, port charges and ocean freight, where applicable. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges, warranties and commissions) and adding U.S. direct selling expenses (credit expenses and bank charges).

Vita

We based third-country market prices on the packed, FOB or C&F prices to unaffiliated purchasers in Germany. We adjusted for the following movement expenses: foreign inland freight and international freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions).

SIFCO

We based third-country market prices on the packed, FOB prices to unaffiliated purchasers in Germany. We adjusted for the following movement expenses: foreign inland freight and international freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions).

KFC

We based third-country market prices on the packed, FOB prices to unaffiliated purchasers in Canada. We adjusted for the following movement expenses: foreign inland freight, terminal and handling charges, container freight station charges, and port documentation charges. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions).

D. Calculation of Normal Value Based on Constructed Value

For those CPF products for which we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product in the ordinary course of trade, we compared the EP to CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the cost of manufacturing of the product sold in the United States, plus amounts for SG&A expenses, comparison market profit, and U.S. packing costs. We calculated each respondent's CV based on the methodology described in the ''*Calculation of COP*'' section of this notice, above. In accordance with section 773(e)(2)(A) of the Act, we used the actual amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the foreign country to calculate SG&A expenses and comparison market profit.

For price-to-CV comparisons, we made adjustments to CV for COS differences, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses.

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP transaction. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different level of trade than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. *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, 61732 (November 19, 1997).

In implementing these principles in this review, we obtained information from each respondent about the marketing stages involved in the reported U.S. and comparison market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for EP and third-country market sales, we considered the selling functions reflected in the starting price before any adjustments. We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

In this review, all respondents claimed that all of their sales were made through a similar channel of distribution (direct sales to customers in export markets) and involved identical selling functions, irrespective of market. In examining these selling functions, we found that sales activities were limited to negotiating sales prices, processing of purchase orders/contracts, invoicing, and collecting payment; there was little or no strategic and economic planning, advertising or sales promotion, technical services, technical assistance, or after-sale service performed in either market. Therefore, for all respondents we have preliminarily found that there is a single (and identical) level of trade in each market, and no level-of-trade adjustment is required for comparison of U.S. sales to third-country sales.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. *See* Change in Policy Regarding Currency Conversions, 61 FR 9434 (March 8, 1996).

Our preliminary analysis of Federal Reserve dollar-baht exchange rate data shows that the value of the Thai baht in relation to the U.S. dollar fell on July 2, 1997, by more than 18 percent from the previous day and did not rebound significantly in a short time. This decline was many times more severe than any single-day decline during several years prior to that date. Had the baht rebounded quickly enough to recover all or almost all of the loss, we might have considered this decline as nothing more than a momentary drop, despite the magnitude of that drop. However, because there was no significant rebound, we have preliminarily determined that the decline in the baht from July 1, 1997, to July 2, 1997, was of such a magnitude that the dollar-baht exchange rate cannot reasonably be viewed as having simply fluctuated at this time, i.e., as having experienced only a momentary drop in value, relative to the normal benchmark. Therefore, for exchange rates between July 2 and August 27, 1997, we relied on the standard exchange rate model, but used as the benchmark rate a stationary average of the daily rates over this period. In this manner we used a post-precipitous drop benchmark, but at the same time avoided undue daily fluctuations in exchange rates. For the period after August 27, 1997, we used the standard (rolling 40-day average) benchmark.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margins exist for the period July 1, 1997, through June 30, 1998:

Manufacturer/Exporter	Margin (percent)
Siam Food Products Company Ltd.	3.26
The Thai Pineapple Public Company, Ltd.	9.93
Kuiburi Fruit Canning Co. Ltd.	3.57
Siam Fruit Canning (1988) Co. Ltd.	3.35
Vita Food Factory (1989) Co. Ltd.	16.63

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within thirty days of publication. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments, within 120 days from publication of this notice.

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of subject merchandise. Upon completion of this review, the Department will instruct the U.S. Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of CPF from Thailand 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 companies listed above will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, de minimis, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the 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) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation conducted by the Department, the cash deposit rate will be 24.64 percent, the "All Others" rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–14520 Filed 6–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part

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

ACTION: Notice of preliminary results of antidumping duty administrative review and notice of intent not to revoke order in part.

SUMMARY: In response to requests from one manufacturer/exporter and one U.S. producer, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on dynamic random access memory semiconductors of one megabit or above (DRAMs) from the Republic of Korea (Korea). The review covers two manufacturers/ exporters and one exporter of subject merchandise to the United States during the period of review (POR), May 1, 1997 through April 30, 1998. Based upon our analysis, the Department has preliminarily determined that dumping margins exist for both manufacturers/ exporters and the exporter during the POR. If these preliminary results are adopted in our final results of administrative review, we will instruct the United States Customs Service (Customs) to assess antidumping duties as appropriate. Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) A statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur or John Conniff, AD/ CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC. 20230; telephone: (202) 482–5346 or (202) 482–1009, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions as of 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 references to the regulations of the Department are to 19 CFR part 351 (1998).

Background

On May 10, 1993, the Department published in the **Federal Register** (58 FR 27250) the antidumping duty order on DRAMs from Korea. On May 12, 1998, the Department published a notice of ''Opportunity to Request an Administrative Review'' of this antidumping duty order for the period May 1, 1997 through April 30, 1998 (63 FR 26143). We received timely requests for review from one manufacturer/ exporter of subject merchandise to the United States; LG Semicon Co., Ltd. (LG). The petitioner, Micron Technology Inc., requested an administrative review of LG and Hyundai Electronics Industries, Co., Ltd. (Hyundai), also a Korean manufacturer of DRAMs, and The G5 Corporation (G5), a Korean exporter of DRAMs. Moreover, the petitioner requested a cost investigation of LG and Hyundai pursuant to section 773(b) of the Act. On June 29, 1998, the Department initiated a review of LG, Hyundai, and G5, including cost investigations of Hyundai and LG (63 FR 35188). The POR for all respondents is May 1, 1997 through April 30, 1998. The Department is conducting this review in accordance with section 751 of the Act.

On January 20, 1999, the Department published in the **Federal Register** (64 FR 3065) a notice extending the time for the preliminary results from January 30, 1999, until May 31, 1999.

Scope of the Review

Imports covered by the review are shipments of DRAMs from Korea. Included in the scope are assembled and unassembled DRAMs of one megabit and above. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die, and cut die. Processed wafers produced in Korea, but packaged or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea, are not included in the scope. The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (VGA) boards and cards, are not included in the scope. The scope of this review also includes video random access memory semiconductors (VRAMs), as well as any future packaging and assembling of DRAMs. The scope of this review also includes removable memory modules placed on motherboards, with or without a central processing unit (CPU), unless the importer of motherboards certifies with Customs that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are reimported for repair or replacement. The DRAMs subject to this review are currently classifiable under subheadings 8542.11.0001, 8542.11.0024, 8542.11.0026, and 8542.11.0034 of the Harmonized Tariff Schedule of the United States (HTSUS). Also included in the scope are those removable Korean DRAMs contained on or within products classifiable under subheadings 8471.91.0000 and 8473.30.4000 of the HTSUS. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this review remains dispositive.

Intent Not To Revoke

LG submitted a request to revoke it from the order covering DRAMs from Korea pursuant to 19 CFR 351.222(b)(2). Under the Department's regulations, the Department may revoke an order, in part, if the Secretary concludes that, among other things: (1) ''[O]ne or more exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years''; (2) ''[i]t is not likely that those persons will in the future sell the merchandise at less than normal value''; and (3) ''the producers or resellers agree in writing to the immediate reinstatement of the order, as long as any producer or reseller is subject to the order, if the

Secretary concludes that the producer or reseller, subsequent to the revocation, sold the merchandise at less than (normal) value.'' *See* 19 CFR 351.222(a)(2). In this case, LG does not meet the first criterion for revocation. In the previous segment of this proceeding the Department found that LG sold subject merchandise at less than normal value. *See Notice of Final Results of Antidumping Administrative Review: Dynamic Random Access Memory Semiconductors (DRAMs) of One Megabit or Above from the Republic of Korea,* 63 FR 50867, September 23, 1998) (*Final Results 1998*). Since LG has not met the first criterion for revocation, *i.e.,* zero or *de minimis* margins for three consecutive reviews, the Department need not reach a conclusion with respect to the second and third criteria. Therefore, on this basis, we have preliminarily determined not to revoke the Korean DRAM antidumping duty order with regard to LG.

Verification

As provided in section 782(i) of the Act, we verified information provided by LG and Hyundai. We used standard verification procedures, including on-site inspection of the respondents' facilities, examination of relevant sales, financial, and/or cost records, and selection of original documentation containing relevant information. G5 was not verified because the company refused to permit verification to take place.

Facts Available

Facts Available

1. Application of Facts Available

Section 776(a)(2) of the Act provides that if any interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes an antidumping investigation; or (D) provides such information but the information cannot be verified, the Department shall use facts otherwise available in making its determination.

Based on information obtained from Customs, we have determined that a number of sales that LG reported as third-country sales were actually sales to the United States. Moreover, the Department has determined that at the time LG made these sales, it knew, or should have known, that the DRAMs were destined for consumption in the United States. This is the same issue the Department addressed in the prior review period. *See* the May 27, 1999 Memorandum regarding '' Dynamic Random Access Memory Semiconductors of One Megabit or Above (DRAMs) from the Republic of Korea—Total Unreported Sales''. Thus, we have determined that LG withheld information we requested and significantly impeded the antidumping proceeding.

On July 15, 1998, the Department sent G5 a Section A questionnaire requesting that G5 provide information regarding any sales that it made to the United States during the POR. On August 10, 1998, G5 stated that it had not sold any of the subject merchandise to the United States during the POR. On December 1, 1998, the Department issued a supplemental questionnaire to G5 again requesting information regarding any sales that were made to the United States during the POR. Specifically, the Department requested that G5 examine the scope of the review and state whether it had any shipments, or knowledge, directly or indirectly, of sales to the United States of the subject merchandise during the POR. The Department also requested that G5 state whether they had any knowledge, directly or indirectly, of sales to business entities in third countries in which the final destination of the sale of the subject merchandise was the United States. In a December 17, 1998, letter, G5 stated that it has not sold or delivered DRAMs to the United States during the POR.

On January 20, 1999, the Department obtained information from Customs indicating that there were entries for consumption into the United States of Korean DRAMs shipped from G5 during the POR. In a March 3, 1999, letter, G5 acknowledged that it did have sales of LG DRAMs to the United States during the POR. Thus, we have determined that G5 withheld information we requested and significantly impeded the antidumping proceeding.

Because LG and G5 failed to respond in full to our questionnaire, pursuant to section 776(a) of the Act, we have applied facts otherwise available to calculate their dumping margins. Moreover, while we have preliminarily determined that certain sales should have been reported as sales to the United States, we will continue to examine Customs data as well as other data sources to determine whether there are any additional sales that have not been properly reported.

2. Selection of Adverse Facts Available

Section 776(b) of the Act provides that, in selecting from the facts available, adverse inferences may be used against a party that failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. 870 (1994).

Section 776(b) states further that an adverse inference may include reliance on information derived from the petition, the final determination, the final results of prior reviews, or any other information placed on the record. *See also Id.* at 868.

LG's decision to report as third-country sales a substantial number of U.S. sales that it knew, or should have known, were U.S. sales, indicates that LG failed to cooperate to the best of its ability. Similarly, G5's failure to provide information on its U.S. sales or permit verification demonstrates that G5 has failed to cooperate to the best of its ability in this review. Therefore, the Department has determined that an adverse inference is warranted in selecting among the facts otherwise available for LG and G5, in accordance with section 776(b) of the Act. Consequently, we have based the margin for G5 on total adverse facts available and for LG on partial adverse facts available.

As partial adverse facts available for LG, we have calculated a dumping margin based on both LG's reported and unreported sales to the United States, the latter of which we were able to identify from Customs data. While LG disagrees with the Department's position, LG provided the selling expenses for the sales transactions obtained from Customs. However, because LG did not report these transactions as U.S. sales, we are not using the expenses. Furthermore, the Department did not verify these expenses as they related to unreported sales. Therefore, since LG did not report these as U.S. sales, we are using as adverse facts available the highest U.S. selling expenses from LG's reported transactions involving identical products. Where there were no reported transactions involving identical merchandise, we used the highest U.S. selling expenses from LG's reported transactions involving similar merchandise.

As total adverse facts available for G5, we have assigned the highest company-specific margin in the history of this proceeding, which is the rate calculated for Hyundai in the instant review.

Per Megabit Cash Deposit Rates for Certain Memory Modules

On February 4, 1999, Compaq requested that the Department establish per megabit cash deposit rates for imports of certain memory modules containing DRAMs from Korea. Consistent with the practice established in the LFTV investigation of DRAMs from Korea, the Department is establishing per megabit cash deposit rates to be applied to memory modules containing subject and non-subject merchandise. For a detailed discussion, *see* memorandum regarding Calculation of Per Megabit Rate, May 28, 1999.

Duty Absorption

On July 27, 1998, the petitioner requested that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In this case, both Hyundai and LG sold to the United States through an importer that is affiliated within the meaning of section 751(a)(4) of the Act.

Section 351.213(j)(2) of the Department's regulations provides that for transition orders (i.e., orders in effect on January 1, 1995), the Department will conduct duty absorption reviews, if requested, for administrative reviews initiated in 1996 or 1998. Because the order underlying this review was issued prior to January 1, 1995, and this review was initiated in 1998, we will make a duty absorption determination in this segment of the proceeding.

On January 26, 1999, the Department requested evidence that unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the review period. Neither Hyundai nor LG provided any evidence in response to the Department's request. Accordingly, based on the record, we cannot conclude that the unaffiliated purchaser in the United States will ultimately pay the assessed duty. Therefore, we find that antidumping duties have been absorbed by the producer or exporter during the POR.

Fair Value Comparisons

To determine whether sales of DRAMs from Korea to the United States were made at less than fair value (LTFV), we compared the constructed export price (CEP) to the normal value (NV), as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. When making comparisons in accordance with section 771(16) of the Act, we considered all products as described in the ''Scope of Review'' section of this notice, above, that were sold in the home market in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of the identical or the most similar merchandise in the home market that were suitable for comparison, we compared U.S. sales to sales of the next most similar foreign like product, based on the characteristics listed in Section B and C of our antidumping questionnaire.

CEP

For LG and Hyundai, in calculating United States price, the Department used CEP, as defined in section 772(b) of the Act, because the merchandise was first sold to an unaffiliated U.S. purchaser after importation. We calculated CEP based on delivered prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for discounts, rebates, foreign brokerage and handling, foreign inland insurance, air freight, air insurance, U.S. duties and direct and indirect selling expenses to the extent that they are associated with economic activity in the United States in accordance with sections 772(c)(2) and 772(d)(1) of the Act. These included credit expenses, commissions, as applicable, and inventory carrying costs incurred by the respondents' U.S. subsidiaries. We added duty drawback paid on imported materials in the home market, where applicable, pursuant to section 772(c)(1)(B) of the Act.

For Hyundai DRAMs that were further manufactured into memory modules after importation, we deducted all costs of further manufacturing in the United States, pursuant to section 772(b)(2) of the Act. These costs consisted of the costs of the materials, fabrication, and general expenses associated with further manufacturing in the United States. Pursuant to section 772(d)(3) of the Act, we also reduced the CEP by the amount of profit allocated to the expenses deducted under section 772(d)(1) and (2).

For Hyundai modules that were imported by U.S. affiliates of Hyundai and then further processed into computer workstations before being sold to unaffiliated parties in the United States, we determined that the special rule for merchandise with value added after importation under section 772(e) of the Act applied. Section 772(e) of the Act provides that, where the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise sold in the United States if there is a sufficient quantity of sales to provide a reasonable basis for comparison. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated person. Based on this analysis, we determined that the estimated value added in the United States by Hyundai's U.S. affiliates accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. *See* 19 CFR 351.402 for an explanation of our practice on this issue. Therefore, we determined that the value added is likely to exceed substantially the value of the subject merchandise. We also determined that there was a sufficient quantity of sales available to provide a reasonable basis for comparison and that the use of such sales is appropriate in accordance with 772(e). Accordingly, for purposes of determining dumping margins for these sales, we have used the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons in the United States. For further discussion, *see* Memorandum on Whether to Determine the Constructed Export Price for Certain Further-Manufactured Sales Sold by Hyundai Electronics Industries Co., Ltd. in the United States During the Period of Review Under Section 772(e) of the Act dated June 1, 1999.

Level of Trade

In accordance with section 773(a)(1(B) of the Act, to the extent practical, we determined NV based on sales in the comparison market at the same level of trade as the CEP sales. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than the CEP sales, we examined stages in the marketing process and selling activities along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level of trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

We reviewed the questionnaire responses of Hyundai and LG to establish whether there were sales at different levels of trade based on the distribution system, selling activities, and services offered to each customer or customer category. For both respondents, we identified one level of trade in the home market with direct sales by the parent corporation to the domestic customer. These direct sales were made by both respondents to original equipment manufacturers (OEMs) and to distributors. In addition, all sales, whether made to OEM customers or to distributors, included the same selling functions. For the U.S. market, all sales for both respondents were reported as CEP sales. The level of trade of the U.S. sales is determined for the sale to the affiliated importer rather than the resale to the unaffiliated customer. We examined the selling functions performed by the Korean companies for U.S. CEP sales (as adjusted) and preliminarily determine that they are at a different level of trade from the Korean companies' home market sales because the companies' CEP transactions were at a less advanced stage of marketing. For instance, at the CEP level, the Korean companies did not engage in any general promotion activities, marketing functions, or price negotiations for U.S. sales. Because we compared CEP sales to home market sales at a more advanced level of trade, we examined whether a level of trade adjustment may be appropriate. In this case, both respondents only sold at one level of trade in the home market. Therefore, there is no basis upon which either respondent can demonstrate a pattern of consistent price differences between levels of trade. Further, we do not have information which would allow us to examine pricing patterns based on the respondents' sales of other products and there is no other record information on which such an analysis could be based. Because the data available do not provide an appropriate basis for making a level of trade adjustment and the level of trade in the home market is at a more advanced stage of distribution than the level of trade of the CEP sales, a CEP offset is appropriate. Both respondents claimed a CEP offset. We applied the CEP offset to adjusted home market prices or CV, as appropriate. The CEP offset consisted of an amount equal to the lesser of the weighted-average U.S. indirect selling expenses and U.S. commissions or home market indirect selling expenses. *See* the Memorandum on Level of Trade for LG, dated May 27, 1999 and Memorandum on Level of Trade for Hyundai, dated May 28, 1999.

NV

Home Market Viability

In order to determine whether there were a sufficient sales of DRAMs in the home market to serve as a viable basis for calculating NV, we compared the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the aggregate volume of home market sales of the foreign like products for both Hyundai and LG was greater than five percent of the respective aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV for all respondents.

Cost of Production (COP)

We disregarded Hyundai's and LG's sales found to have been made below the COP in the *Notice of Final Results of Antidumping Administrative Review: Dynamic Random Access Memory Semiconductors (DRAMs) of One Megabit or Above from the Republic of Korea,* 62 FR 39809, July 24, 1997), the most recent segment of this proceeding for which final results were available at the time of the initiation of this review. Accordingly, the Department, pursuant to section 773(b) of the Act, initiated COP investigations of both respondents for purposes of this administrative review.

We calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, SG&A expenses, and the cost of all expenses incidental to placing the foreign like product in condition, packed, ready for shipment, in accordance with section 773(b)(3) of the Act. We compared weighted-average quarterly COP figures for each respondent, adjusted where appropriate (see below), to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) Within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with sections 773(b)(1)(A) and (B) of the Act. In accordance with section 773(b)(2)(D) of the Act, we conducted the recovery of cost test using annual cost data.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of home market sales of a given model were at prices less than the COP, we did not disregard any below-cost sales of that model because the below-cost sales were not made in ''substantial quantities''. Where 20 percent or more of home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because we determined that the below-cost sales were made in ''substantial quantities'' and at prices that would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that for both respondents, more than 20 percent of their home market sales for certain products were made at prices that were less than the COP. Furthermore, the prices did not permit the recovery of costs within a reasonable period of time. We, therefore, disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1). For those sales for which there were no comparable home market sales in the ordinary course of trade, we compared CEP to CV pursuant to section 773(a)(4) of the Act.

Adjustments to COP

Research & Development (R&D)

Consistent with our past practice in this case, the R&D element of COP was based on R&D expenses related to all semiconductor products, not product-specific expenditures. *See* Memorandum Regarding Cross Fertilization of Research and Development in the Semiconductor Industry, dated May 29, 1999.

In addition, Hyundai and LG both changed their accounting methodologies for R&D expenses during this POR. Specifically, in 1997, both Hyundai and LG changed their accounting methodology from recognizing the R&D costs as expenses when incurred, to deferring such costs and amortizing them over five years using the straight-line method. Furthermore, in 1997, LG also began to completely defer certain R&D costs for long-term R&D projects until the relevant revenue is realized. While the Department did not become aware of this fact until the current POR, Hyundai began to completely defer certain R&D costs in the same manner in 1996. Both Hyundai and LG based the R&D expenses that they reported to the Department for this POR on the amount of R&D costs that they expensed in 1997.

Hyundai and LG have repeatedly changed their accounting methodologies for R&D expenses throughout the course of this proceeding. In their 1991 financial statements (which the Department used, in part, in the original investigation to calculate R&D expenses), both Hyundai and LG amortized R&D expenses. *See Final Determination of Sales at Less Than Fair Value: DRAMs from Korea,* 58 FR 15467 (March 23, 1993) (''*Final Determination*''); and *Micron Technology* v. *United States,* 893 F. Supp. 21, 28 (CIT 1995) (''*Micron I*''). In their 1993 financial statements, LG changed its accounting methodology for R&D expenses, and expensed R&D expenses in the year incurred. *See Notice of Final Results of Antidumping Administrative Review: Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea,* 61 FR 20216 (May 6, 1996); and *Micron Technology* v. *United States and LG Semicon Co., Ltd., and LG Semicon America, Inc.* (Slip Op. 99–12, January 28, 1999) (*Micron II*). Hyundai changed its R&D accounting methodology, and also began to expense R&D expenses in the year incurred, sometime between 1991 and 1996. In 1997, as explained above, Hyundai and LG changed their accounting methodologies a second time, switching back to the amortizing methodology they previously used in 1991. Furthermore, in 1996 and 1997, Hyundai and LG, respectively, began to use a third type of accounting methodology by completely deferring certain R&D expenses until revenue is realized from the R&D project.

Section 773(f)(1)(A) of the Act states that costs ''shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country (or the producing country where appropriate) and reasonably reflect the costs associated with production and sale of the merchandise.'' The SAA states that, in determining whether a company's records reasonably reflect costs, Commerce will consider U.S. GAAP employed by the industry in question. *See* SAA at 834. Further, as explained in the SAA, ''[t]he exporter or producer will be expected to demonstrate that it has historically utilized such allocations, particularly with regard to the establishment of appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs.'' *See Id. See* also *Final Results 1998,* 63 FR at 50871.

The Department has preliminarily determined that Hyundai's and LG's revised accounting methodologies for R&D expenses do not reasonably reflect the costs associated with the production of DRAMs. These revisions in accounting methodologies result in distortions in the costs attributed to the POR and are not consistent with U.S. GAAP. Furthermore, there is no information on the record to justify this change in accounting methodologies. Therefore, the Department has preliminary determined, consistent with Hyundai's and LG's historical R&D accounting methodology and U.S. GAAP, to expense all R&D expenses that Hyundai and LG incurred in 1997, and, consistent with *Micron II Remand,* to expense any R&D expenses that Hyundai expensed in 1997, which Hyundai had previously incurred but not previously expensed. For further discussion of this issue, *see* Memorandum on Whether to Accept the Reported Research & Development Expenses of Hyundai Electronics Industries Co., Ltd. and LG Semicon, Ltd., dated June 1, 1999.

We also note that a number of the projects that LG classified as R&D expenses apply to products which were being commercially produced in 1997. The Department will examine these projects further to determine whether they are more appropriately classified as part of COM.

Company-Specific Adjustments

Hyundai

1. We excluded certain non-operating expenses from Hyundai's R&D expenses.
2. We adjusted Hyundai's depreciation expenses to reflect the net effect of increasing depreciation, consistent with *Final Results 1998,* for special depreciation that would have been taken had the respondent continued to take special depreciation on certain equipment for the period of 1997 and the first half of 1998 and decreasing depreciation expenses to reflect the amount of special depreciation which the Department expensed in *Final Results 1998,* but which Hyundai expensed in its own books and records, and reported in its response, for the current POR.
3. We adjusted Hyundai's general and administrative (''G&A'') expense rate by excluding foreign currency transaction gains and losses related to account receivables.
4. We adjusted Hyundai's interest expense rate by excluding offsets of long-term interest income.

See Memorandum on Hyundai Electronics Industries Co., Ltd.: Calculations for the Preliminary Results, dated June 1, 1999.

LG

1. We included in COP certain costs for an operational new fabrication facility which LG excluded from its COM by recording them in a construction-in-progress account.
2. We adjusted LG's G&A expense rate by excluding foreign currency transaction gains and losses related to account receivables.
3. We adjusted LG's interest expense rate by including translation gains and losses and the amortized amounts of deferred foreign currency translation gains and losses, consistent with the Department's practice (*see Final Results 1998,* 63 FR at 50872). *See* Memorandum on LG Semicon Co., Ltd.,: Preliminary Results of Review Analysis Memorandum, dated June 1, 1999.

CV

In accordance with section 773(e) of the Act, we calculated CV based on the respondents' cost of materials and fabrication employed in producing the subject merchandise, SG&A expenses, the profit incurred and realized in connection with the production and sale of the foreign like product, and U.S. packing costs. We used the cost of materials, fabrication, and SG&A expenses as reported in the CV portion of the questionnaire response, adjusted as discussed in the COP section above.

We used the U.S. packing costs as reported in the U.S. sales portion of the respondents' questionnaire responses. For selling expenses, we used the average of the selling expenses reported for home market sales that survived the cost test, weighted by the total quantity of those sales. For actual profit, we first calculated the difference between the home market sales value and home market COP, and divided the difference by the home market COP. We then multiplied this percentage by the COP for each U.S. model to derive an actual profit.

Price Comparisons

For price-to-price comparisons, we based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade, and to the extent practicable, at the same level of trade, in accordance with section 773(a)(1)(B)(i) of the Act. We compared the U.S. prices of individual transactions to the monthly weighted-average price of sales of the foreign like product. In the case of LG, we calculated NV based on delivered prices to unaffiliated customers and, where appropriate, to affiliated customers in the home market.

With respect to LG, we tested those sales that LG made in the home market to affiliated customers to determine whether they were made at arm's length and could be used in our analysis. *See* 19 CFR 351.102(b). To test whether these sales were made at arm's length prices, we compared, on a model-specific basis, prices of sales to affiliated and unaffiliated customers, net of discounts, all movement charges, direct selling expenses, and packing. For tested models of the subject merchandise, prices to an affiliated party were on average 99.5 percent or more of the price to unaffiliated parties and we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c) and Preamble to the Department's regulations, 62 FR at 27355.

With respect to both CV and home market prices, we made adjustments, where appropriate, for inland freight, inland insurance, and discounts. We also reduced CV and home market prices by packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i) of the Act. In addition, we increased CV and home market prices for U.S. packing costs, in accordance with section 773(a)(6)(A) of the Act. We made further adjustments to home market prices, when applicable, to account for differences in physical characteristics of the merchandise in accordance with section 773(a)(6)(c)(ii) of the Act. Finally, pursuant to section 773(a)(6)(C)(iii) of the Act, we made an adjustment for differences in circumstances of sale by deducting home market direct selling expenses (credit expenses and bank charges) and adding any direct selling expenses associated with U.S. sales not deducted under the provisions of section 772(d)(1) of the Act. For Hyundai and LG, we recalculated the credit expense on home market sales using the interest rate of the currency in which the sales were made.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for May 1, 1997 through April 30, 1998:

Manufacturer/exporter	Percent margin
The G5 Corporation	13.11
Hyundai Electronic Industries, Inc	13.11
LG Semicon Co., Ltd	10.67

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments or at the hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. We have calculated importer-specific STD valorem duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales made during POR to the entered value of sales used to calculate those duties. These rates will be assessed uniformly on all entries of each particular importer made during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of DRAMs from Korea entered, or withdrawn from warehouse, for consumption on or after publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rate established in the final results of this administrative review, except if the rate is less than 0.5 percent *STD valorem* and, therefore, *de minimis,* no cash deposit will be required; (2) for exporters not covered in this review, but covered in the original LTFV investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, a previous 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) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the LTFV investigation, the cash deposit rate will be 3.85 percent, the ''all-others'' rate established in the LTFV investigation. 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 preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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 administrative review and this notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–14511 Filed 6–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order

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

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty administrative review, and intent to revoke order.

SUMMARY: In response to a request from Timothy Haley, the Floral Trade Council, and the FTC's Committees on Standard Carnations, Miniature Carnations, Standard Chrysanthemums, and Pompom Chrysanthemums (collectively ''the FTC and its Committees''), the Department of Commerce (the Department) is initiating a changed circumstances antidumping duty review and is issuing this notice of intent to revoke the antidumping duty order on certain fresh cut flowers from Colombia. The FTC and its Committees requested that the Department revoke the order on certain fresh cut flowers from Colombia retroactive to March 1, 1997, because they no longer have an interest in maintaining the order. The FTC represents a domestic interested party and was the petitioner in the less-than-fair-value (LTFV) investigation. We are initiating this changed circumstances administrative review and issuing this notice of our preliminary determination to revoke the order retroactive to March 1, 1997.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Rosa Jeong or Marian Wells, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–3853 or (202) 482–6309, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1998).

Background

On May 21, 1999, the FTC and its Committees requested that the Department conduct a changed circumstances administrative review to revoke the antidumping duty order on certain fresh cut flowers from Colombia retroactive to March 1, 1997. The FTC and its Committees stated that circumstances have changed such that the FTC and its Committees no longer have an interest in maintaining the antidumping duty order.

The FTC and its Committees also requested that, due to the pendency of the ongoing administrative reviews of the order, the Department initiate and complete the changed circumstances review on an expedited basis.

Scope of Review

The products covered by this changed circumstances review are certain fresh cut flowers from Colombia including standard carnations, miniature (spray) carnations, standard chrysanthemums, and pompon chrysanthemums. These products are currently classifiable under item numbers 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS item numbers are provided for convenience and customs purposes, the Department's written description of the scope remains dispositive.

This changed circumstances review covers all producers and exporters of certain fresh cut flowers from Colombia.

Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke Order

Pursuant to section 751(d)(1) of the Act, the Department may revoke, in whole or in part, an antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances administrative review to be conducted upon receipt of a request containing sufficient information concerning changed circumstances.

The Department's regulations at 19 CFR 351.216(d) require the Department to conduct a changed circumstances administrative review in accordance with 19 CFR 351.221 if it decides that changed circumstances sufficient to warrant a review exist. Section 782(h) of the Act and § 351.222(g)(1)(i) of the Department's regulations provide further that the Department may revoke an order, in whole or in part, if it concludes that the order under review is no longer of interest to domestic interested parties. In addition, in the event that the Department concludes that expedited action is warranted, § 351.221(c)(3)(ii) of the regulations permits the Department to combine the notices of initiation and preliminary results.

The FTC is a domestic interested party as defined by section 771(9)(E) of the Act and 19 CFR 351.102(b) and was the petitioner in the LTFV investigation of this proceeding. Therefore, based on the affirmative statement by the FTC and its Committees of no interest in the continued application of the antidumping duty order on certain fresh cut flowers from Colombia, we are initiating this changed circumstances review. Further, based on the request by the FTC and its Committees and their affirmative statement of no interest, we have determined that expedited action is warranted, and we are combining these notices of initiation and preliminary results. We have preliminarily determined that there are changed circumstances sufficient to warrant revocation of the order in whole. We are hereby notifying the public of our intent to revoke in whole the antidumping duty order on certain fresh cut flowers from Colombia retroactive to March 1, 1997.

In the event this revocation is made final, the Department will terminate the administrative reviews covering the following periods: March 1, 1997, through February 28, 1998 (initiated on April 21, 1998 (63 FR 19709)); March 1, 1998, through February 28, 1999 (initiated on April 30, 1999 (64 FR 23269)).

If final revocation of the order occurs, we intend to instruct the Customs Service to end the suspension of liquidation and to refund any estimated antidumping duties collected for all unliquidated entries of certain fresh cut flowers from Colombia on or after March 1, 1997, in accordance with 19 CFR 351.222(g)(4). We will also instruct the Customs Service to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this changed circumstances review.

Public Comment

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than 28 days after the date of publication of this notice. Written comments from interested parties may be submitted not later than 14 days after the date of publication of this notice. Rebuttal comments to written comments, limited to issues raised in those comments, may be filed not later than 21 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

This notice is in accordance with section 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: June 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–14523 Filed 6–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–041]

Notice of Final Court Decision and Amended Final Results of Expedited Sunset Review on Synthetic Methionine from Japan

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

ACTION: Notice of final court decision and amended final results of expedited sunset review on synthetic methionine from Japan.

SUMMARY: On April 22, 1999, the Court of International Trade (the Court) affirmed the Department of Commerce's (the Department) remand determination arising out of the expedited sunset review of the antidumping finding on synthetic methionine from Japan. *See NOVUS International, et. al.* v. *United States,* Slip Op. 99–38 (CIT April 22, 1999). As there is now a final and conclusive court decision in this action, we are amending the final results of review in this matter and will notify the U.S. International Trade Commission (''the Commission'') that the magnitude of the margin likely to prevail were the finding to be revoked is 48 percent.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 27, 1999, the Court issued an order remanding to the Department the final results of the expedited sunset review on synthetic methionine from Japan.[1] On April 21, 1999, in accordance with the Court's remand order, the Department filed its final results of redetermination. See Final Results of Redetermination Pursuant to Court Remand, April 21, 1999, *NOVUS International, et. al.* v. *United States,* Court No. 99–01–00007 (Remand Results). In this determination, the Department reconsidered the 48 percent rate from the Treasury Department's less-than-fair-value investigation of synthetic methionine from Japan as a possible appropriate indicator of the magnitude of dumping that would prevail were the dumping finding on synthetic methionine from Japan to be revoked. The Department determined that a reliable source that contains a Treasury fair-value rate can be used as a basis for reporting margins to the Commission. *See* Remand Results at 6. Further, the Department determined that, regardless of whether the investigation rate was published in the Treasury finding, the Department did ascertain and rely on a rate from the original investigation for purposes of the final results of the first administrative review. Therefore, we determined that, ''consistent with our policy of selecting a margin ''from the investigation, because that is the only calculated rate that reflects the behavior of the exporters * * * without the discipline of an order in place (footnote omitted),'' we should report the 48 percent rate to the Commission. *See* Remand Results at 7.

On April 22, 1999, the Court upheld the Department's redetermination pursuant to Court remand. *NOVUS International, et. al.* v. *United States,* Slip Op. 99–38 (CIT April 22, 1999). The period to appeal has expired and no appeal was filed. Therefore, as there is now a final and conclusive court decision in this action, we are amending our final results of the expedited sunset review.

[1] *NOVUS International, Inc., Degussa Corporation, and Rhone-Poulenc Animal Nutrition* v. *United States,* Slip Op. 99–14 (CIT January 27, 1999).

Amended Final Results of Review

Pursuant to section 516A(e) of the the Tariff Act of 1930, as amended (the Act), we are now amending the final results of the expedited sunset review on synthetic methionine from Japan and determining that the magnitude of dumping that is likely to prevail if the finding on synthetic methionine from Japan were revoked is 48 percent.

Dated: June 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–14513 Filed 6–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052499B]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Gulf of Alaska; Application for an Exempted Fishing Permit

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

ACTION: Receipt of an exempted fishing permit application.

SUMMARY: NMFS announces receipt of an application from the Alaska Fisheries Development Foundation (AFDF) for an Exempted Fishing Permit (EFP) to test artificial longline bait fabricated from seafood wastes in the Gulf of Alaska. It is intended to promote the objectives of the North Pacific Fishery Management Council (Council).

ADDRESSES: Copies of the EFP application are available by writing to Steven Pennoyer, Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Susan Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska and its implementing regulations at 50 CFR part 679.6 authorize issuance of EFPs to allow fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations. NMFS received an application for an EFP from the AFDF on April 19, 1999. If approved, the EFP would be used to test artificial longline bait fabricated from seafood wastes in the Gulf of Alaska. The AFDF reports that the potential benefits of using artificial bait for longline fisheries include higher catches, enhanced species and size selectivity, consistent product quality and size, enhanced safety, and lower bait loss.

In accordance with regulations, NMFS has determined that the proposal warrants further consideration and has initiated consultation by forwarding the application to the Council. The Council will consider the EFP application during its June 9–14, 1999, meeting which will be held at the Best Western Kodiak Inn, Kodiak, Alaska, and public comment on the application will be requested at this meeting. The applicant has been invited to appear in support of the application if the applicant desires.

A copy of the application is available for review from the NMFS Regional Administrator (see **ADDRESSES**).

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

Dated: June 3, 1999.

Richard W. Surdi,

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

[FR Doc. 99–14474 Filed 6–7–99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Performance of Certain Functions by National Futures Association With Respect to Those Foreign Firms Acting in the Capacity of a Futures Commission Merchant

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and order.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is authorizing National Futures Association (''NFA'') to revoke, after thirty days written notice, the confirmation of Rule 30.10 relief for any firm that fails to comply with the terms and conditions on which relief was confirmed. In addition, the Commission is authorizing NFA to withdraw the confirmation of Rule 30.10 relief from any firm that notifies NFA of its decision to forfeit such relief.

EFFECTIVE DATE: July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Laurie Plessala Duperier, Special Counsel, or Andrew Chapin, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5430.

United States of America

Before the Commodity Futures Trading Commission

Order Authorizing the Performance of Certain Functions by National Futures Association With Respect to Firms That Have Received Confirmation of Rule 30.10 Relief

I. Authority and Background

Section 8a(10) of the Commodity Exchange Act [1] (''Act'') provides that the Commission may authorize any person to perform any portion of the registration functions under the Act, notwithstanding any other provision of law, in accordance with rules adopted by such person and submitted to the Commission for approval or, if applicable, for review pursuant to Section 17(j) of the Act [2] and subject to the provisions of the Act applicable to registrations granted by the Commission. NFA has confirmed its willingness to perform certain functions now performed by the Commission. [3]

Upon consideration, the Commission has determined to authorize NFA, effective July 8, 1999, to revoke or withdraw exemptive relief granted to firms acting in the capacity of futures commission merchants (''FCMs'') that are members of regulatory or self-regulatory bodies to which an order under Commission Rule 30.10 [4] has been issued and that have received confirmation of relief.

Rule 30.10 allows the Commission to exempt a foreign firm acting in the capacity of an FCM from compliance with certain Commission rules and regulations based upon the firm's compliance with comparable regulatory requirements imposed by the firm's home-country regulator. The Commission has established a process whereby a foreign regulator or self regulatory organization (''SRO'') can petition on behalf of its regulatees or members, respectively, for such an exemption based upon the comparability of the regulatory structure in the foreign jurisdiction to that under the Act. Once the Commission determines that the foreign jurisdiction's regulatory structure offers comparable regulatory oversight,[5] the Commission may issue an Order granting general relief subject to certain conditions.[6] Firms seeking confirmation of relief must make certain representations set forth in the Rule 30.10 Order issued to the regulator or SRO from the firm's home country.[7]

On September 11, 1997, the Commission authorized NFA to receive requests for confirmation of Rule 30.10 relief on behalf of particular firms, to verify such firms' fitness and compliance with the conditions of the appropriate Rule 30.10 Order, and to grant exemptive relief from registration to qualifying firms pursuant to Rule 30.10.[8] The Commission stated that, once it had examined the foreign jurisdiction's regulatory structure and issued an Order under Rule 30.10 granting general relief based upon the comparability of that structure to the structure under the Act, the steps

[1] 7 U.S.C. 12a(10)(1998).

[2] 7 U.S.C. 21(j)(1998).

[3] Letter from Robert K. Wilmouth, President of NFA, to Brooksley Born, Chairperson of the Commission, dated August 27, 1997.

[4] Commission rules referred to herein can be found at 17 CFR Ch. I (1999).

[5] The specific elements examined in evaluating whether the particular foreign regulatory program provides a basis for permitting substituted compliance for purposes of exemptive relief pursuant to Commission Rule 30.10 are set forth in Appendix A to Part 30. *See* 52 FR 28990, 29001 (August 5, 1987).

[6] These conditions require the regulator or SRO responsible for monitoring the compliance of the firm with the regulatory requirements described in the Rule 30.10 petition to make certain representations regarding the fitness of each firm seeking to receive confirmation of Rule 30.10 relief, the protections to be afforded to U.S. customers, and the exchange of information with the Commission. *See* 62 FR 47792, 47793, n.7 (September 11, 1997).

[7] A firm seeking confirmation of Rule 30.10 relief is generally required to:

(1) consent to jurisdiction in the United States and designate an agent for service of process in the United States in accordance with the requirements set forth in Rule 30.5;

(2) agree to make its books and records available upon the request of any representative of the Commission or the U.S. Department of Justice;

(3) agree that all futures or regulated option transactions with respect to U.S. customers will be made on or subject to the rules of the applicable exchanges and will be undertaken consistent with rules and codes under which such firm operates;

(4) represent that no principal of the firm would be disqualified under Section 8a(2) of the Act from registering to do business in the U.S. and notify the Commission promptly of any change in that representation;

(5) disclose the identity of each U.S. affiliate or subsidiary;

(6) agree to be subject to NFA arbitration;

(7) consent to the release of certain financial information;

(8) segregate customer funds from the firm's proprietary funds, even if that option is not generally available under local law;

(9) consent to report the value of funds required to be segregated on behalf of U.S. customers; and

(10) undertake to comply with the provisions of law and rules which form the basis for granting the exemption. 62 FR 47792, 47793, n.8. The terms and conditions vary from order to order depending upon the regulatory structure of the firm's home country. *Id.*

[8] 62 FR 47792–47793. The Commission also authorized NFA to serve as the official custodian for all filings, acknowledgments and records produced pursuant to this undertaking. *Id.*

needed to determine if relief is appropriate for particular firms are similar to those undertaken in the course of fitness checks performed by NFA with respect to applicants under the Act.[9] For example, the Commission previously delegated to NFA the authority to deny, condition, suspend, restrict or revoke the registration of futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors and associated persons of these registrants,[10] and floor brokers and floor traders.[11]

Upon consideration, the Commission believes that NFA can revoke or withdraw a firm's confirmation of Rule 30.10 relief in an efficient and cost-effective manner. As the custodian of all Rule 30.10 filings, NFA has developed an extensive database from which it may identify those firms that no longer maintain valid agency agreements.[12] Accordingly, the Commission directs NFA to identify on an ongoing basis those firms that no longer maintain a valid agreement with a U.S. agent for service of process and to notify those firms and their regulators in writing that their failure to maintain a valid agency agreement will result in the termination of the firms' confirmation of Rule 30.10 relief unless such deficiency is cured within thirty days. Further, the Commission authorizes NFA to revoke, after this thirty days written notice, the confirmation of Rule 30.10 relief for any firm that does not maintain a valid agreement with a U.S. agent for service of process in compliance with Rule 30.5. In addition, any firm seeking to withdraw voluntarily its confirmation of Rule 30.10 relief (or any foreign regulator providing notice that a member or regulatee has ceased business operations) currently sends that information to NFA. The Commission authorizes NFA to withdraw the confirmation of Rule 30.10 relief for any firm that notifies NFA, either directly or through its regulatory authority, of its decision to forfeit such relief and/or to cease business operations.

The Commission is also delegating to NFA the power to revoke confirmation of a firm's Rule 30.10 relief if the firm fails to comply with any of the representations and obligations on which the relief is based. While the Commission is not imposing on NFA the duty to monitor activities of Rule 30.10 firms, NFA should note any non-compliance of which it becomes aware. For example, NFA will know if a Rule 30.10 firm has failed to comply with a representation that it will submit to NFA arbitration. If NFA becomes aware of a firm's failure to comply with a representation or consent contained in its Rule 30.10 petition, other than the failure to maintain a valid U.S. agent for the service of process, NFA should consult with the Commission's Division of Trading and Markets (''Division'') to determine if it is appropriate to modify or terminate the firm's Rule 30.10 relief. After such consultation and the consent of the Division, NFA is authorized to revoke, after thirty days written notice, the confirmation of Rule 30.10 relief for any firm that fails to comply with any of the terms and conditions of such relief outlined in the appropriate Rule 30.10 Order.

[9] *Id.* at 47793.

[10] 50 FR 34885 (August 28, 1985).

[11] 59 FR 38957 (August 1, 1994).

[12] All firms seeking confirmation of Rule 30.10 relief must designate an agent for service of process in accordance with Rule 30.5.

II. Conclusion and Order

The Commission has determined, in accordance with Section 8a(10) of the Act, to authorize NFA to perform the following functions:

(1) To revoke, after thirty days written notice, the confirmation of Rule 30.10 relief for any firm that does not maintain a valid agreement with a U.S. agent for service of process in accordance with Rule 30.5;

(2) To revoke, after consultation with and consent from the Commission's Division of Trading and Markets and after thirty days written notice, the confirmation of Rule 30.10 relief for any firm that fails to any of the other terms or conditions outlined in the appropriate Rule 30.10 Order; and

(3) To withdraw the confirmation of Rule 30.10 relief for any firm that notifies NFA either directly or through its regulatory authority of its decision to forfeit such relief and/or to cease business operations.

NFA shall perform these functions in accordance with the standards established by the Act and the regulations and Commission orders issued thereunder and shall provide the Commission with such summaries and periodic reports as the Commission may determine are necessary for the effective oversight of this program.

These determinations are based upon the Congressional intent expressed in Section 8a(10) of the Act that the Commission have the authority to delegate to NFA any portion of the Commission's registration responsibilities under the Act for purposes of carrying out these responsibilities in the most efficient and cost-effective manner and upon NFA's representations concerning the standards and procedures to be followed and the reports to be generated in administering these functions.

This Order does not, however, authorize NFA to render ''no-action'' positions, exemptions or interpretations with respect to applicable disclosure, reporting, recordkeeping and registration requirements.

Nothing in this Order shall affect the Commission's authority to review NFA's performance of the Commission functions listed above.

NFA is authorized to perform all functions specified herein until such time as the Commission orders otherwise. Nothing in this Order shall prevent the Commission from exercising the authority delegated herein. NFA may submit to the Commission for decision any specific matters that have been delegated to it, and Commission staff will be available to discuss with NFA staff issues relating to the implementation of this Order. Nothing in this Order affects the applicability of previous orders issued by the Commission under Parts 4 and 30.

Issued in Washington, DC, on June 1, 1999 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–14371 Filed 6–7–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of expansion of cancer treatment clinical trials demonstration project.

SUMMARY: This notice is to advise interested parties of an expansion of a demonstration project in which the DoD provides CHAMPUS reimbursement for eligible beneficiaries who receive cancer treatment under approved National Cancer Institute (NCI) clinical trials to include NCI sponsored cancer prevention clinical trials. Participation in these clinical trials will improve TRICARE/CHAMPUS eligible beneficiary access to emerging new therapies that have significant promise for the prevention and successful treatment of cancers. DoD financing of these procedures will assist in meeting clinical trial goals and arrival at conclusions regarding the safety and efficacy of emerging therapies in the prevention and treatment of cancer. At this time, there is insufficient demonstration data for a full evaluation of costs associated with enrollment in clinical trials. Expanding the current

demonstration to provide reimbursement for costs associated with NCI sponsored clinical trials for cancer prevention will augment current patient accruals to clinical trials and allow for data collection in order to perform a comprehensive economic analysis. This demonstration also affects TRICARE, the managed health care program that includes CHAMPUS. This demonstration project, which is under the authority of 10 U.S.C., section 1092, will expire December 31, 1999.

EFFECTIVE DATE: June 21, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Larkin, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, (703) 681–3628.

SUPPLEMENTARY INFORMATION:

A. Background

On January 24, 1996, the Department provided notice in the **Federal Register** (61 FR 1899) of an expansion of an existing demonstration for breast cancer treatment clinical trials to include all cancer treatment clinical trials under approved National Cancer Institute (NCI) clinical trials. The demonstration purpose is to improve beneficiary access to promising new therapies, assist in meeting the National Cancer Institute's clinical trial goals, and arrival at conclusions regarding the safety and efficacy of emerging therapies in the treatment of cancer. The January 24, 1996, notice anticipated the possibility of extending the demonstration.

The NCI trials program is the principal means by which the oncology community has developed clinical evidence for the efficacy of various treatment approaches in cancer therapy. Participating institutions include NCI's network of comprehensive and clinical cancer centers, university and community hospitals and practices, and military treatment facilities. Despite this extensive network which includes the nation's premier medical centers, cure rates for most types of cancer remain disappointing, highlighting the significant effort still required for improvement. The principal means by which advances in therapy will be realized is through application of research to victims of cancer. In support of NCI's efforts to further the science of cancer treatment, the Department expanded its breast cancer demonstration to include all NCI-sponsored phase II and phase III clinical trials. This expanded demonstration will enhance current NCI efforts to determine safety and efficacy of promising cancer therapies by expanding the patient population available for entry into clinical trials and stabilizing the referral base for these clinical activities.

In recognition of the successful partnership with the NCI, the current demonstration is being expanded to allow DoD beneficiaries to participate in NCI sponsored clinical trials in cancer prevention in addition to caner treatment. This expansion of the current demonstration will enhance continued NCI efforts to determine safety and efficacy of promising cancer therapies by expanding the patient population available for entry into clinical trials and stabilizing the referral base for these clinical activities.

While this demonstration provides an exception to current CHAMPUS benefit limitations, the Department hypothesizes that this increased access to innovative cancer prevention therapies will occur at a cost comparable to that which Department has experienced in paying for conventional therapies under the standard CHAMPUS program. Results of this demonstration will provide a framework for determining the scope of DoD's continued participation in the NCI's research efforts.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–14391 Filed 6–7–99; 8:45 am]

BILLING CODE 1001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Panel To Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the first meeting of the Advisory Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction. In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C., Appendix II (1982)], it has been determined that this Advisory Panel meeting concerns matters listed in 5 U.S.C. 552b (c)(1)(1988); accordingly, the bulk of the meeting will be closed to the public. A small portion of the meeting will be open, however, to facilitate public comment.

DATE: June 9, 1999.

ADDRESSES: Room 802, RAND, Suite 800, 1333 H Street, NW, Washington, DC 20005.

PROPOSED SCHEDULE AND AGENDA: The Advisory Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction will meet in closed session from 10:00 a.m. until 4:45 p.m. and from 5:00 p.m. until 5:30 p.m. on June 9, 1999. The meeting will be open to the public from 4:45 p.m. until 5:00 p.m. This meeting will include classified briefings on the threat of domestic WMD terrorist attacks. Time will be allocated as noted above for public comments by individuals or organizations. Due to unexpected requirements to amend the meeting's agenda with classified briefings, the posting of this meeting in the **Federal Register** falls within the normal 15 day notice period.

FOR FURTHER INFORMATION: RAND provides information about this Panel on its web site at http://www.rand.org/organization/nsrd/terrpanel; it can also be reached at (202) 296–5000 extension 5282. Public comment presentations will be limited to two minutes each and must be provided in writing prior to the meeting. Mail written presentations and requests to register to attend the open public session to: Priscilla Schlegel, RAND, 1333 H Street, NW, Washington, DC 20005. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: June 2, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–14393 Filed 6–7–99; 8:45 am]

BILLING CODE 5001–10–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend record systems.

SUMMARY: The Department of the Air Force proposes to amend systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on July 8, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force

Communications and Information Center/INC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rolling at (703) 588–6187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed by the notices as amended, published in their entirety.

Dated: May June 2, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F065 SAFAA A

SYSTEM NAME:

Accounts Receivable *(June 11, 1997, 62 FR 31793).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'F065 AFEDF A'.

SYSTEM NAME:

Delete entry and replace with 'Executive Dining Facility'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Replace 'Mess Number One' with 'Executive Dining Facility'.

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'End of month reports detailing name, items purchased, amount, date, unit address, and duty phone.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Access restricted to authorized personnel. Computer records are password protected and paper records are stored in locked rooms secured by alarm systems (motion detectors).'

RETENTION AND DISPOSAL:

Delete entry and replace with 'These records are destroyed after 4 years after the end of the fiscal year in which account was closed. Computer records are deleted then purged from the system. Paper records are destroyed through shredding, macerating, or burning.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Daily tickets and directories for general officers and SES civilians.'

* * * * *

F065 AFEDF A

SYSTEM NAME:

Executive Dining Facility.

SYSTEM LOCATION:

Office of the Secretary of the Air Force, 1720 Air Force Pentagon, Washington, DC 20330-1720.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Air Force employees authorized to use the Air Force Executive Dining Facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

End of month reports detailing name, items purchased, amount, date, unit address, and duty phone.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by.

PURPOSE(S):

Used to bill members authorized use of the Air Force Executive Dining Facility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in folders/binders as well as computer storage.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Access restricted to authorized personnel. Computer records are password protected and paper records are stored in locked rooms secured by alarm systems (motion detectors).

RETENTION AND DISPOSAL:

These records are destroyed after 4 years after the end of the fiscal year in which account was closed. Computer records are deleted then purged from the system. Paper records are destroyed through shredding, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Assistant to the Secretary of the Air Force, (SAF/AA), 1720 Air Force Pentagon, Washington, DC 20330-1720.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Administrative Assistant to the Secretary of the Air Force, 1720 Air Force Pentagon, Washington, DC 20330-1720.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Administrative Assistant to the Secretary of the Air Force, 1720 Air Force Pentagon, Washington, DC 20330-1720.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Daily tickets and directories for general officers and SES civilians.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F090 AF IG B

SYSTEM NAME:

Inspector General Records *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

STORAGE:

Delete entry and replace with 'Maintained in file folders and in Automated Complaints Tracking System (ACTS) database.'

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by Complainant's name, subject of investigation's name and case number.'

SAFEGUARDS:

Delete entry and replace with 'Records are accessed by custodian of the system of records and by person(s) responsible for maintaining the system of records in the performance of their official duties. These personnel are properly screened and cleared for need-to-know. Records are stored in a locked room protected by cipher lock. Information maintained in ACTS database are protected by computer system software and password.'

*   *   *   *   *

F090 AF IG B

SYSTEM NAME:

Inspector General Records.

SYSTEM LOCATION:

Office of the Inspector General, Office of the Secretary of the Air Force (SAF/IG), 1140 Air Force Pentagon, Washington, DC 20330–1140. Headquarters of major commands and at all levels down to and including Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All those who have registered a complaint, allegation or query with the Inspector General or Base Inspector on matters related to the Department of the Air Force. All senior officials who are subjects of reviews, inquiries, or investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters/transcriptions of complaints, allegations and queries; letters of appointment; reports of reviews, inquiries and investigations with supporting attachments, exhibits and photographs; record of interviews; witness statements; reports of legal review of case files, congressional responses; memoranda; letters and reports of findings and actions taken; letters to complainants and subjects of investigations; letters of rebuttal from subjects of investigations; finance; personnel; administration; adverse information, and technical reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: powers and duties; delegation by, 10 U.S.C. 8020, Inspector General, and E.O. 9397 (SSN).

PURPOSE(S):

Used to insure just, thorough, and timely resolution and response to complaints, allegations or queries, and a means of improving morale, welfare, and efficiency of organizations, units, and personnel by providing an outlet for redress. Used by the Inspector General and Base Inspectors in the resolution of complaints and allegations and responding to queries involving matters concerning the Department of the Air Force and in some instances the Department of Defense. Used in connection with the recommendation/selection/removal or retirement of officers eligible for promotion to or serving in, general officer ranks.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and in Automated Complaints Tracking System (ACTS) database.

RETRIEVABILITY:

Retrieved by Complainant's name, subject of investigation's name and case number.

SAFEGUARDS:

Records are accessed by custodian of the system of records and by person(s) responsible for maintaining the system of records in the performance of their official duties. These personnel are properly screened and cleared for need-to-know. Records are stored in a locked room protected by cipher lock. Information maintained in ACTS database are protected by computer system software and password.

RETENTION AND DISPOSAL:

Retained in office files for two years after year in which case is closed. For senior official case files, retained in office files until two years after the year in which case is closed, or two years after the senior official retires, whichever is later. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

The Inspector General, Office of the Secretary of the Air Force (SAF/IG), 1140 Air Force Pentagon, Washington, DC 20330–1140.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to or visit the Inspector General, Office of the Secretary of the Air Force (SAF/IG), 1140 Air Force Pentagon, Washington, DC 20330–1140.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Inspector General, Office of the Secretary of the Air Force (SAF/IG), 1140 Air Force Pentagon, Washington, DC 20330–1140.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Complainants, inspectors, members of Congress, witnesses and subjects of investigations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 99–14392 Filed 6–7–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend record systems.

SUMMARY: The Defense Logistics Agency proposes to amend two systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on July 8, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to amend four systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the systems of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record systems being amended are set forth below, as amended, published in their entirety.

Dated: June June 2, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S161.60 DLA-I

SYSTEM NAME:

Seizure and Disposition of Property Records *(February 22, 1993, 58 FR 10854).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'S500.42 CAAS'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Any person on property controlled by DLA identified as being in possession of contraband or physical evidence connected with a criminal offense.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'The file includes name, Social Security Number, addresses, telephone numbers and data pertaining to the asset. The file also includes documents pertaining to acquisition, storage and disposition of contraband and physical evidence to include receipts, chain of custody documents, release, and disposition or destruction certificates.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with 'Section 21 of the Internal Security Act 1950 (50 U.S.C. 797, et seq.); DoD Directives 5200.8 and 5105.22; and E.O. 9397 (SSN).'

PURPOSE(S):

Delete 'DLA security personnel' and replace with 'security and police force personnel.'

Delete second paragraph and replace with 'Information is also used to maintain chain of custody on evidence for presentation in court in cases requiring criminal prosecution.'

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by property log number and last name if person has been identified in the particular case; by incident number if property was found on the premises or recovered from a crime scene.'

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Record subject; security personnel; and Federal, state, and local law enforcement agencies.'

* * * * *

S500.42 CAAS

SYSTEM NAME:

Seizure and Disposition of Property Records *(February 22, 1993, 58 FR 10854).*

SYSTEM LOCATION:

Defense Logistics Agency Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person on property controlled by DLA identified as being in possession of contraband or physical evidence connected with a criminal offense.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file includes name, Social Security Number, addresses, telephone numbers and data pertaining to the asset. The file also includes documents pertaining to acquisition, storage and disposition of contraband and physical evidence to include receipts, chain of custody documents, release, and disposition or destruction certificates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 21 of the Internal Security Act 1950 (50 U.S.C. 797, et seq.); DoD Directives 5200.8 and 5105.22; and E.O. 9397 (SSN).

PURPOSE(S):

Information is maintained and used by security and police force personnel to provide accountability for confiscated contraband and acquired physical evidence.

Information is also used to maintain chain of custody on evidence for presentation in court in cases requiring criminal prosecution.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic form.

RETRIEVABILITY:

Retrieved by property log number and last name if person has been identified in the particular case; by incident number if property was found on the premises or recovered from a crime scene.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.

RETENTION AND DISPOSAL:

Destroy 3 years after final action on or disposition of the property and responsibility therefore has been appropriately terminated.

SYSTEM MANAGER(S) AND ADDRESS:

Head of PLFAs who are responsible for investigating suspected criminal acts. Official mailing addresses are published as an appendix to the DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer of the PLFA involved. Official mailing addresses are published as an appendix to the DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer of the PLFA involved. Official mailing addresses are published as an appendix to the DLA's compilation of systems of records notices.

Individuals should provide full name, Social Security Number, current address, and telephone numbers.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing office identification card, and give some verbal information that could be verified from his file.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Record subject; security personnel; and Federal, state, and local law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S161.70 DLA-I

SYSTEM NAME:

Firearms Registration Records *(February 22, 1993, 58 FR 10854).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'S500.43 CAAS'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals required to register personal or Government issue firearms with DLA.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'The file includes name, addresses, social security number, and telephone numbers. The file also includes firearm registration forms, and other documents relating to registration of privately owned firearms.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with 'Section 21 of the Internal Security Act 1950 (50 U.S.C. 797, et seq.); DoD Directives 5200.8 and 5105.22; and E.O. 9397 (SSN).'

PURPOSE(S):

Delete entry and replace with 'Information is used by security officers and police force personnel to ensure proper maintenance and safekeeping of privately owned firearms by personnel residing on DLA controlled premises or who are required to register firearms with DLA. Records may also be used to identify the owner of a particular firearm.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete second paragraph.

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by name or Social Security Number.'

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.'

* * * * *

S500.43 CAAS

SYSTEM NAME:

Firearms Registration Records.

SYSTEM LOCATION:

Defense Logistics Agency Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals required to register personal or Government issue firearms with the Defense Logistics Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file includes name, addresses, Social Security Number, and telephone numbers. The file also includes firearm registration forms, and other documents relating to registration of privately owned firearms.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 21 of the Internal Security Act 1950 (50 U.S.C. 797, et seq.); DoD Directives 5200.8 and 5105.22; and E.O. 9397 (SSN).

PURPOSE(S):

Information is used by security officers and police force personnel to ensure proper maintenance and safekeeping of privately owned firearms by personnel residing on DLA controlled premises or who are required to register firearms with DLA. Records may also be used to identify the owner of a particular firearm.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic form.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.

RETENTION AND DISPOSAL:

Destroy 6 months after cancellation of registration or departure of the registrant from the jurisdiction of the registering activity.

SYSTEM MANAGER(S) AND ADDRESS:

Security officers of the DLA PLFAs. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer of the PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual must provide full name, social security number, home address, and location of DLA installation where firearm was registered.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer of the PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individuals should provide information that contains the full name, current address and telephone numbers of the individual. For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing office identification card, and give some verbal information that can be verified from his file.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Record subject and security and police force personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–14394 Filed 6–7–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Supplemental Environmental Impact Statement (EIS) for the San Luis Rey River Reauthorization Study; City of Oceanside, San Diego County, CA

AGENCY: U.S. Army Corps of Engineers (Corps), Los Angeles District, DoD.

ACTION: Notice of intent.

SUMMARY: The Los Angeles District intends to prepare a Supplemental EIS to research the proposed reauthorization study of the on-going flood control project on the San Luis Rey River. The study area is located in the City of Oceanside, in the Northwest portion of San Diego County, California. The study area is comprised of the lower 7.2 miles of the river, from the Pacific Ocean to the College Boulevard Bridge. The Final Environmental Impact Statement (FEIS) was dated September 25, 1970.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. David Compas, U.S. Army Corps of Engineers, Attn.: CESPL–PD–RN, P.O. Box 532711, Los Angeles, California, 90053–2325; phone (213) 452–3850; E-mail: dcompas@spl.usace.army.mil.

SUPPLEMENTARY INFORMATION: To prepare for the preparation of the EIS, the Corps will be conducting a public scoping meeting on 16 June 1999, from 6:30 to 8:30 P.M., in the Civic Center Community Rooms located at 330 North Coast Highway, Oceanside, California. This scoping meeting will be held to solicit public input on significant environmental issues associated with the proposed reauthorization. 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, and alternatives that should be addressed in the analysis. Individuals and agencies may offer information or data relevant to the proposed study and provide comments by attending the public scoping meeting, or by mailing the information within thirty (30) days to Mr. David Compas. Requests to be placed on the mailing list for announcements and the Draft EIS also should be sent to Mr. Compas.

Alternatives

A full array of alternatives to the proposed action will be developed for analyses. A survey of the existing flood control project is being conducted to determine the present level of protection. The proposed reauthorization could include the determined protection level; or 100 year, or 150 year, or 200 year protection; and the no action plan for detailed analysis in the National Environmental Policy Act document.

John P. Carroll,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 99–14487 Filed 6–7–99; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend record system.

SUMMARY: The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on July 8, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The record system being amended is set forth below, as amended, published in its entirety.

Dated: June 2, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01301–1

SYSTEM NAME:

Judge Advocate General Reporting Questionnaire *(February 22, 1993, 58 FR 10712).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Judge Advocate General (Code 61), Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington, DC 20374–5066.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington, DC 20374–5066.'

* * * * *

N01301–1

SYSTEM NAME:

Judge Advocate General Reporting Questionnaire.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 61), Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington, DC 20374–5066.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers reporting for duty in the Office of the Judge Advocate General.

CATEGOREIS OF RECORDS IN THE SYSTEM:

Name, rank, branch of service, date of rank, date reported, previous duty station, date detached, Social Security Number, designator, division assignment, room number, office phone, spouse's name, number of dependents, spouse's employment, dependents' names and ages, home telephone number, home address, name of officer relieving, billet sequence code, unit identification code, place of birth, date of birth, security clearance, basis, completed by and date of completion.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 806 and E.O. 9397 (SSN).

PURPOSE(S):

To assist the Judge Advocate General in assignment of officers within the Office of the Judge Advocate General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are kept in a folder alphabetically and are stored in a file cabinet.

RETRIEVABILITY:

Retrieved by officer's name.

SAFEGUARDS:

Records are maintained in a file cabinet under the control of authorized personnel during working hours; and the office space in which the cabinet is located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are destroyed when the officer is transferred from the Office of the Judge Advocate General.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington, DC 20374–5066.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington, DC 20374–5066.

The request should contain the full name of the individual concerned and must be signed. For personal visits, the requesting individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington, DC 20374–5066.

The request should contain the full name of the individual concerned and must be signed. For personal visits, the requesting individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information submitted by the officer upon his/her reporting for duty in the Office of the Judge Advocate General.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05810–3

SYSTEM NAME:

Appellate Case Tracking System (ACTS) *(February 22, 1993, 58 FR 10774).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N05814–6'.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All individuals who have their appellate case reviewed by the Navy-Marine Corps Court of Criminal Appeals and/or the Court of Appeals for the Armed Forces.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'To track the status of courts-martial cases appealed to the Navy-Marine Corps Court of Criminal Appeals for the Armed Forces. The system will also be used by the officials and employees of the Department of the Navy to provide management and statistical information to governmental, public, and private organizations and individuals.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.'

* * * * *

N05814–6

SYSTEM NAME:

Appellate Case Tracking System (ACTS).

SYSTEM LOCATION:

Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have their appellate case reviewed by the Navy-Marine Corps Court of Criminal Appeals and/or the Court of Appeals for the Armed Forces.

CATEGORIES OF RECORDS IN THE SYSTEM:

Navy appellate case records; additional Navy appellate case information records; and historical Navy appellate case records from 1986 to present. Files contain personal information such as name, rank, Social Security Number, etc., and specific information with regard to the Navy appellate cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 866, 867; and E.O. 9397 (SSN).

PURPOSE(S):

To track the status of courts-martial cases appealed to the Navy-Marine Corps Court of Criminal Appeals for the Armed Forces. The system will also be used by the officials and employees of the Department of the Navy to provide management and statistical information to governmental, public, and private organizations and individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disk, magnetic tape, computers, and on hard copy forms.

RETRIEVABILITY:

ACTS users obtain information by means of a query or a request for a standard report. Data may be indexed by any data item although the primary search keys are the name, Social Security Number, or the Navy-Marine Corps Court of Criminal Appeals docket number.

SAFEGUARDS:

Access to building is protected by uniformed guards requiring positive identification for admission after hours. The system is protected by the following software features: User account number and password sign-on, data base access authority, data set authority for add and delete, and data item authority for list and update.

RETENTION AND DISPOSAL:

An individual's record is retained on disk and will be available for on-line access for twenty-five years after the close of the individual's case. The record will be purged to magnetic tape after twenty-five years and will be utilized in a batch processing mode.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

The request should contain full name, Social Security Number, and address of the individual concerned and should be signed.

Personal visits may be made to the Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047. Individuals making such visits should be able to provide some acceptable identification, e.g., Armed Forces' I.D. card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

The request should contain full name, Social Security Number, and address of the individual concerned and should be signed.

Personal visits may be made to the Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047. Individuals making such visits should be able to provide some acceptable identification, e.g., Armed Forces' I.D. card, driver's license, etc.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual's record of trial and supporting documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05815–1

SYSTEM NAME:

Record of Trial of Special Courts-Martial Resulting in Bad Conduct Discharges or Concerning Officers *(February 22, 1993, 58 FR 10778).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with ''N05813–5''.

SYSTEM LOCATION:

Delete entry and replace with ''Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 865; and 10 U.S.C. 866(b).'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.''

* * * * *

N05813–5

SYSTEM NAME:

Record of Trial of Special Courts-Martial Resulting in Bad Conduct Discharges or Concerning Officers.

SYSTEM LOCATION:

Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps personnel tried by special courts-martial and awarded a bad conduct discharge, and all Navy and Marine Corps commissioned officers tried by special courts-martial.

CATEGORIES OF RECORDS IN THE SYSTEM:

Special courts-martial which resulted in a bad conduct discharge, or involving commissioned officers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 865; and 10 U.S.C. 866(b).

PURPOSE(S):

To complete appellate review as required under 10 U.S.C. 866(b) and provide central repository accessible to the public who may request information concerning the appellate review or want copies of individual public records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The ''Blanket Routine Uses'' that appear at the beginning of the Navy's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Files are kept by Navy courts-martial number and each case is cross-referenced by an index card which is filed in alphabetical order according to the last name of the individual concerned.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in office for three years and then forwarded to the Washington Federal Records Center, 4205 Suitland Road, Suitland, MD 20409 for storage.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Division Director, Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

The request should contain the full name and address.

Personal visits may be made to the Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces' identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Division Director, Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

The request should contain the full name and address.

Personal visits may be made to the Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces' identification card, driver's license, etc.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Special courts-martial proceedings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05814–1

SYSTEM NAME:

Summary and Non-BCD Courts/ Martial Records (February 22, 1993, 58 FR 10777).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with ''N05813–6''.

SYSTEM NAME:

Delete entry and replace with ''Summary and Non-BCD Special Courts-Martial Records of Trial.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 716 Sicard Street SE, Suite 1000, Washington Navy Yard, Washington, DC 20374–5047 or appropriate officer having supervisory authority over the naval activity which convened the court-martial.''

* * * * *

N05813–6

SYSTEM NAME:

Summary and Non-BCD Special Courts-Martial Records of Trial.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy, Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps enlisted personnel tried by summary courts-martial or by special courts-martial which did not result in a bad conduct discharge (BCD).

CATEGORIES OF RECORDS IN THE SYSTEM:

Summary court-martial and non-BCD special court-martial records of trail.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and 10 U.S.C. 865.

PURPOSE(S):

To complete appellate review as required under 10 U.S.C. 864(a) and provide repositories accessible to the public who may request information concerning the appellate review or want copies of individual public records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The ''Blanket Routine Uses'' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Type of courts-martial, date, command which convened the courts-martial, name of individual defendant, and command which completed the supervisory authority's action.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the storage devices in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are retained for two years after final action by officers having supervisory authority over sore activities, and for three months by officers having supervisory authority over fleet activities. At the termination of the appropriate retention period, records are forwarded for storage to the National Personnel Records Center (Military Personnel Records), GSA, 9700 Page Avenue, St. Louis, MO 63132–5100. Records are destroyed 15 years after final action has been taken.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 716 Sicard Street SE, Suite 1000, Washington Navy Yard, Washington, DC 20374–5047 or appropriate officer having supervisory authority over the naval activity which convened the court-martial.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Division Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity. Office of the Judge Advocate General, Department of the Navy, 716 Sicard Street SE, Suite 1000, Washington Navy Yard, Washington, DC 20374–5047.

The request should include the full name of the individual concerned, the type of courts-martial (summary or special), the name of the command which held the courts-martial, and the date of the courts-martial proceedings. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Division Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, 716 Sicard Street SE, Suite 1000, Washington Navy Yard, Washington, DC 20374–5047.

The request should include the full name of the individual concerned, the type of courts-martial (summary or special), the name of the command which held the courts-martial, and the date of the courts-martial proceedings. Written requests must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Proceedings of summary courts-martial and special courts-martial which did not result in a bad conduct discharge.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05819–2

SYSTEM NAME:

Artile 73 Petitions for New Trial (February 22, 1993, 58 FR 10780).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with ''NO5814–5''.

SYSTEM LOCATION:

Delete entry and replace with ''Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, 716

Sicard Street SE, Suite 1000, Washington Navy Yard, Washington, DC 20374–5047.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Navy and Marine Corps personnel who submitted petitions for new trial to the Judge Advocate General within two years after approval of their courts-martial sentence by the convening authority but after their case had been reviewed by the Navy-Marine Corps Court of Criminal Appeals or the Court of Appeals for the Armed Forces, if appropriate.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records are maintained in the office for four years and then destroyed.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.''

* * * * *

N05814–5

SYSTEM NAME:

Article 73 Petitions for New Trial.

SYSTEM LOCATION:

Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps personnel who submitted petitions for new trial to the Judge Advocate General within two years after approval of their courts-martial sentence by the convening authority but after their case had been reviewed by the Navy-Marine Corps Court of Criminal Appeals or the Court of Appeals for the Armed Forces, if appropriate.

CATEGORIES OF RECORDS IN THE SYSTEM:

The petition for new trial, the forwarding endorsements if the petition was submitted via the chain of command, and the action of the Judge Advocate General on the petition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Article 73, Uniform Code of Military Justice, (10 U.S.C. 873).

PURPOSE(S):

To provide a record of individual petitions in order to answer inquiries from the individual concerned and to provide additional advice to commands involved when and if such petitions are granted.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The ''Blanket Routine Uses'' that appear at the beginning of the Navy's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Files are kept in alphabetical order according to the last name of the individual concerned.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in the office for four years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the family housing office at the military installation that services them.

Request should contain full name, Social Security Number and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the family housing office at the military installation that services them.

Request should contain full name, Social Security Number and be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The records are comprised of the following source materials: (1) Petitions for new trial; (2) forwarding endorsements thereon by petitioner's commanding officer and convening/supervisory authorities of courts-martial (above information is omitted if petitioner is former service member); and (3) action of the Judge Advocate General on petitions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N11101–2

SYSTEM NAME:

Family Housing Requirements Survey Record System (May 7, 1999, 64 FR 24619).

CHANGE:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Replace first sentence with 'Naval Facilities Engineering Command, 1322 Patterson Avenue SE, Suite 1000, Washington Navy Yard, Washington, DC 20374–5056.'

* * * * *

N11101–2

SYSTEM NAME:

Family Housing Requirements Survey Record System.

SYSTEM LOCATION:

Military installations with family housing offices. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Office and enlisted personnel and only key and essential civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Non-individual oriented input documents that reflect local housing assets; family housing survey questionnaires indicating family size, individual preference for housing, housing cost, and indication as to suitability of housing for need for individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To determine the housing requirement for the location to support proposed family housing construction, leasing, mobile home spaces and other military construction programs submitted for OSD support and Congressional approval.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated and paper records.

RETRIEVABILITY:

Social Security Number.

SAFEGUARDS:

Housing files used solely within housing office; tape files used solely within data processing system; and protected by the military installation's security measures. Automated files are password protected.

RETENTION AND DISPOSAL:

Held three years and destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Naval Facilities Engineering Command, 1322 Patterson Avenue SE, Suite 100, Washington Navy Yard, Washington, DC 20374–5065. Subordinate record holders of questionnaires: Family housing office at military installation.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the family housing office at the military installation that services them.

Request should contain full name, Social Security Number and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the family housing office at the military installation that services them.

Request should contain full name, Social Security Number and be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–14395 Filed 6–7–99; 8:45 am]
BILLING CODE 5001–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 9, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat__Sherrill@ed.gov,* or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 3, 1999.

Patrick J. Sherrill,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Program Evaluation of the European Community/United States of America (EC/US) Joint Consortia for Cooperation in Higher Education and Vocational Education.

Frequency: One time.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Burden:

Responses: 680.

Burden Hours: 340.

Abstract: Program evaluation of the 1996, 1997, and 1998 fiscal year projects in the EC/US Joint Consortia Program. The evaluation will gauge the educational quality and cost effectiveness of the student exchanges and curriculum development programs and inform future grant competitions.

[FR Doc. 99–14478 Filed 6–7–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 8, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address Pat—Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: June 2, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary:

Type of Review: New.

Title: Evaluation of the Public Charter Schools Program: Year 1 Data Collection Instruments.

Frequency: Annually.

Affected Public: Federal Government; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 358
Burden Hours: 229

Abstract: The evaluation of the Public Charter Schools Program (PCSP) is the first national study of federal support for charter schools. The contractor, SRI International, will gather data on charter school policies and practices at the state, chartering agency, and charter school levels. The study examines the use of PCSP funds at these levels, assesses the impact of flexibility provisions in states' charter school legislation, and assesses the effect of charter schools on student performance. Respondents include federal PCSP staff, state charter school coordinators, representatives of chartering agencies and charter schools, and parents.

[FR Doc. 99–14443 Filed 6–7–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Monticello Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Monticello. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE AND TIME: Wednesday, June 16, 1999, 7:00 p.m.–9:00 p.m.

ADDRESSES: San Juan County Courthouse, 2nd Floor Conference Room, 117 South Main, Monticello, Utah 84535.

FOR FURTHER INFORMATION CONTACT: Audrey Berry, Public Affairs Specialist, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502, (303) 248–7727.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to advise DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. The Board will receive updates on the repository status.
2. The Board will discuss the Monticello surface and groundwater.
3. The Committee will receive updates and reports from subcommittees on local training and hiring, health and safety, and future land use.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Audrey Berry's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Audrey Berry, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502, or by calling her at (303) 248–7727.

Issued at Washington, DC, on June 2, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–14450 Filed 6–7–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. FE C&E 99–9 and C&E 99–10—Certification Notice—173]

Notice of Filings of Coal Capability of Sumas Energy 2, Inc. and Green Country Energy Project, L.L.C., Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Sumas Energy 2, Inc. and Green Country Energy, L.L.C. submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of the proposed new baseload powerplants have filed a self-certification in acccordance with section 201(d).

Owner: Sumas Energy 2, Inc. (C&E 99–9).

Operator: Sumas Energy 2, Inc.

Location: Sumas, Washington.

Plant Configuration: Combined-cycle.

Capacity: 720 megawatts.

Fuel: Natural gas.

Purchasing Entities: Canadian wholesale purchasers.

In-Service Date: On or before December, 2001.

Owner: Green Country Energy Project, L.L.C. (C&E 99–10).

Operator: Subsidiary of Cogentrix Energy, Inc.

Location: Jenks, Oklahoma.

Plant Configuration: Combined-cycle.

Capacity: 800 megawatts.

Fuel: Natural gas.

Purchasing Entities: Power marketer.

In-Service Date: June 1, 2001.

Issued in Washington, D.C., June 1, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–14476 Filed 6–7–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–312–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 2, 1999.

Take notice that on May 26, 1999, Algonquin Gas Transmission Company (Algonquin), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets to be effective July 1, 1999:

Sixth Revised Sheet No. 600

Original Sheet No. 716
Sheet Nos. 717–798

Algonquin states that the purpose of this filing is to set forth in its tariff, the specific types of discounts that Algonquin may agree to enter into with its shippers.

Algonquin states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14418 Filed 6–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6759–016]

Aquenergy Systems, Inc.; Notice of Site Visit to Apalache Hydroelectric Project

June 2, 1999.

Take notice that Commission staff will hold a site visit with Aquenergy Systems, Inc., licensee for the constructed Apalache Hydroelectric Project, FERC No. 6759–016. The project is located on the South Tyger River off Highway 357 in Greer, South Carolina 29651. The site visit will be held on Wednesday, June 16, 1999, from 11:30 a.m. to approximately 2:00 p.m.

The purpose of this visit is to enable Commission staff responsible for preparing the environmental assessment (EA) of the proposed surrender of license to view the existing dam, reservoir, and nearby areas. All interested individuals, organizations, and agencies are invited to attend the site visit.

Participants will meet at the parking lot adjacent to the project powerhouse, near the old Apalache Mill. Participants should provide their transportation to and from the site.

If you have any questions concerning this matter, please contact Jim Haimes, EA Coordinator for the Commission, at (202) 219–2780 or Beth Harris, Project Engineer for the licensee, in Greenville, South Carolina, at (864) 281–9630.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14420 Filed 6–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2674]

Green Mountain Power Corporation; Notice of Authorization for Continued Project Operation

June 2, 1999.

On May 30, 1997, Green Mountain Power Corporation, licensee for the Vergennes Project No. 2674, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2674 is located on Otter Creek in Addison County, Vermont.

The license for Project No. 2674 was issued for a period ending May 31, 1999. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2674 is issued to Green Mountain Power Corporation for a period effective June 1, 1999, through May 31, 2000, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before May 31, 2000, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Green Mountain Power Corporation is authorized to continue operation of the Vergennes Project No. 2674 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14422 Filed 6–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2778]

Idaho Power Company; Notice of Authorization for Continued Project Operation

June 2, 1999.

On May 29, 1997, Idaho Power Company, licensee for the Shoshone Falls Project No. 2778, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2778 is located on the Snake River in Jerome and Twin Falls Counties, Idaho.

The license for Project No. 2778 was issued for a period ending May 31, 1999. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part licensee expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent licensee, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2778 is issued to Idaho Power Company for a period effective June 1, 1999, through May 31, 2000, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before May 31, 2000, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Idaho Power Company is authorized to continue operation of the Shoshone Falls Project No. 2778 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14421 Filed 6–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–314–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 2, 1999.

Take notice that on May 27, 1999, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective July 1, 1999:

Fifteenth Revised Sheet Number 156
Fourteenth Revised Sheet Number 157

Northern Border proposes to decrease the Maximum Rate from 3.716 cents per 100 Dekatherm-Miles to 3.643 cents per 100 Dekatherm-Miles and to increase the Minimum Revenue Credit from 1.463 cents per 100 Dekatherm-Miles to 1.527 cents per 100 Dekatherm-Miles. The revised Maximum Rate and Minimum Revenue Credit are being filed in accordance with Northern Border's Tariff provisions under Rate Schedule IT–1.

The proposed changes do not result in a change in Northern Border's total revenue requirement.

Northern Border Copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14416 Filed 6–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–313–000]

Southern Natural Gas Company; Notice of Cost Recovery Filing

June 2, 1999.

Take notice that on May 28, 1999, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of July 1, 1999:

Forty-Seventh Revised Sheet No. 14
Thirty-Third Revised Sheet No. 14a
Sixty-Eighth Revised Sheet No. 15
Thirty-Ninth Revised Sheet No. 15a
Forty-Seventh Revised Sheet No. 16
Thirty-Third Revised Sheet No. 16a
Sixty-Eighth Revised Sheet No. 17
Thirty-Ninth Revised Sheet No. 17a

Southern sets forth in the filing its revised demand surcharges for the recovery of Order No. 636 transition costs associated with Southern LNG Inc. from the period February 1, 1999 through April 30, 1999. These costs have arisen as a direct result of restructuring under Order No. 636.

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http;//www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 99–14417 Filed 6–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–311–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 2, 1999.

Take notice that on May 26, 1999, Texas Eastern Transmission Corporation (Texas Eastern), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to be effective July 1, 1999:

Third Revised Sheet No. 430
Original Sheet No. 682
Sheet Nos. 683–699

Texas Eastern states that the purpose of this filing is to set forth in its tariff the specific types of discounts that Texas Eastern may agree to enter into with its shippers.

Texas Eastern states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14419 Filed 6–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1969–001, et al.]

Entergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

May 28, 1999.

Take notice that the following filings have been made with the Commission:

1. Entergy Services, Inc.

[Docket No. ER99–1969–001]

Take notice that on May 24, 1999, Entergy Services, Inc., as agent and on behalf of the Entergy Operating Companies, filed a compliance filing adopting NERC's revised interim procedures accepted for filing in TLR Order II. This was pursuant to North American Electric Reliability Council, et al., 87 FERC ¶ 61,160 (1999) (TLR Order II).

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Company, et al. and Montaup Electric Company, et al.

[Docket No. EC99–70–000]

Take notice that on May 26, 1999, New England Power Company, *et al.* and Montaup Electric Company, *et al.* filed a Rate Plan Filing in Support of Merger submitted to the Rhode Island Public Utilities Commission on May 20, 1999. The Rate Plan Filing in Support of Merger should be made part of Exhibit G to the Joint Application filed with the Federal Energy Regulatory Commission on May 5, 1999 in the above-referenced proceeding.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power Corporation

[Docket Nos. ER89–627–003 and ER91–252–003]

Take notice that on May 24, 1999, Florida Power Corporation tendered a refund report related to Rate Limitation Refunds for Calendar Year 1998 to four of its full requirements customers.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Virginia Electric and Power Company

[Docket No. ER99–1986–001]

Take notice that on May 24, 1999, Virginia Electric and Power Company filed a compliance filing pursuant to the Commission's order issued May 12, 1999 in Docket Nos. EL98–52–000, *et al.*

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Western Resources, Inc.

[Docket No. ER99–1998–001]

Take notice that on May 24, 1999, Western Resources, Inc. filed a compliance filing pursuant to the Commission's May 12, 1999 order in Docket No. EL98–52–000, *et al.*

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Company Services, Inc.

[Docket No. ER99–2000–001]

Take notice that on May 24, 1999, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (Southern Companies) submitted, under protest, a filing in compliance with the Commission's order issued May 12, 1999 in Docket Nos. EL98–52–000, *et al.*

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power Corporation, Florida Power & Light Company, Tampa Electric Company

[Docket No. ER99–2003–001]

Take notice that on May 24, 1999, Florida Power Corporation, Florida Power & Light Company and Tampa Electric Company (together, the ''Florida Utilities'') tendered for filing a compliance filing pursuant to the Commission's May 12, 1999 order issued in Docket Nos. EL98–52–000, *et al.*

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. PJM Interconnection, L.L.C.

[Docket No. ER99–2010–001]

Take notice that on May 24, 1999, PJM Interconnection, L.L.C. (PJM) tendered for filing a compliance filing pursuant to the Commission's May 12, 1999 order issued in Docket Nos. EL98–52–000, *et al.*

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Duke Energy Corporation

[Docket No. ER99–2011–001]

Take notice that on May 24, 1999, Duke Energy Corporation (Duke) tendered for filing a compliance filing in the above-referenced proceeding pursuant to the Commission's May 12, 1999 order issued in Docket No. EL98–52–000, *et al.*

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of Oklahoma and Southwestern Electric Power Company

[Docket No. ER99–2035–001]

Take notice that on May 24, 1999, the Public Service Company of Oklahoma and Southwestern Electric Power Company submitted a filing in compliance with the Commission's May 12, 1999 order issued in Docket Nos. EL98–52–000, *et al.*

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Southwest Power Pool, Inc.

[Docket No. ER99–2038–001]

Take notice that on May 24, 1999, Southwest Power Pool, Inc. (SPP) tendered for filing a compliance filing pursuant to the Commission's May 12, 1999 order issued in Docket Nos. EL98–52–000, *et al.*

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. The United Illuminating Company

[Docket No. ER99–2040–000]

Take notice that on May 24, 1999, The United Illuminating Company tendered for filing its response to the Commission's May 12, 1999 order in FERC Docket Nos. EL98–52–000, *et al.*, North American Reliability Council.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Alliant Energy Corporate Services, Inc

[Docket No. ER99–2797–000]

Take notice that on May 24, 1999, Alliant Energy Corporate Services, Inc., tendered for filing an amendment in Docket No. ER99–2797–000. Alliant Energy Corporate Services, Inc., is amending that filing to provide notice that two executed Service Agreements for point-to-point transmission service were filed in that Docket. One agreement was for short-term firm point-to-point transmission service. The other agreement was for non-firm point-to-point transmission service. Both agreements were executed by The Energy Authority, Inc., and Alliant Energy Corporate Services, Inc.

Alliant Energy Corporate Services, Inc., requests an effective date of April 26, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Niagara Mohawk Power Corporation

[Docket No. ER99–3017–000]

Take notice that on May 24, 1999, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission executed a form Service Agreement between NMPC and Duke Solutions, Inc., (Purchaser). The Service Agreement specifies that the Purchaser has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and the Purchaser to enter into separately scheduled transactions under which NMPC will sell to the Purchaser capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence for the Purchaser.

NMPC is (a) generally requesting an effective date of April 21, 1999, for the agreement, and (b) requesting waiver of the Commission's notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service

Commission, and the companies included in a Service List enclosed with the filing.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Niagara Mohawk Power Corporation

[Docket No. ER99–3018–000]

Take notice that on May 24, 1999, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission executed a form Service Agreement between NMPC and Enserch Energy Services, Inc., (Purchaser). The Service Agreement specifies that the Purchaser has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and the Purchaser to enter into separately scheduled transactions under which NMPC will sell to the Purchaser capacity and/or energy as the parties may mutually agree.

NMPC is (a) generally requesting an effective date of May 1, 1999, for the agreement, and (b) requesting waiver of the Commission's notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission, and the companies included in a Service List enclosed with the filing.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corporation

[Docket No. ER99–3019–000]

Take notice that on May 24, 1999, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission executed form Service Agreements between NMPC and multiple parties (Purchasers). The Service Agreements specify that the Purchasers have signed on to and have agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and the Purchasers to enter into separately scheduled transactions under which NMPC will sell to the Purchasers capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence for each Purchaser.

NMPC is (a) generally requesting an effective date of May 1, 1999, for the agreements, and (b) requesting waiver of the Commission's notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission, and the companies included in a Service List enclosed with the filing.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Avista Corporation

[Docket No. ER99–3020–000]

Take notice that on May 24, 1999, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Part 35 of the Commission Rules and Regulations, an executed Service Agreement under Avista Corporation's FERC Electric Tariff First Revised Volume No. 9, with PacifiCorp Power Marketing, Inc.

Avista Corporation requests waiver of the prior notice requirement and that the Service Agreement be accepted for filing effective May 1, 1999.

Copies of this filing have been served upon the PacifiCorp Power Marketing, Inc.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Western Resources, Inc.

[Docket No. ER99–3021–000]

Take notice that on May 24, 1999, Western Resources, Inc., tendered for filing two long-term firm transmission agreements between Western Resources and the Cities of Fredonia and Neodesha, Kansas. Western Resources states that the purpose of the agreements is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission.

The agreements are proposed to become effective June 1, 1999.

Copies of the filing were served upon the Cities of Fredonia and Neodesha, Kansas, and the Kansas Corporation Commission.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Indeck Pepperell Power Associates Inc.

[Docket No. ER99–3022–000]

Take notice that on May 24, 1999, Indeck Pepperell Power Associates, Inc. (Indeck Pepperell), tendered for filing with the Federal Energy Regulatory Commission a Power Purchase and Sale Agreement (Service Agreement) between Indeck Pepperell and New Energy Ventures, Inc. (NEV) dated May 14, 1999, for service under Rate Schedule FERC No. 1.

Indeck Pepperell requests that the Service Agreement be made effective as of May 21, 1999.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Public Service Company of Colorado

[Docket No. ER99–3025–000]

Take notice that on May 21, 1999, Public Service Company of Colorado (PSCo), tendered for filing a Rate Schedule, Temporary Purchases of Electricity from Non-QF Small Independent Power Producers, under which PSCo may purchase energy or capacity and energy from small independent power producers meeting certain specified requirements.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Western Resources, Inc.

[Docket No. ER99–3026–000]

Take notice that on May 24, 1999, Western Resources, Inc. (Western Resources), tendered for filing a proposed change in its Rate Schedule FERC No. 264 and to Kansas Gas and Electric's (KGE) Rate Schedule FERC No. 183. Western Resources states that the change is in accordance with its Electric Power, Transmission and Service Contract with Kansas Electric Power Cooperative (KEPCo) and further that the proposed change for KGE is in accordance with the Electric Power, Transmission and Service contract between KGE and KEPCo. Revised Exhibits B set forth Nominated Capacities for transmission, distribution and dispatch service for the contract year beginning June 1, 1999 and for the four subsequent contract years, pursuant to Article IV, Section 4.1 of Rate Schedule FERC Nos. 264 and 183. Revised Exhibits C set forth KEPCO's Nominated Capacities for the Points of Interconnection, pursuant to Article IV, Section 4.1 of Rate Schedule FERC Nos. 264 and 183. Revised Exhibits D set forth KEPCo's load forecast and KEPCo's Capacity Resources intended to provide power and energy to meet the forecast requirements for ten years into the future, pursuant to Article V, Section 5.1 of Rate Schedule FERC Nos. 264 and 183.

Copies of the filing were served upon Kansas Electric Power Cooperative, Inc., and the Kansas Corporation Commission.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–3027–000]

Take notice that on May 24, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 56 to add Florida Power & Light Company and FPL Energy Power Marketing, Inc., to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreement is May 21, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Arizona Public Service Company

[Docket No. ER99–3028–000]

Take notice that on May 24, 1999, Arizona Public Service Company (APS), tendered for filing a revised Contract Demand Exhibit for the Bureau of Indian Affairs (BIA) on behalf of San Carlos Indian Irrigation Project (SCIP) applicable under the APS–FERC Rate Schedule No. 201.

Current rate levels are unaffected, and revenue levels will decrease from those currently being assessed, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

Copies of this filing have been served on the BIA and the Arizona Corporation Commission.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Central Hudson Gas and Electric Corporation

[Docket No. ER99–3029–000]

Take notice that on May 24, 1999, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and TransAlta Energy Marketing (U.S.) Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890-000.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Duke Energy Corporation

[Docket No. ER99–3030–000]

Take notice that on May 24, 1999, Duke Energy Corporation (Duke), tendered for filing a compliance filing in the above-referenced docket involving transmission loading relief procedures.

Duke states that a copy has been served on the Service List in this proceeding.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Duke Energy Corporation

[Docket No. ER99–3031–000]

Take notice that on May 24, 1999, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with West Penn Power d/b/a Allegheny Energy, for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective upon acceptance by the Commission.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Duquesne Light Company

[Docket No. ER99–3032–000]

Take notice that on May 24, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) an executed Service Agreement at Market-Based Rates with Enron Power Marketing, Inc. (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of August 24, 1998.

Copies of this filing were served upon Customer.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Complete Energy Services, Inc.

[Docket No. ER99–3033–000]

Take notice that on May 24, 1999, Complete Energy Services, Inc. (Complete), petitioned the Commission for acceptance of Complete Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Complete intends to engage in wholesale electric power and energy purchases and sales as a marketer. Complete is not in the business of generating or transmitting electric power.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://

www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14471 Filed 6–7–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2028–000, et al.]

PJM Interconnection, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

June 1, 1999.

Take notice that the following filings have been made with the Commission:

1. PJM Interconnection, L.L.C.

[Docket No. ER99–2028–000]

Take notice that on May 25, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing an amendment to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., in compliance with the Commission's order in PJM Interconnection, L.L.C., 87 FERC ¶ 61,054 (1999), concerning Fixed Transmission Rights auctions.

PJM requests an effective date of April 13, 1999, for the amendment.

Copies of this filing were served upon each entity on the official service list compiled by the Secretary in Docket No. ER99–2028–000, all PJM Members and the state electric regulatory commissions in the PJM Control Area.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket Nos. ER99–237–003 and ER96–58–004]

Take notice that on May 26, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company tendered for filing a compliance filing regarding Amendment No. 2, to the Allegheny Power Pro Forma Open Access Transmission Tariff. This filing was intended to comply with the Commission's order issued on April 6, 1999 in Docket Nos. ER99–58–002 and ER99–237–001. Allegheny Power Service Corporation submitted an Amended Filing, which fills in certain information about effective dates of Transmission Service Customers' contracts, omitted from the Compliance Filing.

Copies of the amended filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Cleco Corporation

[Docket No. ER99–2033–001]

Take notice that on May 25, 1999, Cleco Corporation (Cleco), tendered for filing a notice that it intends to comply with the NERC interim TLR procedures which the Commission accepted on May 12, 1999 in EL98–52–000.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Astoria Gas Turbine Power LLC, Arthur Kill Power LLC, Huntley Power LLC, and Dunkirk Power LLC

[Docket Nos. ER99–2160–002, ER99–2161–001, ER99–2162–001, ER99–2168–001]

Take notice that on May 25, 1999, Astoria Gas Turbine Power LLC, Arthur Kill Power LLC, Huntley Power LLC, and Dunkirk Power LLC made compliance filings in accordance with the order conditionally accepting their rate filings in Rocky Road Power, LLC et al., 87 FERC ¶ 61,163 (1999).

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket No. ER99–3034–000]

Take notice that on May 25, 1999, Public Service Company of New Mexico (PNM), tendered for filing a mutual netting/close-out agreement between PNM and El Paso Power Services Company. PNM requested waiver of the Commission's notice requirement so that service under the PNM/El Paso netting agreement may be effective as of May 1, 1999.

Copies of the filing were served on El Paso and the New Mexico Public Regulation Commission.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER99–3035–000]

Take notice that on May 25, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with PP&L Energy Plus (Energy Plus) under the NU System Companies' Sale for Resale Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to Energy Plus.

NUSCO requests that the Service Agreement become effective June 1, 1999.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3036–000]

Take notice that on May 25, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3037–000]

Take notice that on May 25, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Indianapolis Power & Light Company

[Docket No. ER99–3038–000]

Take notice that on May 25, 1999, Indianapolis Power & Light Company (IPL), tendered for filing an interchange agreement between IPL and Dayton Power & Light Company (Dayton P&L).

Copies of this filing were served on Dayton P&L, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER99–3039–000]

Take notice that on May 25, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's Bid Process Supplier to a point where Niagara Mohawk's transmission system connects to its retail distribution system West of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of May 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Indiana Michigan Power Company

[Docket No. ER99–3040–000]

Take notice that on May 25, 1999, Indiana Michigan Power Company (I&M Power), will terminate the service that it currently provides to the City of Sturgis, Michigan (Sturgis) under the Municipal Resale Service Agreement dated May 8, 1968 with an effective date of July 24, 1968. Sturgis is served under Indiana Michigan Power Company's FERC Electric Tariff MRS, Original Volume No. 1, and the Municipal Resale Service Agreement.

I&M Power is terminating the Municipal Resale Service Agreement at Sturgis' request. Sturgis has notified I&M Power that it intends to terminate the Municipal Resale Service Agreement effective July 24, 1999.

This notice of termination has been served upon City Manager for Sturgis and the Michigan Public Service Commission.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Niagara Mohawk Power Corporation

[Docket No. ER99–3041–000]

Take notice that on May 25, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where Niagara Mohawk's transmission system connects to its retail distribution system East of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of May 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER99–3042–000]

Take notice that on May 25, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant to a point where Niagara Mohawk's transmission system connects to its retail distribution system West of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of May 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Entergy Services, Inc.

[Docket No. ER99–3043–000]

Take notice that on May 25, 1999, Entergy Services, Inc. (Entergy Services), citing as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (the Entergy Operating Companies), tendered for filing six copies of a revised form of Network Integration Transmission Service Agreement between Entergy Services and Entergy Services acting as agent for the Entergy Operating Companies.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Reliant Energy HL&P

[Docket Nos. ER99–3046–000 and ER97–2524–000]

Take notice that on May 25, 1999, Reliant Energy HL&P (Reliant), tendered for filing a notice of succession pursuant to Section 35.16 of the Commission's Regulations, 18 CFR 35.16. As a result of a name change, Reliant is succeeding to the FERC Electric Tariff Third Revised Volume No. 1, of Houston Lighting & Power Company, effective May 7, 1999.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. South Carolina Electric & Gas Company

[Docket No. ER99–3047–000]

Take notice that on May 20, 1999, South Carolina Electric & Gas Company (SCE&G), tendered a service agreement establishing Koch Energy Trading, Inc., as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Koch Energy Trading, Inc., and the South Carolina Public Service Commission.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3048–000]

Take notice that on May 26, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to FPL Energy Power Marketing, Inc., (FPL).

Con Edison states that a copy of this filing has been served by mail upon FPL.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3049–000]

Take notice that on May 26, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Florida Power & Light Company (FP&L).

Con Edison states that a copy of this filing has been served by mail upon FP&L.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Little Bay Power Corporation

[Docket No. ER99–3050–000]

Take notice that on May 26, 1999, Little Bay Power Corporation (Little Bay), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting Little Bay's FERC Electric Rate Schedule No. 1, to be effective on June 26, 1999.

Little Bay intends to engage in electric power and energy transactions as a marketer and a broker. In addition, Little Bay seeks authority to sell certain ancillary services into the New England Power Pool. In transactions where Little Bay sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Georgia Power Company

[Docket No. ER99–3051–000]

Take notice that on May 26, 1999, Georgia Power Company tendered for filing a Memorandum of Understanding, regarding application of the New Southern Companies open access transmission tariff rates to the Pseudo Scheduling and Services Agreement by and among itself and the Municipal Electric Authority of Georgia.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Central Vermont Public Service Corporation

[Docket No. ER99–3052–000]

Take notice that on May 26, 1999, Central Vermont Public Service Corporation (CVPS), tendered for filing the Actual 1998 Cost Report required under Article 2.4 on Second Revised Sheet No. 18 of FERC Electric Tariff, Original Volume No. 3, of Central Vermont under which Central Vermont provides transmission and distribution service to the following Customers:

Vermont Electric Cooperative, Inc.
Lyndonville Electric Department
Village of Ludlow Electric Light Department
Village of Johnson Water and Light Department
Village of Hyde Park Water and Light Department
Rochester Electric Light and Power Company
Woodsville Fire District Water and Light Department

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Central Vermont Public Service Corporation

[Docket No. ER99–3053–000]

Take notice that on May 26, 1999, Central Vermont Public Service Corporation (CVPS), tendered for filing the Actual 1998 Cost Report required under Paragraph Q–1 on Original Sheet No. 18 of the Rate Schedule FERC No. 135 (RS–2 Rate Schedule) under which Central Vermont Public Service Corporation (Company) sells electric power to Connecticut Valley Electric Company Inc., (Customer). The Company states that the Cost Report reflects changes to the RS–2 Rate Schedule which were approved by the Commission's June 6, 1989 order in Docket No. ER88–456–000.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Maine Electric Power Company

[Docket No. ER99–3054–000]

Take notice that on May 26, 1999, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Short-Term Firm Point-to-Point transmission service entered into with FPL Energy Power Marketing, Inc., (FPLP). Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO–FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Maine Electric Power Company

[Docket No. ER99–3055–000]

Take notice that on May 26, 1999, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point transmission service entered into with Great Bay Power Corporation. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO–FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Maine Electric Power Company

[Docket No. ER99–3056–000]

Take notice that on May 26, 1999, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point transmission service entered into with Florida Power & Light Company (FPLP). Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO–FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER99–3057–000]

Take notice that on May 26, 1999, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and Merchant Energy Group of the Americas, Inc. (Merchant Energy), dated May 24, 1999. This Service Agreement specifies that Merchant Energy has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and Merchant Energy to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of May 24, 1999, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Illinois Power Company

[Docket No. ER99–3058–000]

Take notice that on May 26, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which PP&L Energy Plus will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 1, 1999.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Carolina Power & Light Company

[Docket No. ER99–3059–000]

Take notice that on May 26, 1999, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with UtiliCorp United Inc., under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Otter Tail Power Company

[Docket No. ER99–3061–000]

Take notice that on May 26, 1999, Otter Tail Power Company (OTP), tendered for filing a Service Agreement between OTP and Illinois Power Company. The Service Agreement allows Illinois Power to purchase capacity and/or energy under OTP's Coordination Sales Tariff.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14472 Filed 6–7–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 2, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of license for the nonproject use of project lands and waters.

b. *Project No.:* 2512–043.

c. *Date Filed:* May 13, 1999.

d. *Applicant:* Elkem Metals Company.

e. *Name of Project:* Hawks Nest-Glen Ferris.

f. *Location:* Fayette County, West Virginia. The water withdrawal site does not occupy federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) to 825(r).

h. *Applicant Contacts:* J.L. Simpson, Elkem Metals Company, P.O. Box 613, Alloy, WV 25002, Telephone 304–779–3200; Amy S. Koch, Counsel to Elkem Metals Company, Cameron McKenna LLP, 2175 K Street, N.W., Fifth Floor, Washington, DC 20037, Telephone 202–366–0060.

i. *FERC Contact:* Any questions on this notice should be addressed to Jim Haimes at (202) 219–2780, or e-mail address: james.haimes@ferc.fed.us.

j. *Deadline for filing comments and or motions:* 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (P–2512–043) on any comments or motions filed.

k. *Description of Proposal:* Elkem Metals Company, licensee, requests Commission authorization to grant an easement to the West Virginia-American Water Company for the construction and operation of a raw water intake and pump station with a capacity to withdraw 4 million gallons per day from Hawks Nest Lake (New River). Proposed facilities would include: two 24-inch-diameter, buried, ductile iron, raw water intake lines, equipped with traveling screens designed to minimize fish impingement and entrainment; a vertical turbine pump station; and a 24-inch-diameter, discharge transmission main, which would deliver water to the new Fayette Plateau water purification plant to be constructed near Fayetteville, West Virginia.

l. *Locations of the application:* Copies of the application are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. Copies of the application also are available for inspection and reproduction at the addresses in item h above.

m. *Individuals desiring to be included on the Commission's mailing list for the proposed amendment of license should so indicate by writing to the Secretary of the Commission.*

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—All filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulation to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14423 Filed 6–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Reservoir Drawdown and Soliciting Comments, Motions To Intervene, and Protests

June 2, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request to Amend Article 401 of the License.

b. *Project No.:* 2689–021.

c. *Date Filed:* May 25, 1999.

d. *Applicant:* N.E.W. Hydro, Incorporated.

e. *Name of Project:* Oconto Falls Project.

f. *Location:* The project is located on the Oconto River, in Oconto Falls, Oconto County, Wisconsin. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Mr. Loyal Gake, N.E.W. Hydro Inc., P.O. Box 167, Neshkoro, WI 54960, (920) 293–4628.

i. *FERC Contact:* Any questions on this notice should be addressed to Diana Shannon at (202) 208–7774, or e-mail address diana.shannon@ferc.fed.us.

j. *Deadline for filing comments and or motions:* 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the Project Number (2689–021) on any comments or motions filed.

k. *Description of Amendment:* Article 401 requires the licensee to operate the project in a run-of-river mode with a reservoir operating range of 701.92 ±0.3 feet NGVD. The licensee requests that article 401 only require a minimum reservoir operating level. The licensee states the current operating range does not allow the fixed crest spillway to be used to spill flow in excess of the project's hydraulic capacity and the existing spillway gate has only limited utility.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the website at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14424 Filed 6–7–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6356–6]

Agency Information Collection Activities; Health and Safety Data Reporting; Submission of ICR No. 1031.06 to OMB

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request (ICR) entitled: ''Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment (TSCA Section 8(c) Health and Safety Data Reporting Rule),'' (EPA ICR No. 1031.06; OMB Control No. 2070–0017) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden.

The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on July 31, 1999. A FEDERAL REGISTER document announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on January 14, 1999 (64 FR 2488). EPA did not receive any comments on this ICR during the comment period.

DATES: Additional comments may be submitted on or before July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: ''farmer.sandy@epamail.epa.gov,'' or download a copy of the ICR off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1031.06.

ADDRESSES: Send comments, referencing EPA ICR No. 1031.06 and OMB Control No. 2070–0017, to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (Mail Code: 2137), 401 M Street, S.W., Washington, DC 20460; and to

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 1031.06; OMB Control No. 2070–0017.

Current Expiration Date: Current OMB approval expires on July 31, 1999.

Title: Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment (TSCA Section 8(c) Health and Safety Data Reporting Rule).

Abstract: Section 8(c) of the Toxic Substances Control Act (TSCA) requires companies that manufacture, process, or distribute chemicals to maintain records of significant adverse reactions to health or the environment alleged to have been caused by such chemicals. Since section 8(c) includes no automatic reporting provision, EPA can obtain and use the information contained in company files only by inspecting those files or requiring reporting of records that relate to specific substances of concern. Therefore, under certain conditions, and using the provisions found in 40 CFR part 717, EPA may require companies to report such allegations to the Agency.

EPA uses such information on a case-specific basis to corroborate suspected adverse health or environmental effects of chemicals already under review by EPA. The information is also useful to identify trends of adverse effects across the industry that may not be apparent to any one chemical company.

Responses to the collection of information are mandatory (see 40 CFR part 717). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting burden for this collection of information is estimated to range between 0.25 hours and 8.0 hours per response, depending upon the requirements that the collection places on each respondent, for an estimated 7,397 respondents making one or more submissions of information annually. These estimates include 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. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these regulations are displayed in 40 CFR part 9.

Respondents/Affected Entities: Entities potentially affected by this action are companies that manufacture, process, import, or distribute in commerce chemical substances or mixtures.

Estimated No. of Respondents: 7,397.

Estimated Total Annual Burden on Respondents: 30,279 hours.

Frequency of Collection: On occasion.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this document, as described above.

Dated: June 3, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–14497 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6356–5]

Agency Information Collection Activities; Significant New Use Rules for Existing Chemicals; Submission of ICR No. 1188.06 to OMB

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request (ICR) entitled: ''TSCA Section 5(a)(2) Significant New Use Rules for Existing Chemicals,'' [EPA ICR No. 1188.06; OMB Control No. 2070–0038] has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden.

The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on July 31, 1999. A **Federal Register** document announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on January 14, 1999 (64 FR 2488). EPA did not receive any comments on this ICR during the comment period.

DATES: Additional comments may be submitted on or before July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: ''farmer.sandy@epamail.epa.gov,'' or download a copy of the ICR off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1188.06.

ADDRESSES: Send comments, referencing EPA ICR No. 1188.06 and OMB Control No. 2070–0038, to the following addresses: Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (Mail Code: 2137), 401 M Street, SW., Washington, DC 20460;

And to:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 1188.06; OMB Control No. 2070–0038.

Current Expiration Date: Current OMB approval expires on July 31, 1999.

Title: TSCA Section 5(a)(2) Significant New Use Rules for Existing Chemicals.

Abstract: Section 5 of the Toxic Substances Control Act (TSCA) and regulations at 40 CFR part 721 provide EPA with a regulatory mechanism to monitor and, if necessary, control significant new uses of chemical substances. Section 5 authorizes EPA to determine by rule (a significant new use rule or SNUR), after considering all relevant factors, that a use of a chemical substance represents a significant new use. If EPA determines that a use of a chemical substance is a significant new use, section 5 requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use.

EPA uses the information obtained through this collection to evaluate the health and environmental effects of the significant new use. EPA may take regulatory actions under TSCA section 5, 6 or 7 to control the activities for which it has received a SNUR notice. These actions include orders to limit or prohibit the manufacture, importation, processing, distribution in commerce, use or disposal of chemical substances. If EPA does not take action, section 5 also requires EPA to publish a **Federal Register** document explaining the reasons for not taking action.

Responses to the collection of information are mandatory (see 40 CFR part 721). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting burden for this collection of information is estimated to range between approximately 1 hour and 119 hours per response, depending upon the requirements that the collection places on each respondent, for an estimated 3 respondents making one or more submissions of information annually. These estimates include 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. No person is required to respond to a collection of information unless it displays a currently valid OMB control number.

The OMB control numbers for these regulations are displayed in 40 CFR part 9.

Respondents/Affected Entities: Entities potentially affected by this action are companies that manufacture, process, import, or distribute in commerce chemical substances or mixtures.

Estimated No. of Respondents: 3.

Estimated Total Annual Burden on Respondents: 1,032 hours.

Frequency of Collection: On occasion.

Changes in Burden Estimates: There is an increase (from 237 hours to 1,032 hours) in the total estimated respondent burden as compared with that identified in the information collection request most recently approved by OMB. This increase reflects the inclusion, overlooked in previous requests for renewal of this information collection, of the customer notification burden, plus updating estimates based on historical information on the numbers of significant new use rules promulgated by EPA.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this document, as described above.

Dated: June 3, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–14498 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6356–2]

Science Advisory Board; Emergency Federal Register Notice of Public Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Advisory Council on Clean Air Compliance Analysis of the Science Advisory Board (SAB) will hold a public teleconference on Tuesday, June 22, 1999, from 1:00–2:30 pm Eastern time.

At this teleconference the Council will review two draft Advisories prepared by subcommittees of the Council. The first Advisory was developed by the Air Quality Modeling Subcommittee (AQMS) of the Council after the AQMS public meeting on May 4 & 5, 1999. The draft is entitled The Clean Air Act Amendments (CAAA) Section 812 Prospective Study of Costs and Benefits (1999): Advisory by the Air Quality Models Subcommittee on Modeling and Emissions. The second Advisory was developed by the Health and Ecological Effects Subcommittee (HEES) of the Council after its public meeting on April 21 & 22, 1999. The draft is entitled The Clean Air Act Amendments (CAAA) Section 812 Prospective Study of Costs and Benefits (1999): Advisory by the Health and Ecological Effects Subcommittee on Initial Assessments of Health and Ecological Effects; Part 1. Both the AQMS Meeting and the HEES meeting were announced in the **Federal Register** [See 64 15160 March 30, 1999]. For further information concerning the teleconference described in this section, please contact the individuals listed below. This Teleconference will be hosted out of the Science Advisory Board Conference Room (Room M3709), U.S. Environmental Protection Agency, Washington DC 20460.

FOR FURTHER INFORMATION CONTACT:

(a) *Contacting Program Office Staff and Obtaining Review Materials*—To obtain copies of the draft documents pertaining to the CAA Section 812 Prospective Study that had been submitted to the AQMS or the HEES for their review, please contact Ms. Catrice Jefferson, Office Manager, Office of Policy Analysis and Review (OPAR), (Mail Code 6103), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Tel. (202) 260–5580; FAX (202) 260–9766, or via e-mail at <jefferson.catrice@epa.gov>. To discuss technical aspects of the draft document pertaining to the CAAA–90 Section 812 Prospective Study: Report to Congress, please contact Mr. James DeMocker, Office of Policy Analysis and Review (OPAR) (Mail Code 6103), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Tel. (202) 260–8980; FAX (202) 260–9766, or via e-mail at: <democker.jim@epa.gov>.

(b) *Contacting SAB Staff and Obtaining Meeting Information*—To obtain copies of the meeting agenda, rosters of participants, or copies of the draft Advisories, please contact Ms. Diana L. Pozun, Management Assistant to the Council, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460; at Tel. (202) 260–8432; FAX (202) 260–7118; or via e-mail: <pozun.diana@epa.gov>. The draft Advisories will also be posted on the SAB website at HTTP://WWW.EPA.GOV/SAB. To discuss technical or logistical aspects of the Council and its subcommittee review process or to submit written comments, please contact Dr. Angela Nugent, Designated Federal Officer (DFO) to the Council, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460, (Tel. (202) 260–4126; FAX (202) 260–7118; or via e-mail: <nugent.angela@epa.gov>), or Mr. Sam Rondberg, DFO, at: Tel. (301) 812–2560; or via e-mail: <samuelr717@aol.com> (Mr. Rondberg will be the DFO during the teleconference). To obtain information concerning the teleconference and how to participate in the SAB Conference Room or to call in, please contact Ms. Pozun.

(c) *Providing Public Comments to the SAB*—To request time to provide brief oral comments at the meeting, please contact Ms. Pozun *in writing* by mail, FAX or e-mail at the address given above no later than 12 noon on Thursday, June 16, 1999. Please be sure to provide a summary of the issue you intend to present, your name and address (incl. phone, fax and e-mail) and the organization (if any) you will represent.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board (SAB) expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, opportunities for oral comment at face-to-face meetings will be usually limited to ten minutes per speaker. At teleconference meetings, speakers will be usually limited to three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week prior to a meeting), may be mailed to the committees or its respective subcommittees prior to its meeting; comments received too close to the meeting date will normally be provided to the Council and its subcommittees at the meeting. Written comments may be provided up until the time of the meeting.

Dated: June 2, 1999.

John R Fowle. III,

Acting Director, Science Advisory Board.

[FR Doc. 99–14354 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority; comments requested

June 1, 1999.

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 August 9, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0550.

Title: FCC Form 328 Local Franchising Authority Certification.

Form Number: FCC Form 328.

Type of Review: Extension of a currently approved collection.

Respondents: State, local or tribal governments.

Number of Respondents: 40.

Estimated Time Per Response: 30 minutes.

Frequency of Response: On occasion filing requirement.

Total Annual Burden: 20 hours.

Total Annual Cost: $80.

Needs and Uses: On May 3, 1993, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking,* MM Docket No. 92–266, FCC 93–177; In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulation. Among other things, the *Report and Order* implemented Section 3(a) of the Cable Television Consumer Protection and Competition Act of 1992 wherein a local franchise authority (''LFA'') must file with the Commission a written certification when it seeks to regulate basic service cable rates. Subsequently, the Commission developed FCC Form 328 to provide a standardized, simple form for LFAs to use when requesting certification. The data derived from Form 328 filings are used by Commission staff to ensure that an LFA has met the criteria specified in Section 3(a) of the Cable Television Consumer Protection and Competition Act of 1992 for regulating basic service rates.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14490 Filed 6–7–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) being Reviewed by the Federal Communications Commission.

June 1, 1999.

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, 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 August 9, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0309.

Title: Section 74.1281 Station Records.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 3,150 FM translator and FM booster stations.

Estimated Time Per Response: 1 hour per station.

Frequency of Response: Recordkeeping.

Total Annual Burden: 3,150.

Needs and Uses: Section 74.1281 requires that licensees of FM translator/booster stations maintain adequate records. These records include the current instrument of authorization, official correspondence with FCC, maintenance records, contracts, permission for rebroadcasts and other pertinent documents. They also include entries concerning any extinguishment or improper operation of tower lights. The data is used by FCC staff in investigations to assure that the licensee is operating in accordance with the technical requirements as specified in the FCC Rules and with the station authorization, and is taking reasonable measures to preclude interference to other stations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14491 Filed 6–7–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) being Reviewed by the Federal Communications Commission.

June 1, 1999.

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, 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 August 9, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0053.

Title: Application for Consent to Transfer of Control of Corporation Holding Station License.

Form Number: FCC 703.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other For-Profit.

Number of Respondents: 2,000.

Estimated Time Per Response: 36 minutes.

Frequency of Response: Reporting, on occasion.

Total Annual Burden: 1200 hours.

Needs and Uses: This collection of information is used to determine eligibility for licenses. Without this information, violations of ownership regulations could occur. FCC Rules require that applicants in the Private Land Mobile (Part 90), General Mobile (Part 95), Marine (Part 80), Aviation (Part 87) and Experimental (Part 5) Radio Services submit FCC 703 whenever it is proposed to change, as by transfer of stock ownership, the control of a station.

The form is required by the Communications Act of 1934, as amended; International Radio Regulations, General Secretariat of International Telecommunications Union and FCC Rules—47 CFR 1.922, 1.924, 5.55, 80.19, 87.21, 87.31, 90.119, and 95.111.

The form is being revised to delete the collection of payment type information. This information is submitted on FCC Form 159 (Remittance Advice) now required with any payment to the FCC. The instructions, privacy act and public burden statements are being updated as well. The number of respondents and total annual burden have increased as the result of a re-evaluation of receipts. Total burden per response remains at 36 minutes. Total respondent costs are being adjusted to $90,000 as the result of increase in respondents.

Federal Communications Commission.

Magalie Roman Salas

Secretary

[FR Doc. 99–14494 Filed 6–7–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission MeetingThursday, June 10, 1999

June 3, 1999.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, June 10, 1999, which is scheduled to commence at 9:30 a.m. in Room TW-C305, at 445 12th Street, S.W., Washington, D.C.

Item No.	Bureau	Subject
1	WIRELESS TELE-COMMUNICATIONS.	TITLE: Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 and Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services.

Item No.	Bureau	Subject
		SUMMARY: The Commission will consider a Fourth Report fulfilling the requirement of 47 U.S.C. Section 332(c)(1)(c) (the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103–66, Title VI, Section 6002(b)), which directs the Commission to annually report on the state of competition with respect to commercial mobile radio services.
2	WIRELESS TELE-COMMUNICATIONS.	TITLE: Calling Party Pays Service Option in the Commercial Mobile Radio Service (WT Docket No. 97–207). SUMMARY: The Commission will consider further action relating to the calling party pays option provided by CMRS providers.
3	WIRELESS TELE-COMMUNICATIONS.	TITLE: Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Services (PR Docket No. 92–235). SUMMARY: The Commission will consider a Third Memorandum Opinion and Order that addresses petitions for reconsideration regarding centralized trunking of private land mobile channels below 512 MHz.
4	WIRELESS TELE-COMMUNICATIONS.	TITLE: Biennial Regulatory Review — Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services (WT Docket No. 98–20); Amendment of the Amateur Service Rules to Authorize Visiting Foreign Amateur Operators to Operate Stations in the United States (WT Docket No. 96–188, RM–8677); and Amendment of Part 95 of the Commission's Rules to Allow Organizational Licensing in the GMRS (RM–9107). SUMMARY: The Commission will consider a Memorandum Opinion and Order on Reconsideration that addresses petitions for reconsideration pertaining to the operation of the Uuniversal Licensing System.
5	WIRELESS TELE-COMMUNICATIONS.	TITLE: Biennial Regulatory Review — Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services (WT Docket No. 98–20); and Assessment and Collection of Charges for FCC Proprietary Remote Software Packages, On-Line Communications Service Charges, and Bidder's Information Packages in Connection with Auctionable Services (WT Docket No. 95–69). SUMMARY: The Commission will consider a Second Report and Order concerning Internet access to ULS and auctions database information.
6	WIRELESS TELE-COMMUNICATIONS.	TITLE: Promotion of Competitive Networks in Local Telecommunications Markets; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; and Cellular Telecommunications Industry Association Petition for Rule Making and Amendment of the Commission's Rules to Preempt State and Local Imposition of Discriminatory and/or Excessive Taxes and Assessments (CC Docket No. 96–98). SUMMARY: The Commission will consider further action relating to the promotion of facilities-based competition in the local tele-communications marketplace.
7	COMMON CARRIER	TITLE: Low-Volume Long-Distance Users. SUMMARY: The Commission will consider an inquiry into proposals to ameliorate the impact on low-volume long-distance consumers of flat-rated charges assessed by interexchange carriers.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800 or fax (202) 857-3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966-1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14646 Filed 6–4–99; 3:27 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2330]

Petitions for Reconsideration of Action in Rulemaking Proceedings

May 28, 1999.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by June 23, 1999. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Defining Primary Lines (CC Docket No. 97–181).

Number of Petitions Filed: 4.

Subject: Communications Assistance for Law Enforcement Act (CC Docket No. 97–213).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14492 Filed 6–7–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2332]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

Dated: June 1, 1999.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by June 23, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 (CC Docket No. 94–129); Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers.

Number of Petitions Filed: 12.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14493 Filed 6–7–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 224–201076.

Title: Joint Ports & Terminals Association.

Parties: Gulf Seaports Marine Terminal Conference, South Atlantic Marine Terminal Conference, Elizabeth River Terminals, Lambert Point Docks, Virginia Port Authority, Virginia International Terminals, Hampton Roads Shipping.

Synopsis: The proposed agreement updates the authority and membership of the current agreement.

Agreement No.: 224–201078.

Title: San Francisco—Trans-Pacific Terminal Use Agreement.

Parties: The City and County of San Francisco: The San Francisco Port Commission, Trans-Pacific Lines Ltd.

Synopsis: The proposed agreement between the parties provides for the non-exclusive use of certain marine facilities. The agreement runs through May 31, 2004.

Dated: June 3, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–14489 Filed 6–7–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 22, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Kirk E. Boatright; Anthony R. and Ruth Ann Stockton; Gary D. and V. Sue Chapman; Harvey L. and Paula K. Chaffin, all of Tahlequah, Oklahoma; Charles R. and L. Darlene Bynum; and Loyal T. and Susan Chapman Plumb, all of Park Hill, Oklahoma; to acquire voting shares of Fort Gibson Bancshares, Inc., Fort Gibson, Oklahoma, and thereby indirectly acquire voting shares of Fort Gibson State Bank, Fort Gibson, Oklahoma.

Board of Governors of the Federal Reserve System, June 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14396 Filed 6–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 23, 1999.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Lloyd A. Amundson Qualified Annuity Trust, Sioux Falls, South Dakota; to acquire voting shares of First Sleepy Eye Bancorporation, Inc., Sioux Falls, South Dakota, and thereby indirectly acquire voting shares of First Security Bank, Sleepy Eye, Minnesota, and Capital Bank, St. Paul, Minnesota.

2. Lloyd A. Amundson Qualified Annuity Trust, Sioux Falls, South Dakota; to acquire voting shares of Lake Benton Bancorporation, Inc., Sioux Falls, South Dakota, and thereby indirectly acquire voting shares of First Security Bank Lake Benton, Lake Benton, Minnesota.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Stockmens Limited Partnership, Rushville, Nebraska; to acquire voting shares of Stockmens Financial Corporation, Rushville, Nebraska, and thereby indirectly acquire voting shares of The Security Bank, Sidney, Nebraska, and The Stockmens National Bank of Rushville, Rushville, Nebraska.

Board of Governors of the Federal Reserve System, June 3, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14486 Filed 6–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. 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 July 2, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Union Bankshares, Inc., Morrisville, Vermont; to acquire 100 percent of the voting shares of Citizens Savings Bank & Trust Company, St. Johnsbury, Vermont.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Community First Bankshares, Inc., Fargo, North Dakota; to acquire 100 percent of the voting shares of Valley National Corporation, El Cajon, California, and thereby indirectly acquire Valle de Oro National Association, Spring Valley, California.

2. Mille Lacs Bancorporation, Inc., Onamia, Minnesota; to acquire 100 percent of the voting Rural American Bank Hinckley, Hinckley, Minnesota.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Texas Unites Bancshares, Inc., La Grange, Texas; to acquire 100 percent of the voting shares of First State Bank, Dime Box, Texas.

Board of Governors of the Federal Reserve System, June 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14397 Filed 6–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. 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 July 2, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. BB&T Corporation, Winston-Salem, North Carolina; to merge with Matewan Bancshares, Inc., Williamson, West Virginia, and thereby indirectly acquire Matewan National Bank, Williamson, West Virginia.

In connection with this application, Applicant also has applied to acquire Matewan Bank, FSB, Pikeville, Kentucky, and thereby engage in traditional thrift activities, pursuant to § 225.28(b)(4)(ii) of Regulation Y, and thereby indirectly acquire Matewan Venture Fund, Inc., Williamson, West Virginia, and thereby engage in lending activities, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, June 3, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14485 Filed 6–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 23, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. *Banque Nationale de Paris*, Paris, France; to acquire Charter Atlantic Corporation, New York, New York, and thereby engage in acting as investment advisor to any person, pursuant to § 225.28(b)(6) of Regulation Y; in providing securities brokerage services and incidental activities, as agent for the account of customers, pursuant to § 225.28(b)(7)(i) of Regulation Y; in buying and selling in the secondary market all types of securities on the order of customers as a riskless principal, pursuant to § 225.28(b)(7)(ii) of Regulation Y; in acting as agent in the private placement of all types of securities, including providing related advisory services, pursuant to § 225.28(b)(7)(iii) of Regulation Y; in providing to customers as agent transactional services, pursuant to § 225.28(b)(7)(v) of Regulation Y; in engaging as principal in (i) underwriting and dealing in governmental obligations and money market instruments, pursuant to § 225.28(b)((8)(i) of Regulation Y, and in investing and trading in: foreign exchange, and forward contracts, options, futures, options on futures, swaps and similar contracts, whether traded on exchanges or not, based on any rate, price, financial asset, nonfinancial asset or group of assets, pursuant to § 225.28(b)((8)(ii) of Regulation Y; and in serving as the investment advisor to and the general partner of, and holding and placing equity interests in, certain investment funds which invest only in securities and other instruments which Notificant would be permitted to hold directly under the Bank Holding Company Act, including acting as a commodity pool operator for private investment funds organized as commodity pools, see *USB AG*, 84 Fed. Res. Bull. 684 (1998).

Board of Governors of the Federal Reserve System, June 3, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14484 Filed 6–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Monday, June 14, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, 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.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 4, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14654 Filed 6–4–99; 3:56 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Public Workshop: U.S. Perspective on Consumer Protection in the Global Electronic Marketplace

AGENCY: Federal Trade Commission.

ACTION: Notice Announcing Dates and Location of Workshop, and Publishing Workshop Agenda.

SUMMARY: The Federal Trade Commission has: (1) confirmed June 8–9, 1999 from 8:15 a.m. to 6:00 p.m. as the dates and times for its public workshop entitled ''U.S. Perspectives on Consumer Protection in the Global Electronic Marketplace,'' announced in 63 FR 69289 (December 16, 1999); (2) announced the location of the workshop to be the Federal Trade Commission headquarters at 600 Pennsylvania Avenue, N.W., Rooms 432 and 332; (3) published the agenda for the workshop; and (4) announced it will reopen the period for public comments from June 8, 1999 to July 1, 1999.

WORKSHOP INFORMATION: The public workshop will be held at the Federal Trade commission headquarters, 600 Pennsylvania Avenue, N.W., Washington, DC, Rooms 432 and 332 on June 8, and June 9, 1999 form 8:15 a.m. to 6:00 p.m. on both dates. The workshop is open to the public, and there is no formal registration process for those wishing to attend. Seating is limited, but overflow rooms will be available.

Agenda

Tuesday, June 8, 1999

8:15 a.m.—Registration and Breakfast
9:00 a.m.—Introductory Remarks
9:45 a.m.—International Business-to-Consumer Commerce: Four Perspectives
Technological Perspective (9:45 a.m.–10:15 a.m.)
Consumers' Perspective (10:15 a.m.–11:15 a.m.)
Industry Perspective (11:30 a.m.–12:30 p.m.)
Law Enforcement Perspective 12:30 p.m.–1:15 p.m.)
1:15 p.m.—Lunch
2:15 p.m.—Breakout Sessions
Breakout Session 1: Core Protections for Consumers
Online Disclosures (2:15 p.m.–4:00 p.m.)
General Disclosures
Contract-Related Disclosures
Fair Business Practices and Contractual Protections (4:00 p.m.–5:00 p.m.)
Breakout Session 2: Consumer Concerns about Authentication in International Transactions
Technological Solutions Now Available (2:30 p.m.–3:15 p.m.)
Benefits and Risks Associated with Current Technology (3:30 p.m.–4:15 p.m.)
International Transactions (4:15 p.m.–5:00 p.m.)
5:00 p.m.—Overview Remarks and Summary of Breakout Sessions

Wednesday, June 9, 1999

8:15 a.m.—Registration and Breakfast
9:00 a.m.—Consumer Protection Frameworks in Global Electronic Commerce: Opening Remarks
10:00 a.m.—Overview of the History and Future of the Internet
10:30 a.m.—Jurisdiction and Choice of Law for Consumer Protection on the Internet: US Perspectives (10:30 a.m.–12:30 p.m.)
12:30 p.m.—Lunch
1:30 p.m.—Breakout Sessions
Breakout Session 1: Alternative Frameworks: Role and Efficacy of Private Sector Initiatives
Breakout Session 2: Alternative Frameworks: Role and Efficacy of International Bodies and Agreements
3:00 p.m.—Jurisdiction and Choice of Law: International Perspectives
4:40 p.m.—
4:40 p.m.—Report on June 9 Breakout Sessions
5:00 p.m.—Next Steps: What should government, industry, and consumers do now?

REOPENING OF COMMENT PERIOD: Interested parties, including academics, industry members, consumer advocates, and government representatives, are requested to submit written comments on any issue of fact, law, or policy addressed at the workshop.

DATES: Written comments may be submitted between June 8, 1999 and July 1, 1999.

COMMENT SUBMISSION PROCEDURE: Written comments should be submitted to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., N.W., Washington, D.C., 20580. The Commission requests that commenters submit the original plus five copies, if feasible. To enable prompt review and accessibility to the public, responses also should be submitted, if possible, in electronic form, on either one 5¼ or one 3½ inch computer disk, with a disk label stating the name of the submitter and the name and version of the word processing program used to create the document. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII tex format.) Alternatively, the Commission will accept responses submitted to the following e-mail address <EMarketplace@ftc.gov>. All submissions should be captioned: ''U.S. Perspectives on Consumer Protection in the Global electronic Marketplace—Comment, P994312.''

FOR FURTHER INFORMATION: A complete and current agenda, including the list of participants, and all public comments submitted in connection with the workshop can be found at the Federal Trade Commission Web site at <http://www.ftc.gov/bcp/icpw>. For further questions about the workshop, contact either: Lisa Rosenthal, Legal Advisor for International Consumer Protection, Division of Planning and Information, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, telephone 202–326–2249, e-mail<lrosenthal@ftc.gov>; or Jonathan Smollen, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, telephone 202–326–3457, e-mail <jsmollen@ftc.gov>.

Authority: 15 U.S.C. 41 *et seq.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–14550 Filed 6–4–99; 1:53 pm]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR D–242, Supplement 1]

Placement of Commercial Antennas on Federal Property

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice.

SUMMARY: This supplement extends the expiration date of GSA Bulletin D–242, Placement of Commercial Antennas on Federal Property, published in the **Federal Register** on June 16, 1997 (62 FR 32611). The expiration date of the bulletin, June 30, 1999, has been extended indefinitely. The bulletin contains information of a continuing nature and will remain in effect until specifically canceled.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, Director, Real Property Policy Division, at 202–501–1737.

Dated: May 28, 1999.

David L. Bibb,

Acting Associate Administrator, Office of Governmentwide Policy.

[FR Doc. 99–14335 Filed 6–7–99; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR D–246, Supplement 1]

Assessment of Fees and Recovery of Costs for Antennas of Federal Agencies and Public Service Organizations

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice.

SUMMARY: This supplement extends the expiration date of GSA Bulletin D–246, Assessment of Fees and Recovery of Costs for Antennas of Federal Agencies and Public Service Organizations, published in the **Federal Register** on March 4, 1998 (63 FR 10631). The expiration date of the bulletin, June 30, 1999, has been extended indefinitely. The bulletin contains information of a continuing nature and will remain in effect until specifically canceled.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, Director, Real Property Policy Division, at 202–501–1737.

Dated: May 28, 1999.

David L. Bibb,

Acting Associate Administrator, Office of Governmentwide Policy.

[FR Doc. 99–14336 Filed 6–7–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Reallotment of FY 1998 Funds for Low Income Home Energy Assistance Program (LIHEAP)

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Notice of determination concerning funds available for reallotment.

SUMMARY: Notice is hereby given that a preliminary determination has been made that fiscal year (FY) 1998 Low Income Home Energy Assistance Program (LIHEAP) funds are available for reallotment *to States, territories, and Tribes and tribal organizations receiving FY 1999 direct LIHEAP funding.* No subgrantees or other entities may apply for the funds. Section 2607(b)(1) of the Low Income Home Energy Assistance Act (the Act), Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8621 et seq.), as amended, requires that if the Secretary of the Department of Health and Human Services determines that, as of September 1 of any fiscal, an amount in excess of certain levels allotted to a grantee for any fiscal year will not be used by the grantee during the fiscal year, the Secretary must notify the grantee and publish a notice in the **Federal Register** that such funds may be reallotted to LIHEAP grantees during the following fiscal year. If reallotted, the LIHEAP block grant allocation formula will be used to distribute the funds. (No funds may be allotted to entities that are not direct LIHEAP grantees during FY 1999.) It has been determined that $2,381,450.52 may be available for reallotment during FY 1999. This determination is based on revised reports from the State of North Carolina and the Delaware Tribe of Oklahoma, which were submitted to the Office of Community Services as required by 45 CFR 96.82.

The statute allows grantees who have funds unobligated at the end of the fiscal year for which they are awarded to request that they be allowed to carry over up to 10 percent of their allotments to the next fiscal year. Funds in excess of this amount must be returned to DHHS and are subject to reallotment under section 2607(b)(1) of the Act. The amount described in this notice was reported as unobligated FY 1998 funds in excess of the amount that the State of North Carolina and the Delaware Tribe of Oklahoma could carry over to FY 1999.

The State of North Carolina was notified by certified mail that $2,375,000 of its FY 1998 funds may be reallotted. Additionally, the Delaware Tribe of Oklahoma was notified by certified mail that $6,450.52 of its FY 1998 funds may be reallotted. In accordance with section 2607(b)(3), the Chief Executive Officers of the State of North Carolina and of the Delaware Tribe of Oklahoma have 30 days from the date of the letter to submit comments to: Donald Sykes, Director, Office of Community Services, 3701 L'Enfant Promenade, SW, Washington, DC 20047. The comment period expires July 8, 1999.

After considering any comments submitted, the Chief Executive Officers will be notified of the decision, and the decision also will be published in the **Federal Register.** If funds are reallotted, they will be allocated in accordance with section 2604 of the Act and must be treated by LIHEAP grantees receiving them as an amount appropriated for FY 1999. As FY 1999 funds, they will be subject to all requirements of the Act, including section 2607(b)(2), which requires that a grantee obligate at least 90% of its total block grant allocation for a fiscal year by the end of the fiscal year for which the funds are appropriated, that is, by September 30, 1999.

FOR FURTHER INFORMATION CONTACT:
Janet Fox, Director, Division of Energy Assistance, Office of Community Services, 370 L'Enfant Promenade, SW, Washington, DC 20447; telephone (202) 401–9351.

Dated: May 28, 1999.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 99–14480 Filed 6–7–99; 8:45 am]

BILLING CODE 99–4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1522]

Agency Information Collection Activities: Proposed Collection; Comment Request; Temporary Marketing Permit Applications

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 reporting requirements contained in existing FDA regulations governing temporary marketing permit applications.

DATES: Submit written comments on the collection of information by August 9, 1999.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:
Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of 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 set forth 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.

Temporary Marketing Permit Applications—21 CFR 130.17(c) and (i) (OMB Control Number 0910–0133—Extension)

Section 401 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 341) directs FDA to issue regulations establishing definitions and standards of identity for food "whenever * * * such action will promote honesty and fair dealing in the interest of consumers." Under section 403(g) of the act (21 U.S.C. 343(g)), a food that is subject to a definition and standard of identity prescribed by regulation is misbranded if it does not conform to such definition and standard of identity. Section 130.17 (21 CFR 130.17) provides for the issuance by FDA of temporary marketing permits that enable the food industry to test consumer acceptance and measure the technological and commercial feasibility in interstate commerce of experimental packs of food that deviate from applicable definitions and standards of identity. Section 130.17(c) specifies the information that a firm must submit to FDA to obtain a temporary marketing permit. The information required in a temporary marketing permit application under § 130.17(c) enables the agency to monitor the manufacture, labeling, and distribution of experimental packs of food that deviate from applicable definitions or standards of identity. The information so obtained can be used in support of a petition to establish or amend the applicable definition or standard of identity to provide for the variations. Section 130.17(i) specifies the information that a firm must submit to FDA to obtain an extension of a temporary marketing permit.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
130.17(c)	3	1	3	25	75
130.17(i)	4	2	8	2	16
Total	7		11		91

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated number of temporary marketing permit applications and hours per response is an average based on the agency's experience with applications received from October 1, 1995, through September 30, 1998, and information from firms that have submitted recent requests for temporary marketing permits.

Dated: May 28, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–14401 Filed 6–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1392]

Agency Information Collection Activities: Proposed Collection; Comment Request; State Enforcement Notification

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 reporting requirements contained in existing FDA regulations governing State enforcement notifications.

DATES: Submit written comments on the collection of information by August 9, 1999.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of 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 set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

State Enforcement Notification—21 CFR 100.2(d) (OMB Control Number 0910–0275—Extension)

Section 310(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 337(b)) authorizes States to enforce certain sections of the act in their own names, but provides that States must notify FDA before doing so. Section 100.2(d) (21 CFR 100.2(d)) sets forth the information that a State must provide to FDA in a letter of notification when it intends to take enforcement action under the act against a particular food located in the State. The information required under § 100.2(d) will enable FDA to identify the food against which the State intends to take action and advise the State whether Federal action has been taken against it. With certain narrow exceptions, Federal enforcement action precludes State action under the act.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
100.2(d)	1	1	1	10	10

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden for § 100.2(d) is insignificant because enforcement notifications are seldom submitted by States requesting the agency take enforcement action under the act against a particular food. Over the last 3 years, FDA has not received any enforcement notifications. Since the enactment of section 403A(b) of the act (21 U.S.C. 343–1(b)) as part of the Nutrition Labeling and Education Act of 1990, FDA has received only a few enforcement notifications.

Although FDA believes that the burden will be insignificant, it believes these information collection provisions should be extended to provide for the potential future need of a State or local government to petition for an exemption from preemption under the provisions of section 310(b) of the act.

Dated: May 28, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–14458 Filed 6–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Open Meeting for Representatives of Health Professional Organizations; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting with representatives of health professional organizations. The public meeting will be chaired by Sharon Smith Holston, Deputy Commissioner for External Affairs. The two primary topics on the agenda for this meeting will be managing risks from medical product use and pediatric clinical studies.

DATES: The public meeting will be held on Tuesday, June 15, 1999, from 1:30 p.m. to 3:30 p.m.

ADDRESSES: The public meeting will be held at the Holiday Inn Bethesda, 8210 Wisconsin Ave., Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: Peter H. Rheinstein, Office of Health Affairs (HFY–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6630.

Those persons interested in attending this meeting should call Betty Palsgrove at 301–827–6618 to register. Registration may also be transmitted by FAX 1–800–344–3332 or 301–443–2446. Please include the name and title of the person attending, the name of the organization, address, and telephone number. There is no registration fee, however, space is limited. Persons will be registered in the order in which calls are received.

SUPPLEMENTARY INFORMATION: The purpose of the public meeting is to provide an opportunity for representatives of health professional organizations and other interested persons to be briefed by senior FDA staff. It will also provide an opportunity for informal discussion on these topics of particular interest to health professional organizations.

The scheduled presenters for this meeting will be Janet Woodcock, Director, Center for Drug Evaluation and Research (CDER) and M. Diane Murphy, Director, Office of Drug Evaluation IV, CDER.

Dated: June 2, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–14404 Filed 6–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Medical Imaging Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Medical Imaging Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 28 and 29, 1999, 8 a.m. to 5 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Leander B. Madoo, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12540. Please call the Information Line for up-to-date information on this meeting.

Agenda: Section 121 of FDA's Modernization Act of 1997 directs FDA to establish appropriate procedures for the approval of positron emission tomography (PET) drugs under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C 355). At this meeting, FDA will present its findings on the safety and effectiveness of three PET drugs: (1) Fludeoxyglucose F 18 Injection, (2)Ammonia N 13 Injection, and (3) Water 0 15 Injection, for particular indications based on review of published literature. The committee will discuss the safety and effectiveness data on these three drugs. FDA also will discuss its proposed procedures for obtaining marketing approval for these three PET drugs.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 18, 1999. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m., June 28, 1999. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 18, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 28, 1999.

Jane E. Henney,

Commissioner of Food and Drugs.

[FR Doc. 99–14403 Filed 6–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

National Mammography Quality Assurance Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: National Mammography Quality Assurance Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 12, 1999, 9 a.m. to 6 p.m.

Location: Hilton Hotel, Salons A and B, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Charles A. Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12397. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss problematic issues encountered during the early phases of implementation of the final regulations and continue the discussion of the proposed Mammography Quality Standards Act (MQSA) compliance guidance. This guidance is being updated continually in response to questions that FDA receives from the public. The committee will also receive updates on the issues of States as Certifying Bodies under MQSA and Voluntary Stereotactic Accreditation Programs. The draft MQSA compliance guidance documents, which are in a question and answer format, are available to the public on the Internet at ''http://www.fda.gov/cdrh/dmqrp/guidance.html''. Additional information regarding guidance updates may be obtained by calling the Information Line.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 14, 1999. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10:30 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 14, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 28, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–14406 Filed 6–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Joint Meeting of the Nonprescription Drugs Advisory Committee and the Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Nonprescription Drugs Advisory Committee and the Arthritis Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held July 20, 1999, 8:30 a.m. to 5 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Sandra L. Titus or Kathleen R. Reedy, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or e-mail TITUSS@CDER.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12541. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 20, 1999, the committees will jointly consider an over-the-counter, new drug application (NDA) 21–070, Flexeril® (cyclobenzaprine HCl, 5 milligrams tablets, three times a day, Merck and Co.), proposed to treat muscle spasms.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 12, 1999. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on July 20, 1999. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 12, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 28, 1999.

Jane E. Henney,

Commissioner of Food and Drugs.

[FR Doc. 99–14402 Filed 6–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–1273]

Medical Devices; Draft Guidance for FDA Staff on Civil Money Penalty Policy; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Guidance for FDA Staff on Civil Money Penalty Policy.'' The civil money penalty (CMP) policy is intended for use by all FDA Regional and District Directors for the purpose of advising their field personnel when considering potential CMP recommendations under the Safe Medical Devices Act of 1990 (SMDA).

DATES: Written comments concerning this draft guidance must be received by September 7, 1999.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance. Submit written requests for single copies on a 3.5″ diskette of the draft guidance entitled ''Guidance for FDA Staff on Civil Money Penalty Policy'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Written comments concerning this guidance must be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Andrea P. Latish, Center for Devices and Radiological Health (HFZ–330), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4611.

SUPPLEMENTARY INFORMATION:

I. Background

The SMDA amended section 303(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 333(f)) to authorize FDA to impose CMP actions for all violations of the act involving medical devices except for current good manufacturing practice (CGMP) and medical device report violations that do not constitute a significant or knowing departure from such requirements or a risk to public health, filth violations in devices that are not otherwise defective, and minor violations for tracking and reports of corrections and removals. Thus, FDA has considerable latitude when applying CMP to violations involving devices.

FDA has developed a package of three documents that set forth the agency's policy concerning the application of civil money penalties for violations of the act involving medical devices. The three draft guidance documents are: ''Application of the Safe Medical Devices Act Civil Money Penalty Policy,'' ''Safe Medical Devices Act Civil Money Penalty Fee Matrix,'' and ''Safe Medical Devices Act Civil Money Penalty Decision Tree.''

The ''Application of the Safe Medical Devices Act Civil Money Penalty Policy'' outlines the use of the CMP for CGMP and premarket notification (510(k)) violations for chronic and repeat violators, and for less significant violations. It also discusses the relationship between CMP and seizure or injunction. The ''Safe Medical Devices Act Civil Money Penalty Decision Tree'' outlines whether the evidence and information collected justifies pursuing a CMP case. It is not an all-inclusive list of every issue that should be considered, but rather a series of questions to guide FDA's decision. The ''Safe Medical Devices Act Civil Money Penalty Fee Matrix'' is a procedure for calculating the penalty amount that will be assessed. The schedule set forth in the matrix covers the statutory factors that FDA is required to evaluate under the SMDA in determining the appropriateness of the case. The matrix will help to ensure consistency in the assessment of a CMP.

FDA is making these three draft guidance documents available to all FDA Regional and District Directors for the purposes of advising field personnel. FDA is announcing the availability of these documents to the public in order to advise persons who may be affected by FDA's policy and to obtain comment on whether the policy should be revised.

This guidance package of three documents takes into consideration the Presidential Memorandum, dated April 21, 1995, and the Small Business Regulatory Enforcement Fairness Act of 1996, both of which allow monies spent on corrective actions to be deducted from the fine imposed. CMP action, therefore, can provide noncompliant firms with a financial incentive to come into compliance.

The final CMP rule governing the procedures to be used in CMP matters was published in the **Federal Register** of July 27, 1995 (60 FR 38612), and is codified at 21 CFR part 17.

This draft guidance represents the agency's current thinking on the use of CMP recommendations made under the SMDA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both. This draft guidance is issued as a Level 1 draft guidance consistent with good guidance practices.

II. Electronic Access

In order to receive ''Guidance for FDA Staff on Civil Money Penalty Policy'' via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1124) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the World Wide Web (WWW). The Center for Devices and Radiological Health (CDRH) maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at ''http://www.fda.gov/cdrh''. ''Guidance for FDA Staff on Civil Money Penalty Policy'' will be available at ''http://www.fda.gov/cdrh/oc''.

III. Comments

Interested persons may, on or before September 7, 1999, submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 25, 1999.

Linda S. Kahan.

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–14405 Filed 6–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, June 14, 1999, 7:00 PM to June 16, 1999, 5:00 PM, Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852 which was published in the **Federal Register** on May 20, 1999, 64 FR 27585:

This is not an open meeting. The meeting is closed to the public.

Dated: June 2, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–14502 Filed 6–7–99; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood 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.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Rat Gene Catalog and Expressed Sequence Tag (EST) Map.

Date: June 16, 1999.

Time: 2:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Teleconference Meeting, 6701 Rockledge Drive, Rm. 9167, Bethesda, MD 20892, (telephone conference call).

Contact Person: Ivan C. Baines, PhD, Scientific Review Administrator, NIH, NHBLI, DEA, Review Branch, Rockledge II, 6701 Rockledge Drive, Suite 7184, Bethesda, MD 20892–7922; 301/435–0277.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.383, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 2, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–14500 Filed 6–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood 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.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Pediatric Asthma Clinical Research Network.

Date: June 30, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate cooperative agreement applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Anne P. Clark, Phd, NIH, NHLBI, DEA, Review Branch, Rockledge II, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924; (301) 435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 2, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–14501 Filed 6–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 8, 1999.

Time: 3:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (telephone conference call).

Contact Person: Russell E. Martenson, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd. Rm. 6138, MSC 9696, Bethesda, MD 20892–9696; 301–443–3936.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Intervention Research Review.

Date: July 7–9, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20852.

Contact Person: Lawrence E. Chaitkin, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd. Rm. 6138, MSC 9606, Bethesda, MD 20892–9606; 301–443–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, national Institutes of Health, HHS)

Dated: June 2, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–14499 Filed 6–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 10–11, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Clarion Hampshire Hotel, Washington, DC.

Contact Person: Jay Joshi, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, (301) 435–1184.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Development and Function Initial Review Group, Cell Development and Function 5.

Date: June 10–11, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Sherry L. Dupere, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–DMG (4).

Date: June 10–11, 1999.

Time: 8:00 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Lee Rosen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, lrosen@csr/nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Initial Review Group, Hematology Subcommittee 1.

Date: June 10–11, 1999.

Time: 8:00 am to 7:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Robert Su, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 10–11, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Bacteriology and Mycology Subcommittee 2.

Date: June 10–11, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: William C. Branche, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Tropical Medicine and Parasitology Study Section.

Date: June 10–11, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Montgomery Room, Bethesda, MD 20814.

Contact Person: Jean Hickman, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genetic Sciences Initial Review Group, Genetics Study Section.

Date: June 10–11, 1999.

Time: 9:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, N.W., Washington, DC 20037.

Contact Person: David J. Remondini, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 10, 1999.

Time: 12:00 pm to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Medicinal Chemistry Study Section.

Date: June 11–13, 1999.

Time: 8:00 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Best Western Inn on the Park, 22 South Carroll Street, Madison, WI 53703–3372.

Contact Person: Ronald J. Dubois, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722, duboisr@drg.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 11, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle, 1 Washington Circle, NW, Washington, DC 20037.

Contact Person: Anita Miller Sostek, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–0910.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 13, 1999.

Time: 1:00 pm to 5: 00pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW, Washington, DC 20007.

Contact Person: Alec S. Liacouras, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–X (17).

Date: June 13–14, 1999.

Time: 7:00 pm to 4:00 pm.

Agenda: To provide concept review of proposed grant applications.

Place: Bethesda Holiday Inn, Bethesda, MD.

Contact Person: Lee Rosen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–8 (01)

Date: June 14–15, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Capital Holiday Inn, 550 C Street, S.W., Washington, DC 20024.

Contact Person: Samuel Rawlings, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Surgery, Radiology and Bioengineering Initial Review Group, Surgery and Bioengineering Study Section.

Date: June 14–15, 1999.

Time: 8:00 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Teresa Nesbitt, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1172.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BDCN.

Date: June 14–15, 1999.

Time: 8:00 am to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Hotel, 1221 22nd Street NW, Washington, DC 20037.

Contact Person: Jay Cinque, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 14–15, 1999.

Time: 8:00 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, Washington, DC.

Contact Person: Mary Sue Krause, MEDS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7848, Bethesda, MD 20892, (301) 435–0681.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, General Medicine A Subcommittee 1.

Date: June 14–15, 1999.

Time: 8:30 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, Bethesda, MD 20017.

Contact Person: Harold M. Davidson, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776,davidsoh@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, Oral Biology and Medicine Subcommittee 2.

Date: June 14–15, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Old Town Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Priscilla Chen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biochemical Sciences Initial Review Group, Medical Biochemistry Study Section.

Date: June 14–15, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW, Washington, DC 20007.

Contact Person: Alexander S. Liacouras, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 14, 1999.

Time: 8:30 am to 11:00 am.

Agenda: To review and evaluate grant applications.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Ave, NW, Washington, DC 20037.

Contact Person: Nabeeh Mourad, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genetic Sciences Initial Review Group, Mammalian Genetics Study Section.

Date: June 14–15, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Old Town Alexandria, Alexandria, VA 22314.

Contact Person: Camilla Day, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7840, Bethesda, MD 20892, (301) 435–1037, dayc@drg.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 14–15, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Anita Miller Sostek, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–0910.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 2, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc 99–14503 Filed 6–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Changing the Conversation—A National Plan To Improve Substance Abuse Treatment: Call for Public Comment

AGENCY: Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, DHHS.

ACTION: Request for public comment on five issues (domains) of concern to the substance abuse treatment field when assessing substance abuse treatment.

SUMMARY: This notice announces that the Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) is formally inviting public comment on five issues (domains) that are of concern to the substance abuse treatment field and require development and exploration. Via several mechanisms, including public hearings, CSAT intends that findings from the exploration of individual domains will ultimately be synthesized into a coherent national strategy to guide substance abuse treatment program and policy development for the future. Individuals and organizations are encouraged to comment in one of several ways: (1) in writing, by submission through the U.S. Mail or courier service; (2) via the National Treatment Plan web site (http://www.natxplan.org); or (3) in person at one of the four public hearings scheduled at locations across the country. The final cutoff date for comments is December 1, 1999. This notice discusses the public hearings at which interested individuals/organizations may testify regarding the five substance abuse treatment domains discussed below.

DATES/LOCATIONS: CSAT plans to conduct four public hearings in 1999—July in Hartford, Connecticut; September in Chicago, Illinois; October in Portland, Oregon; and November in Tampa/St. Petersburg, Florida. The first hearing will be held at the Connecticut State Capitol, Legislative Office Building, 300 Capitol Avenue, Hartford, Connecticut, 06106, on July 8, 1999, between the hours of 8:30 a.m. and 5 p.m. EDT. Specific details regarding subsequent hearings will be published in the **Federal Register** approximately one month prior to each hearing.

Requests to testify at the Hartford, Connecticut, public hearing must be submitted to one of the addressees indicated below by July 1, 1999. Seating is limited. In the event that interpretive services for the hearing-impaired are required, please indicate these special needs to either of the addressees.

FOR FURTHER INFORMATION CONTACT: Requests for additional information regarding the hearing and/or testimonies, as well as requests to testify must be addressed to:

Peggy Cockrill, [Tele: (301) 443–7024; e-mail: pcockril@samhsa.gov; Fax: (301) 480–6077]

or

Ann Mahony, [Tele: (301) 443–7924; E-mail: amahony@samhsa.gov; Fax: (301) 480–6077], c/o TASCON 1803 Research Boulevard, Suite 305, Rockville, Maryland 20850

Written comments (without a request to personally testify) will also be accepted by either of the above addressees. Written testimonies are limited to five (5) typed pages using 1.5 line spacing and 12 point font.

SUPPLEMENTARY INFORMATION:

Background

Building on recent advances and studies, CSAT has initiated plans to focus on how to apply its extensive knowledge to the practical objective of improving treatment outcomes. The plans include synthesizing current knowledge and recommendations about treatment, service systems, application of best practices, diffusion methods, and organization and financing of substance abuse treatment services. Federal Government and outside experts, as well as the interested public, will explore the current state of the knowledge, resources, needs, and service and organizational capacity. The objective is the culling of priorities for action by the government and by others in the substance abuse treatment field. As noted above, CSAT is inviting the public to comment on five domains as part of the initial step of the plan. The domains, as well as some initial questions for exploration, include:

(1) Closing the Treatment Gap: Where are the gaps? How big are they for different populations? For different types of settings and treatment modalities? How big are gaps in other related systems of care, e.g., welfare, child welfare, housing? What are the policy, organization, and financing issues that must be addressed in the private and public systems, including Medicaid and Medicare, to close the treatment gap?

(2) Reducing Stigma and Changing Attitudes: What are the nature, causes and consequences of addiction stigma? What can CSAT, the treatment field, consumers and families do to address stigma related to addiction, substance abuse treatment and individuals with substance abuse disorders? How do other stigmas impact/compound the stigma of addiction?

(3) Improving and Strengthening Treatment Systems: What are the clinical and organizational challenges facing treatment organizations in the public and private sectors? What can CSAT, the treatment field, consumers and families do to improve and strengthen treatment organizations so that they can adapt to the new imperatives of the changing treatment system, and to improve the relationship between the general health care system and the specialty substance abuse treatment system? What should be done at the State, county and/or local levels to improve and strengthen substance abuse treatment?

(4) Connecting Services and Research: What are the best methods by which CSAT, the treatment field, consumers and families can foster and support evaluation of proven research findings in community-based settings and identification and adoption of best practices?

(5) Addressing Workforce Issues: What are the issues facing clinicians treating addictions? What can CSAT, the treatment field, consumers and families, and professional associations do to foster training, appropriate credentialing, and licensure in all settings in which treatment occurs, and to support treatment organizations in developing appropriate policies for clinical training?

Hearing Format

The hearings will be divided into five segments (i.e., the five domains described above) of approximately 45–60 minutes each. Each individual/organization participant will be limited to three (3) minutes of oral testimony and five (5) pages of typed testimony per domain. Participants who wish to address more than one domain and find it impossible to be in attendance during the scheduled time frame for other domains they also wish to address will, with CSAT staff concurrence, be allowed to address multiple domains at once. In these instances, the participant must clearly indicate the domain being addressed, and again, will be limited to three (3) minutes of oral testimony and five (5) pages of typed testimony per domain. All oral testimonies must be accompanied by a written testimony of no more than five (5) typed pages using 1.5 line spacing and 12 point font. Written testimonies may either be submitted before the hearing to one of the addressees listed above or to the registrar at the hearing. As the hearing schedule allows, unscheduled testimonies will be accommodated.

All testimonies (recorded and written) will become a part of the public domain.

Dated: June 3, 1999.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–14522 Filed 6–7–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Warren Parker, Blue Springs, MO, PRT–011656.

The applicant requests a permit to import the sport-hunted trophy of a straight horned markhor (*Capra falconeri jerdoni*) or a Kabul markhor (*C. f. megaceros*) from the Northwest Frontier Province of Pakistan for the purpose of enhancement of the survival of the species.

Applicant: Zoological Society of Cincinnati, Cincinnati, OH, PRT–011872.

The applicant requests a permit to import two captive-born Brazilian ocelot (*Leopardus pardalis mitis*) from the Zoologico de Curitiba, Curitiba, Brazil for the purpose of enhancement of the species through captive propagation.

Applicant: William H. Crawford, Frederick, OK, PRT–012455.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Frank R. Daigle, Rogers, MN, PRT–010431.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Applicant: Luis Rivera, San Juan, PR, PRT–843332.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted prior to April 30, 1994 from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: Peter Bollinger, Sacramento, CA, PRT–012288.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: Glenn J. Rasmussen, Wapato, WA, PRT–012452

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 1, 1999.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–14389 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Collection of Water Delivery and Electric Service Data for the Operation of Irrigation and Power Projects and Systems: Proposed Collection of Water Delivery and Electric Service Data; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Bureau of Indian Affairs (BIA) invites comments on two information collection requests which will be renewed. The two collections are Electrical Service Application, 1076–0021, and Water Request, 1076–0141.

DATES: Comments must be received on or before August 9, 1999, to be assured of consideration.

ADDRESSES: Comments should be sent to the Bureau of Indian Affairs, Branch of Irrigation, Power, and Safety of Dams, 1849 C Street, NW, Mail Stop 4513–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain copies of the information collection requests without charge by contacting Ross Mooney, 202–208–5480, facsimile number: 202–219–1255, or E-mail: Ross__Mooney@IOS.DOI.GOV.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 provides an opportunity for interested parties to comment on proposed information collection requests. The Bureau of Indian Affairs, Branch of Irrigation, Power, and Safety of Dams is proceeding with this public comment period as the first step in obtaining a normal information collection clearance from OMB. Each requests contain (1) type of review, (2) title, (3) summary of the collection, (4) respondents, (5) frequency of collection, (6) reporting and record keeping requirements.

Water Request

Type of review: Extension of a currently approved collection.

Title: Water Request, 25 CFR 171.

Summary: In order for irrigators to receive water deliveries, information is needed by the BIA to operate and maintain its irrigation projects and fulfill reporting requirements. Section 171.7 of 25 CFR part 171, [Irrigation] Operation and Maintenance, specifies the information collection requirement. Water users must apply for water delivery. The information to be collected includes name, water delivery location, time and date of requested water delivery, duration of water delivery, rate of water flow, number of acres irrigated, crop statistics, and other operational information identified in the local administrative manuals. Collection of this information is currently authorized under an approval by OMB (OMB Control No. 1076–0141). All information is collected at least annually from each water user with a response required each time irrigation water is provided. Annual reporting and record keeping burdens for this collection of information are estimated to average 8 minutes per request. There is a range of one to ten requests from each irrigation water user each season with an average of five responses per respondent. For all five responses, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, the total per respondent is 40 minutes. The total number of respondents is estimated at 10,300 per year. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 6,867 hours.

Frequency of Collection: On occasion.

Description of Respondents: BIA Irrigation Project Water Users.

Total Respondents: 10,300.

Total Annual Responses: 51,500.

Total Annual Burden Hours: 6,867 hours.

Electric Service Application

Type of review: Extension of a currently approved collection.

Title: Electric Service Application, 25 CFR 175.

Summary: In order for electric power consumers to be served, information is needed by the BIA to operate and maintain its electric power utilities and fulfill reporting requirements. Section 175.22 of 25 CFR part 175, Indian electric power utilities, specifies the information collection requirements. Power consumers must apply for electric service. The information to be collected includes name, electric service location, and other operational information identified in the local administrative manuals. Collection of this information is currently authorized under an approval by OMB (OMB Control No. 1076–0021). All information is collected from each electric power consumer. Annual reporting and record keeping burdens for this collection of information are estimated to average 30 minutes for each response for 3,000 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 1,500 hours.

Frequency of Collection: On occasion.

Description of Respondents: BIA Electric Power Consumers.

Total Respondents: 3,000.

Total Annual Responses: 3,000.

Total Annual Burden Hours: 1,500 hours.

The Bureau of Indian Affairs solicits comments in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

(2) Evaluate the bureau'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; and,

(4) Minimize the burden of the collection of information on those who are to respond.

Any public comments will be addressed in the Bureau of Indian Affairs' submission of the information collect request to the Office of Management and Budget.

Dated: May 24, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–14407 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Nevada Temporary Closure of Certain Public Lands Management by the Bureau of Land Management, Las Vegas Field Office

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Temporary Closure of Selected Public Lands in Clark County, Nevada, during the Operation of the 1999 SNORE Pahrump Midnight Special Race.

SUMMARY: The Field Office Manager of the Las Vegas Field Office announces the temporary closure of selected public lands under its administration.

This action is being taken to help ensure public safety, prevent unnecessary environmental degradation during the official permitted running of the 1999 SNORE Pahrump Midnight Special and to comply with provisions of the U.S. Fish and Wildlife Service's Biological Opinion for Speed Based Off-Highway Vehicle Events (1–5–95–F–237).

DATES: From 6:00 am June 25, 1999 through 6:00 am June 27, 1999 Pacific Standard Time.

Closure Area: As described below, an area within T. 20 N. to T. 21 N. R. 56 E. to R. 58 E.

1. The closure is a bound by Toiyabe National Forest on the North, California Line on the South, Clark County Line to the West, Spring Mountains to the East.

Exceptions to the closure are: State Route 160, Sandy Valley Road.

2. The entire area encompassed by the designated course and all areas outside the designated course as listed in the legal description above are closed to all vehicles except Law Enforcement, Emergency Vehicles, and Official Race Vehicles. Access routes leading to the course are closed to vehicles.

3. No vehicle stopping or parking.

4. Spectators are required to remain within designated spectator area only.

5. The following regulations will be in effect for the duration of the closure: Unless otherwise authorized no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course.

c. Spectate or otherwise be located outside of the designated spectator area.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Possess and or consume any alcoholic beverage unless the person has reached the age of 21 years.

f. Discharge, or use firearms, other weapons or fireworks.

g. Park, stop, or stand any vehicle outside of the designated spectator area.

h. Operate any vehicle including an off-highway vehicle (OHV), which is not legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas, along the race course, and in designated pit area.

i. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at owners expense.

j. Take a vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier or device.

k. Fail to keep their site free of trash and litter during the period of occupancy, or fail to remove all personal equipment, trash, and litter upon departure.

l. Violate quiet hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10:00 p.m. and 6:00 a.m. Pacific Standard Time.

m. Allow any pet or other animal in their care to be unrestrained at any time.

n. Fail to follow orders or directions of an authorized officer.

o. Obstruct, resist, or attempt to elude a Law Enforcement Officer or fail to follow their orders or directions.

Signs and maps directing the public to designated spectator areas will be provided by the Bureau of Land Management and the event sponsor.

The above restriction do not apply to emergency vehicles and vehicles owned by the United States, the State of Nevada or Clark County. Vehicles under permit for operation by event participants must follow the race permit stipulations.

Operators of permitted vehicles shall maintain a maximum speed limit of 25 mph on all BLM roads and ways. Authority for closure of public lands is found in 43 CFR part 8340 subpart 8341; 43 CFR part 8360, subpart 8364.1 and 43 CFR part 8372. Persons who violate this closure order are subject to fines and or arrest as prescribed by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf Recreation Manager or Ron Crayton or Ken Burger BLM Rangers, BLM Las Vegas Field Office 4765 Vegas Dr. Las Vegas, Nevada 89108, (702) 647–5000.

Dated: May 27, 1999.

Mark Chatterton,

Acting Field Office Manager.

[FR Doc. 99–14412 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–010–1210–00; WYW–147234]

Notice of Availability of the Decision Record and Notice of Off-Road Vehicle Designations for the Red Gulch Dinosaur Tracksite, Big Horn County, WY; and Notice of Amendment to the Washakie Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM), Worland Field Office, Wyoming, announces the availability of the decision record and off-road vehicle designations for management of the Red Gulch Dinosaur Tracksite.

The decision record amends the 1988 Washakie Resource Management Plan (RMP). The amendment, contained in a general management plan for the Red Gulch Dinosaur Tracksite: (1) Designates an area of critical environmental concern (ACEC) on 1,800 acres, (2) expands an existing special recreation management area, (3) calls for the pursuit of a mineral withdrawal to prohibit the staking and development of mining claims, (4) prohibits most other surface-disturbing activities, and (5) modifies off-road vehicle designations for the tracksite area.

FOR FURTHER INFORMATION CONTACT: Bob Ross, field office planning coordinator, Bureau of Land Management, 101 South 23rd Street, P.O. Box 119, Worland, Wyoming 82401–0119, 307–347–5100.

SUPPLEMENTARY INFORMATION: The Red Gulch Dinosaur Tracksite is the largest tracksite in Wyoming, and one of only a few worldwide from the Middle Jurassic Period (160 million to 180 million years old). The tracksite suggests that a large and diverse population of dinosaurs once existed in the area. Scientists believe these rare Middle Jurassic dinosaur tracks shed new light on the past because the formation in which they were found (the Sundance Formation) was previously thought to be at the bottom of a sea.

The management emphasis within the 1,800-acre tracksite ACEC will be for protection of the fossil resources, as well as for scientific research, public education, and recreation. The area has been included in the West Slope of the Bighorn Mountains Special Recreation Management Area. The BLM will also pursue a withdrawal of the public lands from entry under the mining laws to prohibit the staking and development of mining claims where dinosaur tracks are known or anticipated to exist. Most other surface-disturbing activities will be prohibited as well. The area is identified as ''limited to designated roads and trails'' for motorized vehicle use, representing a change from the former off-road vehicle designation of ''limited to existing roads and trails'' for motorized vehicle use.

As required, further environmental analyses will be conducted on any future site-specific activity or implementation planning to be done in the Red Gulch Dinosaur Tracksite ACEC. This would include opportunities for public comment.

Any detailed activity planning that may be conducted in the ACEC area will consider needs for site-specific mitigation of surface-disturbing activities for things like locating trails, roads, exhibits, and facilities to enhance public education and recreation.

Dated: June 2, 1999.

Alan R. Pierson,

State Director.

[FR Doc. 99–14445 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–960–1150–00]

Dakotas Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, North Dakota Field Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Dakotas Resource Advisory Council will be held July 19 & 20, 1999, at the Feedlot Restaurant, Buffalo, South Dakota. The session will convene at 8:00 a.m. on January 19th and resume at 8:00 a.m. on the 20th. Agenda items will include updates on the South Dakota Land Exchange, and Off-Road Vehicle use on public lands. A field trip to the Moreau Grazing Association is scheduled for the afternoon of July 19th.

The meeting is open to the public and a public comment period is set for 8:00 a.m. on July 20th. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per-person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying.

The 12-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the Dakotas.

FOR FURTHER INFORMATION CONTACT: Douglas Burger, Field Office Manager, North Dakota Field Office, 2933 3rd Avenue West, Dickinson, ND 58601. Telephone (701) 225–9148.

Dated: May 27, 1999.

Douglas J. Burger,

Field Office Manager.

[FR Doc. 99–14322 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–015–1430–01: GP–9–0194]

Realty Action: Direct and Competitive Sale of Public Land in Lake County, Oregon

AGENCY: Bureau of Land Management, Lakeview Resource Area.

ACTION: Direct and competitive sale of public land in Lake County, Oregon (OR45221, (OR55119).

The following parcels of public land are suitable for direct and competitive sale under Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than the appraised fair market value. The land will not be offered for sale for at least 60 days following the publication of this notice in the **Federal Register**.

Legal description	Acreage	Sale price	Deposit
Parcel Serial No., OR 45221:			
T.40S., R.18E., W.M., Oregon, Sec. 6: Lot 9	3.04	$12,500.00	$2,500.00
Parcel Serial No., OR 55119:			
T.40S., R.18E., W.M., Oregon, Sec. 6: Lot 8	6.60	17,500.00	3,500.00

The above described parcels of land are hereby classified for disposal pursuant to Section 7 of the Taylor Grazing Act, 43 U.S.C. 315f and segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statutes. The segregation will last for 270 days from the date of publication, until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The land is not considered essential to the public land management base and is unsuitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with Bureau planning for the land involved and will serve important public objectives.

The properties will be offered for sale at 10:00 a.m. PDT, on September 1, 1999, using both direct and competitive sale procedures. The sale procedures are authorized under 43 CFR 2711.3–3.

Sale parcel OR 45221 will offered under direct sale procedures to John McEachern and Gloria Utley. Direct sale procedures are considered appropriate, in this case, as McEachern/Utley own a summer cabin on the offered public land which has been under authorization ORE 0005481 since 1959. Sale would eliminate the current split property rights situation and the need for future authorization. Submission of either the indicated sale price or deposit shall be required on the date of sale and be in the form of a certified check, postal money order, bank draft or cashier's check, made payable to the Department of the Interior—BLM. If a deposit is submitted for this parcel, the total purchase price shall be paid within 180 days of the date of sale or the deposit will be forfeited and the parcel withdrawn from further sale consideration.

Sale parcel OR 55119 will be offered under competitive sale procedures and by written sealed bid only. Sealed written bids must be received by the BLM, Lakeview Resource Area Office at 1300 South G Street, HC 10, Box 337, Lakeview, Oregon 97630, prior to 10:00 am PDT, September 1, 1999, and must be for not less than the appraised sale price indicated. Written sealed bids must be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to the Department of the Interior—BLM for not less than the deposit specified in this notice and shall be enclosed in a sealed envelope clearly marked, in the lower left hand corner, ''Bid for Public Land Sale OR 55119, Lake County, Oregon, September 1, 1999.'' All written sealed bids received will be opened and the high bidder declared at the time of sale. In the event of a tie, the tied bidders will be notified and given an opportunity to modify their original bids. The resulting bid off will determine the high bidder and the high bidder will be notified by certified mail. The high bidder is required to pay the total purchase price within 180 days of the date of sale or the deposit will be forfeited and the parcel reoffered to the public on an over-the-counter competitive sale basis.

The terms, conditions and reservations applicable to the sale are as follows:

(1) Patents to the sale parcels will contain a reservation to the United States for ditches and canals.

(2) The sale parcels will be subject to all valid existing rights of record at the time of patent issuance.

(3) The mineral interests being offered for conveyance with the sale parcels have no known value. A deposit or bid to purchase either of the parcels will also constitute an application for conveyance of the mineral estate with the following reservations;

(a) Oil and gas and geothermal resources will be reserved to the United States.

The above mineral reservations are being made in accordance with Section 209 of the Federal Land Policy and Management Act of 1976. Successful sale participants, must include with their full or final payment a non-refundable $50.00 filing fee for conveyance of the mineral estate.

Federal law requires that the bidder(s) must be a U.S. citizen, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

If sale parcel OR 55119 is not sold on the date of first offering, the parcel will be available on an over-the-counter competitive sale basis and be subject to the above terms and conditions and at no less than the indicated sale price. Sealed bids will be accepted on the unsold parcel at the Lakeview Resource Area Office during regular business hours (7:45 a.m. to 4:30 p.m. Monday through Friday) at the address shown above. All sealed bids will be opened the first Wednesday of each subsequent month until the land is either sold or withdrawn from sale. Prospective buyers should inquire about parcel availability after September 1, 1999.

Detailed information concerning the sale, including the reservations, sale procedures, terms and conditions, planning and environmental documentation, is available at the Lakeview Resource Area Office, 1300 South G Street, HC 10, Box 337, Lakeview, Oregon 97630.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Lakeview Resource Area Field Manager, Bureau of Land Management, at the above address. Objections will be reviewed by the

Lakeview District Manager who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Scott R. Florence,

Field Manager, Lakeview Resource Area.

[FR Doc. 99–14411 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–33–U

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Region; Environmental Assessment of Proposed Land Exchange, George Washington Memorial Parkway, City of Alexandria and Arlington County, VA

ACTION: Notice of the availability of an environmental assessment (EA) for proposed exchange of land interests between the National Park Service, and Commonwealth Atlantic Properties, Inc., Commonwealth Atlantic Land Company, and Commonwealth Atlantic Land V Inc.

SUMMARY: Pursuant to the Council of Environmental Quality regulations and National Park Service policy, the National Park Service has completed an EA which evaluated the potential impacts of the proposed exchange of land interests associated with two distinct properties located in the City of Alexandria and in Arlington County, Virginia. The EA examines the environmental and visual impacts of the land exchange on the resources and scenic quality of the George Washington Memorial Parkway. The National Park Service is soliciting comments on this EA. These comments will be considered in evaluating it and in making decisions pursuant to the National Environmental Policy Act.

DATES: There will be a 30-day public review period for comment on this document. Comments on the EA should be received no later than June 30, 1999.

ADDRESSES: Comment on the EA should be submitted to Mr. John G. Parsons, Associate Regional Director, Lands, Resources, and Planning, National Park Service, National Capital Region, 1100 Ohio Drive, SW, Washington, DC 20242. A limited number of copies of the EA are available on request. A public reading copy of the EA will be available at the National Capital Region Headquarters Building, 1100 Ohio Drive, SW, First Floor Lobby, Washington, DC 20242, and at the National Park Service Planning web page at nps.gov/gwmp/landexchange.htm.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Parsons, Associate Regional Director, Lands, Resources, and Planning, National Park Service, National Capital Region, 1100 Ohio Drive, SW, Washington, DC 20242, Telephone: (202) 619–7025.

SUPPLEMENTARY INFORMATION: By virtue of an Indenture land agreement dated February 12, 1938, the Richmond, Fredericksburg and Potomac Railroad Company (RF&P), predecessor in title to Commonwealth, conveyed to the United States certain land use restrictions over 29.1 acres of land in Arlington County, Virginia, currently owned by Commonwealth and hereinafter referenced as ''the Indenture Land.''

Commonwealth also owns 38.55 acres of land in the City of Alexandria, Virginia, hereinafter referenced as ''Potomac Greens.'' By virtue of a Deed of Easement dated August 13, 1984, and in accordance with the terms of a previous exchange agreement between the United States and RF&P, the United States conveyed to RF&P a perpetual easement on and across a portion of lands of the George Washington Memorial Parkway for access, including ingress and egress from the northbound and southbound lanes of the George Washington Memorial Parkway to and from Potomac Greens in return for RF&P's obligation to construct at no cost to the United States a center-piered bridge and all associated ramps and connections necessary for ingress and egress to and from Potomac Greens to the George Washington Memorial Parkway and other valuable consideration.

Commonwealth is desirous of the United States relinquishing its restrictions on the Indenture Land in order to allow Commonwealth to implement a proposed plan for the mixed use development of the property in exchange for certain restrictions to be conveyed by Commonwealth to the United States relative to building heights and setbacks. Commonwealth has also proposed implementing a plan for the residential development of Potomac Greens, including minimal support retail.

The National Park Service is desirous of acquiring Commonwealth's access rights to the George Washington Memorial Parkway and in return is willing to partially relinquish the United States' interests in restricting the use of the Indenture Land.

The National Park Service published a notice in the **Federal Register** on December 9, 1998 (63 FR 67916), inviting public comment on proposed land exchange. A public meeting was held on December 10, 1998, and as a result received six comments on the proposed exchange.

Dated: June 1, 1999.

Terry R. Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 99–14439 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Record of Decision, General Management Plan and Environmental Impact Statement, Isle Royale National Park, Keweenaw County, Michigan

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service, has prepared a Record of Decision on the Final General Management Plan/Final Environmental Impact Statement for Isle Royale National Park, Keweenaw County, Michigan.

DATES: The Regional Director, Midwest Region approved the Record of Decision, on May 11, 1999.

FOR FURTHER INFORMATION CONTACT: Superintendent, Isle Royale National Park, 800 E. Lakeshore Drive, Houghton, MI 49931–1895, telephone 906–482–0986.

SUPPLEMENTAL INFORMATION:

Introduction

The National Park Service has prepared the Final General Management Plan/Environmental Impact Statement (GMP/FEIS) for Isle Royale National Park, Michigan. The GMP/FEIS proposes management direction for the park for the next 15–20 years and documents the anticipated effects of the proposed action and other alternatives on the human environment, including natural and cultural resources. This Record of Decision is a concise statement of the decisions made, other alternatives considered, the basis for the decision, the environmentally preferable alternative, and the mitigating measures developed to avoid or minimize environmental harm.

Decision

After careful consideration of environmental impacts, costs, comments from the public, agencies, and tribes, and engineering evaluations, the National Park Service recommends for implementation the proposed action evaluated in the final general management plan/environmental impact statement.

Summary of the Selected Action

The goal of the selected alternative, which was identified as the proposed action in the Final Environmental Statement, is to meet the diverse expectations and needs of Isle Royale visitors while emphasizing the natural quiet that is fundamental to wilderness experiences. All park areas will be available to all visitors, so long as users participate in ways that are consistent with the access, facilities, and opportunities provided. Management zones will provide guidance for managing specific areas for desired visitor experience and resource conditions (see p. 30 of the GMP/FEIS).

Campgrounds will be designed and access provided to separate motorized and non-motorized uses in a few areas; certain docks will be removed or relocated, for example, and some new campgrounds will be provided. A variety of uses will be available that will be fairly evenly distributed across the island. Use limits may become necessary in some management zones to prevent overcrowding and maintain quiet and solitude. Quiet/no-wake water zones will be established to reduce noise and wake impacts in numerous areas. Other regulations aimed at reducing sound associated with humans will also be implemented.

Partnerships will be sought to maintain the docks and cultural resources at Barnum and Washington Islands. Potential adaptive public overnight use of these historic sites and former commercial fishing sites at Crystal Cove, Wright Island, and Fisherman's Home will be considered. When the Passage Island, Isle Royale, and Rock of Ages lighthouses are transferred to the NPS, partners will be sought to help stabilize, maintain, and interpret them and their surroundings.

Existing motel units at Rock Harbor will be reconfigured and made more rustic. Existing Housekeeping cabins will be retained; a few new rustic cabins will be added. Utility systems and other concession infrastructure at Rock Harbor will be brought into compliance with State and Federal standards. The dining room, concession laundry, and public laundry at Rock Harbor will be discontinued; most other concession services will remain. Unless the concessioner is subsidized through a new congressional appropriation, prices of services might rise to the point that concessions services may be unviable.

In addition to the actions described above, the following actions are part of the selected alternative and alternatives B, C, and E (described in the next section). Actions related to natural resources: complete baseline inventories of natural resources, expand monitoring, develop fisheries management and water resource management plans, and establish research and wolf management advisory boards. Actions related to cultural resources: complete inventory and documentation of resources, expand monitoring, research specific cultural history gaps, and cooperate with partners to set standards for and carry out shipwreck preservation. Except in alternative C, historic structures would generally be retained if they were eligible for the National Register and a potential use was identified. Actions related to interpretation, information, and education: develop a comprehensive interpretive plan, improve visitor information facilities, strengthen education outreach, and develop interpretive media supportive of park emphasis statements. Other actions: develop a wilderness and backcountry management plan and a commercial services plan, limit charter fishing permits, prohibit personal watercraft, and perform a study to develop and evaluate options for improving the mainland headquarters.

Other Alternatives Considered

Alternative A—Alternative A (the status quo or no-action alternative) would continue current management at Isle Royale National Park. It provides a baseline for evaluating the changes and related environmental effects of the other alternatives. Park managers would continue to provide for visitor use and would respond to natural and cultural resource management concerns according to current policy and legal requirements and as funding allowed. There would be no change in management direction.

Alternative B—Alternative B would separate uses by concentrating facilities and services at the ends of the island and by creating an increasingly primitive wilderness experience toward the middle of the island. Visitors would find a full range of facilities and services and a more structured experience at Rock Harbor and Windigo, the primary access points to the island, which would both require some increased development. A more primitive wilderness experience with quiet and solitude would be found toward the center of the island, where most facilities and amenities would be removed. Limits on the number of visitors there would probably be necessary.

In addition to orientation and interpretation offered at the Houghton headquarters, a broad range of services would be available at both ends of the island. Rock Harbor and Windigo would offer a full range of orientation information and services. No formal interpretation would be offered in the middle of the island.

Some cultural resources in developed and frontcountry zones could be preserved through adaptive use for lodging, interpretation, or operations. Cultural resources toward the middle of the island would be documented and allowed to deteriorate.

Additional staff and housing might be needed at Windigo to operate expanded sewer and water treatment facilities. The Amygdaloid Island ranger station would remain, but the Malone Bay station in the middle of the island would be removed.

Alternative C—Most of the island would be truly primitive. Emphasis would be placed on providing superlative wilderness experiences, solitude, and escape from the intrusions of the modern world. Facilities and development would be scaled back and evidence of management activities would be minimal. Party size would be limited to a maximum of six people for overnight use on the island.

Visitation would be managed through a reservation system. Permits could be issued on a first-come, first-served basis, or a lottery system would be used. Various systems would be carefully evaluated before one was chosen.

Emphasis would be placed on providing orientation and interpretation at the Houghton headquarters and other ferry staging areas. Additional information would be provided in written materials. No interpretive media or formal programs would be offered on the island because they could intrude on the wilderness character.

Ferry service would be provided to Rock Harbor and Windigo only. Water taxi service would be eliminated.

Consistent with the concept of this alternative, all cultural resources would be documented and allowed to decay. No stabilization or preservation of these resources would be attempted. The Coast Guard would continue to maintain navigational aids, and the National Park Service would continue to maintain access to these areas; however, when the lighthouses are turned over to the National Park Service, they would be documented and allowed to decay. Lighthouses could be maintained, however, by the Coast Guard or some other entity.

Alternative E—Most facilities would remain and services would continue, but a few changes would be made to better separate uses and increase interpretation. To provide better quality experiences without restricting activities, visitor numbers would be controlled at substantially lower levels than exist now (10,000 to 13,000 people per year). This would mean that approximately 5,000 to 8,000 fewer visitors per year would be accommodated than in recent years.

Visitation to the island would be managed through a reservation system. A limited number of permits could be issued per year on a first-come, first-served basis, or there could be a lottery system or some other method. Various reservation systems would be carefully evaluated before one was chosen.

Interpreted sites would remain, and historic structures at Wright Island, Crystal Cove, and Fishermans Home could be adaptively used for additional interpretation of park cultural themes. Interpretation and environmental education could be provided at the west end of the park at Washington and Barnum Islands. The Rock Harbor and Windigo areas would remain the primary visitor orientation points.

Historic structures and landscapes would be preserved in priority order according to significance. The historic commercial fishery sites at Wright Island, Crystal Cove, and Fishermans Home would be stabilized and adaptive uses would be sought to provide for their continued preservation and interpretation. When the National Park Service received title to the lighthouses owned by the U.S. Coast Guard, partners interested in preserving the structures would be considered.

Environmentally Preferable Alternative

The environmentally preferable alternative is defined as ''the alternative or alternatives that will promote the national environmental policy as expressed in section 101 of the National Environmental Policy Act. Ordinarily, this means the alternative that causes least damage to the biological and physical environment; it also means the alternative that best protects, preserves, and enhances historic, cultural, and natural resources'' (''Forty Most Asked Questions Concerning Council on Environmental Quality's (CEQ) National Environmental Policy Act Regulations,'' 1981).

The environmentally preferable alternative is the selected action. This alternative best meets the full range of national environmental policy goals as stated in NEPA's Section 101. The selected action (1) maximizes protection of natural and cultural resources while maintaining a wide range of neutral and beneficial uses of the environment without degradation; (2) maintains an environment that supports diversity and variety of individual choice; (3) achieves a balance between human population and resource use; and (4) improves resource sustainability.

Alternative C, as described in the Final GMP/EIS, could potentially provide additional protection for natural resources beyond that included in the selected action, primarily through scaling back human activities and facilities. Alternative C does not protect historic and cultural resources, however, nor does it provide for a diversity of human choice.

The selected alternative provides the appropriate balance and flexibility necessary to protect the cultural heritage and traditional recreational uses at Isle Royale, as well as natural and cultural resources. This approach is also vital to maintaining relationships between gateway communities and Isle Royale National Park, a critical element in the successful implementation of the proposed action and realization of its beneficial effects on the environment.

Measures To Minimize Harm

All practicable means to avoid or minimize environmental harm that could result from implementation of the selected action have been identified and incorporated into the selected action. They are presented in detail in the GMP/FEIS. They include, but are not limited to, resource monitoring and management; visitor use monitoring and management; commitments for additional resource surveys and consultation prior to Park Service construction, and proposals for additional research and data collection as outlined in the plan. Additional mitigation measures are discussed on pp. 24 and 25, and in the Consultation and Coordination section (pp. 128–134) of the GMP/FEIS.

Due to the programmatic nature of the general management plan, specific development projects will be reviewed as necessary for compliance with the National Environmental Policy Act, National Historic Preservation Act, and other applicable Federal and State laws and regulations prior to project clearance and implementation. Specific measures to minimize environmental harm will be included in implementation plans called for by the GMP/FEIS. These include fisheries management and water resource management plans, a study to develop and evaluate options for improving the mainland headquarters, a comprehensive interpretive plan, a wilderness and backcountry management plan, and a commercial services plan.

Basis For Decision

The selected alternative best supports the park's purpose, significance, and wilderness status, and accomplishes the statutory mission of the National Park Service to provide long-term protection of park resources while allowing for appropriate levels of visitor use and means of visitor enjoyment. The selected alternative also does the best job of addressing issues identified during public scoping while minimizing environmental harm. Other factors considered in the decision were public and resource benefits gained for the cost incurred, and extensive public comment.

Public Involvement

Public involvement for the General Management Plan began with a workshop for representatives of key stakeholders in February 1994. In July 1995 the planning team met on the island to discuss preliminary planning issues. Team members spoke about the planning effort at two public programs on the island. The planning team also met with park staff members (those not on the planning team) to solicit their input. Newsletter #1, published in November 1995, introduced the planning project and process to the public.

In Newsletter #2 the public was asked to review draft purpose and significance statements and a list of preliminary planning issues. Nearly 300 responses were received and 50–60 people attended each public meeting in Duluth, Minnesota, and Houghton and Lansing, Michigan to provide additional comments.

Newsletter #3, published in June 1996, summarized public input to date and presented revised purpose and significance statements, park emphasis statements, revised issue statements, potential management zones, and possible alternative concepts. There were again a large number of responses and the results were reported in November 1996 in Newsletter #4.

Using the public input, the planning team developed the alternative concepts in more detail and presented them with maps in Newsletter #5 in February 1997. Public meetings were held in Ann Arbor and Houghton, Michigan and Duluth, Minnesota, to present the management alternatives for public comment in March 1997. There was significant response to the newsletter and 75 to 150 people attended each meeting. Using that input the planning team developed a preliminary preferred alternative, which was presented in Newsletter #6 in July 1997.

The Draft General Management Plan/ Environmental Impact Statement was produced and distributed for public review in March 1998. Public meetings were held in April 1998 at St. Paul and Duluth, Minnesota, and Houghton and Ann Arbor, Michigan. Approximately 75–150 people attended each of the meetings. Additionally, nearly 600 responses were received by mail or on the Internet. The preferred alternative was subsequently revised and the Final General Management Plan/ Environmental Impact Statement was distributed in November 1998.

Sixteen (16) letters commenting on the GMP/FEIS were received. There were few new ideas expressed in the letters; similar comments (with NPS responses) were incorporated into the GMP/FEIS. Concerns related to the following general topic areas were expressed: separation of uses (including concerns about non-motorized zones), concessions services at Rock Harbor (including concerns about affordability and accessibility of overnight accommodations), and dock removal and replacement. The National Park Service has heard these concerns, and responded to them in the ''Summary of Public Comments'' section of the GMP/ FEIS.

Conclusion

A notice of availability for the Final General Management Plan/ Environmental Impact Statement for Isle Royale National Park was published in the **Federal Register** on November 3, 1998, and the 30-day no-action period ended on December 3, 1998.

The above factors and considerations justify the selection of the final plan, as described in the ''Proposed Action'' section of the Final Environmental Impact Statement. The final general management plan is hereby approved.

Dated: May 21, 1999.

William W. Schenk,

Regional Director.

[FR Doc. 99–14440 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

New Orleans Jazz National Historical Park, New Orleans, Louisiana; Notice of Availability of Final General Management Plan/Environmental Impact Statement for New Orleans Jazz National Historical Park

SUMMARY: This Final General Management Plan/Environmental Impact Statement describes and analyzes three alternatives proposed by the National Park Service for setting park management and direction for New Orleans Jazz National Historical Park over the next 10 to 15 years. The format of the document will be as an abbreviated final environmental impact statement. **Alternative A** is the no-action, or status quo, alternative. This alternative would not allow the park to achieve its mission; however, it does provide a baseline for comparison with the other alternatives. **Alternative B** would emphasize conveying the park's interpretive story through such personal programs as interpreted performances, seminars, and performances. Educational activities would be given maximum emphasis in this alternative. It would allow the park to assist in the adaptive use of structures related to jazz. Interpretive programming would heavily depend on the involvement of local musicians and educators, thus supporting cultural preservation. Under this alternative, the visitor center would be located at the Old U.S. Mint. **Alternative C** would emphasize a strong partnership program between the National Park Service and other entities involved in preserving the New Orleans jazz tradition. In Alternative C, the National Park Service would provide funding for basic park operations and would work intensively with others to develop partnerships and alternative funding sources for interpretation, visitor use and experiences, and other activities focusing on preserving the jazz tradition. The extent and success of this alternative would depend on substantial support from partners, especially the private sector. Interpretation media would be extensively used, and the size and scope of park educational and preservation programs would be guided by the development of partnerships. Under this alternative, the visitor center would be located at a complex in Louis Armstrong Park. Alternative C is the National Park Service's **Proposed Action**.

Environmental impacts that would result from implementation of the alternatives are addressed in the document. Impact topics include cultural and natural resources, interpretation and visitor use, socioeconomic environment, and National Park Service operations. Measures that would be taken to mitigate impacts are also described in the document.

Availability: The Final Environmental Impact Statement is being mailed to agencies, organizations, and individuals on the park's mailing list, and a limited number of copies will be available at park headquarters at the following address: Superintendent, New Orleans Jazz National Historical Park, 365 Canal Street, Suite 2400, New Orleans, LA 70130, Telephone (504) 589–4806.

No sooner than 30 days from the appearance of this notice in the **Federal Register**, a Record of Decision will be signed that will document NPS approval of the general management plan for New Orleans Jazz National Historical Park, and identify the selected action from the alternatives presented in the FEIS.

Dated: May 28, 1999.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 99–14441 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Racial Desegregation of Public Education National Historic Landmark Theme Study

AGENCY: National Park Service.

ACTION: Notice of theme study.

SUMMARY: Notice is hereby given that in October 1998, Congress authorized the National Park Service to prepare a National Historic Landmark (NHL) Theme Study on the history of racial desegregation in public education in the United States. The purpose of this study is to develop a historic context on the story of racial desegregation and to identify and prioritize potential National Historic Landmarks This study will be presented to Congress by the Secretary of the Interior in October 2000.

FOR FURTHER INFORMATION CONTACT: John Sprinkle, National Register, History, and Education (2280), National Park Service, 1849 C Street, NW, Room NC–400, Washington, DC 20240. Telephone (202) 343–8166.

Dated: June 2, 1999.

Carol D. Shull,

Chief, National Historic Landmarks Survey and Keeper of the National Register of Historic Places, National Park Service, Washington Office.

[FR Doc. 99–14451 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

Grand Canyon National Park, Coconino County, AZ

AGENCY: National Park Service, DOI.

ACTION: Notice and request for comment.

SUMMARY: Notice is hereby given that a proposal for a cellular communication site at Grand Canyon National Park has been received. The company proposes installing and operating a wireless telecommunications facility on the existing tower of US WEST at Grand Canyon Village of the park.

DATES: Written comments must be submitted on or before July 5, 1999.

ADDRESSES: Direct all written comments to Superintendent, Attn.: Barbara Nelson, Telecommunications Specialist, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023.

FOR FURTHER INFORMATION CONTACT: Sandi Perl, Management Assistant, at telephone number 520–638–7885.

Dated: June 1, 1999.

Robert L. Arnberger,

Superintendent.

[FR Doc. 99–14442 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–805 (Final)]

Elastic Rubber Tape From India

Determination

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury by reason of imports from India of elastic rubber tape,[2] classified in subheading 4008.21.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective August 18, 1998, following receipt of a petition filed with the Commission and the Department of Commerce by counsel for Fulflex, Inc., Middletown, RI, and two wholly-owned subsidiaries of M-Tec Corp., Elastomer Technologies Group, Inc., Stuart, VA, and RM Engineered Products, Inc., North Charleston, SC. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of elastic rubber tape from India were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 10, 1999 (64 FR 6679). The hearing was held in Washington, DC, on April 20, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 1, 1999. The views of the Commission are contained in USITC Publication 3200 (June 1999), entitled Elastic Rubber Tape from India: Investigation No. 731–TA–805 (Final).

By order of the Commission.

Issued: June 2, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14524 Filed 6–7–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Crawford determines that an industry in the United States is materially injured by reason of the subject imports from India, and Commissioner Koplan determines that an industry in the United States is threatened with material injury by reason of the subject imports from India.

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–406]

Certain Lens-Fitted Film Packages; Notice of Issuance of General Exclusion Order and Cease and Desist Orders; Termination of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission determined to reverse-in-part the presiding administrative law judges (ALJ's) initial determination (ID) of February 24, 1999, in the above-captioned investigation and determine that the design patents in issue are infringed by the respondents. The Commission also determined that the correct standard for the burden of proof on the repair/reconstruction issue is a preponderance of the evidence. The Commission also determined to correct certain technical errors in the ID's infringement findings. Having found a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, the Commission issued a general exclusion order and cease and desist orders directed to 20 domestic respondents, and terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on March 25, 1998, based on a complaint by Fuji Photo Film Co., Ltd. (Fuji) of Tokyo, Japan. 63 FR 14474. Fuji's complaint alleged unfair acts in violation of section 337 in the importation and sale of certain lens-fitted film packages (i.e., disposable cameras). The complaint alleged that 27 respondents had infringed one or more claims of 15 patents held by complainant Fuji. On October 23, 1998, the Commission determined not to review two IDs finding a total of eight respondents, viz., Boshi Technology Ltd., Fast Shot, Haichi International, Innovative Trading Company, Labelle Time, Inc., Linfa Photographic Ind. Co. Ltd., Forcecam, Inc., and Rino Trading Co. Ltd., in default for failure to respond to the complaint and notice of investigation. An evidentiary hearing was held November 2–13, 1998. Eight respondents participated in the hearing, viz., Achiever Industries Limited, Argus Industries, China Film Equipment, Dynatec International Inc., Jazz Photo Corp., OptiColor Camera, P.S.I. Industries, and Sakar International, Inc. (the participating respondents). On December 4, 1998, the Commission determined not to review an ID granting complainant's oral motion to withdraw a single claim of one patent from the investigation. 63 FR 67918 (December 9, 1998). Ten respondents that had filed responses to the complaint and notice of investigation failed to appear at the hearing, viz., Ad-Tek Specialties Inc., AmerImage, Inc. d/b/a/ Rainbow Products, Boecks Camera LLC, BPS Marketing, E.T. Trading d/b/a Klikit, Penmax, Inc., PhilmEx Photographic Film, T.D.A. Trading Corp., Vantage Sales, Inc., and Vivitar Corp.

On February 24, 1999, the ALJ issued his final ID, finding a violation of section 337 by 26 of 27 named respondents. (Complainant Fuji admitted at closing argument that one named respondent, Opticam Inc, was not violating section 337). He found that Fuji had not carried its burden of proof in showing infringement of three design patents. The ALJ also issued his recommendations on remedy and bonding. He recommended that the Commission issue a general exclusion order directing that disposable cameras that infringe the claims in controversy of the 12 utility patents at issue be excluded from entry into the United States. He also recommended that cease and desist orders be issued directed to the 21 domestic respondents found in violation of section 337. Finally, he recommended a 100 percent bond during the period of Presidential review.

On March 8, 1999, the participating respondents, complainant Fuji, and the Commission investigative attorney (IA) filed petitions for review of the ID. Upon considering the petitions, the Commission, on April 19, 1999, determined to review the following issues: (1) The standard for the burden of proof applied in the ID for establishing repair versus reconstruction of a patented product, (2) the ID's determination that the design patents asserted in this investigation were not infringed, (3) infringement issues insofar as necessary to correct certain clerical errors brought to the Commission's attention by the IA. 64 FR 20324–25 (April 26, 1999).

The Commission received written submissions from the parties that addressed the form of remedy, if any, that should be ordered, the effect of a remedy on the public interest, and the amount of bond that should be imposed during the 60-day Presidential review period.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission determined (1) to reverse the ALJ's finding that Fuji failed to carry its burden of proof on the issue of design patent infringement; (2) to correct the standard of the burden of proof on the repair/reconstruction issue to be proof by a preponderance of the evidence; and (3) to correct technical errors in the ID's infringement findings. The Commission further determined that the appropriate form of relief is a general exclusion order prohibiting the unlicensed entry for consumption of lens-fitted film packages that infringe the claims in issue of the 15 patents asserted by Fuji in this investigation. The Commission also determined to issue 20 cease and desist orders directed to domestic respondents Fast Shot, Haichi International, Innovative Trading Company, Labelle Time, Inc., Forcecam, Inc., Argus Industries, Dynatec International Inc., Jazz Photo Corp., OptiColor Camera, P.S.I. Industries, Sakar International, Inc., Ad-Tek Specialties Inc., AmerImage, Inc. d/b/a/ Rainbow Products, Boecks Camera LLC, BPS Marketing, E.T. Trading d/b/a Klikit, PhilmEx Photographic Film, T.D.A. Trading Corp., Vantage Sales, Inc., and Vivitar Corp. Respondent Penmax made a credible showing that it has no remaining inventory of infringing products, and the Commission therefore determined not to issue a cease and desist order against Penmax.

The Commission also determined that the public interest factors enumerated in subsections (d) and (f) of section 337 do not preclude the issuance of the aforementioned general exclusion order and cease and desist orders, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of the articles in question.

Copies of the Commission's orders, the public version of the Commission's opinion in support thereof, the public version of the ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, and sections 210.45–210.51 of the Commission's Rules of Practice and Procedure, 19 CFR 210.45-210.51.

By order of the Commission.

Issued: June 2, 1999,

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14525 Filed 6–7–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[IND No. 1986–99; AG Order No. 2227–99]

RIN 1115–AE 26

Extension and Redesignation of the Province of Kosovo in the Republic of Serbia in the State of the Federal Republic of Yugoslavia (Serbia-Montenegro) Under Temporary Protected Status

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: On June 9, 1998 the Attorney General designated Kosovo Province in the Republic of Serbia in the State of the Federal Republic of Yugoslavia (Serbia-Montenegro) under the Temporary Protected Status (TPS) program. This designation allowed eligible nationals of Kosovo Province (and aliens having no nationality who last habitually resided in Kosovo Province) who have continuously resided in the United States since that date to apply for TPS through June 8, 1999. This notice extends the TPS designation for Kosovo Province for 12 months (until June 8, 2000) and provides procedures for nationals of Kosovo Province (and aliens having no nationality who last habitually resided in Kosovo Province) with TPS to re-register for the additional 12-month TPS period. This notice also redesignated Kosovo Province under the TPS program, thereby expanding TPS eligibility to include nationals of Kosovo Province (and aliens having no nationality who last habitually resided in Kosovo Province) who have been ''continuously present in the United States'') and who have ''continuously resided in the United States'' since June 18, 1999.

EFFECTIVE DATES:

1. Extension of Designation and Re-Registration

Because the initial grant of TPS expires on June 8, 1999, the extension is effective on June 9, 1999, and lasts until June 8, 2000. Nationals of Kosovo Province (and aliens having no nationality who last habitually resided in Kosovo Province) who already have TPS must re-register for TPS during the period lasting from June 8, 1999, until July 8, 1999.

2. Redesignation

The redesignation of Kosovo Province for TPS is effective June 8, 1999, until June 8, 2000. The registration period for nationals of Kosovo Province for TPS under the redesignation begins on June 8, 1999, and will remain in effect until June 8, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Program Analyst, Immigration and Naturalization Service, Room 3040, 425 I Street, NW, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is the Statutory Authority To Extend the Designation and Redesignate Kosovo Province Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (the Act) states that at least 60 days before the end of a designation, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). Under section 244(b)(3)(C), the Attorney General may extend the initial TPS period based on a determination that the foreign state continues to meet the conditions for designation. 8 U.S.C. 1254a(b)(3)(C). Through such an extension, however, TPS continues to be available only to aliens who have been continuously physically present in the United States from the effective date of the initial designation, in this case since June 9, 1998.

However, section 244(b)(1) of the Act implicitly permits the Attorney General to make a new TPS designation for a foreign state (or part of a foreign state) that would affect non-covered aliens currently residing in the United States, rather than simply extending a prior TPS designation for previously eligible aliens. 8 U.S.C. 1254a(b)(1). Section 244(c)(1)(A)(i) states that an alien is eligible for TPS if he or she ''has been continuously physically present since the effective date of the most recent designation of that state.'' 8 U.S.C. 1254a(c)(1)(A)(i).

Why Did the Attorney General Decide to Both Extend and Redesignate Kosovo Province Under the TPS Program?

Due to the recent events in Kosovo Province and surrounding areas of the Federal Republic of Yugoslavia, the Attorney General and the Department of State have reexamined conditions in Kosovo Province. A recent Department of State report on conditions in that region found that, ''[g]iven the state of open war in Kosovo, the ongoing NATO air strikes in the Federal Republic of Yugoslavia (including Kosovo), and no indication of peaceful resolution, a resident of Kosovo now in the United States could not possibly return to Kosovo without incurring an extremely serious threat to his or her personal safety.'' Based on these and other findings, the Attorney General has determined that conditions in Kosovo Province have worsened since the initial designation and, as a result, has decided to extend and redesignate Kosovo Province under the TPS program. This will extend availability of TPS to include eligible nationals of Kosovo Province (and aliens having no nationality who last habitually resided in Kosovo Province) who arrived in the United States after the date of initial designation.

If I Currently Have TPS Through the Kosovo Province TPS Program, Do I Still Need to Re-Register for TPS?

Yes. If you were granted TPS based on the initial designation of Kosovo Province, that status will expire on June 8, 1999. Accordingly, you must re-register for TPS in order to maintain your status through June 8, 2000. With re-registration, you do not need to pay the fifty-dollar ($50) filing fee for the Form I–821.

If you do not have TPS or have TPS but miss the re-registration period, you can still apply for TPS under the redesignation if you have been continuously physically present and have continuously resided in the United States since June 8, 1999. Under the redesignation you must pay the fifty-dollar ($50) fee for the Form I–821. See the two sets of registration instructions below for complete filing instructions.

If I Currently Have TPS, How Do I Register for an Extension?

All applicants previously granted TPS under the Kosovo Province program may apply for an extension by filing a Form I–821 (without the fee) during the re-registration period that begins June 8, 1999 and ends July 8, 1999. Additionally, you must file a form I–765. See the chart below to determine whether or not you must submit the one hundred-dollar ($100) filing fee with the Form I–765.

If	Then
You are applying for employment authorization through June 8, 2000 ...	You must complete and file the Form I–765. Application for Employment Authorization, with the one hundred-dollar ($100) fee.
You already have employment authorization or do not require employment authorization.	You must complete and file the Form I–765, Application for Employment Authorization, without a fee.
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file Form I–765 and an appropriately documented fee waiver request and the requisite affidavit (and any other information), in accordance with 8 CFR 244.20.

To re-register for TPS, you also must include two identification photographs (1½″ × 1½″) and supporting evidence, as provided in 8 CFR 244.9 (evidence of identity and nationality, and proof of residence).

If I Do Not Currently Have TPS, How Do I Register?

All applicants filing for TPS under the Kosovo program redesignation must apply by filing Form I–821 accompanied by the fifty-dollar ($50) fee. Additionally, you must submit a twenty-five dollar ($25) fingerprinting fee, as well as Form I–765. See the chart below to determine if you must also submit the one hundred-dollar ($100) filing fee under Form I–765, and for information on requesting a fee waiver.

If	Then
You are applying for employment authorization through June 8, 2000 ...	You must complete and file the Form I–765. Application for Employment Authorization, with the one hundred-dollar ($100) fee.
You already have employment authorization or do not require employment authorization.	You must complete and file the Form I–765, Application for Employment Authorization, without a fee.
You are requesting a fee waiver for the $50 fee for the Form I–821, $100 fee for the Form I–765, and $25 fingerprinting fee.	You must complete and file Form I–821 and Form I–765 and an appropriately documented fee waiver request and the requisite affidavit (and any other information), in accordance with 8 CFR 244.20.

To register for TPS, you also must include two identification photographs (1½″ × 1½″) and supporting evidence, as provided in 8 CFR 244.9 (evidence of identity and nationality, and proof of residence).

When Must I Register for TPS?

Extension of TPS

For nationals of Kosovo Province (and aliens having no nationality who last habitually resided in Kosovo Province) who already have TPS, the re-registration period begins June 8, 1999 and lasts until July 8, 1999. If you have TPS from the original designation but do not file during the re-registration period, you can still file a new application for TPS under the redesignation, but you will need to follow the instructions for applying under the redesignation.

Registration Period Under the Redesignation

The registration period for nationals of Kosovo Province applying for TPS under the redesignation begins June 8, 1999, and will remain in effect until June 8, 2000.

Where Must I File My Application for TPS Under This Extension and Redesignation?

Applicants seeking to register for TPS or to extend their TPS must submit an application and accompanying materials to the Immigration and Naturalization Service (INS) Service Center that has jurisdiction over the applicant's place of residence.

If you live in Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, West Virginia, or in the U.S. Virgin Islands, mail your application to: Vermont Service Center, ATTN: TPS, 75 Lower Welden Street, St. Albans, VT 05479.

If you live in Arizona, California, Guam, Hawaii, or Nevada, mail your application to: California Service Center, ATTN: TPS, 24000 Avila Road, 2nd Floor, Laguna Niguel, CA 92677–8111.

If you live in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, or Texas, mail your application to: Texas Service Center, PO Box 850997, Mesquite, TX 75185–0997.

If you live elsewhere in the United States, please mail your application to: Nebraska Service Center, PO Box 87821, Lincoln, NE 68501–7821.

What Are the Requirements for Nationals of Kosovo Province to Demonstrate That They Have Been "Continuously Physically Present" and Have "Continuously Resided" in the United States?

All initial applicant for TPS under the Kosovo Province redesignation will have to demonstrate ''continuous physical presence'' and ''continuous residence'' in the United States since June 8, 1999.

''Continuously physically present'' means actual physical presence in the United States for the entire period specified. However, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences.

''Continuously resided'' means residing in the United States for the entire period. An alien will not be considered to have failed to maintain continuous residence in the United States by reason by a brief, casual, and innocent absence or absence due merely to a brief trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Notice of Extension of Designation and Redesignation of Kosovo Province Under the TPS Program

By the authority vested in me as Attorney General under section 244 of the Act, and as required by subsections 244(b)(3) (A) and (C), and 244(b)(1) of the Act, I find that there exist extraordinary and temporary conditions that prevent aliens who are nationals of Kosovo Province (and aliens having no nationality who last habitually resided in Kosovo Province) from returning Kosovo Province in safety, and that permitting nationals of Kosovo Province (and aliens having no nationality who last habitually resided in Kosovo Province) to remain temporarily in the United States is not contrary to the national interest. 8 U.S.C. 1254a(b)(3) (A) and (C); 8 U.S.C. 1254a(b)(1). Accordingly, I hereby order as follows:

(1) The designation of Kosovo Province is extended under section 244(b)(3) (A) and (C) of the Act for the 12-month period spanning from June 9, 1999, to June 8, 2000. 8 U.S.C. 1254a(b)(3) (A) and (C). Nationals of Kosovo Province (and aliens having no nationality who last habitually resided in Kosovo Province) who received TPS during the initial designation period may apply for an extension of TPS during the registration period lasting from June 8, 1999 until July 8, 1999.

(2) Kosovo Province is redesignated under section 244(b)(1) of the Act for TPS until June 8, 2000. 8 U.S.C. 1254a(b)(1). Nationals of Kosovo Province (and aliens having no nationality who last habitually resided in Kosovo Province) who have been ''continuously physically present'' and have ''continuously resided'' in the United States since June 8, 1999, may apply for TPS within the registration period, which begins June 8, 1999, and ends June 8, 2000.

(3) I estimate that there are no more than 5,000 nationals of Kovoso Province who have been granted TPS and who are eligible for re-registration and no more than 3,000 nationals of Kosovo Province who do not have TPS and are eligible for TPS under this redesignation.

(4) In order to maintain TPS, a national of Kosovo Province (or an alien having no nationality who last habitually resided in Kosovo Province) who currently has TPS must re-register by filing Form I–821, together with Form I–765, within the period beginning June 8, 1999 and ending on July 8, 1999. Late re-registration applications will be allowed pursuant to 8 CFR 244.17(c). There is no fee for a Form I–821 filed as part of the re-registration application. A Form I–765 must be filed with the Form I–821. If the applicant requests employment authorization, he or she must submit

one hundred dollars ($100) or a properly documented fee wavier request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but is not required to submit a fee.

(5) A national of Kosovo Province (or an alien having no nationality who last habitually resided in Kosovo Province) filing for TPS under the redesignation must File Form I–821, together with Form I–765, within the period beginning June 8, 1999, and ending on June 8, 2000. A fifty-dollar ($50) fee must accompany Form I–821. A twenty-five-dollar ($25) fingerprinting fee must also be submitted. If the applicant requests employment authorization, he or she must submit one hundred dollars ($100) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but in such cases no fee will be charged. The applicant can also request a fee waiver for the twenty-five-dollar ($25) fee.

(6) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before June 8, 2000, the designation of Kosovo Province under the TPS program to determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination will be published in the **Federal Register**. If there is an extension of designation, late initial registration for TSP will be allowed only pursuant to the requirements of 8 CFR 244.2(f)(2).

(7) Information concerning the TPS redesignation program for nationals of Kosovo Province (and aliens having no nationality who last habitually resided in Kosovo Province) will be available at local INS offices upon publication of this notice.

Dated: June 2, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–14507 Filed 6–7–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 1, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB 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 submission of responses.

Agency: Employment Standards Administration.

Title: Rehabilitation Plan and Award.

OMB Number: 1215–0067.

Frequency: On occasion.

Affected Public: Individuals or households; Businesses or other for-profit.

Number of Respondents: 7,000.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 3,500 hours.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Rehabilitation Plan and Award is the plan for rehabilitation services submitted to OWCP by the injured worker and the rehabilitation counselor, and OWCP's Award of Payment.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–14464 Filed 6–7–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 1, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira MIlls (202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Office for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB 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 submission of responses.

Agency: Employment Standards Administration.

Title: Report of Changes That May Affect Your Black Lung Benefits.

OMB Number: 1215–0084.

Frequency: Biennially.

Affected Public: Individuals or households.

Number of Respondents: 30,000.

Estimated Time Per Respondent: 5 to 8 minutes.

Total Burden Hours: 2,650 hours.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Once a miner or survivor is found eligible for benefits, the primary beneficiary is requested to report certain changes that may affect benefits. To ensure that there is a review and update of all Trust Fund cases and to help the beneficiary comply with the need to report certain changes, the CM–929 is sent to all Trust Fund primary beneficiaries.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–14465 Filed 6–7–99; 8:45 am]

BILLING CODE 4510–77–M

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Wednesday, June 16, 1999 at the Cannon House Office Building, room 345. The meeting is tentatively scheduled for 9:30 a.m. to 12 p.m.

The Commission will discuss its research agenda for the coming year

ADDRESSES: MedPAC's address is: 1730 K Street, NW, Suite 800, Washington, DC 20006. The telephone number is (202) 653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 653–7220.

Murray N. Ross,

Executive Director.

[FR Doc. 99–14453 Filed 6–7–99; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before July 26, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301)713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Justice, Civil Division (N1–60–99–5, 1 item, 1 temporary item). Published and unpublished technical and scientific reports and copies of expert witness testimony in non-Federal cases relating to radiation. Records were collected by Civil Division attorneys as background information for litigation. These documents are not associated with

specific cases nor were they entered as evidence in a case.

2. Department of State, Foreign Service Institute (N1–59–99–17, 124 items, 123 temporary items). Files related to training and instruction in the field of foreign affairs and foreign languages, and the provision of assistance in employment searches, retirement planning, and adjusting to life at overseas posts. Included are such records as course schedules and curricula, training evaluations, class rosters, proficiency tests, trip files, budgetary records, and statistical reports. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of policy files of the Office of the Director of the Institute are proposed for permanent retention.

3. Environmental Protection Agency, Office of Air Quality Planning and Standards (N1–412–99–8, 4 items, 2 temporary items). Software programs and input documents associated with an electronic information system that collects and stores data regarding air quality and emissions. The electronic data and related documentation are proposed for permanent retention.

4. Federal Energy Regulatory Commission, Office of Pipeline Regulation (N1–138–98–4, 1 item, 1 temporary item). Electronic copies of documents created using electronic mail and word processing associated with correspondence with gas pipeline companies. Recordkeeping copies of these files were previously approved for disposal.

5. Federal Energy Regulatory Commission, Office of Pipeline Regulation (N1–138–98–13, 1 item, 1 temporary item). Electronic copies of documents created using electronic mail and word processing related to suspension and investigations of rates, fares, charges, and practices of companies. Recordkeeping copies of these files were previously approved for disposal.

6. Federal Energy Regulatory Commission, Office of the Chief Accountant (N1–138–98–14, 1 item, 1 temporary item). Electronic copies of documents created using electronic mail and word processing related to annual financial and statistical reports from electric utilities and other hydro projects and licensees. Recordkeeping copies of these reports were previously approved for disposal.

Dated: June 1, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–14383 Filed 6–7–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. Pursuant to NARA Bulletin 99–04, agencies must submit schedules for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in **Federal Register** notices separate from those used for other records disposition schedules.

DATES: Requests for copies must be received in writing on or before July 23, 1999. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99–04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see Supplementary Information section of this notice). To facilitate review of such disposition requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge $.20 per page for additional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@ arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301)713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the

Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

In the past, NARA approved the disposal of electronic copies of records created using electronic mail and word processing via General Records Schedule 20, Items 13 (word processing documents) and 14 (electronic mail). However, NARA has determined that a different approach to the disposition of electronic copies is needed. In 1998, the Archivist of the United States established an interagency Electronic Records Work Group to address this issue and pursuant to its recommendations, decided that agencies must submit schedules for the electronic copies of program records and administrative records not covered by the GRS. On March 25, 1999, the Archivist issued NARA Bulletin 99–04, which tells agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14.

Schedules submitted in accordance with NARA Bulletin 99–04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records, agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99–04. Alternatively, agencies may group records by program, function, or organizational component and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted.

Further information about the disposition process is available on request.

Schedules Pending

1. National Archives and Records Administration, Agency-wide (N9–64–99–1, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to routine program administration, committee management, and the use of free-lance editorial services. Recordkeeping copies of these files are included in Appendix 1 of the NARA Files Maintenance and Records Disposition Manual and Disposition Job N1–64–96–2. Appendix 1 is available on the NARA Web site (http://ardor.nara.gov/nara/index.html).

2. National Archives and Records Administration, Agency-wide (N9–64–99–2, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to general administration. Included are electronic copies of records pertaining to space requirements and other housekeeping matters, reproduction fees, the publication of **Federal Register** notices, the development of forms, the protection of security-classified information, and the management of records accumulated by NARA's component offices.

Recordkeeping copies of these files are included in Appendix 2 of the NARA Files Maintenance and Records Disposition Manual and Disposition Job N1–64–96–2. Appendix 2 is available on the NARA Web site (http://ardor.nara.gov/nara/index.html).

3. National Archives and Records Administration, Agency-wide (N9–64–99–3, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to personnel management. Included are electronic copies of records pertaining to such subjects as the development and implementation of automated personnel and manpower information systems, pay and leave administration, charitable contribution campaigns, and savings bond drives. Recordkeeping copies of these files are included in Appendix 3 of the NARA Files Maintenance and Records Disposition Manual. Appendix 3 is available on the NARA Web site (http://ardor.nara.gov/nara/index.html).

4. National Archives and Records Administration, Agency-wide (N9–64–99–4, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to budget, accounting, and financial management. Included are electronic copies of records pertaining to such subjects as the preparation of annual budget estimates and justifications, the development of operating budget plans, reimbursable agreements with other agencies, and cash management. Recordkeeping copies of these files are included in Appendix 4 of the NARA Files Maintenance and Records Disposition Manual. Appendix 4 is available on the NARA Web site (http://ardor.nara.gov/nara/index.html).

5. National Archives and Records Administration, Agency-wide (N9–64–99–5, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to property and procurement. Included are electronic copies of records pertaining to such subjects as general supply and services matters, the control of personal property, the maintenance of office equipment, and procurement policies. Recordkeeping copies of these files are included in Appendix 5 of the NARA Files Maintenance and Records Disposition Manual. Appendix 5 is available on the NARA Web site (htttp://ardor.nara.gov/nara/index.html).

6. National Archives and Records Administration, Agency-wide (N9–64–99–6, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to facilities. Included are electronic copies of records pertaining to such subjects as community activities, the establishment of health units, requisitions for supplies and services, sanitation and snow removal, the operation of concessions,

and the maintenance of mechanical equipment. Recordkeeping copies of these files are included in Appendix 6 of the NARA Files Maintenance and Records Disposition Manual. Appendix 6 is available on the NARA Web site (http://ardor.nara.gov/nara/index.html).

7. National Archives and Records Administration, Agency-wide (N9–64–99–7, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to travel and transportation. Included are electronic copies of records pertaining to the development of agency-wide travel policies, payments for transportation services involving non-routine conditions, and the issuance of official passports. Recordkeeping copies of these files are included in Appendix 7 of the NARA Files Maintenance and Records Disposition Manual.

8. National Archives and Records Administration, Agency-wide (N9–64–99–8, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to automatic data processing and word processing. Included are electronic copies of records pertaining to such subjects as the day-to-day administration of ADP programs, cost and staffing matters, and ADP training. Recordkeeping copies of these files are included in Appendix 8 of the NARA Files Maintenance and Records Disposition Manual.

9. National Archives and Records Administration, Agency-wide (N9–64–99–9, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to legislative and congressional relations. Included are electronic copies of records pertaining to the status of proposed legislation, comments on proposed legislation maintained by offices other than the office responsible for agency-wide legislative liaison, and conversations with Members of Congress and their staffs. Recordkeeping copies of these files are included in Appendix 9 of the NARA Files Maintenance and Records Disposition Manual.

10. National Archives and Records Administration, Agency-wide (N9–64–99–10, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to public information activities. Included are electronic copies of such records as press clippings about NARA, biographies of leading NARA personalities, and letters of commendation or complaint. Recordkeeping copies of these files are included in Appendix 10 of the NARA Files Maintenance and Records Disposition Manual.

11. National Archives and Records Administration, Agency-wide (N9–64–99–11, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to legal matters, such as model copies of contracts and leases, copies of statutes and legal opinions used for reference, and files relating to potential tort claims where a claim is not formally submitted. Recordkeeping copies of these files are included in Disposition Job N1–64–96–3.

12. National Archives and Records Administration, Agency-wide (N9–64–99–12, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to audits and investigations. Included are electronic copies of records pertaining to such subjects as day-to-day administration of the audit function (excluding files on specific cases), guidance provided to auditors, determination of areas for audit, and summaries of audits. Recordkeeping copies of these files are included in Appendix 12 of the NARA Files Maintenance and Records Disposition Manual.

13. National Archives and Records Administration, Agency-wide (N9–64–99–13, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to NARA programs for the management, disposition, and storage of Federal records. Included are electronic copies of records pertaining to such subjects as the operation of agency records centers, records management workshops for staff of Federal agencies, the publication in the **Federal Register** of notices of pending records disposition schedules, and the activities of Federal Records Centers, including accessioning, disposal, and reference. Recordkeeping copies of these files are included in Appendix 13 of the NARA Files Maintenance and Records Disposition Manual.

14. National Archives and Records Administration, Agency-wide (N9–64–99–14, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to archives, presidential materials, and donated materials. Included are electronic copies of records pertaining to such subjects as the preparation and approval of annual work plans, arrangement and description projects, reference and reproduction services, the operation of research rooms, and inspections of regional archival facilities. Recordkeeping copies of these files are included in Appendix 14 of the NARA Files Maintenance and Records Disposition Manual.

15. National Archives and Records Administration, Agency-wide (N9–64–99–15, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to the **Federal Register**. Included are electronic copies of records pertaining to such subjects as studies of **Federal Register** operations and policies, relations with Federal agencies concerning the publication of regulations, and the publication of documents, including copies of the published documents. Recordkeeping copies of these files are included in Appendix 15 of the NARA Files Maintenance and Records Disposition Manual.

16. National Archives and Records Administration, Agency-wide (N9–64–99–16, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to public programs. Included are electronic copies of records pertaining to such subjects as interpretive programs at NARA facilities, the National Archives volunteer program, museum shop operations, educational and training programs, and the preparation and sale of publications. Recordkeeping copies of these files are included in Appendix 16 of the NARA Files Maintenance and Records Disposition Manual.

17. National Archives and Records Administration, National Historical Publications and Records Commission (N9–64–99–17, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to the National Historical Publications and Records Commission. Included are electronic copies of records pertaining to such subjects as Commission meetings, annual reports, grants, and training in documentary editing. Recordkeeping copies of these files are included in Appendix 17 of the NARA Files Maintenance and Records Disposition Manual.

18. National Archives and Records Administration, Agency-wide (N9–64–99–18, 2 items, 2 temporary items). Electronic copies created using electronic mail and word processing that relate to the National Archives Trust Fund. Included are electronic copies of records pertaining to such subjects as annual reports of the Trust Fund, service orders, and the deposit of monies received. Recordkeeping copies

of these files are included in Appendix 18 of the NARA Files Maintenance and Records Disposition Manual.

Dated: May 21, 1999.

Geraldine Phillips,

Acting Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–14382 Filed 6–7–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel; Notice of Correction

This is to announce a correction to the meeting notice for the Combined Arts Advisory Panel, Design section, published in the **Federal Register** on Friday, May 14, 1999. The open session, previously announced as being from 10:45 a.m. to 4 p.m. on June 25th, will, instead, be held from 12:45 p.m. to 4 p.m. on June 25th.

Dated: May 28, 1999.

Kathy Plowitz-Worden,

Panel Coordinator.

[FR Doc. 99–14380 Filed 6–7–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Combined Arts Panel, Music Section (Creation & Presentation and Planning & Stabilization categories) to the National Council on the Arts will be held in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. The meetings will be held on July 6–9, 1999 and July 13–16, 1999. The first panel will meet from 9:00 a.m. to 5:30 p.m. on July 6–8, and from 9:00 a.m. to 3:30 p.m. on July 9th. The second panel will meet from 9:00 a.m. to 5:30 p.m. on July 13–15, and from 9:00 a.m. to 4:00 p.m. on July 16th. A portion of each meeting, from 1:30 p.m. to 3:30 p.m. on July 9th and from 2:00 p.m. to 4:00 p.m. on July 16th, will be open to the public for policy discussions.

The remaining portions of this meeting, from 9:00 a.m. to 5:30 p.m. on July 6–8 and July 13–15, from 9:00 a.m. to 1:30 p.m. on July 9th, and from 9:00 a.m. to 2:00 p.m. on July 16th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: May 26, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–14400 Filed 6–7–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel to the National Council on the Arts will be held on June 21, 1999. The panel will meet from 3:00 p.m. to 4:00 p.m. via teleconference from room 704 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5691.

Dated: June 1, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 99–14399 Filed 6–7–99; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Seeks Qualified Candidates for the Advisory Committee on Reactor Safeguards

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for résumés.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is seeking qualified candidates for appointment to its Advisory Committee on Reactor Safeguards (ACRS).

ADDRESSES: Submit résumés to: Ms. Jude Himmelberg, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

FOR APPLICATION MATERIALS, CALL: 1–800–952–9678. Please refer to Announcement Number 9999901.

SUPPLEMENTARY INFORMATION: Congress established the ACRS to provide the NRC with independent expert advice on the safety of existing and proposed reactor facilities and on the adequacy of the proposed reactor safety standards. At present, the ACRS places emphasis on reviewing several matters, including: safety issues associated with the operation of 104 commercial nuclear units in the United States; risk-informed regulatory approach; license renewal applications; risk-informed revisions to 10 CFR part 50; revisions to the NRC Safety Goal Policy Statement; plant-specific application of Safety Goals; and application of revised source term to operating plants.

The ACRS membership includes individuals from national laboratories, academia, and industry who possess specific technical expertise along with a broad perspective in addressing safety concerns. The ACRS members are selected from a variety of engineering and scientific disciplines, such as nuclear power plant operations, nuclear engineering, mechanical engineering, electrical engineering, chemical engineering, metallurgical engineering, structural engineering, materials science, probabilistic risk assessment, and instrumentation and process control systems.

At this time, candidates are specifically being sought who have 15–20 years of specific experience, including graduate level education in either: Materials science; metallurgical/structural engineering; systems engineering and thermal-hydraulics modeling as applied to nuclear plant systems; or the application of risk methods to nuclear safety issues.

Criteria used to evaluate candidates include education and experience, demonstrated skills in nuclear safety matters, and the ability to solve problems. Additionally, the Commission considers the need for specific expertise in relationship to current and future tasks. Consistent with the requirements of the Federal Advisory Committee Act, the Commission seeks candidates with varying views so that the membership on the Committee will be fairly balanced in terms of the points of view represented and functions to be performed by the Committee.

Because conflict-of-interest regulations restrict the participation of members actively involved in the regulated aspects of the nuclear industry, the degree and nature of any such involvement will be weighed. Each qualified candidate's financial interests must be reconciled with applicable Federal and NRC rules and regulations prior to final appointment. This might require divestiture of securities issued by nuclear industry entities, or discontinuance of industry-funded research contracts or grants.

Copies of a résumé describing the educational and professional background of the candidate, including any special accomplishments, professional references, current address and telephone number should be provided. All qualified candidates will receive careful consideration. Appointment will be made without regard to such factors as race, color, religion, national origin, sex, age, or disabilities. Candidates must be citizens of the United States and be able to devote approximately 80–100 days per year to Committee business. Applications will be accepted until July 30, 1999.

Dated: June 2, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–14467 Filed 6–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Report to Congress on Abnormal Occurrences, Fiscal Year 1998, Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974 (Pub. L. 93–438) identifies an abnormal occurrence (AO) as an unscheduled incident or event that the Nuclear Regulatory Commission (NRC) determines to be significant from the standpoint of public health or safety. The Federal Reports Elimination and Sunset Act of 1995 (Pub. L. 104–66) requires that AOs be reported to Congress on an annual basis. During fiscal-year 1998, six events that occurred at facilities licensed or otherwise regulated by the NRC and the Agreement States were determined to be AOs. These events are discussed below. As required by Section 208, the discussion for each event includes the date and place, the nature and probable consequences, the cause or causes, and the action taken to prevent recurrence. Each event is also being described in NUREG–0090, Volume 21, ''Report to Congress on Abnormal Occurrences, Fiscal Year 1998.'' This report will be available at NRC's Public Document Room, 2120 L Street N.W. (Lower Level), Washington, D.C., about three weeks after the publication date of this **Federal Register** Notice.

Fuel Cycle Facilities (Other Than Nuclear Power Plants)

98–1 Seismic Risk From Liquid Uranium Hexafluoride at the Withdrawal Facilities at the Paducah Gaseous Diffusion Plant, Paducah, KY

One of the AO criteria notes that a major condition or significant event not considered in the license/certificate that requires immediate remedial action will be considered for reporting as an AO.

Date and Place—February 18, 1998; Paducah Gaseous Diffusion Plant, a uranium enrichment plant, operated by Lockheed Martin Utility Services for the United States Enrichment Corporation (USEC) and located about 16 kilometers (10 miles) west of Paducah, Kentucky.

Nature and Probable Consequences—On October 31, 1997, USEC submitted a certificate amendment request that provided an updated Safety Analysis Report, containing a new accident analysis, for Paducah. The seismic accident analysis stated that equipment (piping, condensers, and accumulators) in the withdrawal facilities containing liquid uranium hexafluoride (UF_6) could fail at a 70-year return earthquake (0.05 gravitational acceleration (g) peak ground acceleration (pga)) rather than at the 250-year return design basis earthquake (0.15 g pga). However, the consequences of the accident analysis were noted as minimal because of the assumptions made in the accident analysis. The NRC's request for additional information (RAI) dated February 5, 1998, raised concerns about the conservative nature of assumptions for the seismic accident analysis. In response to the RAI, USEC confirmed that the seismic accident analysis assumption of no liquid UF_6 in the withdrawal facilities' accumulators underestimated the potential source term for the seismic accident analysis.

The accumulators are normally empty and serve only as a reservoir for liquid UF_6 when cylinders are changed after being filled, or during periods of equipment problems or surveillances. However, with no operational restrictions on the amount of liquid UF_6 in the accumulators, a seismic event could occur with the accumulators full. Consequences from a 0.05 g pga earthquake with full accumulators in the withdrawal facilities could involve onsite fatalities and significant offsite injuries from exposure to the released UF_6 and reaction products.

Cause or Causes—The cause of this event was an inadequate seismic design for the facility and an inadequate accident analysis that failed to consider the full range of allowable operations of the withdrawal facilities.

Actions Taken To Prevent Recurrence

Licensee/Certificate Holder—Immediate corrective actions included restricting operations in the withdrawal facilities to limit the amount of liquid UF_6 available for release. Long-term corrective actions were to install seismic modifications that will allow the withdrawal facilities' equipment to withstand a design-basis earthquake. The modifications have been completed as directed by the NRC.

NRC—An immediately effective ''confirmatory order modifying certificate'' to incorporate the immediate and long-term corrective actions was issued on April 22, 1998.

* * * * *

Other NRC Licensees (Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

98–2 Multiple Medical Brachytherapy Misadministrations by José N. De León, M.D., in Rio Piedras, PR

One of the AO criteria notes that a medical misadministration that results in a dose that is: (1) Equal to or greater than 1 gray (Gy) (100 rad) to a major portion of the bone marrow, to the lens of the eye, or the gonads, or (2) equal to or greater than 10 Gy (1000 rad) to any other organ and that represents a dose or dosage that is at least 50 percent greater than that prescribed in a written directive will be considered for reporting as an AO.

Date and Place—Between April 27, 1995, and June 26, 1996; private medical office of José N. De León, M.D., Rio Piedras, Puerto Rico.

Nature and Probable Consequences—Nine patients were treated after surgery for non-malignant eye growths with a strontium-90 (Sr-90) eye applicator, at Dr. De León's private medical office. Each of the nine patients received a dose of 4000 centigray (cGy) (4000 rad) instead of the intended dose of 2000 cGy (2000 rad). The NRC staff identified this event during Fiscal Year 1998.

On June 1, 1994, Dr. De León submitted to NRC a Quality Management Program (QMP) indicating that his 4.625 gigabecquerel (125 millicurie) Sr-90 eye applicator device would deliver to a patient a dose of 2000 cGy (2000 rad) in 26 seconds. In April 1995, Dr. De León hired a health physics consultant to calculate a decay correction for the surface dose rate of the Sr-90 eye applicator. In April 1995, Dr. De León submitted a revised QMP to the NRC, incorporating the surface dose rate corrections performed by the consultant, stating that the Sr-90 eye applicator device would deliver a 2000 cGy (2000 rad) dose in 60 seconds.

On December 11, 1997, the NRC conducted a special inspection of Dr. De León's licensed activities. During this inspection, the NRC determined that in April 1995, Dr. De León's consultant had made a calculation error. Without verifying the consultant's calculations, Dr. De León had adjusted the treatment time from 26 seconds to 60 seconds.

When Dr. De León became aware of this error, he indicated that: (1) All patients or next of kin were notified, (2) a free examination was offered to all patients, which was declined, and (3) there were no problems or complications reported by patients associated with the misadministrations. Dr. De León also indicated that it is unlikely for patients to develop any harmful effects as a result of the misadministration.

The NRC hired a medical consultant to review the medical aspects of the misadministration. The NRC's medical consultant reviewed the information obtained from the NRC, Dr. De León, and Ryder Memorial Hospital, and concluded that: (1) The range for a single fraction for eye radiation treatments, recommended by the medical community using a Sr-90 applicator, is about 1800–3000 cGy (1800–3000 rad), (2) the highest single dose, using a Sr-90 applicator, recommended in published medical reports is 3000 cGy (3000 rad), and (3) the patients treated by Dr. De León are at a higher risk for harmful effects because of the high doses given in single fractions.

Cause or Causes—Dr. De León's consultant made a calculation error in correcting the surface dose rate of the Sr-90 applicator for radioactive decay and Dr. De León failed to verify or question the consultant's calculation before using the revised surface dose rate in patient treatments.

Actions Taken To Prevent Recurrence

Licensee—Dr. De León has retired; he has properly transferred the Sr-90 eye applicator to a foreign user and he has obtained from NRC a termination of his license.

NRC—The NRC's Advisory Committee on the Medical Use of Isotopes will be recommending courses of action to the NRC. NRC will perform additional inspections of NRC licensees authorized to possess and use Sr-90 eye applicators to confirm the use of proper decay corrections and source calibrations. In addition, the NRC staff will review this case with the Secretary of Health of the Commonwealth of Puerto Rico for possible action.

* * * * *

98–3 Multiple Medical Brachytherapy Misadministrations at Ryder Memorial Hospital, in Humacao, PR

One of the AO criteria notes that a medical misadministration that results in a dose that is: (1) Equal to or greater than 1 gray (Gy) (100 rad) to a major portion of the bone marrow, to the lens of the eye, or the gonads, or (2) equal to or greater than 10 Gy (1000 rad) to any other organ and that represents a dose or dosage that is at least 50 percent greater than that prescribed in a written directive will be considered for reporting as an AO.

Date and Place—Between April 22, 1995, and February 21, 1996; at Ryder Memorial Hospital; Humacao, Puerto Rico.

Nature and Probable Consequences—Twelve patients treated with a strontium-90 (Sr-90) eye applicator at the Ryder Memorial Hospital received a dose of 4000 cGy (4000 rad) instead of the intended dose of 2000 cGy (2000 rad). Two patients received a second treatment dose of 4000 cGy (4000 rad) to the same eye. These treatments were performed by Dr. José De León, who, in addition to his private practice in Rio Piedras in Puerto Rico, was authorized by NRC to practice at the Ryder Memorial Hospital in Humacao, Puerto Rico. The NRC staff identified this event during Fiscal Year 1998.

On June 28, 1994, Ryder Memorial Hospital notified the NRC that it had canceled the authorization given to the ophthalmologists named on their license to use Sr-90 at its facility, and a Quality Management Program was not needed for this activity. However, during a routine inspection of Ryder Memorial Hospital, conducted between November 17 and December 11, 1997, the NRC staff learned that Dr. De León had used his Sr-90 eye applicator at the Ryder Memorial Hospital without authorization from the hospital. NRC was unable to determine whether Dr. De León had been told by Ryder Memorial Hospital that his authority was canceled for the use of Sr-90 eye applicator.

On December 11, 1997, the NRC conducted a special inspection of Dr. De León's licensed activities. During this inspection, the NRC determined that in April 1995, Dr. De León's consultant had made a calculation error. Without verifying the consultant's calculations, Dr. De León adjusted the treatment time from 26 seconds to 60 seconds.

Ryder Memorial Hospital representatives and Dr. De León, notified the patients or next of kin of the misadministrations. The information presented by Ryder Memorial Hospital describing the effects on patients from misadministrations was based on the information submitted by Dr. De León. Specifically, Dr. De León indicated that the delivered dose of 4000 cGy (4000 rad) falls within the dose range used by the medical community to prescribe these treatments and no adverse effects were expected.

The NRC medical consultant reviewed the information obtained from the NRC, Dr. De León, and Ryder Memorial Hospital, and concluded that: (1) The range for a single fraction for eye radiation treatments, recommended by the medical community using a Sr-90 applicator, is about 1800–3000 cGy (1800–3000 rad), (2) the highest single dose, using a Sr-90 applicator, recommended in published medical reports is 3000 cGy (3000 rad), and (3) the patients treated by Dr. De León are at a higher risk for harmful effects because of the high doses given in single fractions.

Cause or Causes—Dr. De León's consultant made an error in calculating the surface dose rate of the Sr-90 applicator, and Dr. De León failed to verify the consultant's calculation before incorporating the revised surface dose rate in patient treatments. In addition, Dr. De León performed ophthalmic brachytherapy using his Sr-90 eye applicator device at Ryder Memorial Hospital under Ryder Memorial Hospital's NRC license, without the hospital's authorization.

Actions Taken To Prevent Recurrence

Licensee—Ryder Memorial Hospital reiterated its withdrawal of Dr. De León's authority to use the Sr-90 eye applicator device at Ryder Memorial Hospital and does not intend to authorize future use of the Sr-90 eye applicator for ophthalmic brachytherapy. In addition, Dr. De León has retired; he has properly transferred the Sr-90 eye applicator to a foreign user and he has obtained from NRC a termination of his license.

NRC—The NRC's Advisory Committee on the Medical Use of Isotopes will be recommending courses of action to the NRC. NRC will perform additional inspections of NRC licensees authorized to possess and use Sr-90 eye applicators to confirm the use of proper decay corrections and source calibrations. In addition, the NRC staff will review this case with the Secretary of Health of the Commonwealth of Puerto Rico for possible action.

* * * * *

98–4 Iodine-131 Medical Misadministration at Virginia Beach General Hospital, in Virginia Beach, VA

One of the AO criteria notes that a medical misadministration that results in a dose that is: (1) Equal to or greater than 1 gray (Gy) (100 rad) to a major portion of the bone marrow, to the lens of the eye, or the gonads, or (2) equal to or greater than 10 Gy (1000 rad) to any other organ and represents a dose or dosage that is at least 50 percent greater than that prescribed in a written directive will be considered for reporting as an AO.

Date and Place—November 21, 1997; Virginia Beach General Hospital; Virginia Beach, Virginia.

Nature and Probable Consequences—A patient was administered a dosage of 199.8 megabecquerel (MBq) (5.4 millicurie (mCi)) of iodine-131 (I–131) for a thyroid procedure instead of an 11.1 MBq (0.300 mCi) dosage of iodine-123 (I–123). As a result, the patient's thyroid received a dose of 4000 centigray (cGy) (4000 rad), instead of the intended dose of 2.0 cGy (2.0 rad).

On November 20, 1997, the referring physician prescribed a thyroid function procedure, which, at Virginia Beach General Hospital, required the administration of about 11.1 MBq (0.300 mCi) of I–123. Due to poor communication between the referring physician and her staff (a staff nurse), the patient was scheduled for a whole-body thyroid scan, which required the administration of approximately 185 MBq (5 mCi) of I–131. On November 21, 1997, the technologist who was to perform the procedure attempted to contact the referring physician to ask questions about the requested procedure. However, the referring physician was not available, and the staff nurse who had originally taken the request from the referring physician and scheduled the procedure confirmed that the physician wanted an I–131 scan. The technologist, without a written directive, decided to proceed with the procedure and administered the dosage of 199.8 MBq (5.4 mCi) of I–131 to the patient. The misadministration was identified on November 24, 1997, when the patient returned for a 72-hour whole-body scan.

The licensee stated that no adverse health effects are expected from the misadministration. The NRC's medical consultant determined that the impact of the misadministration on the patient's health should be negligible, with no expected long-term disability.

Cause or Causes—This event was caused by the licensee's failure to prepare a written directive before the administration of the I–131 dosage and inadequate follow-up by the technologist involved in the I–131 procedure.

Actions Taken To Prevent Recurrence

Licensee—New procedures were initiated that required all I–131 procedures to be scheduled through the Nuclear Medicine Department, and additional quality management measures were implemented. The licensee also initiated changes to the computerized scheduling system and provided retraining of the staff.

NRC—An inspection was conducted to review the circumstances of the misadministration. A Notice of Violation was issued for failure of the licensee to prepare a written directive before the administration of I–131.

* * * * *

98–5 Exposure to a Minor from a Radiopharmaceutical Therapy Event at Western Pennsylvania Hospital in Pittsburgh, PA.

One of the AO criteria notes that any unintended radiation exposure to any minor (an individual less than 18 years of age) resulting in an annual total effective dose equivalent (TEDE) of 50 mSv (5 rem) or more will be considered for reporting as an AO.

Date and Place—July 28, 1998; Western Pennsylvania Hospital; Pittsburgh, Pennsylvania.

Nature and Probable Consequences—A female patient was prescribed a whole-body iodine-131 (I–131) thyroid scan following a thyroidectomy. The technologist asked the patient if she was breast-feeding but she did not reply and was administered a dosage of 111 megabecquerel (3 millicurie) of I–131. Two days later, while the thyroid scan was being performed, the patient said that she had breast-fed her 4-year-old son during the past few evenings. The licensee performed a bioassay on the child on August 3, 1998, and determined that the TEDE for the child based on the International Commission on Radiological Protection calculations was 89.5 millisievert (8.95 rem), and the dose to the thyroid was about 184 centigray (cGy) (184 rad).

The NRC medical consultant evaluated the event and estimated that the dose to the child's thyroid using the Medical Internal Radiation Dose calculations was about 128 to 152 cGy (128 to 152 rad) and presented a discussion of potential clinical consequences.

The hospital was notified of the consultant's findings and was given a copy of the consultant's report. The child has been examined by a pediatric endocrinologist and the hospital continues to monitor the patient and her child.

Cause or Causes—The patient failed to answer the technologist's question regarding breast feeding and the hospital failed to receive an answer to the question before dose administration.

Action Taken To Prevent Recurrence

Licensee—The licensee developed a new response form for women aged between 10 and 50 years for: (1) Asking them if they are nursing, (2) informing them of the harm to a child if they are breast-feeding after I–131 administration, and (3) obtaining a signed statement before administering them radioactive material.

NRC—NRC sent a letter to the licensee requiring it to prepare a plan describing how to prevent similar events. The licensee responded on October 8 and 12, 1998, listing adequate actions to prevent recurrence of similar events.

* * * * *

Agreement State Licensees

AS 98–1 Medical Brachytherapy Misadministration at Tuomey Regional Medical Center in Sumter, SC

One of the AO criteria notes that any unintended radiation exposure to an adult (any individual 18 years of age or older) resulting in an annual total effective dose equivalent (TEDE) of 250 millisievert (mSv) (25 rem) or more; or an annual sum of the deep dose equivalent and committed dose equivalent to any individual organ or tissue other than the lens of the eye, bone marrow, and the gonads of 2500 mSv (250 rem) or more will be considered for reporting as an AO.

Date and Place—September 23, 1997; Tuomey Regional Medical Center; Sumter, South Carolina.

Nature and Probable Consequences—On September 23, 1997, a patient was scheduled by a referring physician (urologist) for a palladium-103 (Pd-103) permanent prostate seed implant via transrectal ultrasound guidance. However, the referring physician had two patients with identical names and the wrong individual got the orders for the Pd-103 treatment. The patient was identified at the Medical Center by verbal means (asking the patient's name) and by checking the name on the patient's wristband. In addition, the patient had signed a consent in the chart stating he was at the hospital for seed implant for treatment of prostate cancer. The patient received 67 seeds of Pd-103 at 37 megabecquerel (MBq) (1 millicurie (mCi)) per seed, thus a total implant activity of 2479 MBq (67 mCi). On the basis of pre-implant dosimetry, the periphery of the prostate was to receive a maximum dose of 9000 centigray (cGy) (9000 rad). The posterior wall of the bladder and anterior wall of the rectum would receive approximately 4000 cGy (4000 rad) and the whole-body dose would be less than 1 cGy (1 rad). The procedure was performed without complication.

On September 25, 1997, the referring physician notified Tuomey Regional Medical Center that he had two patients with identical names and that the wrong individual had received the implant. On September 29, 1997, the authorized user met with the individual who had received the Pd-103 treatment and discussed the potential early and late side effects, and all necessary precautions.

The licensee stated that the early consequences from this type of implant usually are dysuria and possible hematuria, which, if they occur, resolve in several days. Late consequences could be an approximately 25 percent chance of impotence. Damage to the bladder and rectum occurs in fewer than 1 percent of patients.

Cause or Causes—The referring physician had two patients with identical names. The wrong individual arrived at Tuomey Regional Medical Center with orders from the referring physician for the Pd-103 seed implant. The patient who should have had these orders had been to Tuomey Regional Medical Center for a pre-operative interview. When the wrong individual presented for treatment at Tuomey Regional Medical Center with orders for the Pd-103 seed implant, the registration process failed to note that he was not the same individual who had undergone the pre-operative interview.

Actions Taken To Prevent Recurrence

Licensee—The licensee performed a comprehensive review of the patient identification process once the incident occurred. As a result, the patient identification system was revised on a hospital-wide basis in order to prevent recurrence of this type of event.

State Agency—The State agency investigated the event and a Notice of Violation and Enforcement Conference was held on February 10, 1998. A Notice of Noncompliance was issued for failure to meet the objective that each administration is done in accordance with a written directive. The licensee responded in writing and no additional actions were required.

* * * * *

Dated at Rockville, Maryland this 2nd day of June, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–14468 Filed 6–7–99; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee With Respect to the Railroad Retirement Account; Notice of Public Meeting

Notice is hereby given in accordance with Public Law 92–463 that the Actuarial Advisory Committee will hold a meeting on June 15, 1999, at 10:30 a.m. at the office of the Chief Actuary of the U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, on the conduct of the 21st Actuarial Valuation of the Railroad Retirement System. The agenda for this meeting will include a discussion of the assumptions to be used in the 21st Actuarial Valuation. A report containing recommended assumptions and the experience on which the recommendations are based will have been sent by the Chief Actuary to the Committee before the meeting.

The meeting will be open to the public. Persons wishing to submit written statements or make oral presentations should address their communications or notices to the RRB Actuarial Advisory Committee, c/o Chief Actuary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

Dated: May 26, 1999.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 99–14323 Filed 6–7–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Form F–6, SEC File No. 270–270, OMB Control No. 3235–0292

Regulation S–T, SEC File No. 270–375, OMB Control No. 3235–0424

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

The Commission under Section 19 of the Securities Act of 1933 established Form F–6 for registration of American Depositary Receipts (ADRs) of foreign companies. Form F–6 requires disclosure of information regarding the terms of the depository bank, fees charged, and a description of the ADRs. No special information regarding the foreign company is required to be prepared or disclosed, although the foreign company must be one which periodically furnishes information to the Commission. Such information is available to the public for inspection. The information is needed to ensure that investors in ADRs have full disclosure of information concerning the deposit agreement and the foreign company. It has been estimated that there are 339 respondents annually resulting in an estimated annual total burden of 306 hours.

Regulation S–T sets forth the general rules and regulations for electronic filings. Registrants who file electronically are the likely respondents. Regulation S–T is only assigned one burden hour for administrative convenience because it does not directly impose any information collection requirements.

Written 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 collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: June 1, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14415 Filed 6–7–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (e4L, Inc. (Formerly National Media Corporation), Common Stock, Par Value $.01) File No. 1–6715

June 1, 1999.

e4L, Inc., formerly National Media Corporation (''Company''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security has been listed for trading on the PHLX and on the New York Stock Exchange, Inc. (''NYSE'') The Company's headquarters were recently relocated from Philadelphia, Pennsylvania, to Los Angeles, California, following the consummation of a transaction in which an investor group purchased an aggregate amount of $30 million of the Company's securities and assumed operational control of the Company. In light of the fact that the Company no longer has any geographical ties to the Philadelphia metropolitan area, and having weighed the additional costs incurred by maintaining listing of the Security on both the PHLX and the NYSE against the additional value derived from such dual listings, the Board of Directors of the Company has determined it would be prudent to discontinue listing the Security on the PHLX.

The Company has complied with Rule 809 of the Exchange by filing with the Exchange a certified coy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing on the PHLX and by setting forth in detail to the Exchange the reasons for the proposed withdrawal, and the facts in support thereof. The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Security from listing on the Exchange.

The application refers solely to the withdrawal of the Security from listing on the PHLX and shall have no effect upon the continued listing of such Security on the NYSE. By reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and with the NYSE.

Any interested person may, on or before June 22, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth street, N.W., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–14414 Filed 6–7–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements filed during the week ending May 28, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5738.

Date Filed: May 27, 1999.

Parties: Members of the International Air Transport Association.

Subject: PTC2 AFR 0056 dated 1 June 1999, Mail Vote 006—Resolution 010m, TC2 Within Africa Special Passenger Amending Resolution from Mozambique, Intended effective date: 1 June 1999.

Docket Number: OST–99–5741.

Date Filed: May 28, 1999.

Parties: Members of the International Air Transport Association

Subject: PTC31 S/CIRC 0067 dated 25 May 1999, Expedited South Pacific Resolutions r1-r5, Intended effective date: 15 July 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–14506 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Amtrak Reform Council; Notice of Meeting

AGENCY: Amtrak Reform Council.

ACTION: Notice of special meeting with southeast states and business meeting.

SUMMARY: As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997, the Amtrak Reform Council (ARC) gives notice of a business meeting of the Council, preceded by a special meeting with southeast state representatives. At the special meeting, the Council will hear from, among others, the representatives of the Commonwealth of Virginia and the states of North Carolina, South Carolina, Georgia and Florida on all aspects of intercity railroad passenger service, including corridor service, in the

southeast states. At its business meeting the Council will consider committee assignments and committee work schedules and action on conflict of interest guidelines for non-government members of the Council. The meeting will also consider matters raised by individual Council members. The Council's business meeting will follow the special meeting with representatives of southeast states.

DATES: The meeting with representatives of southeast states is scheduled from 9:00 a.m. to 1:00 p.m. on Tuesday, June 29, 1999. The Council's business meeting will follow at 2:00 p.m. to 5:00 p.m.

ADDRESSES: The meeting with the southeast states will be held in Room 267, Charlotte Mecklenburg Government Center (City Hall), 600 East 4th St. Charlotte, N.C. 28202. The Council's business meeting will be held in the South Carolina Hall of the Hilton Hotel, 222 East Third Street, Charlotte, N.C. 28202, telephone 704–3777–1500. Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM-ARC, 400 Seventh Street, S.W., Washington, D. C. 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061.

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (ARAA), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the ARAA requires that the ARC monitor cost savings resulting from work rules established under new agreements between Amtrak and its labor unions; that the ARC provide an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that after two years the ARC has the authority to determine whether Amtrak can meet certain financial goals specified under the ARAA and, if not, to notify the President and the Congress.

The ARAA provides that the ARC consist of eleven members, including the Secretary of Transportation and ten others nominated by the President and Congressional leaders. Each member is to serve a five year term.

Issued in Washington, DC June 3, 1999.

Thomas A. Till,

Executive Director.

[FR Doc. 99–14521 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5760]

Merchant Marine Personnel Advisory Committee; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for appointment to membership on the Merchant Marine Personnel Advisory Committee (MERPAC). MERPAC provides advice and makes recommendations to the Coast Guard on matters related to the training, qualification, licensing, certification, and fitness of seamen serving in the U.S. merchant marine.

DATES: Applications must reach the Coast Guard on or before August 1, 1999.

ADDRESSES: You may request an application form by writing to Commandant (G–MSO–1), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001; by calling 202–267–0229; or by faxing 202–267–4570. Submit application forms to the same address. This notice and the application form are available on the Internet at hhtp://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Commander Steven J. Boyle, Executive Director of MERPAC, or Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202–267–0229, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: MERPAC is chartered under the Federal Advisory Committee Act, 5 U.S.C. App. 2. It provides advice and makes recommendations to the Assistant Commandant for Marine Safety and Environmental Protection, on merchant marine personnel issues such as implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, types of marine simulation utilized in lieu of sea service for marine licenses, and regional examination center activities.

MERPCAS meets at least twice a year, once at Coast Guard Headquarters, Washington, DC, and once elsewhere in the country. Its subcommittees and working groups may also meet to consider specific problems as required.

The Coast Guard will consider applications for five positions that expire or become vacant in January 2000. Applicants with one or more of the following backgrounds are needed to fill the positions:

(a) Licensed Deck Officer.

(b) Shipping Company employed in ship operation management.

(c) Licensed Engineering Officer.

(d) Marine Educator associated with a training institution other than a federal or state maritime academy.

(e) Public.

Each member serves for a term of 3 years. No member may hold more than two consecutive 3-year terms. MERPAC members serve without compensation from the Federal Government; however, travel reimbursement and per diem will be provided.

In support of the policy of the Department of Transportation on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and members of minority groups.

Applicants selected may be required to complete a Confidential Financial Disclosure Report (OGE Form 450). Neither the report nor the information it contains may be released to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Howard L. Hime,

Acting Director of Standards Marine Safety and Environmental Protection.

[FR Doc. 99–14509 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–06–U–00–JAC) To Use a Passenger Facility Charge (PFC) at the Jackson Hole Airport, Submitted by the Jackson Hole Airport Board, Jackson, WY

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 use a PFC at the Jackson Hole Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before July 8, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. George Larson, Airport Director, at the following address: Jackson Hole Airport Board, P.O. Box 159, Jackson, Wyoming 83001.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Jackson Hole Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. 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 (99–06–U–00–JAC) to use a PFC at the Jackson Hole Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 28, 1999, the FAA determined that the application to use a PFC submitted by the Jackson Hole Airport Board, Jackson Hole Airport, Jackson, Wyoming, 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 August 28, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Actual charge effective date: August 1, 1998.

Proposed charge expiration date: January 1, 2003.

Total requested for use approval: $1,850,000.00.

Brief description of proposed project: Runway Overlay and Safety Areas. (Move runway 300 feet north and overlay; Pave portion of safety areas.)

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: 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 S.W., 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 the Jackson Hole Airport.

Issued in Renton, Washington on May 28, 1999.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 99–14482 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 21, Notice No. 2]

Northwestern Pacific Railroad; Notice of Partial Relief from Emergency Order No. 21

AGENCY: Federal Railroad Administration, Department of Transportation.

ACTION: Notice of Partial Relief.

SUMMARY: This notice provides partial relief for the Northwestern Pacific Railroad from the limitations of Federal Railroad Administration Emergency Order No. 21. The relief allows the Northwestern Pacific Railroad to re-open to rail traffic approximately 1.5 miles of its line near Willits, California, including trackage between the junction with the California Western Railroad and the Willits Depot, as well as Tracks 20, 24, 25, 26, 27, 709, and 711 in Willits Yard. The purpose of the partial relief is to allow the California Western Railroad to renew its operations over NWP tracks to Willits Depot and turn its trains at Willits. The remainder of the NWP line, from Arcata, California, to mile post 63.4 between Schellville and Napa Junction, California, remains closed pending further relief from the emergency order.

Authority

Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws, 49 U.S.C. 20102, 20103. FRA is authorized to issue emergency orders where an unsafe condition or practice ''causes an emergency situation involving a hazard of death or personal injury.'' 49 U.S.C. 20104. These orders may impose such ''restrictions and prohibitions . . . that may be necessary to abate the situation.'' (Ibid.) Likewise, FRA is authorized to grant relief from an emergency order when the agency deems that the unsafe condition or practice which gave rise to the emergency order no longer exists.

Background

The NWP operates on a 286-mile line between mile post 295.5 near Arcata, California and mile post 63.4 between Schellville, California and Napa Junction, California. The North Coast Railroad Authority, a California public agency formed pursuant to California Government Code Section 93000 *et seq.*, owns and operates that portion of the NWP between Healdsburg, mile post 68, and Arcata. Another portion over which the NWP operates and for which it is responsible for maintenance, Healdsburg to mile post 63.4 near Napa Junction, is owned by the Northwestern Pacific Railroad Authority, a joint powers agency representing the Golden Gate Bridge, Highway and Transportation District, the County of Marin, and the North Coast Railroad Authority. Railways, Inc. is the operating agent for the North Coast Railroad Authority, doing business as the NWP.

The NWP connects to the California Western Railroad, among other railroads, which operates both freight and passenger trains, to Willits. Prior to the issuance of Emergency Order No. 21, the California Western operated over about one mile of NWP trackage in order to interchange freight operations with the NWP at Willits and to reach its passenger terminal in Willits.

The NWP is subject to the jurisdiction of FRA. In 1997, FRA, in partnership with the California Public Utilities Commission (CPUC), reviewed NWP's compliance with Federal safety statutes and regulations. The review revealed widespread noncompliance, including hundreds of track defects and a general failure to perform periodic tests of locomotive air brake equipment. On June 11, 1997, FRA, CPUC, and the NWP signed a safety compliance agreement which detailed 11 action items for the NWP to perform. On June 28, 1998, upon finding that the NWP had failed to comply with most of the agreement, the Federal Railroad Administrator issued Compliance Order 98–1 directing NWP to perform the corrections listed in the compliance agreement. When FRA later found that the NWP failed to comply with the directives in the compliance order, and the defects on the rail line posed an imminent and unacceptable threat to public safety, the Federal Railroad Administrator issued Emergency Order No. 21 on November 25, 1998. The emergency order closed all railroad operations except the operation of work trains for the specific and sole purpose of effecting repairs on the railroad. The closure included the trackage near Willits over which the California Western Railroad operated.

Emergency Order No. 21 detailed requirements the NWP must meet in order to gain full relief from the order. The railroad must:

(1) Properly repair and inspect all grade crossing signals and certify to the Federal Railroad Administrator that all necessary repairs and inspections have been performed and that all required tests are up-to-date.

(2) Adopt a set of grade crossing signal standards and instructions acceptable by FRA.

(3) Update, correct and/or redraw circuit plans for each grade crossing signal system to meet compliance with 49 CFR 234.201 and 234.203. A list of locations of the updated, corrected or redrawn circuit plans should be submitted to FRA.

(4) Provide proper and adequate test equipment for signal maintainers.

(5) Repair all track not subject to Emergency Order No. 14 to class 1 track standards as detailed in 49 CFR part 213.

Note: Emergency Order No. 14 requires the Northwestern Pacific Railroad to repair certain segments of track to class 1 track standards for the hauling of passengers and all hazardous materials. Otherwise, the railroad may designate the track still subject to that order as excepted.

(6) Clear all vegetation from drainage facilities and away from signs and signals and track bed so that the track meets the requirements of 49 CFR 213.37;

(7) Furnish FRA with a 12-month track maintenance plan.

(8) Establish a program of employee training on the Federal Track Standards to ensure that employees performing inspection, maintenance, and restoration work are qualified in accordance with 49 CFR 213.7.

(9) Certify in writing that each individual conducting track inspections has sufficient knowledge, skills, and ability to successfully conduct the types of inspections which will be performed by that individual. Records of that certification are to be maintained by the railroad.

(10) Obtain approval from the Federal Railroad Administrator that all of the requirements of this Emergency Order have been met and properly performed.

The emergency order also allows for partial relief for designated portions of the NWP's line. The NWP is required to first meet all of the system-wide requirements, as listed in items 2, 4, 7, 8, and 9. The NWP may then obtain partial relief for any portion of its line for which all of the requirements of the emergency order are met.

On May 20, 1999, in accordance with the terms of the emergency order, the NWP formally requested that FRA grant it partial relief from the emergency order for the 1.5 miles of track in Willits, California, over which the California Western Railroad needs to operate to Willits Depot and turn its train. At this time, the NWP has been fount to meet all of the systemic requirements of Emergency Order No. 21, namely:

- The NWP adopted a set of grade crossing signal standards and instructions that is acceptable to FRA;
- The NWP has entered into a contract with MEC Rail Systems, a signal maintenance company, for the testing and maintenance of NWP signals. In response to the agreement, MEC Rail Systems purchased proper and adequate test equipment for signal maintainers for use on the NWP;
- The NWP has furnished to FRA a 12-month track maintenance plan that includes all of the necessary information required by Emergency Order No. 21;
- The NWP has established a program of employee training on the Federal Track Safety Standards. Railways, Inc. has adopted for use on the NWP the Railway Educational Bureau's *Track Foreman's Training Program*. Individual testing of roadmaster and office engineer candidates has begun;
- The NWP has certified that the sole employee responsible for track inspections, a chief engineer for Rail-Ways, Inc., has sufficient knowledge, skills and ability to successfully conduct track inspections. Any employees who become responsible for track inspections subsequent to the granting of this partial relief will be certified by the NWP as well.

NWP's compliance at this time with the systemic requirements of the emergency order makes the railroad eligible to request partial relief for the designated segment of track in Willits. However, FRA will monitor the railroad's continuing compliance with these systemic requirements.

On May 25, 1999, FRA inspected the track for which the NWP has requested relief from the emergency order. FRA found the track to meet Class 1 track standards in accordance with 49 CFR part 213. On May 27, 1999, FRA inspected the grade crossing signal systems on the track for which NWP has requested relief from the emergency order and found that all necessary repairs, inspections and tests had been performed.

Relief

In light of the foregoing, I grant NWP partial relief from Emergency Order No. 21. NWP trackage between its junction with the California Western Railroad and the Willits Depot, as well as Tracks 20, 24, 25, 26, 27, 709, and 711 in Willits Yard may open immediately to rail traffic. The issuance of this Notice does not preclude imposition of another emergency order governing the segment of track should conditions of the track or rail operations deteriorate to the extent that I believe they pose an imminent and unacceptable threat to public safety.

Issued in Washington on May 28, 1999.

S. Mark Lindsey,

Acting Administrator.

[FR Doc. 99–14454 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Major Investment Study/Draft Environmental Impact Statement on the Metro-North Hudson Line Extension Project, Dutchess County, NY

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of intent to prepare a major investment study/draft environmental impact statement (MIS/DEIS).

SUMMARY: The Federal Transit Administration (FTA) and Metro-North Commuter Railroad Company (Metro-North) intend to prepare a Major Investment Study/Draft Environmental Impact Statement (MIS/DEIS) for the Metro-North Hudson Line Extension Project in Dutchess County, New York. The MIS/DEIS is being prepared in accordance with the National Environmental Policy Act (NEPA) of 1969 as amended, and as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), and the Federal Transit Administration/Federal Highway Administration Environmental Impact regulations (23 CFR Parts 771), and the FTA/FHWA Statewide Planning/ Metropolitan Planning regulations (23 CFR Part 450, the National Historic Preservation Act of 1966 as amended, Section 4(f) of the Department of Transportation Act of 1966, as amended (49 U.S.C. 303, 23 U.S.C. 138), the requirements of the 1990 Clean Air Act Amendments, the Executive Order 12898 on Environmental Justice, and other applicable rules, regulations,

Executive Orders and guidance documents.

Metro-North is preparing this MIS/DEIS to address the potential social, economic and environmental impacts of extending its Hudson Line from the existing northern terminus at Poughkeepsie to either Rhinecliff or Tivoli (approximately 15 and 25 miles respectively) and constructing three or four stations and parking facilities at Hyde Park, Staatsburg, Rhinecliff and Tivoli, as well as a rail yard and employee base facility. This project would expand regional mobility and accommodate the growing demand for commuter rail service to Northern Dutchess County.

The MIS/DEIS will evaluate the following transportation alternatives: No-Build, Transportation System Management (TSM) and several Build Alternatives. Scoping will be accomplished through correspondence with interested persons and organizations, as well as with federal, state and local agencies, and through a public meeting. See **SUPPLEMENTARY INFORMATION** below for details.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to Metro-North by Monday, July 12, 1999. See **ADDRESSES** below.

Scoping Meeting

The public scoping meetings will be held on Tuesday, June 29th at 7 p.m. and Wednesday, June 30th at 7 p.m. Registration to speak at these meetings will commence at 6:30 p.m. and close at 9 p.m. on the date of the meeting. See **ADDRESSES** below. People with special needs should contact Ms. Robyn Hollander at Metro-North at the address below or by calling (212) 672–1242. The building is accessible to people with disabilities. A sign language interpreter will be available upon request in advance of the meeting.

The scoping meeting will begin with an ''open house'' where attendees will be able to view graphics and discuss the project with project representatives. A presentation on the project will be given, followed by an opportunity for comments. Scoping material will be available at the meeting and in advance of the meeting by contacting Ms. Robyn Hollander at the address and phone number below. In addition to oral and written comments, which may be made at the meeting or as described below, a stenographer will be available at the meeting to record comments.

ADDRESSES: Written comments on the project scope should be sent to Ms. Robyn M. Hollander, Project Manager, Metro-North Railroad, 420 Lexington Avenue, New York, New York 10017, (212) 672–1242. The scoping meetings will be held on Tuesday June 29, 1999 at 7:00 p.m. at Roosevelt High School Auditorium, Hyde Park Central School District, South Cross Road, Hyde Park, New York and on Wednesday, June 30, 1999 at 7:00 p.m. at Rhinebeck Town Hall, 80 East Market Street, Rhinebeck, New York.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Danzig, Community Planner, Federal Transit Administration, Region II, One Bowling Green, Room 429, New York, NY 10004–1415, (212) 668–2170. If you wish to be placed on the mailing list to receive further information as the project develops, contact Ms. Hollander at the above address or phone number as described above.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and Metro-North invite interested individuals, organizations, and federal, state and local agencies to participate in developing the alternatives to be evaluated in the MIS/DEIS, and identifying any potential significant social, economic, or environmental issues related to the alternatives. Scoping comments may be made at the public scoping meeting or in writing. See **DATES** and **ADDRESSES** sections above. During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated and suggesting alternatives which are more cost effective or have less environmental impacts while achieving similar transit objectives. Scoping materials will be available at the meeting or in advance of the meeting by contacting Robyn Hollander at Metro-North as indicated above.

II. Description of Study and Project Need

The proposed project consists of an extension of the Metro-North Hudson Line from the existing northern terminus at Poughkeepsie, Dutchess County, NY to a new station and terminus to be located at either Rhinecliff in the Town of Rhinebeck, Dutchess County, NY or Tivoli in the Village of Tivoli, Dutchess County, NY, a distance of 15 and 25 miles, respectively, using the existing double-track line (which is owned by CSX and is currently being used by Amtrak to provide inter-city rail service). The project includes the construction of three or four stations with parking facilities and a rail yard and employee base facility.

Historically, the Upper Hudson line segment, including stations at Cortlandt, Peekskill, Garrison, Cold Spring, Beacon, New Hamburg and Poughkeepsie, has been one of Metro-North's fastest growing line segments. From 1984–1997, ridership on this line segment increased from 1.4 million to 3.2 million annual trips, a growth rate of 131% (about 7% annually). This increase in ridership is the result of several factors, including vastly improved service, more trains, new coaches and locomotives, decreased travel times, improved stations and expanded parking. These improvements have attracted commuters to the system who live beyond the current terminus of Poughkeepsie and west of the Hudson River.

Extending the Hudson Line north from its current terminus in Poughkeepsie, and the construction of appropriate facilities, are intended to expand service to residents of northern Dutchess County, benefit those living in the Mid-Hudson Region, and improve regional air quality goals by providing an alternative to the single occupant vehicle.

III. Alternatives

The transportation alternatives proposed for consideration in this project area include: (1) A No-Build Alternative which involves the current infrastructure of highways, parking facilities, train and bus service, and maintenance facilities in addition to all ongoing, committed and funded roadway and transit projects outlined in the State Transportation Improvement Program (STIP). Transit projects include modifications of current train and bus service but propose a minimum level of service expansion. (2) Transportation System Management, which includes all elements of the No-Build Alternative in addition to roadway and traffic improvements and improved transit services reflecting a number of local route modifications in addition to new and express routes. The TSM Alternative provides the baseline against which the cost-effectiveness of major capital transit investments can be evaluated. (3) Build Alternatives which include an extension of the existing Metro-North line from Poughkeepsie northward to either Rhinecliff, in the Town of Rhinebeck or Tivoli, in the Village of Tivoli (including station locations and support facilities), following the existing rail line. The Build Alternatives may be comprised of more than one ''Build Alternative'' which would differ in the number of stations and terminus location.

IV. Probable Effects

The FTA and Metro-North will evaluate all potential significant environmental, social, and economic impacts of the alternatives analyzed in the MIS/DEIS. Environmental and social impacts proposed for analysis include: land use, secondary development, community disruption, displacements and relocations, traffic and parking, visual, noise and vibration, safety, aesthetics, stormwater management, archaeological, historic, cultural and ecological resources and wildlife corridors. Impacts on natural areas, rare and endangered species, air and water quality, groundwater, and potentially contaminated sites will also be studied. The impacts will be evaluated both for the construction period and for the long-term period of operation of each alternative. Measures to mitigate adverse impacts will be identified.

V. FTA Procedures

The DEIS will be prepared in conjunction with a major transportation investment study and document the results of that study, including an evaluation of the potential social, economic and environmental impacts of the alternatives. Upon completion of the MIS/DEIS, and on the basis of the comments received, Metro-North, in concert with other affected agencies, will select a locally preferred alternative. The MIS/DEIS will be made available for public review and comment and a public hearing will be held during the MIS/DEIS comment period.

On the basis of the MIS/DEIS and comments received, Metro-North and FTA will continue with the preparation of the Final MIS/DEIS. Opportunity for additional public comment will be provided throughout all phases of project development.

Issued on: June 3, 1999.

Letitia Thompson,

Regional Administrator, TRO–II, Federal Transit Administration.

[FR Doc. 99–14483 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–99–5792]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD) intentions to request approval for three years of an existing information collection entitled, ''46 CFR Part 298—Title XI Obligation Guarantees.''

DATES: Comments should be submitted on or before August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Daniel Ladd, Financial Analyst, Office of Ship Financing, Maritime Administration, 400 Seventh Street, SW, Room 8122, Washington, D.C. 20590, telephone number—202–366–5744. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: 46 CFR Part 298—Title XI Obligation Guarantees

Type of Request: Approval of an existing information collection

OMB Control Number: 2133–0018

Form Number: MA–163, MA–163A

Expiration Date of Approval: Three years from the date of approval

Summary of Collection of Information: In accordance with the Merchant Marine Act, 1936 (Act), MARAD is authorized to execute a full faith and credit guarantee by the United States of debt obligations issued to finance or refinance the construction or reconstruction of vessels.

Need and Use of the Information: The information collected is necessary for MARAD officials to evaluate an applicant's project and capabilities, make the required determinations, and administer any agreements executed upon approval of loan guarantees.

Description of Respondents: Individuals/businesses interested in obtaining loan guarantees for construction or reconstruction of vessels satisfying criteria under the Act.

Annual Responses: 25 responses.

Annual Burden: 1750 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments maybe submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., et. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web *at http://dms.dot.gov.*

By Order of the Maritime Administrator.

Dated: June 3, 1999.

Joel C. Richard,

Secretary.

[FR Doc. 99–14504 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–556 (Sub–No. 2X)]

Railroad Ventures, Inc.—Abandonment Exemption—Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA [STB Docket No. AB–555 (Sub–No. 2X)]; The Ohio & Pennsylvania Railroad Company—Adverse Discontinuance of Service Exemption—Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA

On May 19, 1999, Railroad Ventures, Inc. (RVI), filed a petition under 49 U.S.C. 10502 for an exemption from the provisions of 49 U.S.C. 10903 for RVI to abandon 35.7 miles of railroad line from milepost 0.0 at Youngstown, OH, to milepost 35.7 at Darlington, PA, and a connecting 1-mile spur near Negley, OH. RVI also petitioned for an exemption under 49 U.S.C. 10502 from the provisions of 49 U.S.C. 10903 for The Ohio & Pennsylvania Railroad Company (OPRC) to receive discontinuance authorization for OPRC's service obligations over the line. OPRC has a lease with RVI to provide service over this line, but has not provided service since shortly after RVI purchased the line in 1996.[1]

RVI's acquisition of the subject line, formerly part of the Youngstown & Southern Railroad Company (Y&S), OPRC's lease to operate over the line, and their subsequent attempts to abandon the line and discontinue service have a long and tortuous history.[2] Most recently, on January 4,

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[1] Although the proposed discontinuance is styled as an adverse discontinuance because it was filed by RVI, the owner of the line, instead of by OPRC, the carrier authorized to operate over the line, the interests of the parties are not adverse because OPRC agrees that its lease and service obligations should be discontinued and, in fact, had previously sought on its own behalf a discontinuance exemption, which was rejected.

[2] *See Railroad Ventures, Inc.—Acquisition and Operation Exemption—Youngstown & Southern*

1999, OPRC filed a notice of exemption under 49 CFR 1152.50 to discontinue service over the line, and RVI filed a notice of exemption to abandon the line. RVI stated in its verified notice of exemption that it should be allowed to abandon the line and either salvage it or permit other interested parties to acquire the line through the offer of financial assistance (OFA) procedures under 49 U.S.C. 10904 and 49 CFR 1152.27. Both notices were rejected because use of the out-of-service class exemption was deemed to be inappropriate for this line in that it would deprive the Board of the opportunity to review the merits of the abandonment and discontinuance. *Railroad Ventures, Inc.—Abandonment Exemption—Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA*, STB Docket No. AB–556 (Sub–No. 1X) *et al.* (STB served Jan. 22, 1999). The rejections were without prejudice to the filing of either a petition for exemption or a formal application, provided that, if a petition for exemption were filed, it must contain sufficient information for the Board to determine what rehabilitation is required to restore service, what the costs of rehabilitation would be, and an accurate estimate of the line's revenue potential.[3] Then, if the Board determines that the abandonment of the line is warranted by its economics, RVI's willingness to sell to the line through the OFA procedures might be an acceptable approach for resolving the service issues surrounding the line.

The line traverses U.S. Postal Service ZIP Codes: 44501, 44512, 44452, 44408, 45042, 44455, 44441, and 16115. The line does not contain federally granted rights-of-way. Any documentation in RVI's and OPRC's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting exemption proceedings pursuant to 49 U.S.C. 10502(b). Official notice will be taken of the records developed in Docket Nos. AB–556 (Sub–No. 1X) and AB–555 (Sub–No. 1X).[4] A final decision will be issued by September 3, 1999.[5]

Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the exemptions. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested parties should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than June 28, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket Nos. AB–556 (Sub–No. 2X) and AB–555 (Sub–No. 2X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Richard R. Wilson, Vuono & Gray, L.L.C., 2310 Grant Street, Pittsburgh, PA 15219. Comments on the proposed abandonment and discontinuance are due June 28, 1999.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: June 2, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–14508 Filed 6–7–99; 8:45 am]

BILLING CODE 4915–00–P

Railroad Company, STB Finance Docket No. 33385 *et al.* (STB served July 15, 1997), wherein the Board imposed a bi-weekly reporting requirement on RVI in order to monitor the restoration of service and the specific causes of any delays in restoring service.

3 RVI, with OPRC's cooperation, has filed a petition for exemption in response to this requirement. Publication of this notice, however, does not constitute acceptance of RVI's data. The data submitted for projected revenue, maintenance costs, and net liquidation value appear reasonable (although the value of the land may be overstated). Rehabilitation costs were not stated with any certainty. RVI submitted three estimates ranging from approximately $800,000 to approximately $4.5 million, but did not explain the discrepancies among them. Also, several rehabilitation items appear questionable (e.g., the need for extensive replacement of cross ties and tie plates, a new bridge, and drainage work at an overpass).

4 RVI has asked that the environmental reports filed in the previous proceedings be used here. Because those reports are still current, this request is acceptable. Additionally, RVI has asked to be exempted from the notice requirements of 49 CFR 1152.20 and 1152.21. Because RVI complied with these notice requirements in its previous abandonment request, has served copies of its petition on the parties of record in the previous proceedings, and has stated that it will serve a copy of its petition on any other interested party requesting it, RVI will not be required to republish notice of the proposed abandonment and discontinuance.

5 Because the parties and issues in these proceedings are the same, they will be considered on a consolidated basis.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 27, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 8, 1999 to be assured of consideration.

U.S. Customs Service (CUS)

OMB Number: 1515–0026.

Form Number: Customs Form 3078.

Type of Review: Extension.

Title: Application for Identification Card.

Description: Customs Form 3078 is used by licenses Cartmen, Lightermen, Warehousemen, brokerage firms, foreign trade zones, container station operators, their employees, and employees requiring access to Customs secure areas to apply for an identification card so that they may legally handle merchandise which is in Customs custody.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 5,250 hours.

OMB Number: 1515–0051.

Form Number: Customs Form 7523.

Type of Review: Extension.

Title: Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate and Release.

Description: Customs Form 7523 is used by carriers and importers as a manifest for the entry of merchandise free of duty under certain conditions and by Customs to authorize the entry of such merchandise . It is also used by carriers to show that the articles being imported are to be released to the importer or consignee.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 4,950.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 8,247 hours.

OMB Number: 1515–0052.

Form Number: None.

Type of Review: Extension.

Title: Petition for Remission or Mitigation of Forfeitures and Penalties Incurred.

Description: Persons whose property is seized or who incur monetary penalties due to violations of the Tariff Act are entitled to seek remission or mitigation by means of an informal appeal.

Respondents: State, Local or Tribal Government, Individuals or households, Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 28,000.

Estimated Burden Hours Per Respondent: 19 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 6,500 hours.

OMB Number: 1515–0055.

Form Number: Customs Form 3229.

Type of Review: Extension.

Title: Certificate of Origin.

Description: This certification is required to determine whether an importer is entitled to duty-free entry for goods which are: (1) The growth or product of a U.S. insular possession, or (2) Carribean Basin Initiative imports.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 10.

Estimated Burden Hours Per Respondent: 22 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 113 hours.

Clearance Officer: J. Edgar Nichols, (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, N.W., Room 3.2.C, Washington, DC 20229.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–14426 Filed 6–7–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Identification Markings Placed on Firearms, 27 CFR 178.92 and 179.102.

DATES: Written comments should be received on or before August 9, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Nicholas Colucci, Public Safety Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8919.

SUPPLEMENTARY INFORMATION:

Title: Identification Markings Placed on Firearms, 27 CFR 178.92 and 179.102.

OMB Number: 1512–0550.

Abstract: This information collection implements the regulations of Section 923(i) of the Gun Control Act of 1968. In general, these sections require each licensed manufacturer, or licensed importer of firearms to legibly identify each firearm by engraving, casting, stamping (impressing), or otherwise conspicuously placing on the frame or receiver an individual serial number. The serial number must be placed in a manner not susceptible of being readily obliterated, altered or removed. The regulations also prescribe minimum height and depth requirements for identification markings placed on firearms.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,506.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 5,665.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 27, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–14459 Filed 6–7–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Drawback on Distilled Spirits Exported.

DATES: Written comments should be received on or before August 9, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary A. Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8185.

SUPPLEMENTARY INFORMATION:

Title: Drawback on Distilled Spirits Exported.

OMB Number: 1512–0199.

Form Number: ATF F 5110.30.

Abstract: The information collected on ATF F 5110.30 provides a uniform format for determining that taxes have already been paid. The form details specific operations and accounts for taxable commodities. Tax liability is established to prevent jeopardy to the revenue derived from distilled spirits. ATF examines and verifies entries so as to identify unusual activities, errors or omissions.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 10,000.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 27, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–14460 Filed 6–7–99; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Transportation in Bond, and Notice of Release of Puerto Rican Tobacco Products, Cigarette Papers, or Cigarette Tubes.

DATES: Written comments should be received on or before August 9, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Shawn Hart, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8522.

SUPPLEMENTARY INFORMATION:

Title: Transportation in Bond, and Notice of Release of Puerto Rican Tobacco Products, Cigarette Papers, or Cigarette Tubes.

OMB Number: 1512–0167.

Form Number: ATF F 3072 (5210.14).

Abstract: ATF F 3072 (5210.14) is used to document the shipment of taxable tobacco products brought into the United States in bond from Puerto Rico. The form documents certification by ATF to account for the tax liability as well as any adjustments assessed to the bonded licensee. The form also describes the shipment and identification of the licensee who receives the products.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 200.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 27, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–14461 Filed 6–7–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Computation of Tax and Agreement to Pay Tax on Puerto Rican Cigars and Cigarettes.

DATES: Written comments should be received on or before August 9, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Joan Kravchak, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–6993.

SUPPLEMENTARY INFORMATION:

Title: Computation of Tax and Agreement to Pay Tax on Puerto Rican Cigars and Cigarettes.

OMB Number: 1512–0156.

Form Number: ATF F 5120.8.

Abstract: ATF F 5120.8 is used to calculate the tax due on cigars and cigarettes manufactured in Puerto Rico and shipped to the U.S. The form identifies the tax payer, cigars or cigarettes by tax class and certification by a U.S. Customs official as to the amount of shipment, and that the shipment has been released to the U.S.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 30.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 150.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 27, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–14462 Filed 6–7–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application and Permit Under 26 U.S.C. 5181—Alcohol Fuel Producer.

DATES: Written comments should be received on or before August 9, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Joyce A. Drake, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8177.

SUPPLEMENTARY INFORMATION:

Title: Application and Permit Under 26 U.S.C. 5181—Alcohol Fuel Producer.

OMB Number: 1512–0214.

Form Number: ATF F 5110.74.

Abstract: This form is used by persons who wish to produce alcohol for fuel use and describes the persons(s) applying for the permit, location of the proposed operation, type of material used for production, and the amount of spirits to be produced.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 1,364.

Estimated Time Per Respondent: 1 hour and 48 minutes.

Estimated Total Annual Burden Hours: 2,455.

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 informtion on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 27, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–14463 Filed 6–7–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Prior Disclosure Regulations

AGENCY: U.S. Customs, Department of the 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, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Prior Disclosure Regulations. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before August 9, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Prior Disclosure Regulations.

OMB Number: 1515–0212.

Form Number: N/A.

Abstract: This collection of information is required to implement a provision of the Customs Modernization portion of the North American Free Trade Implementation Act (Mod Act) concerning prior disclosure by a person of a violation of law committed by that person involving the entry or introduction or attempted entry or introduction of merchandise into the United States by fraud, gross negligence or negligence, pursuant to 19 U.S.C. 1592(c)(4), as amended.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 3,500.

Estimated Time Per Respondent: 60 minutes.

Estimated Total Annual Burden Hours: 3,500.

Estimated Annualized Cost to the Public: N/A.

Dated: June 2, 1999.

J. Edgar Nichols,

Team Leader, Information Services Branch.

[FR Doc. 99–14427 Filed 6–7–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Automotive Products Trade Act of 1965

AGENCY: U.S. Customs, Department of the 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, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Automotive Products Trade Act of 1965. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before August 9, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Automotive Products Trade Act of 1965.

OMB Number: 1515–0178.

Form Number: N/A.

Abstract: Under APTA, Canadian articles may enter the U.S. so long as they are intended for use as original motor vehicle equipment in the U.S. If diverted to other purposes, they are subject to duties. This information collection is issued to track these diverted articles and to collect the proper duties on them.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 10,920.

Estimated Time Per Respondent: 12 hours.

Estimated Total Annual Burden Hours: 23,587.

Estimated Total Annualized Cost on the Public: $290,850.

Dated: June 2, 1999.

J. Edgar Nichols,

Team Leader, Information Services Branch.

[FR Doc. 99–14428 Filed 6–7–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Documents Required Aboard Private Aircraft

AGENCY: U.S. Customs, Department of the 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, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Documents Required Aboard Private Aircraft. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before August 9, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Documents Required Aboard Private Aircraft.

OMB Number: 1515–0175.

Form Number: N/A.

Abstract: The documents required by Customs regulations for private aircraft arriving from foreign countries pertain only to baggage declarations. Customs also requires that the pilots present documents required by FAA to be on the plane.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 144,000.

Estimated Time Per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 2,490.

Estimated Total Annualized Cost on the Public: $38,240.

Dated: June 2, 1999.

J. Edgar Nichols,

Team Leader, Information Services Branch.

[FR Doc. 99–14429 Filed 6–7–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Foreign Trade Zone Annual Reconciliation Certification and Recordkeeping Requirement

AGENCY: U.S. Customs, Department of the 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, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before August 9, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement.

OMB Number: 1515–0151.

Form Number: N/A.

Abstract: Each Foreign Trade Zone Operator will be responsible for maintaining its inventory control in compliance with statute and regulations. The operator will furnish Customs an annual certification of their compliance.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 260.

Estimated Time Per Respondent: 70 minutes.

Estimated Total Annual Burden Hours: 199.

Estimated Total Annualized Cost on the Public: $855.

Dated: June 2, 1999.

J. Edgar Nichols,

Team Leader, Information Services Branch.

[FR Doc. 99–14430 Filed 6–7–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Disclosure of Information on Inward and Outward Vessel Manifest

AGENCY: U.S. Customs, Department of the 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, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Disclosure of Information on Inward and Outward Vessel Manifest. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before August 9, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch Printing and Records Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Disclosure of Information on Inward and Outward Vessel Manifest.

OMB Number: 1515–0124.

Form Number: N/A.

Abstract: This information is used to grant a domestic importer's, consignee's, and exporter's request for confidentially of its identity from public disclosure.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 578.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 289.

Estimated Total Annualized Cost on the Public: $1,400.

Dated: June 2, 1999.

J. Edgar Nichols,

Team Leader, Information Services Branch.

[FR Doc. 99–14431 Filed 6–7–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Entry and Immediate Delivery Application

AGENCY: U.S. Customs, Department of the 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, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Entry and Immediate Delivery Application. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before August 9, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Entry and Immediate Delivery Application.

OMB Number: 1515–0069.

Form Number: Customs Form 3461 and 3461 Alternate.

Abstract: Customs Form 3461 and 3461 Alternate are used by importers to provide Customs with the necessary information in order to examine and release imported cargo.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 6,543,405.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 838,158.

Estimated Annualized Cost to the Public: $11,440,860.

Dated: June 2, 1999.

J. Edgar Nichols,

Team Leader, Information Services Branch.

[FR Doc. 99–14432 Filed 6–7–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Crew's Effects Declaration

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent

burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Crew's Effects Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before August 9, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Crew's Effects Declaration.

OMB Number: 1515–0061.

Form Number: Customs Form 1304.

Abstract: Customs Form 1304 contains a list of Crew's effects that are accompanying them on the trip, which are required to be manifested, and also the statement of the master of the vessel attesting to the truthfulness of the merchandise being carried on board the vessel as Crew's effects.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 206,100.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 17,326.

Estimated Total Annualized Cost on the Public: $188,150.

Dated: June 2, 1999.

J. Edgar Nichols,

Team Leader, Information Services Branch.

[FR Doc. 99–14433 Filed 6–7–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209826–96]

Proposed Collection; Comment Request for Regulation Project

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–209826–96, Application of the Grantor Trust Rules to Nonexempt Employees' Trusts (§ 1.671–1(h)(3)(iii).

DATES: Written comments should be received on or before August 9, 1999 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 regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application of the Grantor Trust Rules to Nonexempt Employees' Trusts.

OMB Number: 1545–1498.

Regulation Project Number: REG–209826–96.

Abstract: This regulation provides rules for the application of the grantor trust rules to certain nonexempt employees' trusts. Under Section 1.671–1(h)(3)(iii) of the regulation, the overfunded amount for certain foreign employees' trusts will be reduced to the extent the taxpayer demonstrates to the Commissioner, and indicates on a statement attached to a timely filed Form 5471, that the overfunded amount is attributable to a reasonable funding exception. The IRS needs this information to determine accurately the portion of the trust that is properly treated as owned by the employer.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,000.

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: June 2, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–14384 Filed 6–7–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 99–26

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning Revenue

Procedure 99–26, Secured Employee Benefits Settlement Initiative.

DATES: Written comments should be received on or before August 9, 1999 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 revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Secured Employee Benefits Settlement Initiative.

OMB Number: 1545–1653.

Revenue Procedure Number: Revenue Procedure 99–26.

Abstract: Revenue Procedure 98–26 offers employers alternative 50 percent settlement options to settle cases in which they accelerated deductions for accrued employee benefits secured by letter of credit, bond, or other similar financial instruments. The purpose of this settlement initiative is to provide options for taxpayers and the IRS to expeditiously resolve these cases, thereby avoiding litigation of the cases in the future.

Current Actions: There are no changes being made to the revenue procedure 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: 20 hours.

Estimated Total Annual Burden Hours: 2,000.

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: June 2, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–14385 Filed 6–7–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–REIT

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 1120–REIT, U.S. Income Tax Return for Real Estate Investment Trusts.

DATES: Written comments should be received on or before August 9, 1999 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(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Real Estate Investment Trusts.

OMB Number: 1545–1004.

Form Number: 1120–REIT.

Abstract: Form 1120–REIT is filed by a corporation, trust, or association electing to be taxed as a real estate investment trust in order to report its income and deductions and to compute its tax liability. IRS uses Form 1120–REIT to determine whether the income, deductions, credits, and tax liability have been correctly reported.

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: 363.

Estimated Time Per Respondent: 127 hours, 55 minutes.

Estimated Total Annual Burden Hours: 46,435.

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: June 2, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–14386 Filed 6–7–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5305A–SEP

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5305A–SEP, Salary Reduction and Other Elective Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement.

DATES: Written comments should be received on or before August 9, 1999 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 Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5577, 1111 Constitution Avenue NW, Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Salary Reduction and Other Elective Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement.

OMB Number: 1545–1012.

Form Number: 5305A–SEP.

Abstract: Form 5305A–SEP is used by an employer to make an agreement to provide benefits to all employees under a Simplified Employee Pension (SEP) described in Internal Revenue Code section 408(k). This form is not to be filed with the IRS, but is to be retained in the employer's records as proof of establishing a SEP and justifying a deduction for contributions made to the SEP.

Current Actions: There are no changes being made to Form 5305A–SEP at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 10 hrs., 10 min.

Estimated Total Annual Burden Hours: 1,016,000.

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: June 2, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–14387 Filed 6–7–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–C

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 1099–C, Cancellation of Debt.

DATES: Written comments should be received on or before August 9, 1999 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 Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW, Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Cancellation of Debt.

OMB Number: 1545–1424.

Form Number: 1099–C.

Abstract: Form 1099–C is used by Federal government agencies, financial institutions, and credit unions to report the cancellation or forgiveness of a debt of $600 or more, as required by section 6050P of the Internal Revenue Code. The IRS uses the form to verify compliance with the reporting rules and to verify that the debtor has included the proper amount of canceled debt in income on his or her income tax return.

Current Actions: There are no changes being made to the form at this time. However, separate specific form instructions are being proposed for payers who wish to order only the information pertaining to Form 1099–C. The specific instructions would be combined with the general instructions to create a booklet similar to the 1999 Instructions for Forms 1099, 1098, 5498, and W–2G.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and the Federal government.

Estimated Number of Responses: 647,993.

Estimated Time Per Response: 10 min.

Estimated Total Annual Burden Hours: 110,159.

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: June 1, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–14388 Filed 6–7–99; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

Date/Time: Thursday, June 17, 1999 (4:00 p.m.–9:00 p.m.); Friday, June 18, 1999 (9:00 a.m.–5:00 p.m.).

Location: 1200 17th Street, NW., Suite 200, Washington, DC 20036.

Status: Open Session—Portions may be closed pursuant to subsection (c) of section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Agenda: June 1999 Board Meeting; Approval of Minutes of the Eighty-Ninth Meeting (March 18, 1999) of the Board of Directors; Chairman's Report; President's Report; Review and Discussion of Individual Grants and Fellowships; Review Essay Finalists and Select Winners; Committee Reports; Approve Solicited Grant Topics; Other General Issues.

Contact: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: June 1, 1999.

Charles E. Nelson,

Vice President for Management and Finance,

[FR Doc. 99–14539 Filed 6–3–99; 4:49 pm]

BILLING CODE 6820–AR–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Amendment Determinations: ''Eva Levina-Rozengolts: Her Life and Work''

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Amendment to the **Federal Register** Notice published on May 20, 1999, at page 27621 of the **Federal Register** Vol. 64, No. 97 by the United States Information Agency pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), to Pub. L. 89–249 relating to the exhibit ''Eva Levina-Rozengolts: Her Life and Work.'' Correction: This is to announce that the National Museum of Women In the Arts is located in Washington, DC.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of imported exhibit objects or for further information, contact Jacqueline H. Caldwell, Assistant General Counsel, Office of the General Counsel, 202/619–6982, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: June 2, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–14512 Filed 6–7–99; 8:45 am]

BILLING CODE 8230–01–M

federal register

Tuesday
June 8, 1999

Part II

Department of Commerce

International Trade Administration

Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Japan, Taiwan, Germany, etc.; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Japan

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

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Letitia Kress or Karla Whalen, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; at telephone: (202) 482–3793.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to the regulations at 19 CFR Part 351 (1998).

Final Determination

We determine that stainless steel sheet and strip in coils (''SSSS'') from Japan are being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination, issued on December 17, 1998 (*Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Sheet and Strip in Coils from Japan*, 64 FR 108 (January 4, 1999)) (''*Preliminary Determination*''), the following events have occurred.

On December 21, 1998, Nippon Steel Corporation (''NSC'') requested that the Department extend the deadline for its response to the Section D supplemental questionnaire until January 11, 1998. The Department granted NSC an extension for this response until January 4, 1999. On December 22, 1998, petitioners submitted comments on NSC's Section D response. On January 4, 1999, NSC notified the Department of its inability to respond to the Section D supplemental request on time. On January 11, 1999, Petitioners requested that the Department cancel verification for NSC due to the lack of a response and base its final determination on facts otherwise available. On January 12, 1999, the Department granted NSC an extension to respond to the supplemental cost response until January 25, 1999. On January 19, 1999, NSC notified the Department that it could not respond to the Department's supplemental questionnaire. However, in the same letter, NSC also asked the Department to verify its shipment data for purposes of the Department's final critical circumstances determination.

On December 22, 1998, the Department issued a supplemental cost questionnaire to Kawasaki Steel Corporation (''KSC''). On December 23, 1998, KSC requested an extension of the deadline for its response to supplemental cost questionnaire. On January 4, 1999, KSC submitted a ministerial error allegation on the Department's *Preliminary Determination*. On February 23, 1999, the Department published the amended preliminary determination incorporating the correct scope language. *See Notice of Preliminary Determinations of Sales at Less than Fair Value: Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, Mexico, South Korea, and United Kingdom; and Amended Preliminary Determination of Sales at Less than Fair Value, Stainless Steel Sheet and Strip from Taiwan*, 64 FR 8749 (Feb. 23, 1999). On January 25, 1999, KSC submitted its supplemental cost response to the Department as well as its supplemental home market sales information.

On January 15, 1999, Sumitomo Metal Industries (''SMI''), a producer not selected as a respondent in this investigation, requested that the Department reverse its decision that SMI be subject to the ''All Others'' affirmative critical circumstances cooperative finding since it cooperated with the Department's request for information until being deselected as a respondent (*See Decision Memorandum from Division Directors*, Office VII, to Joseph Spetrini, regarding Selection of Respondents, September 21, 1998). On January 29, 1999, Nippon Metal Industry Co., Ltd. (''NMI''), a mandatory but unresponsive respondent, submitted shipment information in connection with the Department's preliminary critical circumstances finding.

On January 25, 1999 and February 2, 1999, KSC and NSC, respectively, requested that the Department conduct a hearing. On February 2, 1999, petitioners and SMI requested that they too participate in the hearing.

On January 28, 1999, petitioners submitted comments regarding the upcoming KSC sales verification. On March 24, 1999, the Department forwarded the sales verification outline to KSC. The Department conducted the sales verification from February 1 through February 9, 1999. On February 2, 1999 and February 9, 1999, KSC submitted a list of minor corrections reported at the beginning of verification for KSC and Kawasho Corporation (''Kawasho''), its affiliated trading company, respectively. The Department did not conduct a sales verification of NSC or NMI.

On February 12, 1999, the Department issued the cost verification outline to KSC. Petitioners submitted cost verification comments regarding KSC on February 18, 1999. The Department conducted the cost verification in conjunction with the LTFV investigation on Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan from February 22 through March 5, 1999. The Department issued its cost verification report on March 23, 1999 and sales verification report on March 24, 1999. (*See Memorandum to James Doyle, Program Manager, AD/CVD Enforcement Group III, Office 7: Verification of the Sales Questionnaire Responses of Kawasaki Steel Corporation* (''*KSC Sales Verification Report*'') and *Memorandum to Neal Halper, Acting Director, Office of Accounting: Cost Verification Report-Kawasaki Steel Corporation*) (''*KSC Cost Verification Report*''). On April 13, 1999, KSC submitted a revised sales database which incorporated the minor corrections presented at verification as well as verification findings.

On April 2, 1999, Petitioners, KSC, SMI, Watanabe Trading Co., Ltd. (''Watanabe''), and Printing Developments Inc. submitted case briefs. On April 9, 1999, petitioners, KSC and NSC submitted rebuttal briefs. The Department conducted the hearing on April 14, 1999.

Scope of the Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''. [5]

Period of Investigation

The period of investigation (''POI'') is April 1, 1997 through March 31, 1998.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products, covered by the description in the *Scope of Investigation* section above produced by KSC, and sold in Japan during the POI to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We relied on nine characteristics to match U.S. sales of subject merchandise to comparison market sales of the foreign like product (listed in order of significance): grade; hot/cold rolled; gauge; finish; metallic coating; non-metallic coating; width; temper/tensile strength; and edge trim. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the antidumping duty questionnaire instructions.

Fair Value Comparisons

To determine whether sales of SSSS from Japan to the United States were made at LTFV, we compared export price (''EP'') to the normal value (''NV''), as described in the ''Export Price'' and ''Normal Value'' sections of this notice below. In accordance with sections 772(a) and (c) of the Act, we calculated EP for all of KSC's sales, since the subject merchandise was first sold in the United States to an unaffiliated purchaser, and constructed export price (''CEP'') was not otherwise warranted based on the facts on the record.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, the Department determines NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (''CV''), that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer. To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the home market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and home market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We applied the aforementioned criteria in the *Preliminary Determination* and indicated that the information on the record revealed two levels of trade (end-users and trading companies) for KSC in the home market. The Department also found that sales made through trading companies in both the home market and the United States were at the same level of trade. *See Preliminary Determination*, 64 FR at 114–115. As we further explain this issue in response to Comment 3, below, we continue to find that there are two levels of trade: (1) KSC sales to end-users; and (2) KSC sales to affiliated and unaffiliated trading companies. Additionally, we continue to find that no consistent, significant pattern of price differences existed and therefore we did not adjust NV for U.S. sales when compared to home market sales made at a different LOT.

Export Price

We calculated EP based on the packed, delivered price to unaffiliated purchasers in the United States. For KSC, we deducted, where appropriate, foreign inland freight, insurance, rebates, brokerage and handling from the starting price and added duty drawback.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparisons'' sections of this notice, below.

1. Home Market Viability

As discussed in the *Preliminary Determination*, we determined that the home market was viable. *See Preliminary Determination*, 64 FR at 113. The parties did not contest the viability of the home market and we have no other reason to reconsider our preliminary determination regarding viability. Consequently, for the final determination, we have based NV on home market sales.

2. Cost of Production (''COP'')

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, based on the sum of KSC's cost of materials, fabrication, SG&A expenses, and packing costs. We relied on KSC's submitted COPs, except in the following specific instances where the

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

submitted costs were not appropriately quantified or valued.

1. We adjusted KSC's reported cost of manufacturing to remove variances associated with the packing and transportation cost centers.

2. We revised KSC's reported financial expense rate to include a subsidiary's excluded foreign exchange losses.

3. We applied the general and administrative expense rate and financial expense rate to KSC's cost of manufacturing plus packing expenses and loading costs. *See Memorandum of Cost of Production and Constructed Value Calculation Adjustments for the Final Determination from William Jones to Neal Halper,* dated May 19, 1999. (''*Cost Calculation Memo*'')

We conducted the sales-below-cost test in the same manner as described in our *Preliminary Determination*, 64 FR at 113. As with our *Preliminary Determination*, we found that for certain models of SSSS, more than 20 percent of KSC's home market sales were at prices less than the COP within an extended period of time. *See* section 773(b)(1)(A) of the Act. Further, the prices did not provide for the recovery of cost within a reasonable period of time. We, therefore, disregarded the sales that failed the cost test and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

3. Calculation of Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of KSC's cost of materials, fabrication, SG&A expenses, direct and indirect selling expenses, interest expense, research and development expenses incurred in producing the subject merchandise, U.S. packing costs, and profit. We relied on the submitted CVs except for the specific instances noted in the ''Cost of Production'' section above.

Price-to-Price Comparisons

For those product comparisons for which there were sales that did not fail the cost test, we based NV on prices to home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C) of the Act. Where applicable, we made adjustments for rebates and movement expenses. To adjust for differences in circumstances of sale between the home market and the United States, we reduced home market prices by the amounts of direct selling expenses (*i.e.*, warranty and credit expenses) and added U.S. credit expenses. In order to adjust for differences in packing between the two markets, we deducted home market packing costs and added U.S. packing costs.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, where we were unable to find a home market match of identical or similar merchandise, we based NV on CV. We calculated CV based on KSC's cost of materials, fabrication, SG&A expenses, U.S. packing, direct and indirect expenses, interest expense, research and development expenses employed in producing the subject merchandise, and profit. In accordance with section 773(a)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by KSC in connection with the production and sale of the foreign like product during the ordinary course of trade for consumption in Japan. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to EP, we made circumstances of sale (''COS'') adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made certain corrections for the final determination. We have corrected certain programming and clerical errors that occurred in the *Preliminary Determination*. Where applicable, these errors are discussed in the relevant comment sections below.

Currency Conversion

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

Facts Available

Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, as provided in section 782(i), the Department shall, subject to subsections 782(d) of the Act, use facts otherwise available in reaching the applicable determination. In this investigation, NSC, NMI, Nisshin Steel Co., Ltd., and Nippon Yakin Kogyo failed to provide requested information. Therefore, use of facts available is warranted.

Section 776(b) of the Act further provides that adverse inferences may be used for a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information (*See Statement of Administrative Action* (''SAA''), accompanying the URAA, H.R. DOC. No. 103–316 at 870 (1994)). Given that Nisshin Steel Corporation, Nippon Yakin Kogyo and NMI refused to comply with the Department's request for information, we find that these companies have failed to act to the best of their ability to comply with reporting obligations in this investigation. Therefore, the Department has determined that an adverse inference is warranted with respect to these three mandatory respondents. As in the *Preliminary Determination*, the Department has selected as adverse facts available a margin of 57.87 percent, which is based on the highest margin alleged in the petition for any Japanese producer. As discussed in the *Preliminary Determination*, the Department has, to the extent practicable, corroborated the information used as adverse facts available because information from a petition is considered secondary information. *See* 19 CFR 351.308(c) and (d). For example, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics, call reports, and data from business contacts). We have also determined that the adverse facts available petition rate has probative value by comparing this rate to actual sales made by KSC, the only respondent whose information the Department was able to verify and use for margin calculation. After comparing the information in the petition to KSC's verified sales data, we find that the petition data is reliable for use as adverse facts available. (*See Corroboration Memorandum Detailing Application of Total Adverse Facts Available* from James Doyle, Program Manager, to Roland MacDonald, Director Office VII, dated May 19, 1999.) (''*Corroboration Memorandum*'') Furthermore, no record evidence or argument has been submitted that would cause the Department to call into question the accuracy of the data in the petition. Therefore, we determine that the use of this margin as facts available for these three companies is appropriate. For further discussion regarding the Department's use and selection of facts available for these three companies, see the *Preliminary Determination*, 64 FR at 115.

In addition, in light of NSC's decision not to respond to the Department's December 7, 1998, supplemental cost response despite repeated extensions by the Department, the Department has determined that NSC has failed to act to the best of its ability in this investigation. Furthermore, NSC's failed to provide the requested cost information, including a large number of affiliated input suppliers, a breakdown of NSC costs by production process and explanations and clarifications regarding allocation methodologies used by NSC in arriving at product-specific costs. As a result, the Department was unable to assess whether any input constituted major inputs, whether collapsing certain steel grades is appropriate, as well as the reasonableness of the allocation methodologies used. Thus, the Department has determined that, in selecting from among facts available, an adverse inference is appropriate. Consistent with Department practice in cases where a respondent withdraws its participation in an investigation, as adverse facts available, we have applied the highest margin in the petition. *See* Comment 13 and *Corroboration Memorandum; see also Final Determination of Sales at Less Than Fair Value: Vector Supercomputers From Japan*, 62 FR 45623 (August 28, 1997).

Critical Circumstances

Section 735(a)(3) of the Act provides that if a petitioner alleges critical circumstances, the Department will determine whether: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

As discussed in our preliminary findings of critical circumstances, we are not aware of any antidumping order in any country on stainless steel sheet and strip in coils from Japan, nor has any additional information in this regard been placed on the record for purposes of the final determination. Therefore, we examined whether there was importer knowledge. The statute and the Statement of Administrative Action (''SAA''), which accompany the Uruguay Round Agreements Act, are silent as to how the Department is to make a finding that there was knowledge of less than fair value sales and the likelihood of material injury. Therefore, Congress has left the method of implementing this provision to the Department's discretion.

In determining whether an importer knew or should have known that the exporter was selling the product at less than fair value, the Department normally considers margins of 15 percent or more sufficient to impute knowledge of dumping for constructed export price (''CEP'') sales, and margins of 25 percent or more for export price (''EP'') sales. *See Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the PRC*, 62 FR 9160 (February 28, 1997). In this investigation, as discussed above in the Facts Available section, we have determined pursuant to an application of adverse facts available that the petition margin of 57.87 percent is probative of the selling practices of mandatory respondents Nisshin Steel Corporation, Nippon Yakin Kogyo, Nippon Metal Industries, and NSC. This margin indicates dumping over the 15 and 25 percent thresholds for these respondents' sales. In addition, the Department normally considers a preliminary International Trade Commission (''ITC'') determination of material injury sufficient to impute knowledge of likelihood of resultant material injury. The ITC preliminarily found material injury to the domestic industry due to imports of sheet and strip from Japan and, on this basis, the Department may impute knowledge of likelihood of injury to these respondents. *See Preliminary Determination of the ITC of Certain Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan, and the United Kingdom*, 63 FR 33092, (June 17, 1998). Thus, we determine that the knowledge criterion for ascertaining whether critical circumstances exist has been satisfied.

Moreover, because we are applying adverse facts available to these four companies with respect to our final critical circumstances determination, we also find that imports for each of them have been massive. Consequently, both prongs of our critical circumstances analyses have been met. We further discuss our treatment of Facts Available/Critical Circumstances in Comment 15 below.

We do not find critical circumstances for KSC. KSC was a cooperative mandatory respondent whose verified shipments did not evidence massive imports but, instead, showed an increase of less than the requisite threshold of 15 percent during the relevant comparison periods (January–May 1998 with June–October 1998). Although the Department's regulations at 19 CFR 206(i) require that we examine at least three months in making our determination of whether imports are massive, it is the Department's practice to examine the longest period for which information is available up until the preliminary determination. *See Notice of Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide From The Netherlands*, 59 FR 23684, (May 6, 1994). In this case, for purposes of the Final Determination, available information permitted us to examine relevant comparison periods covering five months before and after the filing of the petition. Additionally, for purposes of the final determination we included June in the post-petition period, as it was incorrectly included in the pre-petition period for purposes of the Preliminary Determination.

We have reconsidered our *Preliminary Determination's* finding as to the ''All Others'' category of companies and further discuss our treatment of the ''All Others'' category in Comment 14 below. For a complete discussion, see Memo from Roland MacDonald to Joe Spetrini regarding Final Critical Circumstances Determination, dated May 19, 1999, (''*Final Critical Circumstances Memo*''). For this final determination, we do not find critical circumstances for the ''All Others'' category.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by KSC for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by KSC.

Interested Party Comments Regarding Sales Issues

Comment 1: Exclusion of Sales of Foil Products

KSC argues that the Department should have excluded product code R20–5USR grade foil products, which are used for automotive catalytic converter applications, from its preliminary margin calculation since this product meets the exclusion criteria as outlined in the Scope of Investigation of the *Preliminary Determination*. Further, KSC contends that the Department's verification findings support its claim for exclusion of these foil products. For instance, KSC claims that at verification, the Department reviewed numerous sales transactions of R20–5USR foil products, including production records and mill certificates. KSC argues that these findings prove that the R20–5USR grade foil product, previously included in the sales database, met all of the Department's physical and chemical criteria for exclusion. Thus, KSC argues that the merchandise is outside the scope of the investigation and therefore must be removed from the Department's dumping margin calculations for the final determination.

Alternatively, KSC contends that if the Department decides not to exclude sales of foil used for automotive catalytic converter applications, then the Department should exclude the home market trial sales as being outside the ordinary course of trade. KSC argues that the home market sales of R20–5USR grade foil product, also classified as trials, are outside the ''ordinary course of trade,'' in accordance with the section 773(a)(1) of the Act because: (1) These sales represent a small percentage of the entire volume of home market sales of SSSS during the POI; (2) the price of the trial sales is aberrational; (3) the average quantity of the trial sales is an insignificant percentage of the average quantity of commercial sales of all subject merchandise during the POI; and (4) the trial sales are not used for commercial production by the end-users, but are used only for testing and evaluation purposes. For the aforementioned reasons, KSC contends that if the Department should decide to use R20–5USR grade foil in its margin analysis then the Department should exclude the home market trial sales from its margin analysis, on the basis of the fact that these sales are ''outside the ordinary course of trade'' and sold in non-commercial quantities.

Petitioners' first contention is that respondent's exclusion request of October 15, 1998, related only to narrowly focused foil product sold only by Emitec, a producer. According to the petitioners, KSC sells a wide range of foil products falling under the R20–5USR designation and the evidence on the record suggests that KSC's home market sales of foil products do not meet the precise exclusion specifications agreed to by petitioners. Petitioners agree that the verified U.S. sales of R20–5USR meet all the ''Emitec specifications'' and thereby fall within the exclusion. However, petitioners argue that the mill certificates of the home market sales of foil products contain certain chemical elements but not other elements and do not clearly indicate that the product meets ''Emitec specifications.''

Furthermore, petitioners assert that the cost data for foil products vary significantly between the export products and the domestic products, which they argue indicates that not all foil products have the same cost of production, as discussed in *KSC Cost Verification Report* at S–14. For the aforementioned reasons, petitioners urge the Department to limit exclusion of sales only to those sales of foil products that meet the precise exclusion requirements as defined in its October 15, 1998 submission. As a result, petitioners request that the Department not exclude home market foil products from its margin calculations as the exclusion applies only to a particular producer, and the home market foil products do not appear to meet the specifications set forth in the exclusion language. Petitioners' second contention is that KSC's request that its sales of home market foil products be excluded as being outside the ordinary course of trade should not be granted. Petitioners argue that these sales were made at arm's length regardless of the quantity sold.

Department's Position: We agree with KSC. At verification, KSC was able to demonstrate that its R20–5USR products met all of the Department's exclusion criteria for foil products as defined in the Scope of Investigation of the *Preliminary Determination*. Specifically, KSC provided copies of mill certificates for a randomly selected group of foil sales accompanied by a ladle analysis (indicating chemical contents). This verification documentation demonstrates that the chemical content of all exclusion elements met the narrow exclusion requirements as defined in the Scope of Investigation of the Department's *Preliminary Determination*.

The Department first disagrees with petitioners' application of the scope exclusion on a customer-specific basis. The scope of an antidumping duty order covers merchandise, not companies. Second, the Department has determined that petitioners' argument that home market mill certificates contain certain elements not within the scope exclusion is unjustified given the facts of the record. Contrary to this contention, we find that the evidence on the record (*i.e.*, mill certificates and ladle analysis) demonstrates that each of the elements required by the Department's exclusion criteria, as stated in the *Preliminary Determination*, is disclosed on the home market mill certificates and ladle analysis for the randomly selected and verified foil sales. (*See KSC Sales Verification Report* and verification exhibit 3.) Therefore, those chemical elements referred to by petitioners that were not found in the market mill certificates are not relevant to the question of scope. Since these sales meet the exclusion criteria, they do not fall within the scope as defined in the *Preliminary Determination*. Thus, we have eliminated them from the final determination margin calculations because we determine that these sales meet the exclusion criteria, we do not need to address respondent's ordinary course of trade argument.

Comment 2: Proper Application of the Arm's Length Test

KSC claims that the Department erred in its application of the arm's length test by testing sales on a sales destination basis, rather than on a customer basis. According to KSC, the Department's normal practice is to compare overall weighted average home market net prices for each control number sold to affiliated customers with the overall weighted average home market net prices for each control number sold to unaffiliated customers. KSC argues that the Department performed its arm's length test for sales to affiliated customers for each delivery point, as each delivery point has a unique customer code in KSC's sales database, rather than aggregating the delivery points maintained by one particular customer. KSC claims that the arm's length test should have been performed by customer taking into account the customer's various delivery points in determining the appropriate comparison price. Hence, KSC asserts that the Department should perform this test on an affiliated customer-specific basis, rather than on a destination-specific basis.

In response, petitioners note that KSC failed to indicate that its reported customer codes are ''commingled'' with customers'' delivery locations in its questionnaire response. Further, petitioners contend that the data on the record contradict KSC's assertion that an affiliated customer may have numerous delivery points as reflected in the multiple codes assigned to the customer. First, petitioners claim that not all of the delivery locations for each home market sale were reported. Second, petitioners argue with KSC's contention that each customer code signifies a particular destination point since a specific customer code is reported to have more than one destination point related to it and certain customer codes share the same destination point as reflected in KSC's home market sales database. In light of the above contradictions to KSC's claim, petitioners argue that the Department should continue to use the existing customer codes in KSC's home market database as in the Department's *Preliminary Determination*.

Department's Position: We agree with KSC. Although KSC could have explained that its individual customer codes may at times reference the same customer at a different location by a different customer code, the necessary factual information has already been presented on the record in the Section B and C responses. Further, the Department did not find any discrepancies with the reporting of customers or delivery locations at verification. Hence, we have no reason to suspect that the information in regard the destination data field (*i.e.*, DESTH) is in error in the sales databases. Finally, the Department attempts to calculate margins as accurately as possible and this inadvertent oversight by KSC and the Department will be corrected by using information on the record. Accordingly, we have corrected our arm's length program and tested the prices on a customer basis rather than an individual customer delivery location basis.

Comment 3: Proper Implementation of Level of Trade Analysis

KSC argues that the Department should recognize that KSC's sales to all end-users are classified as a separate level of trade regardless of whether the end-user is a customer of KSC or Kawasho, an affiliated party of KSC. KSC contends that Kawasho's sales to its end-users exhibit the same differences in selling functions as KSC's sales to its end-users. In addition, KSC claims that the Department found no discrepancies in its review of the framework agreement between KSC and its end-users and the distinct sales functions performed by Kawasho to its end-users. According to KSC, these distinctions in selling functions, as examined during the course of verification, warrant two separate levels of trade. Kawasaki argues that because sales to trading companies were at the same LOT in both markets, the Department should match U.S. sales to trading companies with normal values derived from home market sales to trading companies, citing *Notice of Preliminary Determination of Sales Less than Fair Value: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 63 FR 6155, 6158 (February 6, 1998) (''We first attempted to compare sales at the U.S. level of trade to sales at the identical home market level of trade. If no match was available at the same level of trade, we attempted to compare sales at the U.S. level of trade to sales at the second home market level of trade.''); *Certain Stainless Steel Wire Rods From France Final Results of Antidumping Duty Administrative Review*, 61 FR 47874, 47880 (September 11, 1996) (same). Thus, KSC urges that sales to end users should be segregated from sales to trading companies.

Petitioners did not comment on this issue.

Department's Position: As discussed in the Department's *Preliminary Determination*, 64 FR at 114, 115, we disagree with KSC for the following reasons. To determine whether normal value was established at a different LOT than KSC's EP sales, we examined stages in the marketing process and selling functions along the chain of distribution between KSC and its U.S. customers, and then compared those functions to the two LOTs that we previously identified in the home market (''HM''). In the U.S., we identified a single channel of distribution: sales from KSC to the unaffiliated Japanese trading companies. In the HM, we identified two channels of distribution: (1) Sales from KSC to end-users; and (2) sales from KSC to all trading companies (affiliated and unaffiliated). In examining the LOTs of the HM sales at verification, we verified that KSC conducted price negotiations, communications with customers, payment collection activity, and warranty activity with its end-users. In contrast, KSC did not perform these same sales functions with respect to sales to both affiliated and unaffiliated trading companies. In our comparison of sales function of KSC to affiliated trading companies and then to unaffiliated customers (end-users/distributors), we noted that KSC's affiliated trading companies gathered market intelligence and customer information, made customer contacts, and performed marketing services, price negotiations, warehousing, processing, payment collection activity, and warranty activity. Based on the above-referenced distinctions between the selling functions of KSC to end-users and those of KSC to affiliated trading companies, and then to unaffiliated customers, we consider the respondent's request that the Department treat KSC's sales to all end-users as one level of trade to be unpersuasive. Finally, because the Department found no ''consistent price differences between the sales on which NV is based and comparison markets sales at the LOT of the export transaction,'' we found that no LOT adjustment or offset was necessary for NV in the event that U.S. sales (KSC sales to unaffiliated trading companies) were compared to home market sales made at a different LOT (KSC sales to end-users) as demonstrated in the Preliminary Determination Pattern of Price Program results. For a discussion of the Department's practice concerning level of trade adjustments, see *Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15444, 15445 (March 31, 1999) (''If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales in which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment * * *''). Therefore, for this final determination, in accordance with section 773(a)(7)(A) of the Act, we maintain our preliminary position with regard to KSC's level of trade analysis.

Comment 4: Rolled-On or Hard Finish With 2B Finish

Petitioners argue that the Department should collapse the finish codes 7 and 9 into 2B finish as these finish codes are broad and lack profound distinctions to justify separate categories. Citing *Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from Mexico*, 64 FR 14872, 14875 (March 29, 1999) (''*Emulsion Styrene-Butadiene*''), petitioners suggest that subtle differences may exist among various finish codes; however, the underlying intention of the model match program is not to recognize each distinction between a product but rather to distinguish the major physical differences in the merchandise.

Petitioners urge the Department to treat finish codes 7 (Rolled-On) and 9 (Hard Finish) as a consolidated finish code 2B (temper rolled or skin passed) in its final determination due to the similarity of the products and the fact that these two codes are not in KSC's product brochure which is used in KSC's normal course of business. Moreover, petitioners cite *Rautaruukki Oy* v. *United States*, Slip Op. 98–112 at 14 arguing that a respondent may not unilaterally alter the physical characteristics of the Department's model match methodology.

KSC responds that it did not ''unilaterally'' alter the product codes, since the Department's model match criteria in the questionnaire specifically lists code 7, ''Rolled-On,'' as a distinct finish, and further requested respondent to specify distinct finishes other than those specifically listed in the questionnaire. Instead, KSC notes that the individual specifications of these finishes were demonstrated with support documentation at verification. KSC argues that the products with finish code 7 and finish code 9 undergo separate production processes according to customer specifications on finishes. KSC argues further that there is a lack of evidence on the record to suggest that KSC's rolled-on or hard finishes are identical to 2B finish.

With respect to petitioners' comment that finish codes 7 and 9 were not mentioned in KSC's product brochure, KSC argues that it provides numerous ''bona fide'' grades and options that are not listed in the main product brochure to its customers. According to KSC, the product brochure features only the most popular grades and options and by no means dictates the types of grades and options that it produces for its customer.

Finally, KSC stresses that if the Department decides to consolidate these finish codes, it would be necessary to recalculate CONNUM-specific costs, imposing burdensome programming calculations and increasing the risk of clerical errors. Therefore, KSC argues that the Department should not deem it appropriate to consolidate these two finishes into 2B, and its statement in the verification report should be read as ''most similar'' to 2B rather than identical.

Department's Position: We agree with KSC. In accordance with section 771(16)(A) of the Act, the Department's selection of appropriate matching criteria was based on meaningful physical characteristics and the comments of the parties. *See Emulsion Styrene Butadiene.* As part of the criteria selection process, the Department's original antidumping questionnaire in this investigation specifically asked KSC to report ''Rolled-On'' (code 7) and ''Other'' (code 9). Pursuant to the questionnaire instructions, KSC reported finish code 7 and code 9 in its sales database and constructed CONNUM-specific costs accordingly. During verification, we noted that KSC offers code 7 and code 9 finish treatments in its ordinary course of business even though these specific finishes are not listed in its finish brochure. (*See KSC Sales Verification Report* at 8 and Exhibit 3 of the verification exhibits.) Despite the overall similarities shared by code 7, code 9 and 2B finish, we examined technical documentation for finish code 7 and internal specifications for code 9, and determined that code 7 and code 9 were distinctly different finishes from 2B. In addition, during verification, we reviewed sales documentation indicating both types of finishes. Accordingly, we have maintained our treatment of code 7 and code 9 as distinct finish codes from code 2B for the final determination.

Comment 5: Advertising and Technical Service Expenses

KSC argues that it classified home market advertising and technical services as direct selling expenses in its questionnaire response; yet the Department inadvertently reclassified these expenses as indirect selling expenses in its *Preliminary Determination* margin calculations. KSC notes that, in response to the Department's questionnaire instructions, it classified only the technical service expense as direct expense.

KSC contends that nothing in the Department's sales verification report contradicts KSC's classification that these expenses are direct. Instead, numerous documents in the verification exhibits demonstrate the nature of these expenses as being direct. *See KSC Sales Verification Report* at 18–19.

Petitioners argue that KSC's reported home market advertising and technical service expenses were not directly related to the subject merchandise, and thus were not direct expenses.

In addition, petitioners maintain that none of the advertisements on the record referred directly to the subject merchandise. Rather, the advertisements referred to stainless steel products in general and covered grades of subject merchandise that were either not subject merchandise or represented an insignificant percentage of KSC's total home market sales during the POI. Further, petitioners argue that KSC's home market advertisements were not directly aimed at the users of the subject merchandise sold during the POI, but to KSC's customers for stainless products in general.

With respect to technical service expenses, petitioners argue that the record suggests that a calculation worksheet from the verification demonstrates that KSC's financial accounting system captures technical service expense for subject and non-subject merchandise under the same cost center, even though KSC used the home market SSSS sales value as the denominator for its technical service expense calculation. Thus, petitioners assert that such expenses are not variable costs. Petitioners cite to the *Notice of Final Results of Antidumping Duty Administrative Review for Certain Internal-Combustion Industrial Forklift Trucks from Japan,* (''*Industrial Forklift Trucks from Japan*'') 62 FR 5592, 5607–5608 (February 6, 1997) arguing that the Department considers expenses as direct expenses if these expenses vary with the sale of a subject merchandise.

KSC rebuts petitioners' argument that KSC's direct selling expenses should be treated as indirect on the basis that these expenses are related to the trading company's sale to its customer, rather than KSC's sale to the trading company. According to KSC, the Department has consistently treated manufacturer's expenses made on behalf of end-users as direct, citing the Department's questionnaire at Appendix I at 1–6, *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan* (''*Stainless Steel Wire Rod*''), 63 FR 40434, 40437 (July 29, 1998); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from South Africa,* 64 FR 15459, 15469 (Mar. 31, 1999) (disallowing advertising expense as a direct expense, because advertising was directed at respondent's direct customer, rather than at customer's customer); and *Notice of Final Determination of Sales at Less than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France,* 59 FR 14136, 14145 (March 25, 1994). Similarly, KSC contends that its home market advertising and technical service expenses should be considered direct as indicated in the *Sales Verification Report.* Regarding technical service expenses, KSC argues that technical service expenses should be classified as direct expenses since KSC incurred those expenses in connection with particular sales.

Department's Position: We agree, in part, with KSC. Based on the record evidence in this investigation and the information examined at verification, we have determined that KSC's reported advertising expenses apply to all stainless steel products, including subject and non-subject merchandise, and were incurred on behalf of KSC's customer. In accordance with the Department's practice, in determining whether advertising expenses directly tie to particular sales, we applied the two-prong test used in *Final Determination of Sales at Less than Fair Value: Antifriction Bearings Other than Tapered Roller Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom* (''*AFB's*''), 62 FR 2102–2104 (January 15, 1997). In AFB's, the

Department stated that ''for advertising to be treated as a direct expense, it must be incurred on products under review and assumed on behalf of the respondent's customer; that is, it must be shown to be directed toward the customer's customer.'' *Id.; See also Stainless Steel Wire Rod from Japan*, 63 FR at 40437 (Department will treat expenses as direct expenses if they can be directly tied to specific sales). As evidenced by documentation gathered at verification in Exhibit 7 of the verification exhibits and *KSC Sales Verification Report*, we examined samples of brochures directed to the end-user's product design needs, invoices for advertisements concerning KSC's environmental safety record, invoices for advertisements for a particular company, as well as brochures directed at construction application uses. At verification, KSC provided sufficient documentation that the advertising expenses in question relate to subject merchandise and target the customer's customer. (*See KSC Sales Verification Report* at 4–11). Accordingly, we have reclassified KSC's advertising expenses as direct selling expenses for the purpose of the final determination. This is consistent with our determination in *Stainless Steel Wire Rod*.

With respect to technical service expenses, there is nothing on the record to support petitioners claims. Furthermore, the case cited by petitioners, *Industrial Forklift Trucks from Japan*, is factually distinguishable from this case as the respondent in that case stated that its technical service ''expenses are all expenses and do not relate to specific sales.'' 62 FR at 5605. Furthermore, there is nothing on the record to support petitioners' position that the technical expense did not vary with the sale of subject merchandise. Accordingly, we reclassified KSC's technical service expenses as direct selling expenses for the final determination.

With regard to petitioners' assertion that KSC used the home market SSSS sales value as the denominator for its technical service expense calculation despite KSC's assignment of technical service expenses to one cost center, we agree with the petitioners and accordingly revised the reported per-unit technical service expense. In order to properly reflect the portion of the total technical service and advertising expense associated with the subject merchandise, we calculated a ratio by dividing the sales of subject merchandise by total sales of stainless steel products, and applied the ratio to the total respective verified technical service and advertising expense amounts for the stainless steel products.

Comment 6: Home Market Advertising Expenses

Petitioners argue that the Department should apply the revised advertising expense ratios to KSC's respective sales databases for its final determination. Additionally, the Department should reject KSC's correction to the advertising expense for a certain home market sale observation because this particular reported advertising expense contradicts other information on the record. Petitioners further claim that KSC may not use an allocation methodology for some sales but choose actual expenses for others.

KSC rebuts petitioners' argument that home market advertising expenses be recalculated on newspapers alone, on the basis that the home market advertising expense comprises not only the newspaper expense but also catalogue and other advertising expenses. KSC adds, as a result, that the home market advertising expense ratio should remain the same, reflecting the total sum of catalogue, newspaper and advertising expense. In addition, KSC urges that the Department deny petitioners' request that HM observation 400 be corrected, pointing to the verified sales data which support KSC's corrected advertising value.

Department's Position: The Department agrees with KSC in that the advertising expenses should be used as reported to the Department since this expense was verified. Additionally, the Department has taken into account the minor corrections presented at verification. At verification, we found no inconsistencies in KSC's reporting of its advertising expense. *See KSC Sales Verification Report* at 18. Further, the Department has determined that the value reported for the particular home market sale in question corresponds to the verified expense ratios. Thus, we have not corrected this observation.

Comment 7: Correction of Errors in KSC's Weighted-Average Cost Calculation for Certain Products

Petitioners argue that in the process of recalculating the value of financial expenses in its preliminary margin analysis, the Department miscalculated the financial expenses for constructed value by applying the financial expenses ratio to KSC's reported financial expenses, rather than to KSC's reported cost of manufacturing for CV. Thus, petitioners claim, the Department should revise KSC's margin calculation program by multiplying the revised total cost of manufacturing for CV by the revised financial expense ratio.

KSC agrees with this change.

Department's Position: We agree with the proposed change and have corrected this inadvertent error in this final determination. (*See Cost Calculation Memo*).

Comment 8: KSC's Sales to Unaffiliated Trading Companies as Separate Transactions

Petitioners assert that the information on the record indicates that the trading company's role is limited to conveying the end-user's order requests and KSC's acceptance or counter-offer to the end-user. Petitioners argue that the trading companies' roles are similar to that of commissioned agents, and thus the Department should not establish the normal value on the sales price between KSC and the trading company. Instead, petitioners urge the Department to rely on the price paid by the end-user or, in the absence of such information, the Department add an amount for the commission to the sales price reported by KSC to calculate normal value for KSC's home market sales.

Petitioners contend that if the Department views the transaction between the trading company and the end-user as a separate transaction, the Department should then recognize the expenses incurred by KSC on its sales to trading companies as indirect selling expenses, rather than direct selling expenses, on the basis that the services associated with these expenses pertain to ''downstream'' sales and thereby directly benefit the end-user and not the trading company, citing *Notice of Final Results of Antidumping Duty Administrative Reviews: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom*, 62 FR, 54042, 54054 (October 17, 1997); and *Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Wire Rod from Japan*, 63 FR 40434, 40436 (July 29, 1998). Petitioners request that the Department treat those expenses that are not part of the negotiated deal between KSC and the trading companies as indirect selling expenses in KSC's margin calculation analysis.

KSC argues that the record demonstrates that the unaffiliated trading companies are customers of KSC, rather than ''commissioned sales agents. In support, KSC notes that the Department reviewed the framework agreements for its unaffiliated trading companies as well as contracts demonstrating that KSC makes bona fide sales to the trading companies. (*See KSC Sales Verification Report* and verification exhibit 4.) Furthermore, KSC adds that the sales reviewed by the Department at verification demonstrated that KSC issues an order confirmation and an invoice to its trading company customer and records the invoice amount to the trading company in its financial accounting system. KSC notes that the obligation to pay KSC rests with the trading company and not on the condition that the trading company receive payment from its downstream customer for payment to KSC. KSC further stresses that the trading companies take title to the goods and are solely responsible for the resale transaction, issue order confirmations and invoices to their customers, and bear the full responsibility of a resale profit or loss on their sale. Finally, KSC argues that, because the sales to the trading companies are actual bona fide sales, the Department may not disregard those sales. KSC stresses that the Department practice is to use manufacturers' sales to trading companies, even in instances where the manufacturers ships the goods directly to the customers of the trading companies. *See Stainless Steel Wire Rod from Taiwan*, 63 FR 40461, 40470 (Jul. 29, 1998), and *Stainless Steel Plate in Coils from South Africa*, 64 FR 15459, 15467 (Mar. 31, 1999).

Department's Position: We agree with KSC. At verification, the Department found that the trading company obtains title to goods and has direct responsibility for payment to KSC for merchandise sold to the customer of the trading company even if the customer defaults on its payment. *See KSC Sales Verification Report* at 5. Additionally, our examination of KSC's sales process did not demonstrate that the trading companies assume the role of commissioned agents. At verification, KSC stated that trading companies undertake their own sales negotiations with their customers, issue separate order confirmations and sales invoices and take title of goods purchased from KSC. *See KSC Sales Verification Report* at 3. Thus, we have not changed our treatment of NV sales for the final determination.

Comment 9: Actual vs. Budgeted Brokerage and Handling Expenses for KSC's U.S. Sales

Petitioners contend that the Department should rely on the actual brokerage and handling expenses reported in Verification Exhibit 9 rather than KSC's budgeted brokerage and handling expenses. According to petitioners, a review of KSC's most recent U.S. sales listing demonstrates that the verified brokerage and handling expenses were not reported to the Department. Instead, KSC reported budgeted brokerage and handling costs for its U.S. sales.

KSC finds no basis for the petitioners' assertion that KSC applied budgeted rather than actual brokerage and handling expenses. In fact, KSC argues that the petitioners misconstrued the brokerage and handling expense calculation in Verification Exhibit 9, as the Department found values from this worksheet to be actual and calculated on a bi-annual basis. KSC acknowledges that its original calculation contained errors that needed to be revised; however, it argues that neither the original calculation nor the revised calculation were based on budgeted values. In addition, KSC contends that the Department tested the integrity of the calculation worksheets, during verification and found no inconsistencies in the calculation worksheets, with the exception of a clerical error presented at the beginning of verification. As a result, KSC concludes that the revised and actual brokerage and handling expenses should be used by the Department.

Department's Position: We agree with the respondent. Although KSC reported brokerage and handling expense values in its January 25, 1999 sales listing that were different from those verified, we were able to confirm the accuracy of the per-unit brokerage and handling expenses submitted at the time of verification by obtaining support documentation and reconciling those values to KSC's financial accounting system. (*See KSC Sales Verification Report* at 13–15). We further note that our findings at verification clearly demonstrate that the verified brokerage and handling amounts are actual and not budgeted. Thus, for the purpose of the final determination, we will use KSC's verified brokerage and handling expenses as submitted on April 13, 1999.

Comment 10: Verified Inland Insurance Amounts for KSC's Home Market and U.S. Sales

Petitioners argue that some of KSC's reported inland insurance amount exceeded the maximum amount of verified home market inland insurance expense for home market sales and fell below the minium verified value for certain U.S. sales. Petitioners contend that in instances where KSC reported incorrect inland insurance amounts, the Department should apply adverse facts available to those sales. As facts available, petitioners argue that the Department should assign a zero to those home market sales with reported inland insurance greater than the maximum verified amount, and the maximum amount for those sales that were reported to have an inland insurance expense lower than the minimum verified amount.

KSC explains that the higher and lower per-unit values exist simply as a result of KSC's use of multiple invoices as was verified by the Department. KSC contends that the per-unit values for certain sales would be less where not all invoices issued against a given order had insurance charges, indicating that not all of the quantity for the particular order incurred inland insurance charges. KSC states that, even though insurance charges are incurred on an invoice-specific basis, KSC's allocation of the total insurance charges for a particular order over the total quantity of that order is consistent with its freight calculation methodology. Further, KSC emphasizes the relative insignificance of the alleged inconsistencies, as they only apply to four home market sales and may potentially apply only to twenty eight U.S. sales. KSC suggests that even if the Department views these inconsistencies as errors, the Department should either ignore them or assign the mean of the home market and U.S. insurance expenses to those sales, rather than apply any punitive facts available, citing *Notice of Final Determination of Sales Less than Fair Value: Stainless Steel Plate in Coils from Belgium*, 64 FR 15476 (March 31, 1999).

Department's Position: We agree with the petitioners. As noted by the petitioners, KSC incorrectly reported inland insurance values for certain home market sales with amounts below the minimum value and those exceeding the maximum value for inland insurance. KSC's argument that its inland insurance calculation methodology is consistent with that of inland freight is without merit. We note that our findings are in contrast to KSC's claim that the per-unit insurance expense was derived by allocating total insurance charges to order quantity. As the Department examined at verification, and as KSC demonstrated in its exhibits, the per-unit inland insurance expense is a contract-based amount, with rates that varied on the designated market of the sale (*i.e.*, home market vs. export market) and location (i.e., Nishinomiya plant vs. Chiba Works) in which the merchandise was produced. (*See KSC Sales Verification Report* at 10–11.) Moreover, our comparison of the home market sales database to the inland insurance expense values submitted at verification confirm these alleged inconsistencies in KSC's sales data. Therefore, as facts available for the final determination, we have accounted for the existing inconsistencies by assigning the average inland insurance rate to those home market and U.S. sales with reported inland insurance greater than the maximum verified amount and to those sales that were reported to have an insurance expense lower than the minimum verified amount.

Comment 11: KSC Misreported Inland Freight Expense for Certain U.S. Sales

Petitioners argue that a comparison of per-unit inland freight expense on a particular sale from the verification exhibit to KSC's January 25, 1999 sales listing reveals that the revised inland freight expense remains incorrect. Petitioners contend that even though the total freight expense for the U.S. sale in question is correct, the verified shipment quantity does not match the reported shipment quantity on this particular sale. Thus, the Department should use the total reported quantity for this particular sale on the sales listing rather than the total shipment quantity that the Department examined during verification. Petitioners point out that the revised allocation base will produce results comparable to inland freight expenses of other U.S. sales while conforming to the overall allocation methodology used to calculate inland freight expenses.

KSC argues that petitioners have misunderstood KSC's order-based freight calculations, explaining that the per-unit expense on sales covered by that specific order is based on the order quantity for each delivery. KSC reiterates that the Department reviewed relevant supporting documentation and was able to tie KSC's reported inland freight expenses to its financial accounting system. For the purposes of the final determination, KSC urges the Department to continue using its verified freight information.

Department's Position: We agree with KSC. At verification, we confirmed that KSC allocates its total inland freight charges on an order-specific basis rather than on an invoice-specific basis. We again reviewed Exhibit 10 in regards to the noted invoice and have confirmed that the per order calculation is correct. It appears that petitioners neglected to include one invoice of the affected order in their calculation. Thus, we are using KSC's submitted information for this invoice.

Comment 12: Duty Drawback

Petitioners argue that KSC's duty drawback calculation is erroneous. According to petitioners, KSC applied the duty rate to the total consumption value without duty to derive a duty-inclusive total consumption value. KSC then used the difference in the unit prices with and without duty as the per-unit value for duty savings. The duty inclusive total consumption value after the application of the duty rate to the total consumption value is different from the value verified by the Department. Petitioners assert that this mathematical error improperly increases the per-unit value of duty drawback. Petitioners request that the Department use KSC's recalculated per-unit duty saving value for chromium to correct this mathematical error.

KSC agrees with the petitioners' recalculation of duty drawback and with their suggested programming language to correct KSC's inadvertent error.

Department's Position: We agree with petitioners and KSC. For the purpose of the final determination, we have continued to rely on KSC's duty drawback calculation methodology while adjusting appropriately for the mathematical error on KSC's part.

Comment 13: Facts Available for NSC

Petitioners contend that the Department should rely on total adverse facts available for NSC in the final determination. Petitioners argue that due to NSC's failure to submit cost information and, as a result, the Department's inability to verify any portion of NSC's response, the Department should rely on facts available. Petitioners note that on prior occasions the Department has found that an inability to utilize cost data results in the inability to use the sales data. NSC contends that to assess an adverse facts available rate would be to ignore its ''substantial compliance'' with the Department's requests and also the reasons for which NSC was unable to respond to the Supplemental D questionnaire. NSC asserts that it did in fact act to the best of its ability and that the Department should assess a non-punitive facts available rate for NSC, using the average margin calculated in the petition. NSC cites to the preamble to the Department's regulations which state that ''the Department will consider whether a failure to respond was due to practical difficulties that made the company unable to respond by the specified deadline.'' 62 FR 27296, 27340 (May 19, 1997). NSC states that to assess the same punitive margin to it as that assigned to the totally non-responsive companies is unfair and would not be consistent with the meaning of the facts available provision. Furthermore, in one instance, the Department used the weighted average petition rate to calculate the final margin where the company had not responded completely and the Department was not able to verify some of the data. *See Notice of Final Determination of Sales Less than Fair Value: Certain Welded Carbon Steel Pipes and Tubes from Thailand*, 62 FR 53808 (October16, 1997).

Department's Position: We agree with the petitioners that the highest rate alleged in the petition, and corroborated by the Department, is the appropriate facts available rate for NSC in this determination. Although NSC cooperated with the Department until the deadline for the section D supplemental response, NSC has not cooperated with the Department's request for cost of production information, which is essential to our dumping analysis. The supplemental section D questionnaire requested: (1) Detailed information on NSC's large number of affiliated input suppliers; (2) a breakdown of NSC's costs by production process; and (3) explanations and clarification regarding allocation methodologies used by NSC in arriving at product-specific costs from NSC's more aggregated accounting records. Absent the affiliated input data, we are unable to determine whether transfer prices between the affiliates occurred at market prices in accordance with section 773(f)(2) of the Act. Moreover, we are unable to assess whether any of these inputs from affiliated parties constituted major inputs. If major inputs are found by the Department to have been used in the production of subject merchandise, we would need the appropriate affiliated suppliers' actual costs of production in accordance with section 773(f)(3) of the Act. With respect to our request for cost information disaggregated according to the stages of the production process, without this information, we are unable to collapse steel grades where appropriate (as we are doing with other respondents in the other SSSS cases), unable to analyze the validity of the reported product-specific data, and unable to adequately plan for verification. Thus, this data omission rendered NSC's response unusable for the cost of production analysis (*i.e.*, the Department is unable to determine whether home market sales were made at prices at or above production costs) and, as a result, for margin analysis.

The Department's practice has been to reject a respondent's submitted information *in toto* when flawed and unreliable cost data renders any price-to-price comparison impossible. *See, e.g., Preliminary Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Mexico,* 63 FR 48181, 48183 (September 9, 1998); and *Notice of Final Determination of Sales at Less Than Fair Value: Grain Oriented Electrical Steel From Italy,* 59 FR 33952 (July 1, 1994). The rejection of a respondent's questionnaire response is particularly appropriate and consistent with Department practice in instances where a respondent failed completely to provide verifiable COP information. *Id.; see also Final Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products from Korea,* 61 FR 18547, 18559 (April 26, 1996) (use of total BIA warranted where reliable price-to-price comparisons are not possible). Therefore, where a respondent's failure to respond is so substantial as to require analysis based upon total facts available the Department will not then selectively review subsets of data provided by the respondent.

Comment 14: Critical Circumstances for ''All Others''

Sumitomo Metal Industries, Ltd. (''SMI'') argues that the Department should not find critical circumstances with respect to it in the final determination. SMI argues that the Department chose not to investigate SMI because of the administrative burden to the Department, yet nonetheless applied its preliminary affirmative critical circumstances finding to imports by SMI. Sumitomo argues that, as a cooperative non-selected respondent, it is entitled to a negative final critical circumstances determination. *See Preliminary Determination of Critical Circumstances: Brake Drums and Brake Rotors from The People's Republic of China,* 61 FR 55269, 55270 (Oct. 25, 1996). SMI argues that it is the Department's practice not to issue final affirmative critical circumstances with regard to cooperative non-selected companies. SMI also cites to the Department's decision in *Honey from the People's Republic of China,* 60 FR 29824, 29825 (Jun. 6, 1995) noting that the Department determined that it was not appropriate ''to penalize respondents whose individual data have not been analyzed due to the Department's own administrative constraints.'' In addition, SMI argues that even though the company falls within the ''all others'' category, the Department must consider its shipment data for purposes of determining whether there were massive imports.

Department's Position: With regard to the ''all others'' category (*i.e.,* companies that were not analyzed in this investigation, *e.g.,* SMI) we have reconsidered our *Preliminary Determination* finding of critical circumstances. In order to determine whether a finding of critical circumstances is appropriate with respect to uninvestigated exporters, it is the Department's normal practice to conduct its analysis based on the experience of investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey,* (''*Rebars from Turkey*'') 62 FR 9737, 9741 (Mar. 4, 1997). In addition, in the instant case, while we have found affirmative critical circumstances for four of the five respondents, we did not extend our affirmative critical circumstances findings to the ''all others'' category, because these companies received affirmative critical circumstances based on adverse facts available. In *Rebars from Turkey,* the Department found critical circumstances for the ''all others'' category because it found critical circumstances for three of the four companies investigated. However, as we most recently determined in *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan,* 64 FR 24329 (May 6, 1999) (''*Hot-Rolled Steel from Japan*''), we are concerned that literally applying that approach could produce anomalous results in certain cases. We believe it would be inappropriate to extend the Department's application of adverse facts available to ''all others'' for purposes of making a critical circumstances determination where there is verified data for an investigated company. Instead, we find that it is appropriate in this case to apply the traditional critical circumstances criteria to the ''all others'' category. For further discussion regarding the criteria considered when determining critical circumstances see Comment 15.

First, in determining knowledge of dumping, we look to the ''all others'' rate, which is based on the weighted-average rate of all investigated companies. In this case, such a weighted-average rate must, of necessity, be based on the individual rate of KSC, the only investigated company that did not receive adverse facts available in this investigation. KSC's rate, applied to the ''all others,'' is 37.13 percent. This rate is high enough to impute knowledge of dumping to the ''all others'' category. Furthermore, on the basis of the ITC's preliminary material injury determination, we also find that importers knew or should have known that there would be material injury from the dumped merchandise.

Second, we also must also evaluate the second prong of the critical circumstances criteria: whether there have been ''massive imports'' for the ''all others'' companies. In making this determination, we examined the verified company-specific shipment data provided by KSC, the only investigated company that did not receive adverse facts available in this investigation. KSC's data showed an increase of less than 15 percent during the relevant comparison periods, and we therefore found that KSC's data provided no evidence of massive imports. In accordance with our decision in *Hot-Rolled Steel from Japan,* we also considered U.S. Customs data on overall imports from Japan of the products at issue. These statistics, however, cover numerous HTS categories that include merchandise other than subject merchandise. As such, we have not relied on this data in making our ''massive imports'' determination for ''all others.'' Based on our review of KSC's data on massive imports, we find that imports from uninvestigated exporters, (e.g., ''all others'') were also not massive during the relevant comparison periods. Given these factors, the Department determines that there are no critical circumstances with regard to ''all other'' imports of SSSS from Japan. For a complete discussion of the data examined, see the Department's *Final Critical Circumstances Memo,* dated May 19, 1999.

Comment 15: Fact Available/Critical Circumstances

Petitioners argue that the Department should use adverse facts available with respect to critical circumstances for the non-responding exporters. As for NSC, petitioners contend that a non-responsive company should not be able to manipulate or selectively respond to the Department's questionnaire and benefit as a result. *See Carbon Steel Plate from Mexico and Pistachio Group of the Association of Food Industries* v. *United States,* 11 CIT 668, 671 F. Supp. 31 (1987). Petitioners further argue that NSC, Nisshin Steel Co., Nippon Yakin Kogyo, and Nippon Metal Industries chose not to respond to the Department and should not be rewarded for the section that they responded to because they deemed it as beneficial to their company while remaining non-responsive to other aspects of the investigation. Because none of the shipment data has been verified, petitioners contend that the Department should use facts available when determining critical circumstances.

In its rebuttal, NSC argues that the Department should use non-adverse facts available in its critical circumstance determination and should instead use the submitted data in conjunction with the U.S. Customs data. Further, NSC contends that the record does not show that it ''failed to cooperate by not acting to the best of its ability,'' because it submitted the shipment data in a timely manner and requested that the Department verify the information. Furthermore, NSC argues that the shipment data it submitted clearly demonstrates that its shipments to the United States have not been massive during the relevant period. NSC contends that the Department has used Customs import data where the respondent's data was not verified. *See Sodium Thiosulfate from the Federal Republic of Germany and the United Kingdom,* (''*Sodium Thiosulfate*'') 55 FR 51749 (Dec. 17, 1990). In another case, where the exporters were non-responsive, the Department used import statistics for its critical circumstances determination and the petition rates for their margins. *See Sodium Thiosulfate from the PRC,* 56 FR 2904 (Jan. 25, 1991). In sum, NSC states that the Department, in some cases, has used Customs import statistics as facts available for determining critical circumstances.

Department's Position: We agree with petitioners. With respect to critical circumstances, it would not be possible to conduct a critical circumstances analysis without relying on adverse facts available. In accordance with section 735(a)(3) of the Act for the final determination, we determine critical circumstances to exist if: (1) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (2) the importer knew or should have known (imputed knowledge) that the exporter was selling the subject merchandise at less than fair value and that there would be material injury by reason of such sales; and (3) there have been massive imports of the subject merchandise over a relatively short time.

In order to determine whether or not the importer of a product under investigation knew or should have known that the exporter was selling the product at less than fair value, we use the estimated margins in our determination as a guide to ''impute knowledge.'' *See Final Determination of Sales at Less Than Fair Value: Manganese Sulfate from the People's Republic of China,* 60 FR 52155 (Oct. 5, 1995); *Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China,* 60 FR 22359 (May 5, 1995); *Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Brazil,* 59 FR 22359 (Jan. 6, 1994). If a particular exporter's sales to an unaffiliated U.S. company (EP transactions) yields a margin of 25 percent or greater, we determine that margin sufficient to impute knowledge to the importer. Similarly, if a particular exporter's sales to an unaffiliated U.S. company through an affiliated company (CEP transactions) yields a margin of 15 percent or greater, we determine that margin sufficient to impute knowledge to the importer.

In this investigation, as discussed above in the Facts Available section, we have determined pursuant to an application of adverse facts available that the petition margin of 57.87 percent is probative of the selling practices of mandatory respondents Nisshin Steel Corporation, Nippon Yakin Kogyo, Nippon Metal Industries, and NSC. This margin indicates dumping over the 15 and 25 percent thresholds for these respondents' sales. In addition, the Department normally considers a preliminary International Trade Commission (''ITC'') determination of material injury sufficient to impute knowledge of likelihood of resultant material injury. The ITC preliminarily found material injury to the domestic industry due to imports of stainless steel sheet and strip in coils from Japan and, on this basis, the Department may impute knowledge of likelihood of injury to these respondents. *See Preliminary Determination of the ITC of Certain Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan, and the United Kingdom,* 63 FR 33092, (June 17, 1998). Thus, we determine that the knowledge criterion for ascertaining whether critical circumstances exist has been satisfied.

Moreover, because we are applying adverse facts available to these four companies with respect to our final critical circumstances determination, we also find that imports for each of the companies have been massive. Consequently, both prongs of our critical circumstances analyses have been met. *See* Critical Circumstances section above for full discussion.

We disagree with NSC's arguments for the following reasons. First, NSC argues that the Department should use the shipment data it submitted. Although, NSC submitted its shipment data in a timely manner and offered to have this information verified by the Department, the Department decided not to verify any of the information submitted by NSC due to substantial missing information since NSC did not respond to the Department's supplemental cost questionnaire. Thus, because the Department could not rely on NSC's sales and cost information as a whole we must apply total adverse facts available and it is not the Department's practice to verify partial information by a respondent who has not fully cooperated. Second, NSC argues that the Department can rely on Customs data in this case as was done previously in *Sodium Thiosulfate.* The Department is unable to do such an analysis in this case since the HTS numbers in the scope of the investigation are basket categories that include non-subject merchandise, and thus do not permit the Department to make an accurate analysis as discussed above. Further, the Department again has determined that, in this case, such an analysis is not warranted for NSC due to NSC's lack of cooperation in this investigation. Therefore, we have found affirmative critical circumstances for NSC.

Comment 16: Date of Sale

KSC asserts that the Department should use invoice date as the date of sale. KSC contends that the Department proved through numerous tests during the course of verification that the material terms of sales change after the order confirmation date and up until the invoice date. For this reason, KSC believes that the Department's should consider the date of invoice as the date of sale. KSC cites the Department's regulations which state that the Secretary normally will use the date of invoice but, in some cases, will use a date that better reflects the date on which the exporter or producer establishes the material terms of sale. KSC asserts that in this case the invoice date is the only date that reflects the intention of the Department's regulations for date of sale. Furthermore, KSC cites the Department's decision in *Notice of Final Results of Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand,* 63 FR 55578, 55587–88 (October 16, 1998) (''*Pipes and Tubes from Thailand*''), where the Department found the date on which the essential terms of the sale were established as the proper date of sale.

Petitioners did not comment on this issue.

Department's Position: We agree with KSC that invoice/shipment date is the correct date of sale for its home market and U.S. sales of subject merchandise. Under our current practice, as codified in the Department's regulations at section 351.401(i), in identifying the date of sale of the subject merchandise, the Department will normally use the date of invoice, as recorded in the producer's records kept in the ordinary course of business. *See Pipes and Tubes from Thailand,* 63 FR at 55578–55587. However, in some instances, it may not be appropriate to rely on the date of invoice as the date of sale, because the evidence may indicate that the material terms of sale were established on some date other than invoice date. *See Preamble to the Department's Final Regulations,* 62 FR 27296 (May 19, 1997) (''*Preamble*''). Thus, despite the general presumption that the invoice date is the appropriate the date of sale, the Department may determine that this is not an appropriate date of sale where the evidence of the respondent's selling practice points to a different date on which the material terms of sale were set.

In this investigation, KSC, in its response to the original questionnaire reported invoice/shipment date as the date of sale in both the U.S. and home markets. However, when requested by the Department, KSC also reported order confirmation date, but maintained that the invoice date would be a more appropriate date of sale. For purposes of our *Preliminary Determination,* we accepted the date of invoice as the date of sale subject to verification. *See Preliminary Determination,* 64 FR at 112.

At verification, we carefully examined KSC's selling practices. We found that it records sales in its sales and financial records by date of invoice/shipment. For the home market, we reviewed several sales observations for which the price and quantity changed subsequent to the original order (*see KSC Sales Verification Report,* dated March 24, 1999). For the U.S. market, we reviewed several instances in which material terms of sale changed subsequent to the original order. In addition, the Department has examined the time lags between order date and invoice date to determine whether it was appropriate to use order date as the date of sale. *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 63 FR 32833, 32835 (June 16, 1998) (''*Steel Pipe from Korea*''). However, it is important to note that, in *Steel Pipe from Korea,* the Department found that ''[t]he material terms of sale in the United States are set on the contract date and any subsequent changes are usually immaterial in nature or, if material, rarely occur.'' *Id.,* 63 FR at 32836. In contrast, KSC reported that there were numerous instances of changes in terms of sale between the initial order date and the shipment/invoice date. Therefore, invoice date is the most appropriate date of sale, notwithstanding some time lag between order confirmation and invoice. As noted above, we observed a significant number of such instances at verification where changes did occur between order confirmation and invoice. Based on KSC's representations, and as a result of our examination of its selling records kept in the ordinary course of business, we are satisfied that the date of invoice/shipment should be used as the date of sale because it best reflects the date on which material terms of sale were established for KSC's U.S. and home market sales.

Comment 17: Scope Exclusion Requests

Since the *Preliminary Determination* we received a number of scope exclusion requests. Printing Developments, Inc. (''PDI'') requests that the necessary stainless steel supplies used for the production of printing plates using a stainless steel substrate be excluded from the scope of the investigation. PDI has found only one Japanese manufacturer who produces materials to meet PDI's rigorous specifications. To date, PDI has found no U.S. producer able to produce this specialized product. PDI is presently discussing the requested exclusion with one petitioner who has demonstrated some interest in supplying stainless steel sheet for the production of the printing plates.

SMI argues that the Department should exclude a certain form of ASTM specification 403. SMI contends that it is the only producer in the world of this grade of stainless steel sheet and strip used for production of certain applications. Furthermore, a partner of SMI in developing this material solicited three U.S. steel producers but none were willing or able to produce the material in question.

Watanabe argues that welding strip should be excluded from the scope of the investigation. Watanabe cites the *Preamble* in stating that the Department ''intend(s) to avoid * * * situations where products in which the domestic industry has no interest are included in the scope of an order'' 62 FR at 27323. Further, Watanabe claims that it solicited quotes from all petitioners but received no response. Therefore, Watanabe urges the Department to exclude welding strip from the scope of the investigation. Because there is no evidence on the record of this investigation that U.S. producers have sold the aforementioned product during the POI and because no U.S. manufacturer was willing to produce the said merchandise, Watanabe argues that welding strip should be excluded from the scope. In addition, Watanabe claims that there are no ASTM and AISI standards for this product.

Petitioners have commented that they are unwilling to consider any further exclusions from the scope of investigation.

Department's Position: Since petitioners have not indicated a lack of interest in these particular products, the Department has not excluded any of these products from the final scope of investigation.

Comment 18: GIN4 and GIN5 Scope Correction

Hitachi Metals America, Ltd. (''HMA'') requests that the Department make two corrections to the definition for GIN4 and one correction to the definition of GIN5. First, HMA asserts that the proprietary name ''GIN4 HI–C'' should be included in the definition of GIN4, because the excluded product is sold under that name as well as GIN4 Mo. Second, HMA contends that the product GIN4 should be compared to AISI 420 as it is ''more similar'' to that product than ASTM 440F. Finally, HMA argues that the Department should revise the units for carbide density for the product GIN5. HMA asserts that the correct units for carbide density should read ''one hundred square microns'' as opposed to ''square micron.''

The petitioners have not commented on these requests.

Department's Position: We agree in part. The Department disagrees with the suggestion that we include an explicit reference to GIN4 HI–C in the scope language. The Department's scope has provided illustrative examples but not an exhaustive list of proprietary names. It is unreasonable to expect the Department to do such for each particular product variety and it is unnecessary for the scope language to include each and every proprietary product meeting the noted exclusion. The Department agrees that the product GIN4 should be compared to AISI 420 and has made the necessary change. Finally, in regard to the GIN5 correction, the Department agrees with the noted correction and has made the necessary change.

Interested Party Comments Regarding Cost

Comment 1: Cost of Second Quality Merchandise

Petitioners argue that the Department should reject KSC's reported costs for non-prime merchandise (''seconds'') and the related offset adjustment to prime merchandise costs. Petitioners assert that in its November 18, 1998 Section D response, KSC did not report costs for seconds because it claimed it could not identify the physical characteristics for sales of such products. Petitioners argue that KSC's home market sales database provides information allowing it to identify at least three of the product characteristics for seconds. Petitioners note that KSC offered a proposal in its Section D response that the Department should use the weighted-average cost of all prime merchandise as a proxy for the cost of seconds. Petitioners state that this proposal was rejected by the Department and KSC then submitted costs for seconds in a supplemental response dated January 11, 1999. Petitioners claim that, instead of reporting its actual costs for seconds, KSC provided the average cost of products based on the known physical characteristics. Petitioners argue that KSC should have calculated the actual costs of production for seconds based on its costs for prime merchandise with the same identifiable characteristics. Petitioners assert that the methodology used by KSC to report the costs of seconds in its supplemental response resulted in unreasonable cost allocations. As an example, petitioners claim that nine products with different grades were assigned the same variable cost of manufacturing. Petitioners also argue that KSC assigned unreasonable costs that do not reflect the reported costs of prime merchandise with similar specifications, as demonstrated by four submitted comparisons of nearly identical prime and secondary products with significantly different assigned costs. In addition, petitioners argue that KSC improperly reduced its costs of prime merchandise with an offset adjustment related to the assigned costs of seconds. Petitioners note that KSC claimed this offset was necessary to avoid overstating total costs because it calculated costs for seconds in the same manner as prime merchandise. Petitioners assert, however, that KSC did not assign the same costs for prime merchandise and seconds of the same product specifications. Petitioners also claim that it is unclear from the record what methodology was used by KSC to derive its offset adjustment and that there is no indication that the Department traced this adjustment to KSC's normal books and records. Therefore, petitioners argue that the Department should disallow this reduction to the costs of KSC's prime merchandise.

KSC argues that the Department should use its reported costs for seconds, which were based on data maintained in the ordinary course of business. KSC notes that it has repeatedly explained, and the Department has confirmed, that it does not maintain actual production costs for seconds and therefore it cannot report actual costs for seconds. KSC states that, as confirmed by the Department in its sales verification report, it does not maintain the same product details for seconds as it maintains for prime merchandise. KSC asserts that the extent to which its sales records provide reliable evidence as to the precise characteristics of a secondary product depends on the information needed by sales personnel in order to make the sale. KSC claims that some of the reported physical characteristics in its sales database may be pure estimates and that the only thing known for certain is that the sales of seconds are, in fact, seconds. With regard to the different products that were assigned the same variable cost of manufacturing, KSC asserts that each of those products either had an unknown grade, finish, or metallic coating, and thus these physical characteristics could not be reliably identified. KSC states that seconds are recorded in inventory as a by-product, at their net realizable value, but that it reported costs for seconds as if they were co-products of the prime merchandise, in accordance with *IPSCO, Inc.* v. *United States,* 965 F.2d 1056, 1061 (Fed. Cir. 1992) (''*IPSCO*'') and *Notice of Final Determination of Sales at Less than Fair Value of Stainless Steel Plate in Coils from the Republic of Korea,* 64 FR 15444, 15455 (March 31, 1999) (''*SSPC from Korea*''). KSC asserts that by using this reporting methodology, which adjusts the costs of seconds, it is necessary to reduce the costs of prime merchandise to avoid overstating its total costs of production.

Department's Position: We agree with KSC and have not adjusted its reported costs. As petitioners note, we did object to the proposal set forth by KSC in its Section D response for reporting the costs of seconds. Our supplemental questionnaire dated December 22, 1998 stated, ''the COP for second-quality products should not be calculated using the methodology suggested at page D–29. The use of a single weighted-average cost of all prime products is not an acceptable method of calculating costs for second-quality merchandise. Evidence presented in the home market sales database indicates that KSC is able to identify sales of second-quality products to a high level of specificity. To the extent possible, KSC should use its production system to calculate the actual production quantities and costs for second-quality products during the POI. If such detailed production information is not available, KSC should derive such production quantities and costs based on its sales records.'' KSC followed these specific directions in reporting costs for seconds in its supplemental responses, dated January 11, 1999 and January 25, 1999. The only instances in which KSC based its reported costs for seconds on the overall weighted-average of prime merchandise were those in which it was unable to identify the grade, finish, *and* non-metallic coating of the secondary product. The nine secondary products that petitioners submitted as an example of different products with the same reported costs clearly fall into this category. While petitioners claim that the grades of these products are different, the grade, finish and non-metallic coating characteristics were all coded as unknown. As KSC notes, in no case did the Department identify a second that was miscoded as a prime, or a prime that was miscoded as a second. Thus, it is reasonable to expect that the costs of these seconds would be calculated based on the weighted-average of all prime products.

In other instances where only one or two of these three characteristics were unknown, KSC calculated the reported costs of seconds based on the weighted-average costs of prime merchandise with the identical characteristics, aside from the unknown characteristic(s). The four comparisons presented by petitioners clearly reflect this approach, as we recalculated the cost of these secondary products without exception. See, *Memo to The File from William Jones,* dated May 19, 1999. As a result of our analysis, it appears that KSC properly reported its cost of seconds, to the extent it was able, in accordance with the *IPSCO* rule that prime and secondary merchandise be treated as co-products and be assigned equivalent costs.

With regard to the offset adjustment that KSC applied to its prime merchandise, we agree with KSC that this offset was necessary to avoid overstating its total costs. Since KSC does not track the cost of its secondary merchandise in its normal books and records, it was necessary for the company to recalculate costs in the manner described above. We reviewed a reconciliation of KSC's total reported costs to its audited financial statements, noting an insignificant difference. If the offset adjustment applied to the prime merchandise had been overstated, then the reported costs of prime merchandise and seconds would have been understated, and the reconciliation would have revealed the understatement. Since the offset adjustment appears to have been properly calculated, we will not make any additional adjustments to the reported costs of KSC's prime merchandise.

Comment 2: Application of Cost Variances

KSC allocated its variable cost variances between subject and non-subject merchandise on the basis of total standard costs incurred for subject and non-subject production. In the *KSC Cost Verification Report* at 2, we stated that it may be appropriate to allocate variable cost variances at the packing and transportation cost centers on the basis of production quantities, rather than standard costs, since the costs in these cost centers are more likely to vary in relation to the production quantities. KSC allocated its fixed cost variances between subject and non-subject merchandise on the basis of the total finished production quantities of subject and non-subject merchandise. We also stated in our cost verification report that it may be appropriate to allocate fixed cost variances at KSC's No. 4 refining and No. 4 continuous caster cost centers on the basis of tons processed.

KSC claims that standard cost is the most appropriate basis for allocating packing and internal transportation costs, as these costs vary by value, and therefore no adjustment is necessary. KSC argues that its packing costs vary based on the type of packing rather than the quantity of production. KSC asserts that the subject merchandise requires more costly packing to protect the thinner gauge models and to protect the finish of models with special surfaces. KSC argues that its internal transportation costs are also more likely to vary with value because higher-cost products require extensive downstream processing and are transferred more extensively throughout the mill. KSC claims that if the Department reallocates the variances incurred at the refining and continuous caster cost centers, it should do so in a consistent manner for both variable and fixed variances, based on data from the entire POI. KSC states that it has no objection to such a reallocation, though it would result in a de minimis adjustment which indicates the reasonableness of its submitted methodology.

Petitioners claim that KSC improperly allocated certain variable and fixed overhead variances, as identified in the cost verification report, which understated KSC's reported costs. Petitioners argue that information on the record does not support KSC's assertion that its packing costs tend to be associated more closely with the value of the product than with production quantity. Petitioners argue that there is no consistent correlation between the reported per-unit packing cost and either sales value or the cost of manufacturing. Petitioners provide examples to support its claim that there is no information on the record to affirm KSC's assertion that its internal transportation costs vary by value rather than quantity. Petitioners note that the Department's verifiers focused on the common cost centers that generated the largest variances and that, if the Department had the resources to examine all of KSC's allocations, other errors requiring revisions may have surfaced.

Department's Position: We agree with KSC that any reallocation of variances incurred at the No. 4 refining and No. 4 continuous caster cost centers should be applied to both variable and fixed cost variances, and should be calculated based on the entire POI. The result of such an adjustment would have a de minimis impact and therefore we have not revised the variance allocations.

We have adjusted the reported costs, however, to remove the packing and transportation variances. KSC derived its reported costs by first calculating variable and fixed cost variances, then applying these variances to the standard cost of each product. Since the resulting actual cost includes packing and loading costs, it was necessary for KSC to remove packing and loading which are not part of the cost of manufacturing. KSC only deducted the standard packing and loading costs, however, while retaining the variances associated with packing and transportation cost centers in the reported costs. Since packing costs are classified as an adjustment to the gross selling price, and since the packing costs reported in the sales databases are actual costs (*see KSC Sales Verification Report* at 17), the variances associated with packing and transportation should be removed from the reported cost of manufacturing. We have adjusted the reported costs to remove these variances, rendering the allocation basis (i.e., quantity or standard cost) a moot point. It is irrelevant whether production quantities or standard costs are used to allocate packing and transportation cost variances between subject and non-subject merchandise, as long as the allocated variances for these costs are completely removed in deriving the cost of manufacturing.

Comment 3: G&A Expenses—Losses on Disposal of Fixed Assets

Petitioners argue that KSC erroneously excluded certain losses on the disposal of fixed assets from the calculation of its general and administrative (''G&A'') expense rate. Petitioners argue that, although these fixed assets may be unrelated to production of subject merchandise, the Department's normal practice is to calculate G&A expenses based on the producing company as a whole, and not on a divisional or product-specific basis. *See, e.g. Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada,* 64 FR 17324, 17333 (April 9, 1999); and *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile,* 63 FR 31412, 31433 (June 9, 1998) (''*Fresh Atlantic Salmon from Chile*''). Petitioners claim that it is reasonable to include all cost of sales as well as all G&A expenses incurred by KSC during the POI for the calculation of its G&A expense rate.

KSC argues that the Department should not include its losses on the disposal of fixed assets used for production of non-subject merchandise in calculating the G&A expense rate. KSC claims that the Department has recognized that expenses relating exclusively to the production of non-subject merchandise do not belong in G&A expenses. KSC maintains that the facts in the instant case are similar to the facts in *Fresh Atlantic Salmon from Chile,* in which the Department noted that it would not include the disposal of fixed assets in G&A if the assets in questions were tied to the production of non-subject merchandise. KSC also cites to the following cases as examples of Department practice on this issue: *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 61 FR 46618, 46619–20 (September 4, 1996) (''*Brass Sheet and Strip from Canada*''); *Certain Hot-Rolled Lead and Bismuth Carbon Steel Flat Products From the United Kingdom; Final Results of Antidumping Duty Administrative Review,* 60 FR 44009, 44012 (August 24, 1995) (''*Lead and Bismuth from the U.K.*''); *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From South Africa,* 60 FR 22550, 22556 (May 8, 1995) (''*Furfuryl Alcohol from South*

Africa''); and *Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada,* 59 FR 18791, 197895 (April 10, 1994) (''*Steel Wire Rod from Canada*''). KSC claims that because the assets in question relate to the production of non-subject merchandise, the Department should exclude such expenses from the calculation of KSC's G&A expense rate.

Department's Position: We agree with petitioners and, as in the *Preliminary Determination,* we have included the losses on the disposal of fixed assets in our calculation of KSC's G&A expense rate. We verified that the assets in question relate to the production of non-subject merchandise. However, it is our practice to calculate G&A expenses using the operations of the company as a whole. *See, e.g., Brass Sheet and Strip from Canada,* 61 FR at 46619; and *Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review,* 63 FR 33041, 33050 (June 17, 1998). As we stated in the original questionnaire issued to KSC, ''G&A expenses are those period expenses which relate indirectly to the general production operations of the company rather than directly to the production process for the subject merchandise * * *''. Therefore, any income or expense incurred through KSC's disposition of fixed assets should be included in the G&A expense rate, regardless of whether they are used purely for the production of subject merchandise or non-subject merchandise. This policy was established in *Final Determination of Sales at Less Than Fair Value: New Minivans from Japan,* 57 FR 21937, 21943 (May 26, 1992) (''*Minivans from Japan*''). In that case, the Department stated, ''we generally consider disposal of fixed assets to be a normal part of a company's operations and have included, therefore, *any gains or losses generated by these transactions* in the cost of production calculation.'' (emphasis added). This is consistent with our treatment of miscellaneous income expenses in *U.S. Steel Group et al* v. *United States,* 998 F. Supp 1151 (CIT 1998). We note also that KSC incurred losses on sale of fixed assets related to the production of subject merchandise and these losses were included in G&A expenses and allocated over the cost of all products that KSC produced.

In *Fresh Atlantic Salmon from Chile,* cited by KSC, the issue was whether to treat temporary shutdown costs as period costs or G&A expenses, that would normally be allocated over the cost of all products. The Department determined that the facilities in question were only idle for a brief period of time and therefore the costs associated with the temporary shutdown should not be treated as G&A expenses. Rather, the costs of operating the facility were charged directly to the cost of manufacturing for the non-subject products produced in the facility. The Department did not, as KSC implies, specifically exclude the shutdown costs from the G&A expense calculation because the facility did not produce subject merchandise. KSC's reliance on *Brass Sheet and Strip from Canada* and *Steel Wire Rod from Canada* is similarly misplaced. The issue in these cases was whether to include in a respondent's G&A expenses certain costs that were incurred by a parent company or a subsidiary. The citations are not on point since the instant case involves equipment that was owned by KSC itself and, as noted above, the Department calculates G&A expenses based on the operations of the respondent as a whole. Expenses incurred by a parent company, or any other affiliated company, are only included in the G&A expense calculation where the affiliated company provides services to the respondent company. KSC's citation to *Lead and Bismuth from the U.K.* is also misplaced, since the respondent in that case closed an entire facility that only produced non-subject merchandise and then excluded these closure costs from the G&A expense rate calculation. In the instant case, KSC simply disposed of assets and, as noted above in *Minivans from Japan,* the Department's policy is to include all gains or losses generated by such disposals. The respondent in *Furfuryl Alcohol from South Africa* calculated separate G&A expense rates by division and a company-wide G&A expense rate for G&A expenses that related to the operations of the company as a whole. 60 FR at 22556. Here, KSC submitted a single G&A expense rate for the entire company and only included the losses on the sale of fixed assets related to subject merchandise. It would not be appropriate nor reasonable to allocate these losses over the cost of producing all products, while specifically excluding losses on the sale of fixed assets used for non-subject production. Since the sale of fixed assets is a general activity of the company, and not specifically related to production, we have allocated all losses on the sale of fixed assets over the cost of producing all products.

Comment 4: General Administrative Expenses—Severance Expenses

KSC states that its expenses on special retirement are one-time severance payments to employees who are transferred from the company and are considered an extraordinary expense under Japanese generally accepted accounting principles (''GAAP''). Therefore, KSC claims that the Department should not include these expenses in the G&A expense rate calculation. KSC asserts that the special retirement payments are not normal, as petitioners claim, because these expenses would normally be accrued as pension liability over an employee's career. KSC also claims that these amounts are not related to KSC's current operations since the workers are no longer employed by the company and KSC has no obligation to make continuing payments to these former employees. KSC states that it can incur such expenses in more than one year, to the extent that the downsizing of operations may not be completed in a single year and additional layoffs or transfers may occur in other years.

Petitioners argue that KSC erroneously excluded expenses on special retirement from the calculation of its G&A expense rate. Petitioners claim that these expenses were incurred during the POI and constitute normal costs associated with the operation of KSC's business. Petitioners state that to qualify as ''extraordinary'' in nature, an expense must be highly unusual and should not reasonably be expected to recur in the foreseeable future. Petitioners assert that it is not unusual for a company to layoff employees when downsizing and it is not unusual for a company to offer severance payments to affected employees. Petitioners also argue that such expenses cannot be considered infrequent because KSC recorded the same expenses during the two prior fiscal years. Petitioners state that it is irrelevant whether the expenses on special retirement may be classified as extraordinary under Japanese GAAP, because the Department's practice is to rely upon a respondent's books and records prepared in accordance with home country GAAP on the condition that those accounting principles reasonably reflect the costs associated with the production of subject merchandise and have been historically used. *See, e.g., Notice of Court Decision: Certain Corrosion-Resistant Carbon Steel Flat Products From Canada,* 63 FR 49078, 49079 (September 14, 1998). Petitioners claim that since the expenses were incurred both prior to and during the

POI, and the expenses were associated with KSC's business operations, the Department should include these expenses in the G&A expense calculation, regardless of whether Japanese GAAP allows KSC to present these amounts as ''extraordinary'' items on the financial statements.

Department's Position: We agree with petitioners and, as in the *Preliminary Determination,* we have included the expenses on special retirement in our calculation of KSC's G&A expense rate. The expenses for special retirement are severance costs that are recorded as part of KSC's ongoing downsizing operations. The Department's normal practice is to include severance costs in a company's G&A expenses. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil,* 64 FR 8299, 8305–8306 (February 19, 1999), and *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey,* 63 FR 68429, 68434 (December 11, 1998). We noted at verification that these downsizing activities have resulted in recurring expenses for KSC. The fact that the process may extend over multiple years does not preclude the use of current period expenses. KSC has recognized in its audited financial statements the expense related to the current fiscal year, and it is this period cost which we have included in KSC's G&A expenses. Also, the classification of these amounts as extraordinary expenses under Japanese GAAP is irrelevant. The Department in some instances will exclude costs considered extraordinary, provided that they are both unusual in nature and infrequent in occurrence. These expenses for special retirement cannot be considered infrequent in occurrence since they have been a recurring cost for KSC and, therefore, are properly included in G&A expenses along with other period costs. *See Silicomanganese From Brazil: Preliminary Results of Antidumping Administrative Review,* 62 FR 1320, 1322 (January 9, 1997).

Comment 5: G&A Expenses—Bonuses

Petitioners claim that KSC should include bonuses paid to the company's directors and statutory auditors in the calculation of its G&A expense rate. Petitioners refer to a schedule in KSC's consolidated financial statements, which indicates that such bonuses totaled 10,773 million yen during the POI.

KSC points out that the petitioners' claim is based on a misreading of its financial statements and that the bonuses paid to the directors and statutory auditors were actually 42 million yen. In addition, KSC claims that its G&A expense rate calculation includes all relevant bonus expenses.

Department's Position: We agree with KSC and therefore have not adjusted the G&A expense rate calculation for bonuses. As shown in KSC's financial statements in its ''Statement of Other Surplus,'' the total bonuses to directors and statutory auditors during the POI were only 42 million yen, and we verified that the amount of bonuses reported in KSC's G&A expenses were reasonable.

Comment 6: G&A and Financial Expense Rate Application

Petitioners argue that the Department should account for packing costs and loading charges in calculating and applying KSC's G&A and financial expense rates. Petitioners note that packing costs and loading charges are included in the cost of sales denominators used to calculate these rates, but the per-unit cost of manufacturing figures, to which the rates are applied, do not account for these costs. Petitioners argue that the Department should correct this situation by increasing the cost of manufacturing of each product for packing costs and loading charges.

KSC asserts that the Department could address this problem by removing packing costs and loading charges from the cost of sales denominators, as it has in previous cases. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey,* 63 FR 68429, 68434 (December 11, 1998). However, KSC argues that it is impossible for large companies (such as KSC) to determine the precise amount of packing costs incurred for all products, in all plants and by all divisions. As an alternative, KSC suggests that the Department reduce the company-wide cost of sales figures using the ratio of packing and loading costs to total costs of manufacturing for the subject merchandise.

Department's Position: We agree with petitioners that an adjustment is necessary in order to apply the G&A and financial expense rates to the per-unit cost of manufacturing on the same basis on which it is calculated. We also agree with KSC that our preferred method of making this adjustment is to remove packing and loading costs from the cost of sales denominator. However, as KSC acknowledges, the company-wide packing and loading costs are not available in the instant case. We have chosen not to use KSC's proposed alternative, which requires the assumption that packing costs for all company products are incurred in the same ratios as the subject merchandise. Instead, we have applied the G&A and financial expense rates to the per-unit cost of manufacturing inclusive of packing and loading costs.

Comment 7: Financial Expenses—Foreign Exchange Losses

Petitioners argue that KSC incorrectly excluded a subsidiary's foreign exchange losses when calculating its reported financial expense rate. Petitioners note that the Department's practice is to use the highest level of consolidation to calculate financial expenses due to the fungibility of financial resources and to include foreign exchange losses on debt in the same calculation. Petitioners claim that the excluded foreign exchange losses were related to debt and thus should be included in the financial expense rate calculation.

KSC acknowledges that an insignificant amount of foreign exchange losses were inadvertently omitted from the calculation of its financial expense rate.

Department's Position: We agree with petitioners and have adjusted KSC's financial expense rate calculation to include the foreign exchange losses related to debt that were incurred by a KSC subsidiary.

Comment 8: Financial Expenses—Affiliated Party

Petitioners argue that the Department should adjust KSC's reported costs to include financing costs associated with the purchase of equipment. Petitioners note that an affiliated company, KSC Enterprises, purchased equipment from unaffiliated companies and then sold the equipment to KSC under an installment contract. Petitioners assert that the cost of financing was not included in the purchase price and therefore was not included in KSC's depreciation basis for the purchased assets. Petitioners further note that the financing cost was not captured since it was eliminated in the preparation of KSC's consolidated financial statements.

KSC contends that the interest expenses captured on its consolidated income statement reflect all of the financing expenses actually incurred by the consolidated entity and that petitioners' claim seeks to supplement these amounts with financing incurred on specific assets. KSC argues that petitioners' claim violates the Department's practice of allocating finance expenses based on the consolidated corporate entity. *See*

Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands; Final Results of Antidumping Administrative Review, 63 FR 37516, 37517 (July 13, 1998); *E.I. DuPont De Nemours & Co.* v. *The United States,* 98–7 (CIT Jan. 29, 1998) (''*DuPont*'').

Department's Position: We agree with KSC. As noted, our long-standing practice is to derive the financial expense rate using the respondent's audited consolidated financial statements. *See, e.g., Silicon Metal From Brazil: Preliminary Results of Antidumping Duty Administrative Review,* 63 FR 42001, 42005 (August 6, 1998). This practice has been upheld by the CIT as reasonable. *See DuPont.* Petitioners are correct in noting that the depreciable basis of the asset does not include financing costs, and the financing costs associated with this specific transaction between the two affiliated entities are eliminated in the preparation of consolidated financial statements. However, petitioners are incorrect in their assertion that these financing expenses should be included in the depreciable basis of the asset as this would result in the double-counting of costs. Since KSC's reported financial expense rate was properly based on its audited consolidated financial statements, which reflect all borrowing incurred by the consolidated entity, we have not made any adjustments to this rate.

Comment 9: Calculation Error

Petitioners claim that there is an error in KSC's reported cost for one control number, because the reported cost does not agree to supporting documents presented at the cost verification. Petitioners claim that the supporting documents indicate that the reported costs were understated and the Department should adjust the reported cost accordingly.

KSC asserts that the reported cost for the control number is correct. KSC states that the supporting worksheet contains a clerical error and that, after correcting for this error, the weighted-average cost calculation on the worksheet agrees to the reported cost.

Department's Position: We agree with KSC. We reviewed the worksheet that demonstrates the weighted-average cost calculation for this control number, noting that the unit costs of two products comprising the control number were switched in error. When the error is corrected, the resulting weighted-average cost is consistent with the figure reported by KSC. Therefore no adjustment is warranted.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Japan that are entered, or withdrawn from warehouse, for consumption on or after January 4, 1999 (the date of publication of the *Preliminary Determination* in the **Federal Register**) for KSC and companies falling under the All Others category. We are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Japan that are entered, or withdrawn from warehouse, for consumption on or after October 12, 1998, for NSC, Nippon Metal Industries, Nisshin Steel Co., Ltd., and Nippon Yakin Kogyo. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
KSC Steel Corporation	37.13
Nippon Steel Corporation	57.87
Nisshin Steel Co., Ltd.	57.87
Nippon Yakin Kogyo	57.87
Nippon Metal Industries	57.87
All Others	37.13

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded any zero and de minimis margins and any margins determined entirely under section 776 of the Act, from the calculation of the ''All Others'' rate.

ITC Notification

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

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13680 Filed 6–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Taiwan

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

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Doreen Chen (Tung Mung); Joanna Gabryszewski (Chang Mien); Gideon Katz (YUSCO and Yieh Mau); or Michael Panfeld (Ta Chen), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0408; (202) 482–0780; (202) 482–5255; and (202) 482–0172, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1998).

Final Determination

We determine that stainless steel sheet and strip in coils (''SSSS'') from Taiwan are being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice. Additionally, as discussed below, we have determined that the application of total adverse facts available is warranted with respect to YUSCO and Ta Chen.

Case History

Since the amended preliminary determination (*Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip from Taiwan, (Amended Preliminary Determination*) (64 FR 4070, January 27, 1999)) the following events have occurred. We conducted a sales verification of Yieh United Steel Corporation's (''YUSCO'') questionnaire response on January 18–22, 1999. We conducted a sales and cost verification of Tung Mung Development Co., Ltd's (''Tung Mung'') questionnaire response on January 25–29, 1999. We conducted a sales and cost verification of Chang Mien Industries Co., Ltd.'s (''Chang Mien'') questionnaire response on February 2–6, 1999. We conducted a sales verification of Yieh Mau Corporation's (''Yieh Mau'') questionnaire response on February 8–9, 1999. Finally, we conducted a verification of Ta Chen Stainless Pipe Co., Ltd.''s (''Ta Chen Taiwan'') and Ta Chen International's (''TCI'') (collectively ''Ta Chen'') middleman dumping questionnaire response on April 5–8,1999 in Los Angeles and on April 12–16, 1999 in Taiwan. On April 12, 1999, respondents YUSCO, Ta Chen, Chang Mien, and Tung Mung provided this monthly shipment data for subject merchandise to the U.S. for 1996, 1997, and 1998.

Petitioners and respondents submitted case briefs on April 20, 1999. On April 22, 1999, petitioners (the only party requesting a public hearing) withdrew their request for the public hearing. Petitioners and respondents submitted rebuttal briefs on April 26, 1999.

On February 5, 1999, Ta Chen submitted a middleman dumping questionnaire response. On February 17 and on March 3, 1999, Ta Chen submitted additional information. On April 7, 1999, the Department requested historical data from respondents regarding exports of subject merchandise during the POI to the U.S. for the years 1996, 1997, and 1998. On April 20, 1999, the Department released a preliminary decision on our middleman dumping investigation of Ta Chen. *See* Memorandum from Michael Panfeld to the File entitled *''Ta Chen Stainless Pipe Co., Ltd.: Preliminary Middleman Dumping Analysis.''* In that memorandum, we preliminarily found that Ta Chen did not engage in middleman dumping with respect to purchases from YUSCO. However, we did preliminarily find that Ta Chen engaged in middleman dumping with respect to purchases from Tung Mung. On May 3, 1999, petitioners and respondents submitted a second round of case briefs, focused on middleman dumping issues. Petitioners and respondents submitted rebuttals for this second case brief on May 7, 1999.

Scope of the Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[5]

Period of Investigation

The period of investigation (''POI'') is April 1, 1997 through March 31, 1998.

Fair Value Comparisons

To determine whether sales of SSSS from Taiwan to the United States were made at less than fair value, we compared the export price (''EP'') to the normal value (''NV''), as described in the ''export price'' section of this notice below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

Transactions Investigated

Chang Mien

With respect to home market sales, we have determined that the date of the order confirmation is the appropriate date of sale since it is the date on which the terms are set and is not changed thereafter, *i.e.* the date which ''established the material terms of sale.'' 19 CFR 401(i). For a further discussion of this issue, *see* the date of sale discussion for Chang Mien further in the body of this Final Determination, and in the *Analysis of Chang Mien in the Final Determination of Stainless Steel Sheet and Strip in Coils from Taiwan Memorandum* (''*Analysis Memorandum: Chang Mien*''), May 18, 1999.

For U.S. sales, we have determined that the date of invoice is the appropriate date of sale since it is the date on which the terms of the sale are set and is not changed thereafter. For a further discussion of this issue, *see* the date of sale discussion for Chang Mien, further in the body of this final, and in the *Analysis Memorandum: Chang Mien*.

Tung Mung

For Tung Mung's U.S. sales, we have used contract date as date of sale. With respect to home market sales, we have determined that the date of invoice is the appropriate date of sale since it is the date on which the terms are set and is not changed thereafter, i.e. the date which ''established the material terms of sale.'' 19 CFR 401(i). For a further discussion of this issue, *see Analysis of Tung Mung in the Final Determination of Stainless Steel Sheet and Strip in Coils from Taiwan Memorandum* (''*Analysis Memorandum: Tung Mung*''), May 18, 1999. For U.S. sales, as a result of verification, we have treated Tung

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

Mung's sales to Company X as sales through Ta Chen Taiwan in our calculations. *See* Ta Chen Taiwan Verification Report dated April 28, 1999 and *Analysis Memorandum: Tung Mung.*

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by respondents, covered by the description in the ''Scope of Investigation'' section above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's August 3, 1998 questionnaire.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or constructed export price (''CEP'') transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (''SG&A'') and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In this investigation, none of the respondents requested a LOT adjustment. To ensure that no such adjustment was necessary, in accordance with principles discussed above, we examined information regarding the distribution systems in both the United States and Taiwan markets, including the selling functions, classes of customers and selling expenses for each respondent.

Tung Mung

Tung Mung claimed that there was only one LOT in the home market. Tung Mung reported that in the home market it made sales to distributors, service centers, and end-users through one channel of distribution. Tung Mung offered freight and delivery arrangements and warranty services to all customers in the home market. The Department confirmed this information at verification (*see Verification Report: Stainless Steel Plate in Coils from Taiwan, Less than Fair Value Investigation*, p. 8). Based on our analysis, for the final determination, we determine that Tung Mung had one LOT in its home market.

In the U.S. market, Tung Mung reported that it sold at one LOT through two channels of distribution: (1) A foreign distributor, and (2) domestic trading companies. In the U.S. market, Tung Mung reported only one LOT to customers. Tung Mung reported that it performed identical selling functions in the United States and in the home market. These selling functions include freight and delivery arrangements and warranty services. The Department confirmed this information at verification (*see* Tung Mung sales verification report, p. 9). Therefore, for the final determination, we determine that there is one LOT in the U.S. and that sales to these customers constitute the same LOT in the home market and the United States. Therefore, a LOT adjustment for Tung Mung is not appropriate.

Chang Mien

Chang Mien reported two LOTs in the home market and two channels of distribution. Within both channels of distribution, the merchandise is either shipped immediately to the customer or stored in Chang Mien's warehouse. In the home market, Chang Mien stated that it performed identical selling activities for both channels of distribution, such as providing inventory maintenance, technical advice, warranty services, delivery arrangements, and advertising. Although the selling activities offered are identical for each of its customers, an additional selling activity is performed for those sales which are stored in inventory. However, we determine that sales on which inventory maintenance is performed do not involve significantly greater resources than sales on which inventory maintenance is not performed and, therefore, do not constitute a separate LOT. The Department confirmed this information at the verification (*see* Memorandum to the File through Rick Johnson from Laurel LaCivita, *Chang Mien Industries Co., Ltd., Home Market Sales, United States Sales Verification Report; Stainless Steel Plate in Coils from Taiwan, Less than Fair Value Investigation* (''*Chang Mien Sales Verification Report*''), pp. 4–5). With respect to the final determination, the Department determines that Chang Mien's two claimed LOTs constitute one LOT. For a further discussion of this issue, *see Analysis Memorandum: Chang Mien*, pp. 7–8.

In the U.S. market, Chang Mien reported that it sold at one LOT, through one channel of distribution, and to one type of customer (trading company). For sales in the U.S. market, Chang Mien performed the following activities: packing, delivery arrangements (*i.e.*, transportation, brokerage and handling, and marine insurance), advertising, and warranty services. Based on a comparison of the selling activities performed in the United States market to the selling activities in the home market, we conclude that there is not a significant difference in the selling functions performed in both markets. The Department confirmed this information at the verification (*see* Chang Mien Sales Verification Report, pp. 4–5). Therefore, for the final determination, we determine that there is one LOT in the U.S. and that sales to these customers constitute the same LOT in the home market and the United States. Therefore, a LOT adjustment for Chang Mien is not appropriate.

Export Price

For all respondents (except Ta Chen and YUSCO—*see* ''Facts Available'' section below), we based our calculation on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise indicated. Furthermore, we calculated EP based on packed prices charged to the first unaffiliated customer in the United States.

We made company-specific adjustments as follows:

Tung Mung

We made deductions from the starting price, where appropriate, for the following movement expenses, in accordance with section 772(c)(2)(A) of the Act: foreign inland freight; containerization expenses; brokerage and handling expenses; harbor duty fees, and bank charges. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act.

Chang Mien

We made deductions from the starting price, where appropriate, for the following movement expenses, in accordance with section 772(c)(2)(A) of the Act: foreign inland freight; brokerage and handling; ocean freight; and marine insurance. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparison'' sections of this notice.

1. Home Market Viability

As discussed in the preliminary determination, we determined that the home market was viable for YUSCO, Tung Mung, and Chang Mien. No party has contested this decision. For the final determination, we have based NV on home market sales.

2. Cost of Production Analysis

Based on the cost allegation submitted by petitioners in the petition, the Department found reasonable grounds to believe or suspect that respondents had made sales in the home market at prices below the cost of producing (''COP'') the merchandise, in accordance with section 773(b)(2)(A) of the Act. As a result, the Department initiated an investigation to determine whether respondents made home market sales during the POI at prices below their respective COPs within the meaning of section 773(b) of the Act. *See Initiation of Antidumping Investigation: Stainless Sheet and Strip In Coils From France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom*, (''*Initiation Notice*'') 63 FR 37521 (July 13, 1998).

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A, interest expenses, and packing costs. We relied on the COP data submitted by each respondent in its cost questionnaire response. Additionally, we made the following adjustments based on our verification findings: (1) We made an adjustment to Tung Mung's G&A expenses to account for power expenses; and 2) for Chang Mien, we revised costs for three CONNUMs, as discussed further in Comment 8.

B. Test of Home Market Prices

We compared the weighted-average COP for each respondent, adjusted where appropriate (see above), to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities,'' pursuant to section 773(b)(2)(C)(i), within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to weighted-average COPs for the POI, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, interest expenses, profit and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Taiwan.

Price-to-Price Comparisons

We performed price-to-price comparisons where there were sales of comparable merchandise in the home market that did not fail the cost test. We disregarded sales to affiliated customers that failed the arm's-length test. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(c)(ii) of the Act.

Tung Mung

For Tung Mung's home market sales of products that were above COP, we based NV on prices to home market customers. We made a deduction for inland freight and two post-sale price adjustments (these adjustments were reported as a quantity discount and other discounts) pursuant to section 351.401(c) of the Department's regulations. We calculated NV based on prices to unaffiliated home market customers. In addition, we made circumstance-of-sale (''COS'') adjustments for differences in direct selling expenses (*i.e.*, credit and warranty expenses), where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs. Based on the results of verification, we made an adjustment to indirect expenses. *See* Tung Mung Sales Verification Report at p. 14 and *Analysis Memorandum: Tung Mung*, p. 6.

Chang Mien

For Chang Mien's home market sales of products that were above the COP, we based NV on prices to unaffiliated home market customers. We made a deduction for inland freight. In its December 4, 1998 submission, petitioners argued that the Department should deny Chang Mien's reported home market credit expense and reclassify Chang Mien's claimed advertising expenses as indirect selling expenses. For the preliminary determination, the Department accepted Chang Mien's home market credit expenses and classified Chang Mien's advertising expenses in both the U.S. and home market as direct selling expenses. However, based on findings made at verification, we have reclassified Chang Mien's claimed advertising expenses as indirect selling expenses for the final determination. *See Analysis Memorandum: Chang Mien* at 4. For a further discussion of this issue, *see* Comment 11 ''Advertising Expenses'' below. Furthermore, based on a pre-verified correction, we have adjusted Chang Mien's reported advertising expenses. Additionally, for the Final Determination, we will only make adjustments for warranty expenses associated with POI sales and have, therefore, excluded one of the two warranty expenses claimed by Chang Mien. *See* Comment 12 ''Warranty Expenses'' below. We made COS adjustments for direct selling expenses (*i.e.*, credit, warranty and bank charges), where appropriate. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of similar merchandise. We made adjustments to CV in accordance with section 773(a)(8) of the Act. For these EP comparisons, for Tung Mung, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Critical Circumstances

On October 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of SSSS from Taiwan. Section 735(a)(3) of the Act provides that if a petitioner alleges critical circumstances, the Department will determine on the basis of the information available to the Department, whether:

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

To determine that there is a history of dumping of the subject merchandise, the Department normally considers an existing antidumping duty order on SSSS in the United States or elsewhere to be sufficient. Petitioners did not provide any information indicating a history of dumping of SSSS from Taiwan. Furthermore, we investigated the existence of antidumping duty orders on SSSS from Taiwan in the United States or elsewhere, and did not find any. On April 7, 1999, we requested respondents to submit historical data on exports of subject merchandise to the United States for 1996, 1997 and 1998. On April 12, 1999, YUSCO, Chang Mien, Tung Mung, and Ta Chen submitted the historical data on U.S. exports as requested.

In determining whether an importer knew or should have known that the exporter was selling subject merchandise at less than fair value and thereby causing material injury, the Department normally considers estimated dumping margins of 25 percent or greater for EP sales to impute knowledge of dumping and of resultant material injury. In this regard, we note that the ITC preliminarily determined that the domestic industry is materially injured or threatened with material injury by reason of imports from Taiwan. *See Notice: International Trade Commission*, 63 FR 41864 (August 5, 1999). In this investigation, with the exception of YUSCO, we have not established estimated dumping margins of 25 percent or greater. Based on these facts, we determine that, with the exception of YUSCO, the first criterion for ascertaining whether critical circumstances exist is not satisfied. Therefore, we determine that there is no basis to find that critical circumstances exist with respect to exports of SSSS from Taiwan by all respondents except YUSCO (*see, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Collated Roofing Nails From Korea*, 62 FR 25895, 25898 (May 12, 1997)). Because the dumping margins for all companies except YUSCO are below the 25 percent threshold, we have not analyzed the shipment data for these respondents to examine whether imports of SSSS have been massive over a relatively short period.

For YUSCO, we compared shipment data for the periods December 1997 through May 1998 and June through November 1998 (the post-petition period), and found that YUSCO did not have massive shipments of SSSS to the United States in the post-petition period. Therefore, we find that critical circumstances do not exist. For a more detailed discussion of this analysis, *see Analysis Memorandum—YUSCO* from Rick Johnson to Edward Yang, May 19, 1999.

Verification

As provided in section 782(i) of the Act, we verified the sales and cost information submitted by the respondents for use in our final determination. We used standard procedures, including examination of relevant sales, accounting, and production records and original source documents provided by respondents.

Application of Facts Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Thus, pursuant to section 776(a) of the Act, the Department is required to apply, subject to section 782(d), facts otherwise available. Pursuant to section 782(e), the Department shall not decline to consider such information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

YUSCO

We find, based on the evidence set out below in the ''total facts available'' section of the notice, that by not reporting a large portion of the home market database, YUSCO withheld information that had been requested by the Department (*i.e.*, all home market sales of the foreign like product) and did not act to the best of its ability in providing the requested information. Accordingly, the Department used facts available with an adverse inference, as provided for in section 776(b) of the Act. Since these sales were not reported to the Department, this information was clearly not provided in a timely manner (*i.e.*, in response to Section B of the Department's questionnaire). Furthermore, YUSCO's withholding of crucial information which the Department needed to calculate an accurate normal value significantly impeded the Department's investigation. As a result, we must rely on the facts otherwise available.

Ta Chen

We also determine, in accordance with section 776(a) of the Act, that the use of facts available as the basis for the weighted-average dumping margin is appropriate for Ta Chen because, despite the Department's attempts to verify necessary information provided by Ta Chen, the Department could not verify the information as required under section 782(i) of the Act. Furthermore, section 782(e) of the Act authorizes the Department to decline to consider information that is submitted by an interested party that is necessary to the determination under certain circumstances, such as when such information is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination or when such information cannot be verified. As discussed below in Comment 23, we determine that information provided by Ta Chen in this investigation could not be verified.

Total Facts Available

YUSCO

Section 773(a)(1)(B) of the Act requires that, in determining normal value, the Department use all sales of the foreign like product sold for consumption in the exporting country, provided the sales are in the usual commercial quantities, made in the ordinary course of trade and, to the extent practical, at the same level of trade as the export price or constructed export price sale. Our questionnaire requires that where the home market is viable, respondents report all sales of the foreign like product sold in the home market.

The Department's antidumping questionnaire issued to YUSCO, at B–1, notes that Section B of the questionnaire ''provides instructions for reporting your sales of the foreign like product in your home market or a third-country market.'' Foreign like product, in turn, is defined in the glossary to the antidumping questionnaire as referring ''to merchandise that is sold in the foreign market and that is identical or similar to the subject merchandise. When used in the questionnaire, foreign like product means all merchandise that is sold in the foreign market and that fits within the description of merchandise provided in Appendix III to the questionnaire (section 771(16) of the Act).'' Therefore, it is clear from the instructions in the questionnaire that respondent is required to report all sales of subject merchandise in the foreign market. Furthermore, in explaining how to report customer codes for home market sales, the questionnaire states that, ''(i)f known, identify customers that export some or all of their purchases of the foreign like product. Explain how you determined which sales were for consumption in the foreign market.'' *See* Questionnaire at page B–8. This instruction clearly places an obligation upon a respondent and contemplates, in accordance with section 773(a)(1)(B) of the statute, that sales for consumption in the home market be reported as home market sales. Moreover, the questionnaire specifically asked respondent to identify customers that export and explain how it determined what sales were for home market consumption.

The record establishes that YUSCO failed to report a substantial portion of sales possibly consumed by home market customers. On pages 3 and 4 of its November 18, 1998 supplemental questionnaire response, YUSCO stated that:

> The majority of YUSCO's home market customers are further manufacturers. These further manufacturers produce different types of SSSS and/or non-subject merchandise from YUSCO's SSSS, and sell to their customers in the home market, U.S., and third countries. As stated above, YUSCO states that it does not know which YUSCO's SSSS was further manufactured into different types of SSSS or into non-subject merchandise. Nor does YUSCO claim to know which YUSCO's SSSS was finally destined to either the home market, the United States, or third countries.

We confirmed this during verification by interviewing 12 members of YUSCO's sales department via a written questionnaire. The questions concerned the employees' role, knowledge of its customers, and knowledge of further-processing. *See Facts Available Decision Memorandum—YUSCO* for a full discussion, as well as Exhibit 7 of the YUSCO sales verification report.

Prior to verification YUSCO submitted a list of ''UZ sales'' which were sales made to home market further manufacturers. These customers informed YUSCO that the processed SSSS would be exported, but did not specify whether the exported product would still be subject merchandise. YUSCO claims that these sales should not be used in calculating YUSCO's dumping margin because YUSCO knew that its SSSS would be finally exported to third countries. Consistent with *Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils From Taiwan,* 64 FR 15493 (March 31, 1999), however, these sales must be included in a normal value calculation for YUSCO because YUSCO has not demonstrated that it knew that the SSSS from these sales was not consumed in the home market. YUSCO thus erroneously considered a substantial portion of its sales as third country export sales, even though they were sales to unaffiliated home market customers. Likewise, YUSCO also did not report a large number of indirect export sales, coded ''U*.'' These sales were made to Taiwan customers who possibly further manufactured the SSSS and then exported it to third countries. Although YUSCO reported the total quantity and value of these sales, it did not submit a U* sales listing and it did not provide evidence that this merchandise was exported as subject merchandise.

Although YUSCO has provided information regarding total value and quantity of its home market sales, it has not explained why it did not report a large number of sales to home market customers who possibly further manufactured SSSS into non-subject merchandise before export. Nor has it reported the individual sales transaction data necessary to conduct the dumping analysis.

As noted above, under section 773(a)(1)(B), normal value is based on sales of the like product for consumption in the home market. Thus, sales may be excluded from the home market database only if a respondent knew or had reason to know that merchandise was not sold for home consumption. *See INA Walzlager Schaeffler KG* v. *United States,* 957 F. Supp. 251, 263H (CIT 1997). Therefore, if YUSCO had demonstrated that it knew or had reason to know that its sales of subject merchandise in the home market were not for consumption in the home market, it may have been appropriate for YUSCO to omit these sales from its home market sales. In this case, as described above, YUSCO has admitted that a large portion of its sales are further processed prior to exportation. It is without question that if merchandise sold in the home market, even if ultimately destined for export, was consumed in the home market in producing non-subject merchandise prior to exportation, then it should be reported as part of the home market sales database. *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products From Korea,* 58 FR 37176 (July 9, 1993) (Comment 9); *Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic* *of Korea,* 58 FR 15467 (March 23, 1993). Therefore, YUSCO should have reported these sales as home market sales.

Moreover, substantial evidence reveals that YUSCO's reliance on its internal coding system for sales reporting purposes contains an additional flaw: namely, this system is not used in accordance with YUSCO's own stated guidelines. Specifically, the Department found, in *SSPC from Taiwan,* that a product which, according to YUSCO's description, should have been coded as a ''UAS'' sale to the United States (irrespective of the Department's ultimate determination that, for our purposes, this sale was properly considered to be a home market sale), was in fact coded as a domestic sale (*see* Comment 1 and 2 of *SSPC from Taiwan*). The Department notes that the same system was used for the purposes of reporting sales in the instant investigation (*see* YUSCO sales verification exhibit 3, and pages 4 and 6 from YUSCO's verification report dated January 28, 1999 in *SSPC from Taiwan,* which has been placed on the record of this investigation). Therefore, further doubt is cast upon the reliability of YUSCO's reporting methodology.

Because YUSCO's reliance on this internal classification of home market and third country sales for reporting sales to the Department was inadequate, by relying on it YUSCO failed to comply to the best of its ability with the Department's instructions. Additionally, although YUSCO did submit its UZ sales listing late in our investigation, this information is grossly incomplete and thus unusable for our dumping calculation purposes. Furthermore, because it was submitted on January 11, 1999, we had no opportunity to issue supplemental questionnaires regarding these sales. The UZ sales listing is missing key information, such as product characteristics, CONNUMs, customer codes, relevant dates, and a number of adjustments. This information is thus so incomplete that it cannot serve as a reliable basis for reaching our determination of normal value. Finally, because this UZ sales information was so incomplete and was submitted too late for the Department to seek additional information regarding these sales, we find that the submission of these sales cannot reasonably be construed as evidence that YUSCO was attempting to cooperate to the best of its ability.

Ta Chen

Generally, and in the process of verification, the Department's analysis of the completeness of a respondent's U.S. sales database is essential because the database is used to calculate the anti-dumping duties. An incomplete U.S. sales database is normally sufficient to render a company's response inadequate for the purpose of calculating a dumping margin. *See, e.g., Persico Pizzamiglio, S.A.* v. *United States,* Slip Op. 94–61 (CIT 1994) (*Persico*) (upholding the Department's use of best information available for a respondent who was unable to demonstrate the completeness of its U.S. sales at verification).

Despite our efforts at verification, we were unable to verify information which is necessary and must be verified in order for us to make a determination under section 731 of the Act. Specifically, we were unable to verify the data Ta Chen provided concerning its purchases and subsequent U.S. sales of subject merchandise produced by YUSCO and Tung Mung. Most significantly, we found that Ta Chen was unprepared to demonstrate that the appropriate universe of purchases and U.S. resales were reported, that further-manufacturing activities in Taiwan were not related to subsequent U.S. sales, and that it had reported all expenses related to its purchases. As we have indicated above, incompleteness of the U.S. sales database is a critical flaw and is a factor which, by itself, forms an adequate basis for our determination to use facts available.

Thus, we have determined that although Ta Chen provided information we requested which was necessary for us to perform our analysis, the information could not be verified as required by section 782(i) of the Act. Thus, in accordance with section 782(e)(2) of the Act, we have declined to consider information submitted by Ta Chen because it could not be verified. Because we were unable to verify necessary information, we were unable to employ our normal middleman dumping analysis. Under section 776(a) of the Act, we are required, in reaching our determination, to use total facts available because we could not verify Ta Chen's data. Thus, for Ta Chen, we have determined that it is appropriate to select from the facts otherwise available to the Department.

Adverse Facts Available

YUSCO

Where the Department determines that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act provides that the Department may use an adverse inference in selecting from the facts available. *See, e.g., Roller Chain, Other Than Bicycle, From Japan; Final Results and Partial Recission of Antidumping Duty Administrative Review,* 63 FR 63671 (November 16, 1998); *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 62 FR 53808, 53819–20 (October 16, 1997). We have determined that YUSCO failed to cooperate to the best of its ability within the meaning of section 776(b) because YUSCO failed to follow the Department's instructions to report all home market sales.

Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition. Section 776(c) of the Act provides that, when the Department relies on secondary information, such as the petition, as facts available it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see* SAA at 870). At the outset of this investigation, the Department examined the accuracy and adequacy of the price to price information in the petition. We determined that the price to price comparisons and price to CV comparisons constituted sufficient evidence of dumping to justify initiation. *See Initiation Notice* at 37527 (estimated margins for Taiwan ranged from 8.23 percent to 77.08 percent).

In order to determine the probative value of the petition margins for use as adverse facts available for the purposes of this determination, we have examined evidence supporting the petition calculations. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the U.S. price and normal value calculations on which the petition margin was based and compared the sources used in the petition to YUSCO's reported sales databases. Based on this analysis, we have successfully corroborated the information in the petition regarding price to price comparisons. *See Facts Available Memorandum—YUSCO.* Therefore, we have chosen the highest petition margin (based on price-to-price comparisons) for Taiwan of 21.10 percent as the basis for using total adverse facts available. *See* comment 2, below, for a full discussion of the overall facts available margin.

Ta Chen

We examined whether Ta Chen had acted to the best of its ability in responding to our requests for information, such as U.S. sales data. We took into consideration the fact that, as an experienced respondent in other investigations and orders, its ability to comply with our requests for information could be distinguished from, for example, the ability of a less experienced company. Thus, Ta Chen can reasonably be expected to know which types of essential data we request in each investigation or review, and to be conversant with the form and manner in which we require submission of the data.

In addition to taking into account the experience of a respondent, the Department may find it appropriate to examine whether the respondent has control of the data which the Department is unable to verify or rely upon. The record reflects that Ta Chen was in control of the data which was vital to our dumping calculations and which we were unable to verify or rely upon. *See Facts Available Decision Memorandum—Ta Chen* from Rick Johnson to Edward Yang, dated May 19, 1999 (''Facts Available Decision Memorandum-Ta Chen'').

An additional factor we have considered is the extent to which Ta Chen might have benefitted from its own lack of cooperation. The SAA states that ''where a party has not cooperated, [the Department] may employ adverse inferences about the missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *Id.* at 870. In accordance with our policy, we considered the overall effect of Ta Chen's errors. In this case, we have determined that the use of the flawed response would have yielded a more favorable margin for Ta Chen. *See Facts Available Decision Memorandum—Ta Chen.*

In light of Ta Chen's familiarity with the Department's practices, its control of the necessary data, and the potential benefits it may have received, we have determined that Ta Chen failed to act to the best of its ability in providing the data we requested. Therefore, in accordance with section 776(b) of the Act, we have, on the basis of the record in this case, determined that it is appropriate for us to make the adverse inference authorized under that subsection of the statute. Accordingly, for this final determination, we base Ta Chen's margin on adverse facts available.

In selecting a margin which would appropriately reflect our decision to use adverse facts available for Ta Chen, we examined the rates applicable to this case throughout the course of the proceeding. As adverse facts available, we have selected a rate of 15.34 percent for Ta Chen's resales of Tung Mung's and YUSCO's product, which reflects the highest rate in *Stainless Steel Sheet and Strip in Coils from Taiwan: Whether to Initiate a Middleman Dumping Investigation (''Middleman Initiation Memo'')* dated December 3, 1998. As we discuss in Comment 2 below, we have used this rate in calculating an overall weighted-average margin for Tung Mung and YUSCO.

As indicated above, section 776(c) of the Act requires the Department to corroborate secondary information used as facts available to the extent practicable. Because the facts available applied to Ta Chen for this investigation is secondary information within the meaning of section 776(c) of the Act, we have, in accordance with section 776(c), corroborated this information with independent sources.

In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the middleman dumping calculations on which the middleman dumping petition was based and compared these sources to Ta Chen's reported data. Based on this analysis, we are satisfied that this information has probative value. *See Facts Available Decision Memorandum—Ta Chen.* Thus, we have determined that information and inferences which we have applied are reasonable to use under the circumstances of this determination, in accordance with the *SAA* at 869. Furthermore, there is no reliable evidence on the record indicating that this selected margin is not appropriate as adverse facts available.

Interested Party Comments

General Issues

Comment 1: Currency Fluctuations

Petitioners argue that the Department should calculate final dumping margins for all respondents using three separate averaging periods to account for alleged severe currency fluctuations which occurred during the POI. Petitioners charge that there were sudden and dramatic drops in the value of the New Taiwan dollar relative to the U.S. dollar (from an annualized 9.83 percent drop in the first six months of the period of investigation to an annualized 70.60 percent drop in the last quarter of 1997). Therefore, to account for these sudden currency fluctuations, petitioners urge the Department to calculate three separate weighted-average price comparisons for each product under investigation; one for the first six months of the POI, another for the October 1997 through December 1997 period, and a third for the January 1998 through March 1998 period. Petitioners argue that the failure to account for the ''severe'' exchange rate fluctuations during the POI through the use of three separate periods will result in the dilution of pre-existing dumping margins resulting solely from exchange rate changes and independent of any pricing changes by respondents.

Petitioners maintain the use of multiple averaging periods to account for exchange rate fluctuations is consistent with what petitioners claim to be the two goals of the antidumping law: (1) to provide relief to domestic industries facing unfair competition, and (2) to make fair comparisons. *See Smith-Corona Group* v. *United States,* 713 F.2d 1568, 1575–76 (Fed. Cir. 1983) and *Koyo Seiko Co.* v. *United States,* 20 F.3d 1156, 1158–59 (Fed. Cir. 1994) (''*Koyo Seiko*''). Petitioners allege that unless the Department calculates separate margins for three periods, the macroeconomic conditions unrelated to each respondent's competitive pricing policies will unfairly and inappropriately mask Taiwan respondents' true margins of dumping. Petitioners assert that in several recent antidumping investigations, the Department recognized that a rapid currency devaluation may mask dumping margins and that multiple averaging periods are appropriate. *See, e.g., Final Determination of Sales at Less Than Fair Value; Stainless Steel Plate in Coils from Korea (''SSPC From Korea''),* 64 FR 15443, 15452 (March 31, 1999) and *Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from the Republic of Korea (''ESBR from Korea''),* 64 FR 14865, 14868 (March 29, 1999). Petitioners note that the Department has specifically addressed in its regulations the appropriate use of multiple averaging periods to avoid the possibility of distortion in the dumping calculation. *See Preamble to Antidumping and Countervailing Duties; Final Rule,* 62 FR 27296, 27377 (May 19, 1997) (''*Preamble*'') (stating that [Commerce] should address depreciating currencies more fully in its regulations); and 19 CFR 351.414(d)(3) (stating that Commerce may use shorter averaging periods ''when normal values, export prices, or constructed export prices differ significantly over the course of the period of investigation...''). Petitioners assert that to achieve ''fairness,'' which is the goal of the dumping law, the Department must consider sudden currency devaluations in calculating dumping margins. Petitioners argue that given the significant degree of devaluation of the Taiwan dollar that occurred in the last quarter of 1997, calculating a single POI weighted-average price for each product is inappropriate.

Petitioners argue that the statute and the *SAA* authorize the Department to rely on modified averaging comparisons where time affects sales comparability. Petitioners assert that the *Notice of Proposed Rulemaking and Requests for Public Comment,* 61 FR 7308, 7349 (February 27, 1996) (*''Notice of Proposed Rulemaking''*), state that the Department will normally calculate an average-to-average comparison by weight-averaging sales during the entire period of investigation. Petitioners argue that the Department may resort to shorter time periods where the normal values, export prices, or constructed export prices for sales included in an averaging group differ significantly over the course of the POI. Petitioners allege that NV differs significantly and dramatically over the course of the POI when exchange rates are taken into account.

Petitioners cite to the Department's reasoning in *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan (''PVA from Taiwan''),* 61 FR 14064, 14069 (March 29, 1996), where the Department acknowledged that time affects price comparability, and relied on two averaging periods to calculate dumping margins. Petitioners note that although *PVA from Taiwan* involved an affirmative change in home market selling practices by respondent, the Department held that the change in selling practices enhanced the effect of time on price comparability ''because the respondent entered into long-term contracts that dramatically reduced NV in the last six weeks of the POI.'' *Id.* Petitioners argue that the need for separate averaging periods is even stronger in this investigation than in *PVA from Taiwan,* because the steep decline in NV results from the Department's calculation methodology, not from some independent action by respondents. *Id.*

Petitioners argue that the ''precipitous'' drop at the last quarter of 1997 has a strong effect on the dumping calculations since respondents' costs for raw materials would be affected by the New Taiwan dollar's decline. Petitioners contend that if separate costs were available for three periods, it would be almost certain that all post-decline NV's would be below respondents' costs and that dumping would be found based on a comparison of respondents' U.S. prices to their actual ''constructed value'' for that same period. Petitioners assert that respondents are more likely to be further reducing U.S. prices in response to the Taiwan currency devaluations, whereas under the Department's current methodology, no dumping would be found for this period.

Petitioners argue that the Department often departs from ordinary comparison methodology to account for extraordinary events. Petitioners argue that the courts have recognized that dumping margins should not be ''artificially'' created simply because of unforeseen changes in the exchange rate, citing, *e.g., Melamine Chem., Inc.* v. *United States*, 732 F.2d 924, 929–932 (Fed. Cir. 1984). In addition, petitioners argue that dumping margins should not be eliminated artificially because of unanticipated changes in the exchange rate, given that the goal of the antidumping law is to protect the domestic industry from unfair trade practices, citing *Koyo Seiko* at 1158. In so arguing, petitioners cite to past Department decisions where the Department made adjustments to cost to account for extraordinary events that occurred during the period of investigation or review (*Floral Trade Council* v. *United States*, 16 CIT 1014, 106–17 (1992); *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Presses and Components Thereof, Whether Assembled or Unassembled from Japan*, 61 FR 38139, 38153 (July 23, 1996); *Final Determination of Sales at Less Than Fair Value: Fresh Kiwi Fruit from New Zealand*, 57 FR 13695, 13697 (April 17, 1992)). Petitioners assert that the Department consistently has recognized and attempted to minimize the effect of severe currency devaluations in dumping calculations, citing *Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose from Brazil*, 55 FR 23120 (June 6, 1990) (to account for hyperinflation, the Department calculated a separate foreign market value for each price period); *Certain Fresh Cut Flowers from Columbia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53297 (October 14, 1997) (holding that calculations should be revised to account for the ''devaluation of the Columbian currency''). Petitioners contend that the *Notice of Proposed Rulemaking* (at 7349) states that the Department may resort to shorter time periods where normal values included in the averaging group differ significantly over the POI.

Petitioners argue that the Department also acknowledges that standard weight-averaging procedures are inappropriate under extraordinary circumstances by adopting special procedures for exchange rate conversions where foreign currencies appreciate vis-a-vis the dollar. Petitioners assert that 19 CFR 351.415 permits respondents time to adjust their pricing practices so that appreciating currencies do not ''create'' dumping margins. Petitioners argue that likewise, depreciating foreign currencies should not be used to reduce or eliminate margins of dumping. Petitioners argue that if a respondent is dumping at a time of stable inflation and currency valuation, dumping should not be eliminated because of an extraordinary devaluation of the foreign currency that otherwise has no impact on the respondent's pricing practices. Petitioners argue that respondents did not take any affirmative steps in the latter part of the period of investigation to eliminate or minimize its dumping. Petitioners claim that but for the rapid and unexpected devaluation of the Taiwan dollar, respondents' level of dumping would have been the same. Therefore, petitioners argue, the Department has not only the authority, but also the obligation, to rely on an alternative method to calculate the dumping margins to ensure a fair result.

YUSCO argues that the Department should reject petitioners' request to calculate dumping margins using three separate averaging periods. YUSCO argues that petitioners' arguments are based on a ''tortured'' calculation of the exchange rate and on inapposite determinations in *ESBR from Korea* and *SSPC from Korea*. YUSCO asserts that petitioners grossly exaggerate the New Taiwan dollar fluctuation.

YUSCO argues that contrary to petitioners' findings, the New Taiwan dollar exchange rates in the last three months in 1997 are within normal currency fluctuations addressed by the Department's standard rules for currency conversions. YUSCO asserts that section 351.415(c) of the Department's regulations state that the Department will ''ignore fluctuations in exchange rates.'' YUSCO claims that the New Taiwan dollar fluctuated only 12.6 percent in the last three months of 1997. Respondent argues that petitioners relied on a misleading calculation of a yearly change in the New Taiwan dollar exchange rate that never occurred. Specifically, YUSCO claims that petitioners' ''annualized'' change of 70.6 percent is fictitious and alleges that petitioners inflated the denominator of their percentage calculation and ''irrationally'' extrapolated an inflated one quarter rate change over a year in which no such sustained change occurred.

YUSCO also claims that the Department did not use separate averaging periods when moderate currency fluctuation occurred in prior proceedings. In so arguing, YUSCO cites *Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled and Whether Complete or Incomplete, from Japan* (''*EPGTC from Japan*''), 62 FR 24394 (May 5, 1997), where the Department did not use separate averaging periods even though the Japanese yen fluctuated over 25 percent during the period of investigation. YUSCO argues that the Department's determinations in the South Korean cases petitioners have cited are not applicable to the instant case. YUSCO asserts that in *SSPC from Korea*, the Department determined that normal value, in U.S. dollar terms, in the last two months differed significantly from normal value in the earlier period due to a significant change in the exchange rate. In *SSPC from Korea*, the Department found that ''the won's value decreased by more than 40 percent in relation to the dollar in the last two months of 1997.'' YUSCO argues that, in contrast, the New Taiwan dollar fluctuated only 4.88 percent in the last two months of 1997, and less than 13 percent in the last three months of 1997. Finally, YUSCO argues that neither the New Taiwan dollar nor the Taiwan economy has ever faced the currency crisis similar to the one that South Korea faced in 1998.

Chang Mien also argues that petitioners have exaggerated the exchange rate fluctuations by annualizing their percentage change. Chang Mien assert that on a month-to-month basis, or annually, rather than ''annualizing'' individual numbers, the exchange rate between the New Taiwan dollar and the U.S. dollar changed approximately 15 percent using the Department's own data. Thus, Chang Mien argues, a change in the exchange rate on a month-to-month basis rather than on an annualized basis reveals that the change was less than ''sudden and dramatic.'' Chang Mien alleges that, with the exception of the two months from November to December 1997, the change in exchange rate was small and not sustained. Chang Mien claims that in the last two months of the POI, the New Taiwan dollar began a recovery, appreciating against the U.S. dollar.

Chang Mien disagrees with petitioners' argument that the instant situation is comparable to the cases of *SSPC from Korea* and *ESBR from Korea*. As noted by YUSCO, Chang Mien also contends that in the above Korean cases, the Department found more than a 40 percent change in the exchange rate in the POI. Moreover, Chang Mien asserts that in *SSPC from Korea*, the Department found not only that there was a precipitous drop in the Korean won/U.S. dollar exchange rate, but also that this drop continued through the end of the POI, without quick rebound. According to Chang Mien, in contrast to the won, the New Taiwan dollar fell only 15 percent in the POI and also rebounded significantly in the last two months of the POI.

Chang Mien asserts that petitioners' reading of the *Preamble* to the Department's regulations is misplaced. Chang Mien argues that the *Preamble* instead reads that ''the Department did not change its policy regarding the use of the exchange rates.'' *Id.* Chang Mien contends that among the areas the Department did not revise includes the use of either the actual exchange rate on a particular day or the use of a rolling eight-week average if the daily exchange rate varies by more than 2.25 percent from the rolling average. Chang Mien claims that this provision of using the rolling average for moderate fluctuations effectively takes care of any exchange rate fluctuations affecting dumping calculations, such as the fluctuations found in this case.

Chang Mien disagrees with petitioners' interpretation that the provision under 19 CFR 351.414(d)(3) allows the use of shorter averaging periods, ''when normal values, export prices, or constructed export prices differ significantly over the course of the period of investigation * * *'' Chang Mien argues that this provision has no relevance to using multiple averaging periods due to rapid currency fluctuations. Chang Mien claims that the provision instead relates solely with averaging all home market sales, for example, and comparing them to an average of all U.S. sales. Further, Chang Mien argues that the Court of Appeals for the Federal Circuit has ruled that a respondent cannot be held responsible for actions beyond its control, citing *Melamine Chemicals, Inc.* v. *United States*, 732 F.2d 924 (Fed. Cir. 1984).

Chang Mien argues that the Department should disregard petitioners' suggestion to use multiple averaging periods to account for currency fluctuations for the following policy reasons. First, Chang Mien contends that using this methodology would be prejudicial to respondents because it would provide no certainty on how to ensure that future sales comply with the antidumping duty statute with regard to currency fluctuations. Second, Chang Mien argues that multiple averaging periods would result in artificial dumping margins based solely on changes in the exchange rates. Third, Chang Mien claims that neither petitioners nor the Department have established clear guidelines on what constitutes either a severe, abnormal fluctuation or sufficient rebound from a severe currency devaluation. Finally, Chang Mien asserts this treatment of exchange rate fluctuations suggested by petitioners would have a ''nightmarish'' effect on future cases that would similarly be affected by exchange rate fluctuations.

Chang Mien asserts that it is the exchange rate, not price, which has fluctuated. Chang Mien contends it does not have any control over the exchange rates, nor have petitioners alleged that Chang Mien significantly changed its business practices or pricing policy as a result of the exchange rate fluctuations. Chang Mien objects to petitioners' allegation that the fluctuation of exchange rates in the instant case is an ''extraordinary event'' sufficient enough to warrant using multiple averaging periods to calculate dumping margin. Chang Mien argues that currency fluctuations in the instant case cannot be equated with the hyperinflation seen in Brazil and in other antidumping cases, citing *Industrial Nitrocellulose from Brazil; Final Results of Antidumping Duty Administrative Review*, 55 FR 23120 (June 6, 1990).

Finally, Chang Mien asserts that if the Department were to use multiple averaging periods, three calculations for the cost of production for each period also must be used in the margin calculation. Chang Mien argues that petitioners raised the issue of exchange rate fluctuations only in their case brief, making it impossible for respondents to submit cost of production data for each period within the time limits of this proceeding.

Similar to YUSCO and Chang Mien, Tung Mung argues that the exchange rate changes during the POI were not significant enough to warrant dividing the period into three periods. Tung Mung argues that petitioners' assertion that Tung Mung's costs for raw materials would have ''skyrocketed'' as a result of the declining New Taiwan dollar overlooks the fact that much of Tung Mung's raw materials are obtained from domestic and imported sources. Tung Mung objects to petitioners' argument that Tung Mung failed to take ''affirmative steps'' during a period when the New Taiwan dollar was declining, given that the decline of a foreign currency in relation to the U.S. dollar reduces any dumping margin that might have existed or increases the safety margin.

Department's Position: We disagree with petitioners and have continued to use POI averages and our exchange rate model in this final determination. While we agree in principle with petitioners that we may use averaging periods of less than the POI when normal value, export price, or constructed export price varies significantly over the POI under 19 CFR 351.414(d)(3), we do not find that normal value or export price varied significantly over the POI due to exchange rate fluctuations for any of the respondents.

In cases where there is a precipitous drop in the foreign currency's value during the POI, we may find it appropriate to use multiple averaging periods to avoid the possibility of a distortion in the dumping calculation caused by exchange rate fluctuations. *See, e.g., SSPC from Korea*, where the Department used two averaging periods to calculate the dumping margin because there was a precipitous drop in the won in relation to the dollar (more than 40 percent in a two month period). However, in the instant case, changes in the exchange rate were moderate. Using exchange rate data from the Federal Reserve, we found that the value of the New Taiwan dollar relative to the U.S. dollar declined steadily over the POI and the overall decline in the value of the New Taiwan dollar relative to the U.S. dollar was less than 20 percent over the POI. Given these facts, we find no basis to conclude that the change in the value of the New Taiwan dollar over the POI was so significant that it warranted the use of multiple price averaging periods.

Comment 2: Independent Rates

Channel-specific dumping rates are inappropriate and without basis, petitioners contend, because the focus of the statute, the Department's regulatory regime, and both administrative and judicial precedent is on obtaining a single, weighted-average dumping rate for each foreign producer or exporter. Petitioners contend that multiple channels through which a foreign producer or exporter chooses to ship sales to the United States do not entitle them to channel-specific dumping rates.

Petitioners contend that there is no statutory basis for assigning a channel-specific rate. Petitioners, citing to sections 777A(c)(1) and 731(1) of the Act, argue that Congress has charged the Department with ascertaining the extent to which subject merchandise is dumped in the United States and assigning a single, weighted-average dumping rate to each producer or exporter under investigation. Petitioners state that there is no language in the statute to the effect that a producer is to receive a channel-specific dumping rate. In contrast, petitioners assert, the statute contemplates what, at best, might be called a ''unitary'' rate, reflecting all the given producer's sales to the United States regardless of routing and distribution.

Petitioners argue that given the circumstances in the instant case and the Department's discussion of its current regulations, the Department should impose a single, weighted-average dumping rate for each investigated producer. Petitioners cite the Department's discussion in *Antidumping Duties: Countervailing Duties*, 62 FR 27296, 27303 (May 19, 1997) (''*Final Rule*'') with regard to regulation 351.107:

> The Department also believes it is not appropriate to establish combination rates in an AD investigation or review of a producer; *i.e.*, where a producer sells to an exporter with knowledge of exportation to the United States. In these situations, the establishment of separate rates for a producer in combination with each of the exporters through which it sells to the United States could lead to manipulation by the producer. Furthermore, the Department recognizes that in many industries it is not uncommon for a producer to sell some amount of merchandise purchased from other producers. In such situations, the Department generally intends to establish a single rate for such a respondent based on its status as a producer, although unusual circumstances may warrant the application of a combination rate.

Petitioners state that both YUSCO and Tung Mung have acknowledged that they knew the subject merchandise was to be resold by the middleman or trading company to the United States, citing YUSCO's and Tung Mung's September 8, 1998 responses at A–12 and A–8, respectively. Moreover, petitioners allege that there are no unusual circumstances presented in the instant investigation that would justify recourse to a combination rate alongside a separate rate for YUSCO and Tung Mung.

Petitioners maintain that relevant precedent further reinforces the conclusion that a single, weighted-average dumping rate should be assigned to each producer and exporter of the subject merchandise. Petitioners maintain that the decision of *SSPC from Taiwan* with regard to separate dumping rates for each producer should not be followed, as it is at variance with the Department's express policy and precedent, citing *Ferrovanadium and Nitride Vanadium from the Russian Federation: Notice of Final Results of Antidumping Duty Administrative Review*, (''*Ferrovanadium from Russia*'') 62 FR 65656, 65659 (December 15, 1997); *Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, (''*CVD SSPC from Korea*'') 64 FR 15530, 15532 (March 31, 1999); and *Certain Pasta from Italy: Results of New Shipper Antidumping Duty Administrative Reviews*, (''*Certain Pasta from Italy*'') 64 FR 852853 (January 6, 1999) and 63 FR 53641, 53642–43 (October 6, 1998). Petitioners state that the Department's findings in *Certain Pasta from Italy* differ from the instant case only in that Corex, in its role as a trading company, was not involved in a middleman dumping investigation.

Petitioners argue that the Department has recognized the need of assigning producers a single, weighted-average dumping rate, regardless of channels used to sell merchandise to the United States, to prevent margin manipulation and avoidance of antidumping duties, citing the *Final Rule* at 27303. Petitioners contend that the use of channel-specific dumping rates, as requested by respondents, would encourage respondents to resort to middleman dumping. Petitioners maintain that a foreign producer and an unaffiliated middleman could easily engage in price manipulation such that respondents could avoid antidumping duties by having the producer sell to the middleman at non-dumped prices and rely upon the middleman to carry out the dumping in the resale that usually is not analyzed by the Department. Moreover, if the producer is excluded from the order by virtue of its own separate rate, petitioners argue that the producer will be free to accomplish dumping on its own.

Petitioners maintain that it is this reasoning that causes the Department to capture the total amount of dumping through an additional analysis of the middleman's dumping. In keeping with this purpose, petitioners surmise, the Department should assign a single, weighted-average dumping rate because the total dumping by these two parties has benefitted the subject merchandise imported into the United States. Thus, even absent an affiliation between the producer and the middleman within the meaning of section 771(33) of the Act, petitioners argue that the producer and the middleman are ''rightly perceived by the Department as having effectively worked in tandem'' in dumping the subject merchandise.

Petitioners also cite *Sweaters Wholly or in Chief Weight of Man-made Fiber from Taiwan: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, (''*Sweaters*'') 58 FR 32544, 32645 (June 11, 1993) as punctuating the notion that the Department will assign a single, weighted-average dumping rate to each producer, no matter whether the producer's product has gone through a trading company like Jia Farn or directly to the United States. In *Sweaters*, the Department stated that:

> The CIT agreed with the Department that the subject of antidumping orders is merchandise, not companies, and that only merchandise manufactured by Jia Farn was excluded from the order * * *''

Petitioners argue that *Sweaters* buttresses the Department's authority to act forcefully within the bounds of the statute to preclude circumvention of antidumping duties. Therefore, petitioners submit that the Department should use a single, weighted-average dumping rate on YUSCO and Tung Mung to prevent possible circumvention of antidumping duties.

YUSCO states that the record does not support a middleman dumping finding in this investigation, but in case the Department does find middleman dumping, YUSCO should be assigned an independent dumping margin. YUSCO, in explaining its reasoning for an independent rate, states that the record establishes that YUSCO is an independent producer and exporter of SSSS, as it made direct sales to U.S. customers during the POI, and that according to section 777A of the Act, the Department ''shall determine the individual weighted average dumping margin for each known exporter and producer of the subject merchandise'' unless such individual rate determination is not ''practicable.'' Therefore, YUSCO contends that it is entitled to an independent deposit rate. Furthermore, since the Department verified YUSCO's sales and cost information, the Department should, according to YUSCO, have no undue difficulties in calculating this margin. According to YUSCO, the Department's decision in *Fuel Ethanol from Brazil* supports this argument since in that case the Department assigned an independent deposit rate to a manufacturer based on its sales to the United States other than through a trading company.

YUSCO argues that the Department should disregard petitioners' arguments and assign an independent rate to YUSCO based only on dumping margins produced from YUSCO's sales other than through Ta Chen.

First, YUSCO argues that petitioners' arguments are contrary to the Department's practice and regulations. YUSCO states that petitioners' ''knowledge'' standard does not apply to cases when ''unusual circumstances may warrant the application of a combination rate,'' as stated in the preamble. YUSCO argues that since the Department and petitioners have both admitted that middleman dumping is unusual, knowledge of destination should be irrelevant to the determination of a middleman dumping deposit rate.

Second, YUSCO disagrees that combination rates offer respondents a possibility to circumvent antidumping duties, and that, according to the preamble, combination rates are issued in order to prevent circumvention.

Third, YUSCO asserts that petitioners incorrectly state that the Department's knowledge test as stated in the preamble supersedes *Fuel Ethanol from Brazil.* YUSCO states that the Department set a standard regarding middleman dumping as an exception to the knowledge test in *Fuel Ethanol from Brazil* and that *SSPC from Taiwan* changes *Fuel Ethanol* only regarding combination rate methodology. According to YUSCO, all other aspects of *Fuel Ethanol,* including the calculation of a producer's independent rate, are still applicable. YUSCO states that the Department correctly assigned both a combination rate and independent rate to YUSCO in *SSPC from Taiwan.*

Finally, YUSCO states that all four cases that petitioners quote are irrelevant to this investigation. *Ferrovanadium from Russia* does not apply because it is a non-market economy case. *CVD SSPC from Korea* is also irrelevant, argues YUSCO, since the Department stated that combination rates would serve no purpose in that specific case. YUSCO also argues that *Certain Pasta from Italy* is irrelevant, because petitioners incorrectly claim that the Department did not assign a combination rate to a trading company. In fact, YUSCO notes that the trading company was in fact a producer, and the Department specifically noted the importance of assigning a combination rate to a producer and exporter. Finally, YUSCO argues that *Sweaters from Taiwan* is irrelevant because the issue in that case was not, as petitioners state, possible circumvention of antidumping duties by a producer; rather, the issue was over whether a company should be considered a producer, an issue which YUSCO maintains is irrelevant to the case at hand.

YUSCO also argues that petitioners' single rate methodology would unreasonably and unfairly punish YUSCO and its U.S. customers since nothing on the record shows that any of these parties were involved in Ta Chen's selling practices. Furthermore, as in *Fuel Ethanol from Brazil* and *SSPC from Taiwan,* YUSCO claims that the Department should not double-count dumping margins generated from sales to Ta Chen when calculating a separate rate for YUSCO, since the margins for sales to Ta Chen will be incorporated into the YUSCO/Ta Chen combination cash deposit rate. YUSCO claims that not double-counting advances fairness and administrative efficiency in determining importer-specific assessment rates.

Tung Mung argues that, if the Department does affirm its middleman dumping finding, the Department should issue a separate rate for Tung Mung. Tung Mung argues that in middleman dumping cases the Department has consistently issued separate rates to the producers, citing *SSPC from Taiwan* (assigning two cash deposit rates, one to apply to sales made by the producer through the middleman, the other to apply to any sale of subject merchandise by the producer other than through the middleman). Tung Mung argues that assigning a separate rate for Tung Mung is fair and appropriate because the producer should not be penalized in making future sales to the United States as a result of pricing activities by the unaffiliated middleman that are, by definition, completely outside the producer's knowledge or control. Tung Mung argues that it should be able to continue to make direct sales to the United States without the importer being burdened with cash deposits that resulted from Ta Chen's activities. Tung Mung also requests that the Department confirm its decision that direct sales from Tung Mung to TCI, Ta Chen Taiwan's U.S. affiliate, are not subject to the middleman dumping analysis and therefore that such sales in the future would not be subject to any middleman dumping rate that the Department might issue in its final determination.

Tung Mung disagrees with petitioners' proposal to issue a single rate and argues that petitioners' reasoning is ''fatally'' flawed. Tung Mung asserts that the cases relied upon by petitioners involved middleman sales but no middleman dumping. Tung Mung agrees with petitioners' request to issue a single rate to a producer, regardless of which channel it is selling to the United States. Tung Mung finds this policy appropriate where the producer alone has been found to be dumping, and not the middleman. However, Tung Mung challenges petitioners' assertions that the Department has changed its policy of giving a separate rate to the producer in middleman dumping cases, and instead now applies a single, weighted average margin, noting that in *SSPC from Taiwan,* the Department gave one rate to the producer—based in its sales to the middleman—and another rate to the producer/middleman combination. Tung Mung asserts that petitioners failed to explain how manipulation by the respondents is possible in the instant case. Tung Mung distinguishes the instant case from *CVD SSPC from Korea,* where the producer in question was selling through five different trading companies. Here, Tung Mung argues, there would only be two rates for each producer—one applying to its sales to the United States through Ta Chen, the other to the remainder of its sales. Thus, Tung Mung argues there would be no opportunity for manipulation.

Tung Mung finds implausible petitioners' claim that the producer and middleman can work in tandem in dumping the subject merchandise in the United States. Tung Mung argues that this assertion made by petitioners has no basis in fact and contradicts the Department's practice of giving separate rates to the producer and the middleman in middleman dumping cases. Tung Mung argues that petitioners even admit the implausibility of price manipulation by the middleman and the respondent producer, because by having the middleman carry out the dumping in the resale, the middleman would incur substantial losses. Thus, Tung Mung argues that the middleman could not engage in such a pricing strategy for any length of time.

In conclusion, Tung Mung submits that the Department should find a separate rate for Tung Mung based on direct sales to the United States. Further, Tung Mung argues that if that rate is *de minimis,* Tung Mung should be excluded from the order with respect to future sales to the United States that do not go through Ta Chen.

Ta Chen argues that, as the Department determined in *SSPC from Taiwan,* any middleman dumping margin should only apply to sales made by Ta Chen Taiwan. According to Ta Chen, TCI, like any other U.S. corporation, should be permitted to purchase directly from a Taiwan manufacturer at that manufacturer's own dumping rate.

Department's Position: We agree with petitioners that separate channel-specific rates are not appropriate in this case. Accordingly, we have determined one rate for Tung Mung merchandise, whether or not exported by Ta Chen, and one rate for YUSCO merchandise, whether or not exported by Ta Chen.

In light of the arguments raised by interested parties in this proceeding, we have reviewed our findings in *SSPC from Taiwan.* In making that final determination, we notified the U.S. Customs Service that, for entries of subject merchandise produced by YUSCO and shipped to the United States through Ta Chen, the cash deposit rate would be 10.20 percent and, for all other entries of subject merchandise produced by YUSCO, the cash deposit rate would be 8.02 percent. However, in that determination, YUSCO sold the subject merchandise to the United States only through Ta Chen and the dumping margin on that channel was above *de minimis,* such that we were not faced with the same factual situation in the instant case.

In the instant case, the factual situation is different. For example, both Tung Mung and YUSCO had a small volume of sales to the United States not subject to our current middleman investigation. Moreover, in the *Preliminary Determination,* we determined that on an overall basis, neither Tung Mung nor YUSCO had estimated dumping margins that exceeded the *de minimis* level such that the possibility of exclusion existed for these firms. However, this preliminary finding did not include an analysis of middleman dumping. Thus, we recognize that, in this final determination, we are examining this issue for the first time since *Fuel Ethanol from Brazil.*

Since our finding in *Fuel Ethanol from Brazil,* the Department has adopted new regulations regarding so-called ''combination'' or ''channel'' rates. Specifically, section 351.107 of the Department's regulations was added, codifying our ability to issue channel rates in certain circumstances. The preamble to these regulations, which discusses our position on issuing channel rates in different factual scenarios (see *Preamble* at 27302–3), notes that we do not generally find it appropriate to determine channel rates when investigating producers.

After analyzing all interested party comments, we determine that it is appropriate to consider the full range of dumping when reaching a determination under sections 733(a) or 735(a) of the Act. This is particularly important given the number of sales of subject merchandise produced by YUSCO and Tung Mung which are made through Ta Chen, and given (in the case of Tung Mung) the identity of the customer(s) in the United States to which Tung Mung made its direct sales. *See Analysis Memorandum: Tung Mung,* Attachment 3. and *Facts Available Memorandum—YUSCO* at page 1. Under these circumstances, it is inappropriate to determine an independent margin for purposes of determining whether sales are made at LTFV under section 735(a)(1) or in determining eligibility for exclusion under section 735(a)(4) of the Act. However, we have taken into consideration the dumping margins attributable to both channels in determining the weighted-average dumping margins.

Therefore, for the final determination, we calculated an overall weighted-average margin (taking into account YUSCO's and Tung Mung's sales to Ta Chen and other customers, and the middleman dumping of YUSCO and Tung Mung merchandise attributable to Ta Chen) as provided for under section 735(c)(1)(B)(i) of the Act. We used this overall margin for determining whether SSSS from Taiwan is being sold in the United States at LTFV, as provided in section 735(a)(1) of the Act. We also compared the overall weighted-average margin to our *de minimis* benchmark to determine eligibility for exclusion, as provided in section 735(a)(4) of the Act.

In order to calculate the overall weighted-average margin, we used the following methodology. For YUSCO, we first calculated a rate for those sales made by YUSCO and Yieh Mau to Ta Chen by summing YUSCO's facts available rate and Ta Chen's facts available rate (the sum of which equals 36.44 percent). *See* discussion of these rates in the ''Facts Available'' section above. We also calculated the total weight of these sales. Similarly, we calculated the weight of sales made by YUSCO and Yieh Mau to all other customers, and we applied the adverse facts available rate of 21.10 percent to these sales. Finally, we weight averaged these two rates by the total sales volume. The overall margin is 34.95 percent. For further detail, *see Analysis Memorandum—YUSCO.*

For Tung Mung, we first calculated a rate for those sales made by Tung Mung to Ta Chen by summing Tung Mung's rate and Ta Chen's facts available rate (the sum of which equals 15.40 percent). Then, we calculated the margin for other Tung Mung sales, which was zero. Finally, we weight averaged these two rates by the total value. The overall margin is 14.95 percent. For further detail, *see Analysis Memorandum—Tung Mung.*

Comment 3: All-Others Rate

Tang Eng and Chia Far argue that, where the Department makes all exporters mandatory respondents but does not calculate a margin for all respondents, the Department should calculate the ''all-others'' rate for the non-selected respondents as the average of the calculated dumping margins, including any *de minimis* margins and excluding any margins based entirely on facts otherwise available. Tang Eng and Chia Far assert that this treatment is provided for in the URAA and follows Departmental practice. Respondents cite *Notice of Preliminary Determination of Sales at Less than Fair Value: Honey from the People's Republic of China,* (''*Honey*'') 60 FR 14725, 14729 (March 20, 1995) and *Certain Fresh Cut Flowers From Colombia: Preliminary Results of Antidumping Duty Administrative Review,* (''*Flowers XI*'') 64 FR 8059, 8060–62 (February 18, 1999) as examples of the Department's prior treatment of non-selected respondents.

Petitioners contend that the ''all-others'' rate assigned to Tang Eng and Chia Far should exclude any *de minimis* margins. Petitioner's contend that the statute's language is unambivalent in its direction to calculate the ''all-others'' rate exclusive of *de minimis* margins and margins based on facts otherwise available. Petitioners cite *Flowers XI, et al,* as examples of Departmental precedent in keeping with this statutory requirement.

Department's Position: We agree with respondents in part. Section 735(c)(5)(A) of the Act directs us to calculate the ''all-others'' rate exclusive of *de minimis* margins and those margins determined entirely on facts otherwise available. Moreover, under this section, the ''all-others'' rate is established during the less-than-fair-value investigation and does not change in subsequent administrative reviews conducted under section 751. However, section 735(c)(5)(B) of the Act provides for an exception in instances where all margins are either *de minimis* or based on facts otherwise available.

In the instant case, all margins are either *de minimis* or based on facts otherwise available. Hence, we are not limited to the methodology prescribed in section 735(c)(5)(A) of the Act. Therefore, for this final determination, we have calculated the ''all-others'' rate based on a simple average of the corroborated price-to-price comparisons alleged in the petition, as indicated in our *Initiation Notice.*

We disagree with respondents' interpretation of *Honey* and *Flowers XI. Flowers XI* involves a review conducted under section 751 of the Act and did not result in a recalculation of the ''all-others'' rate. Rather, *Flowers XI* describes how the Department established a margin for those respondents for which a review was initiated, but were not selected for individual review under section 777A(c)(2)(A). *Honey* is not controlling because that investigation was governed by the Act prior to the URAA. Moreover, in that determination we did not include *de minimis* margins in our calculation of the all-others rate.

Company-Specific Issues

YUSCO/Yieh Mau

Comment 4: Affiliated Party Transactions

Petitioners argue that the Department should reclassify YUSCO's sales to Yieh Mau as affiliated home market sales and include them in the Department's arm's-length test of YUSCO's home market sales. Petitioners also state that, in the preliminary determination, the Department did not conduct an arm's-length test on YUSCO's sales to Yieh Mau because it determined that according to the evidence on the record, Yieh Mau was not affiliated with YUSCO. Petitioners claim that, as discovered at verification, this decision is improper.

During verification, petitioners argue, the Department confirmed that an affiliation exists between YUSCO and Yieh Mau within the meaning of section 771(33) of the Tariff Act, since the Department found that the same family owns large percentages of both companies and is involved in their management, thus making the two companies ''commonly controlled.'' In addition, petitioners state that an equity interest exists between these two firms and that YUSCO has consistently referred to Yieh Mau as an affiliated party.

Petitioners continue by citing the *Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate from Belgium* (''*Plate from Belgium*'') 64 FR 15476 (March 31, 1999), in which, according to petitioners, the Department determined that two companies were affiliated because they were under common control by another company. Petitioners draw a parallel inference with respect to YUSCO's and Yieh Mau's common familial control.

YUSCO states that even if the Department determines that YUSCO and Yieh Mau are affiliated, the Department should use YUSCO's sales to Yieh Mau in calculating YUSCO's dumping margin and not use Yieh Mau's sales, because YUSCO made its sales to Yieh Mau, not through Yieh Mau to other customers.

Department's Position: We agree with petitioners that YUSCO and Yieh Mau are properly considered affiliated parties under the statute. Section 771(33)(A) of the Act states that persons shall be considered affiliated if they are ''members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.'' Section 351.102(b) of the Department's regulations state that, in considering whether control over another person exists, the Secretary will consider, among other things, corporate or family groupings. At verification we found a significant degree of ownership by the same family. We also found that this same family is involved in the management of both companies. *See* YUSCO SSSS Sales Verification Report, dated April 12, 1999.

Given these circumstances, we determine that YUSCO and Yieh Mau are affiliated persons under section 771(33)(A) of the Act. Therefore, due to our above-described determination to use total adverse facts available for YUSCO, we also determine that Yieh Mau shall be subject to this decision as well.

Comment 5: Verification Corrections

Petitioners argue that the Department should disallow Yieh Mau's claimed adjustment for home market credit expenses and inventory carrying costs since the Department was unable to verify Yieh Mau's short-term interest rate. Petitioners contend that Yieh Mau did not provide the information that was required by the Department, although Yieh Mau possessed documents containing this information and could have retrieved these from storage. Therefore, petitioners argue, Yieh Mau failed to cooperate to the best of its ability and the Department may, according to Section 776(b) of the Tariff Act, use facts available with an adverse inference. Furthermore, petitioners cite the SAA, stating that the Department ''* * * may employ adverse inferences about the missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.''

YUSCO did not comment on this issue.

Department's Position: We agree, in principle, with petitioners, that the use of adverse facts available would be warranted under these circumstances. However, due to our decision to apply total adverse facts available to YUSCO, this issue is moot.

Comment 6: Overall Cost Reconciliation

YUSCO argues that the Department should not adjust its reported costs by the difference between total reported COM and the total COM in its accounting system. YUSCO states that the Department verified all of its cost data for the POI and did not find discrepancies between reported COP and CV data and the material cost, direct labor, and overhead cost in its accounting records. Respondent asserts that it provided information necessary to quantify the differences between the amounts in the accounting records and reported TOTCOMs. YUSCO maintains that it quantified the differences between the accounting system and reported COMs for: raw material input costs for affiliated transactions; usage of processing time instead of production quantity as the allocation factor for production costs after the hot rolling stage; and recalculation of YUSCO's average material cost based on cost of goods used during the POI instead of only inputs purchased during the year.

Respondent contends that petitioners did not argue the validity of the difference resulting from reporting costs for the POI verses for the fiscal year. Therefore, YUSCO argues that if the Department adjusts for the other reconciling items, it should exclude this particular difference from the adjustment.

YUSCO argues that the Department's practice is not to adjust reported costs for explained differences between amounts in the accounting system and reported costs. YUSCO notes that the Department has not adjusted differences in the past which were ''adequately explained,'' citing *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 12725, 12736 (March 16, 1998) (Comment 13).

Petitioners argue that the difference the Department found between YUSCO's reported total cost of manufacturing and the amount in its accounting records is an unreconciled difference and it should be added to the reported costs. Petitioners state that while respondent explained the difference as being generated by the three items noted above, YUSCO did not quantify the amount of each item. Therefore, petitioners conclude that the difference is unreconciled.

As support for the importance of reconciling the costs, petitioners point to *Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review,* (''*CTL*'') 64 FR 77, 78 (January 4, 1999) (Comment 1), where the Department explained the role and significance of the cost reconciliation. Petitioners further point to the *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Taiwan,* (''*SSPC from Taiwan*'') 64 FR 15493, 15498 (March 31, 1999), where the Department determined that the unreconciled difference between amounts in the accounting records and reported costs should be included in reported costs. Petitioners argue that the same determination should be made for this investigation.

Petitioners contend that YUSCO's analysis of the unreconciled difference is flawed. First, petitioners argue that YUSCO's calculated change in the work-in-process (''WIP'') account is not only related to subject merchandise but all WIP in the company and therefore could be overstated. Second, petitioners argue that the respondent erred in calculating the difference in costs due to the application of the major input rule for affiliated input purchases. Petitioners note that the difference calculated for the major input rule adjustments should only include slab costs and not overhead costs. Petitioners argued the same for YUSCO's difference in allocation methodology for the adjustment figure: namely, that the difference should only include slab costs. Petitioners conclude that once these errors in YUSCO's analysis are corrected, the original unreconciled difference remains. Therefore, petitioners conclude that the Department should adjust YUSCO's costs to include the total unreconciled difference between its costs in its accounting system and reported costs of manufacturing.

Department's Position: We agree with petitioners that any unreconciled understatement of YUSCO's reported costs should be added to the cost of manufacturing for COP and CV purposes. As articulated in *CTL,* the Department must assess the reasonableness of a respondent's cost allocation methodology according to section 773(f)(1)(A) of the Act. Before this can be done, however, the Department must ensure that the aggregate amount of costs incurred to produce the subject merchandise was properly reflected in the reported costs. In order to accomplish this, a reconciliation of the respondent's submitted COP and CV data to the company's audited financial statements, when such statements are available, is performed. YUSCO did not complete this reconciliation at verification because it did not identify and quantify all differences shown on the reconciliation. As stated in *CTL,* ''[i]n situations where the respondent's total reported costs differ from the amounts reported in its financial statements, the overall cost reconciliation assists the Department in identifying and quantifying those differences in order to determine whether it was reasonable for the respondent to exclude certain costs for purposes of reporting COP and CV.'' As demonstrated in *SSPC from Taiwan,* we found that the reported costs should have been adjusted for the unreconciled portion of the difference between respondent's costs from its accounting system and reported costs of manufacturing. While YUSCO attempted to quantify the reconciliation differences in the brief, based on the verification exhibits, some portions remain unreconciled. However, due to our decision to apply total adverse facts available to YUSCO, this issue is moot.

Comment 7: Exchange Gains and Losses

Petitioners argue that YUSCO's net exchange loss related to notes payable for the POI should have been included in the financial expense rate calculation. According to petitioners, net exchange losses for notes payable are costs incurred by the company as a whole for financing purposes. Petitioners point to *SSPC from Taiwan,* where the Department determined that the current portion of the net exchange loss related to debt should be included in the financial expense rate calculation.

YUSCO did not comment on this issue.

Department's Position: We agree in principle with petitioners that the current portion of the net exchange loss related to notes payable should be included in the financial expense rate calculation. As explained in *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile,* 63 FR 31430 (June 9, 1998) (Comment 24), the Department includes in the cost of production the amortized portion of foreign exchange losses resulting from loans. However, due to our decision to apply total adverse facts available to YUSCO, this issue is moot.

Chang Mien

Comment 8: Conversion Costs

Petitioners state that, at verification, the Department discovered that Chang Mien failed to include any coils that were processed more than once in its rolling mill in Chang Mien's machine time analysis. Therefore, petitioners contend, respondent understated the cost of production for three CONNUMs and a certain number of coils. Petitioners argue that by not providing the Department with data regarding the coils in question, Chang Mien did not provide the information that was required by the Department. Thus, the Department was not able to determine the correct cost of production. Petitioners maintain that, pursuant to section 776(a)(2)(D) of the Act, if a respondent provides information but the information cannot be verified, the Department should resort to the use of fact otherwise available in reaching its final determination. Further, petitioners state that if the Department finds that a party has failed to cooperate by not acting to the best of its ability, the Department ''* * * may use an inference that is adverse to the interests of that party in selecting the facts otherwise available,'' citing section 776, 1677e(b) of the Act. Petitioners also argue that in determining the appropriate measure of adverse facts available, the SAA instructs the Department that it ''* * * may employ adverse inferences about the missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully,'' citing the SAA at 870. Petitioners contend that since respondent knew that multiple passes resulted in additional costs for producing these products but failed to report these additional costs, the Department should find that Chang Mien failed to cooperate to the best of its ability and, therefore, use an adverse inference in selecting facts otherwise available for this final determination. Furthermore, petitioners argue that the Department should apply the highest cost of production to the three CONNUMs so that respondent does not benefit from its lack of cooperation.

In its rebuttal, petitioners contend that the Department should not accept any post-facto argument provided by respondent. Petitioners assert that, given that it was the Department which discovered Chang Mien's omission during verification, the Department should find that Chang Mien failed to cooperate to the best of its ability and resort to the use of fact otherwise available in reaching its final determination.

Respondent argues that the Department should not increase the costs of labor and overhead for these coils which were processed through two passes but for which Chang Mien included cost of production data for only one pass. Respondent maintains that it did not fail to cooperate to the best of its ability, as petitioners assert. Instead, respondent continues, not reporting the second pass of the 23 coils was an oversight and for which it subsequently provided documentation during the verification. Respondent further contends that, given that these 23 coils represent a very small percent of all production of subject merchandise during the period of review, the Department can ignore, under section 19 CFR 351.413 of the Department Regulations, any change to the relevant CONNUMs if it believes that there will be no change to the dumping margin. Furthermore, respondent argues, one of the three CONNUMs in question was not sold in the U.S. and was not used by the Department in its calculations for the preliminary determination of this case.

Additionally, respondent asserts that the additional underreported costs for the small quantity of coils in question will not result in it obtaining a more favorable dumping margin in the Department's final determination. Respondent suggests that if, however, the Department concludes that it should account for any labor and overhead costs associated with a second pass on these coils, the Department should use its suggested methodology, which, respondent asserts, the Department verified and is contained in the *Verification of Cost of Production of Chang Mien Report* as Exhibit C–11, page 1, item 1. Respondent contends that the cold-rolling arrangement specified in the report is similar for this particular coil to that mentioned in the *Verification of Cost of Production of Chang Mien Report*, a pass from 3.00 mm to 1.50 mm and then from 1.50 mm to 0.40 mm. Respondent indicates that this exhibit details the ''working hours'' and ''productivity factor'' for the two passes for this coil and that by taking the data from the Verification Exhibit C–9, one can calculate the cost for each relevant cost field for one-pass and two-pass operations for all production of this particular CONNUM. Respondent argues that the Department should only add the difference between the two in its calculations. Respondent contends that the Department should apply this factor to all production of this particular CONNUM and all three CONNUMs in question.

Respondent reiterates, in its rebuttal, that the omission of the additional coils for the second pass was an inadvertent mistake on the part of Chang Mien and argues that the verified data should be used to correct it in the final determination. Furthermore, respondent notes that petitioners did not provide a case precedent to support their theory that the Department should treat a minor data problem by disregarding the entire cost data submission for the three CONNUMs at issue and substituting the highest figures for the entire cost of product for these CONNUMs.

Department's Position: Although petitioners are correct in noting that it was the Department which discovered the under-reported costs for the second pass of the 23 coils, we agree with respondent that the Department should simply recalculate the under-reported production costs based on the information gathered at verification. We disagree with petitioners that Chang Mien's COP data failed to be verified, and we believe that the percentage of coils affected by the respondents' omission is insignificant. First, for the three CONNUMs affected by this under-reporting, the 23 coils do not greatly impact the calculated costs, given the relative proportion of the weight of these coils to total weight of all coils used for the COP calculation. *See Analysis Memo: Chang Mien* at page 1. Second, on the issue of COP, we do not believe that Chang Mien has failed to cooperate by not acting to the best of its ability. Chang Mien cooperated fully with the Department verifiers upon the discovery of the under-reported costs during verification by providing the raw data for the coils and an excerpt from the computer sales listing showing the list of observation numbers and CONNUMHs of the coils that received a double pass during the verification. Finally, it is the Department's long-standing practice to accept certain omissions from the record during verifications if the Department believes they are unintentional and minor in magnitude.

For the above reasons, the Department has recalculated respondent's cost of production, without the use of facts available, by including the costs associated with the double pass of the 23 coils. The Department has calculated the costs using the methodology suggested by respondent and using the data which we confirmed at verification. *See Analysis Memo—Chang Mien.*

Comment 9: Date of Sale

Petitioners argue that the Department should use the order date for the home market and U.S. dates of sale, as opposed to the Department's decision in the preliminary determination to use date of invoice as the date of Chang Mien's U.S. sales. Petitioners maintain that based on the Department's verification of Chang Mien, the date of order confirmation is the appropriate date of sale for both home market and U.S. market. Petitioners contend that the Department's regulations state that the Department will defer to the date of invoice as the date of sale unless the record demonstrates that the material terms of sale for home market sales are established at a different date. *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27349 (May 19, 1997). Petitioners further contend that in the preliminary determination, the Department correctly decided to depart from its preference of the date of invoice with regard to Chang Mien's home market sales given that Chang Mien usually had no price change or change in quantity for those sales between order confirmation date and shipping. Petitioners submitted that the same factual pattern exists for Chang Mien's U.S. sales and, therefore, petitioners argue, the order of confirmation date should serve as the date of sale for Chang Mien's U.S. sales as well. Therefore, petitioners argue that the order confirmation date most closely reflects commercial reality and the time when the material terms of sale are agreed upon for Chang Mien's sales.

Respondent argues that it routinely produces either too much or too little steel for each U.S. order. Because this occurs in the normal course of trade, respondent asserts that the Department should continue its practice of using the invoice date as the date of sale rather than the order date. Respondent argues that the Department's stated policy regarding date of sale (''* * * the Secretary normally will use the date of invoice'' (19 CFR 351.401(i)) is pertinent to the respondent's date of sale scenario and contends that the Department should, therefore, enforce its policy with regard to the respondent. Respondent also cites the Department's decision regarding date of sale in *SSPC from Korea,* in which the Department stated:

> We do not treat an initial agreement as establishing the material terms of sale between buyer and seller when changes to such an agreement are common even if, for a particular sale, the terms did not actually change.

Moreover, respondent asserts that the Department acknowledged in that case that it will uphold its standard of using the invoice date as date of sale as long as the material terms ''are subject to change'' (*Id.*). Respondent states that it provided the Department with an exhibit (Exhibit 61, November 27, 1998) comparing quantity ordered with quantity actually delivered and asserts that nothing in the verification reports refutes any of the data provided in the exhibit. Respondent points out that the Department did not attempt to verify any of the sales reported in that exhibit to determine whether they were beyond the tolerances called for in the orders. Had the Department verified this exhibit, respondent argues, it would have been clear that changes to the orders were neither infrequent nor abnormal. Had the Department verified all of the information available on the record, respondent asserts the Department would know that the high level of frequency of changes between quantity ordered and quantity actually delivered is a normal business practice for the respondent. Therefore, respondent concludes, the Department should not change its methodology with regard to date of sale in this case and should therefore, use the invoice date as the date of sale, rather than the order date, for sales to the United States.

Department's Position: We agree in part with respondent and petitioners. In the preliminary determination, the Department relied upon the date of the order confirmation as the date of sale for Chang Mien's home market transactions. According to Chang Mien's November 27, 1998 supplemental response regarding home market date of sale, ''there usually is no price change or change in quantity between order confirmation date (day 0) and shipping [invoice date] (day 1–3).'' *See* Chang Mien's November 27, 1998 supplemental response at 8. This was confirmed at verification. *See* Chang Mien Sales Verification Report at 5 (''We did not find material changes in the quantity and value terms from the order and invoice''). Therefore, with regard to home market sales, we agree with petitioners and will continue to use the date of order confirmation as the date of purchase for this final determination.

With regard to sales to the United States, the Department preliminarily determined that the invoice date was the appropriate date of sale. The Department based its decision in part on Chang Mien's November 27, 1998 supplemental response, in which the Department relied on respondent's assertion that ''[in] approximately 94.5 percent of the sales there was a change between the quantity from the date of confirmation and the invoice date.'' *See Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Stainless Steel Sheet and Strip in Coils from Taiwan,* 64 FR 101 (January 27, 1999). We disagree with respondent that the Department did not attempt to verify any of the sales reported in that exhibit to determine whether they were beyond the tolerances called for in the orders. During verification, the Department confirmed Chang Mien's basic methodology for reporting date of sale as described in their questionnaire response. The Department examined eight different sales contracts to the United States during the POI. These sales were part of the same universe of the sales contained in Chang Mien's November 27, 1998 supplemental response. No discrepancies were discovered. Given that Chang Mien successfully passed the sales verification, there is no record evidence to conclude that the Department should find the information submitted in response to the Department's request regarding date of sale to be unreliable. The Department does not agree with respondent that, for 94.5 percent of the sales, there was a change between the quantity from the date of confirmation and the invoice date. We have analyzed those sales that changed in quantity from the order of confirmation to the invoice date in excess of the variation of plus or minus 10 percent of the quantities delivered, as stated in Chang Mien's contracts, and found that the number of changes is significant and thus, the date of sale should continue to be the invoice date. *See Chang Mien Sales Verification Report* at 5 and *Analysis Memorandum: Chang Mien.* Additionally, in the Department's decision regarding date of sale in *SSPC from Korea,* the Department determined that the date of sale was the invoice date, or when the final terms of sales were established, in keeping with the Department's regulatory preference for using the invoice date of sale absent evidence ''that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' *See* 19 CFR 351.401(i). Therefore, in keeping with previous Department decisions and with the Department's policy, we agree with respondent and have used, for this final determination, the invoice date for sales transactions to the United States.

Comment 10: Surface Finishes

Petitioners argue that Chang Mien's claims that there is a difference between surface finishes in their product description as defined between surface finish code 9 (hot-rolled, annealed and pickled, grinding) and code 1 (hot-rolled, annealed and pickled) should not be honored. Petitioners contend that, based on Chang Mien's own description of code 1 and code 9, the Department should consolidate codes 1 and 9 into a single finish code, because the grinding in the initial phase of production does not affect the ultimate finish of the merchandise. Furthermore, petitioners argue that the Department should consolidate finish code 10 (cold-rolled, not annealed and pickled) with code 3 (cold-rolled). Petitioners state that Chang Mien's description of the code 10 finish ''refers to material which has not completed production because, there were so many defects, that it already has been classified as non-prime material.'' *See* Supplemental Questionnaire Response of Chang Mien Industries, Co., Ltd., dated November 27, 1998 at 7. This description, petitioners assert, indicates that code 10 is cold-rolled material that Chang Mien has defined as non-prime merchandise, and petitioners argue that the designation of non-prime merchandise is not relevant in the finish characteristic. Therefore, petitioner concludes, the Department should consolidate the finish code 10 with finish code 3 in the final determination.

Respondent indicates that at verification, Chang Mien demonstrated to the Department that finishes 1 and 9 should not be consolidated because there were physical differences between the two. The differences, respondent states, were readily apparent from a visual inspection and explained in detail to the cost verifier. Respondent further contends that for the same reasons, code finishes 3 and 10 should not be combined. In addition, respondent argues, since finish 10 is not a completely produced product, the mechanical properties are different from finish 3 products. Lastly, respondent argues, that it would not make sense to combine a second quality sheet product, which has not completed the production process because they have so many defects, to first quality finished product. For this reason, respondent contends, finish 10 should not be compared to U.S. sales, as it is an unfinished product, and should be ignored.

Department's Position: With regard to Chang Mien's finish codes 1 and 9, we agree with petitioners and are continuing to treat these two codes as one combined group. For the application in the margin calculation of this decision, *see Analysis Memorandum: Chang Mien.* First, we note that finish codes 1 and 9 are nearly identical, as both products are hot-rolled, annealed and pickled. Furthermore, regardless of whether there is some difference in the physical appearance between products which have been subject to grinding (a matter about which there is no determinative record evidence), there is no record evidence to conclude that any alleged difference in physical appearance affects the product's end-use, or that such a difference is reflected in relatively higher production costs or prices. In any event, as we note below in Comment 14, in general, our model match criteria does not consider the number of processing steps undertaken for each coil. Moreover, we note that respondent did not raise this issue on the record when the Department requested public comments on its proposed product concordance.

With regard to finish codes 3 and 10, we find no reason to deviate from the Department's preliminary determination, in which we treated these two categories as separate codes. Unlike in the case of grinding, the Department generally recognizes that annealing and pickling are processing steps which significantly alter the physical appearance of a product, and generally affects product end-use, cost, and sales price. With regard to the definition of the merchandise as prime or non-prime, we note that in this case, this distinction is largely irrelevant to our analysis. That is, if the merchandise were indeed secondary, it would be separated from prime merchandise in our model match analysis, minimizing the impact of any decision to collapse the two codes (given that, as a rule, secondary merchandise, which is sold at reduced prices, fails the Department's cost test). However, in fact we dispute respondent's categorization of code 10 finish products as second quality sheet, as respondent itself has classified many sales of code 10 as prime merchandise. *See Analysis Memorandum: Chang Mien* pp. 6–7. Therefore, the record does not support Chang Mien's assertion that this merchandise is second quality.

Comment 11: Advertising Expenses

Petitioners argue that Chang Mien's claimed direct advertising expenses should be denied as a direct selling expense and reclassified as indirect selling expenses. Petitioners state that during verification, the Department examined various advertising expenses, and petitioners argue that Chang Mien could not demonstrate that it incurred direct advertising expenses on behalf of its customers. Petitioners further argue that the Department's questionnaire specifically states that in order to qualify for direct advertising expenses, respondent must have assumed advertising expenses on behalf of its customer, citing the Department's Questionnaire at p. B–28. Petitioners contend that the verified documents indicate that the claimed advertising expenses were general information on the company or products produced by the company, and hence Chang Mien did not demonstrate that it incurred advertising expenses to advertise to its customer's customers, citing Chang Mien's Questionnaire response to sections B–D at 26. Therefore, petitioners assert, for the final determination, the Department should deny Chang Mien's home market and U.S. market claim for direct advertising expenses and reclassify these expenses as indirect selling expenses.

Respondent states that the primary purpose of the advertising expense in periodicals and via the sample books for distribution to U.S. and home market customers is to assist its customers, who are distributors, to obtain new customers. Respondent further asserts that virtually all U.S. customers are distributors and not end-users and that they already buy from Chang Mien. These forms of advertising, respondent states, assist current customers to obtain new customers and show potential customers, via the sample book, the quality of Chang Mien's products. The same, respondent asserts, is true in the home market. Respondent states that advertising in periodicals also directly discusses the subject merchandise and is directed to the potential customers who would contact a distributor of Chang Mien steel. Given that the Department's verification team found no discrepancies when they inspected the advertising, respondent argues, the claimed advertising expenses should remain as a direct expense in the Department's final determination.

Department's Position: We agree with petitioners. We reviewed Chang Mien's claimed advertising expenses at verification and found that most of these promotional expenses were not incurred in marketing to Chang Mien's customers/end-users. *See Sales Verification Report: Chang Mien* at 11–12. Contrary to Chang Mien's assertion that it incurs advertising expenses on behalf of its customers/end-users, at verification Chang Mien indicated that they did not know whether distributors (Chang Mien's domestic customers) gave the sample book to the distributors' customers. *Id.* The Department examined various advertising documents, including advertising in the

Taiwan Import Export Company List, advertising in the local newspaper, advertising in the *Metal Bulletin Magazine,* brochure advertising, and the Stainless Steel Sample Book. *See* Chang Mien Sales Verification Report at 11, 12. Based on this review, we found that these advertisements were more general in nature and offered a variety of information on the company or products produced by the company. Moreover, Chang Mien did not demonstrate to the Department that the claimed direct advertising expenses were incurred to advertise to its customer's customers. In *Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from South Africa,* 64 FR 15459 at 43 (March 31, 1999), the Department concluded that print advertising expenses which are general in nature and ''intended to promote either the benefits of stainless steel generally, or Columbus's image as a reliable supplier of high-quality stainless steel'' do not represent expenses incurred by the respondent on behalf of its customers that can be claimed as a COS adjustment. Therefore, we conclude that Chang Mien's print advertising expenses are aimed primarily at its customers. As such, these expenses do not represent expenses assumed by Chang Mien on behalf of its customers, and do not merit treatment as a direct expense.

Comment 12: Home Market Warranty Claims

Petitioners argue that Chang Mien has double counted its claimed warranty expenses by counting (1) claims on subject merchandise where the sale and the warranty claim occurred during the period of investigation and (2) claims that were incurred during the period of investigation for sales prior to the period. *See* Chang Mien Questionnaire response to sections B–D at 27. Petitioners assert that not only has respondent claimed an adjustment for non-POI sales, it also has claimed both types of warranty expenses for some sales. The Department, petitioners argue, should only accept warranty claims incurred on POI sales and deny the warranty claims on non-POI sales.

Respondent states that the Department has a long-standing policy of using all direct, variable warranty expenses incurred in the POI when calculating this cost. It further states that the Department is fully aware that warranty claims may be made for merchandise long after it is sold and, respondent asserts, the Department has consistently used all warranty costs incurred in the POI, regardless of sales dates, in its calculations. Respondent cites the Department's decision in *Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Final Results of Antidumping Duty Administrative Review,* 63 FR 13204, 13205 (March 18, 1998), in which the Department stated:

> As noted in AFBs 1997, the Department has long recognized that warranty expenses cannot be reported on a transaction specific basis and an allocation is necessary * * * Accordingly, for the final results of this review, we have calculated warranty expenses as a separate direct variable expense * * * We allocated the expense to the metric tonnage sold.

Respondent asserts that to be consistent with the above stated decision, and based on the verified findings by the Department, that the Department should deduct all actual, variable warranty expenses incurred in the POI in its final determination of this case.

Department's Position: We agree with petitioners. Chang Mien has provided transaction-specific warranty claims, and thus an allocation of POI warranty expenses to POI sales is not warranted. The allocation of warranty expenses applies to situations where it is not possible to tie POR/POI warranty expense to POR/POI sales. The Department has recognized that in certain situations, warranty expenses cannot be reported on a transaction-specific basis, due to time lags between the warranty expenses incurred and sales associated with the warranty. Therefore, where warranty expenses cannot be reported on a transaction-specific basis, an allocation of POR/POI warranty expenses to POR/POI sales is deemed necessary. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et. al.; Final Results of Antidumping Duty Administrative Review,* 62 FR 2081, 2095 (January 15, 1997). Here, respondent provided transaction-specific warranty expenses, which were revised at verification. We verified documentation supporting that the warranty expense reported in the field WARR2H is associated with a non-POI sale. Therefore, because we have transaction-specific information with regard to warranty expenses, we only made adjustments for POI warranty expenses associated with POI sales.

Comment 13: Financial Expenses

Petitioners state that at verification, the Department found that Chang Mien recalculated its financial expense ratio to ''exclude non-financial items,'' thereby changing its financial expense ratio from its reported ratio in the September 24, 1998 submission. *See Cost Verification Report: Chang Mien,* at 2. Petitioners argue that for the final determination, the Department should recalculate Chang Mien's financial expense ratio to reflect all financial items. Petitioners further assert that the Department should consider interest expenses, losses on foreign exchange rate, loss on inventory valuation, and other losses. *Id.* Additionally, petitioners argue, interest income, investment income, miscellaneous income, rental income, and gains and losses on land value, should be excluded because they are either (1) not short-term interest income or (2) are not related to the production or sale of the merchandise and are more like investments.

In its rebuttal brief, Chang Mien contends that petitioners are incorrect in their arguments regarding the financial expense ratio. Respondent states that at verification, the Department found, in Verification Exhibit C–8, that items 7101 (interest income) and 7102 (investment income) are short-term and related to production. Therefore, Chang Mien argues, they should not be excluded from the calculations. Additionally, respondent asserts, the Department did not find any discrepancies with this reported data. Chang Mien maintains that given that it had already excluded miscellaneous income, rental income, and gains and losses on land value in its revised data, no further changes should be made to these items. Furthermore, respondent argues that if this information were excluded again, it would result in double counting this data. Chang Mien concludes by stating that the changes noted by the Department in its verification report should be used in the Department analysis for the final determination because (1) this information was verified and, (2) the reported figures in the verified information are calculated in accordance with Taiwanese Generally Accepted Accounting Principle (GAAP).

Department's Position: We agree with petitioners. During the cost verification, Chang Mien submitted corrections to its financial expense to exclude non-fianancial items. We have reviewed these items and concluded that most were inappropriately excluded from financial expenses. Therefore, we have revised our calculations to include all financial expenses. To obtain the revised financial expense ratio, we deducted short term income and the loss and sale of fixed assests from total non-operating expenses. *See Final Analysis Memo: Chang Mien,* pp. 4–5.

Tung Mung

Comment 14: Model Match

Tung Mung argues that the Department improperly treated certain types of coil as identical merchandise, by overlooking important distinctions in physical characteristics between the coil types at issue. Tung Mung asserts that the Department's selection of matching criteria to define identical merchandise must be based on ''meaningful physical characteristics,'' and may consider both price differences in the marketplace and cost in order to identify such ''meaningful physical characteristics.'' *Emulsion Styrenene-Butadiene Rubber from Mexico; Final Determination of Sales at Less Than Fair Value*, (''*ESBR from Mexico*''), 64 FR 14872, 14875 (March 28, 1999). Tung Mung maintains that the differences between the two types of coil at issue are ''meaningful'' enough to warrant treatment as separate products.

Tung Mung argues that the types of coils at issue differ significantly in terms of quality, use and price. First, Tung Mung claims that one type of sheet at issue develops unsightly lines, known as ''Luder's Lines,'' when drawn or stretched, and is therefore not used in applications where the sheet is visible in the final product. Second, Tung Mung argues that this type of coil is less expensive to produce and sold for a lower price. Tung Mung asserts that the difference in cost of producing the two products at issue was verified by the Department and results from the difference in the number of times the sheet goes through the mill, citing the Verification Report at p. 18. In addition, Tung Mung asserts that Tung Mung's sales tape shows that the two products sell for different prices. Therefore, Tung Mung argues that it was improper for the Department to treat the two products as identical and requests that the Department treat these two types of coil as separate products in the final determination.

Petitioners did not comment on this issue.

Department's Position: We disagree with Tung Mung and did not treat the coils at issue separately based on Tung Mung's reported finishes. As stated by respondent, the coils at issue differ by the number of processing steps undertaken for each coil. In general, our model match criteria do not consider the number of processing steps undertaken for each coil. Rather, it focuses on physical differences between products. However, it is important to note that products undergoing different processing steps will generally not match in any event, based on the model matching criteria which the Department has established for this investigation. Indeed, in this case, treating the coils at issue separately has no practical effect since the coils do not match based on other physical characteristics (which, it should be noted, rank higher in the Department's product concordance). *See* Questionnaire, Appendix V. Therefore, for the final determination, we did not treat the products in question separately.

Comment 15: Normal Value

Petitioners argue that the Department should use all six price components in the home market in calculating normal values as the Department did in the preliminary determination. Tung Mung indicated that it uses a combination of up to six tiers of prices to establish the price for a single coil. *See* September 24, 1998 Questionnaire Response at p. B–1. Petitioners note that Tung Mung stated in its response that its home market prices for one coil can consist of up to six price components. Petitioners also note that Tung Mung urged that the Department limit the normal value to only the first three price categories of the coil price and not consider the other three price categories which pertain to tail-end and untrimmed edges. Petitioners object to Tung Mung's suggestion in its Questionnaire Response (*see* September 24, 1998 Questionnaire Response at B–2) to consider only the first three price categories of the coil for determining normal value, by arguing that tail-end and untrimmed edges are integral sections of a home market coil, and therefore prices for these parts of the coil should be considered in calculating normal values to be compared with U.S. sales. In addition, petitioners argue that home market warranty expenses should also be calculated based on the weight of all six price components of the home market coil rather than only the three price components suggested by Tung Mung. We also continue to calculate warranty expenses based on all six price categories of the coils.

Tung Mung did not comment on this issue.

Department's Position: We agree with petitioners and have continued to use the actual selling price of the coils as reflected in the invoice to the customer in calculating normal value. Respondent has indicated that the invoice price represents the weighted-average of all six price categories of the coils. *See* September 24, 1998 Questionnaire Response at p. B–2.

Comment 16: U.S. Warranty Expenses

Petitioners argue that Tung Mung's U.S. warranty expenses should be adjusted to include warranty expenses for U.S. sales which occurred during the POI but pertained to products sold prior to the POI. Petitioners argue that the adjustment is justified under the holding of *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 Review and Termination in Part* (''*Tapered Roller Bearings from Japan*''), 62 FR 11825, 11839 (March 13, 1997). Petitioners maintain that the Department has long recognized that there is usually a time lag between the initial sale and any subsequent warranty claim because customers may not discover damaged goods until a later time. *Id.* Petitioners assert that the Department has held that where warranty expenses generally cannot be reported on a transaction-specific basis due to the time lag between the warranty claim and initial sale, an allocation of warranty expenses is necessary. *Id.* Therefore, petitioners argue that warranty expenses for U.S. sales should include warranty expenses occurring during the POI, even if they pertain to products sold outside of the POI.

Tung Mung argues that its single aberrational warranty claim made with respect to 1996 sales to the United States should not be used as a surrogate for warranty expense incurred on 1997 sales. Tung Mung contends that the Department accepts variable warranty expenses incurred during the POI as a ''surrogate'' for expenses actually incurred on sales during the POI, ''provided such expenses reasonably reflect the firm's historical experience with respect to warranty claims,'' citing *Notice of Final Determination of Sales at Less than Fair Value: Foam Extruded PVC and Polystyrene Framing Stock from the United Kingdom*, 61 FR 51411, 51418 (October 2, 1996). Tung Mung maintains that the Department does not use this methodology where to do so would produce distorted results, citing *Color Television Receivers from Korea; Final Results of the Antidumping Duty Administrative Review*, 53 FR 24975 (July 1, 1988).

Tung Mung asserts that to base warranty claims paid in 1997 on 1996 sales would distort the calculation of the warranty adjustment. Tung Mung argues that more than ninety percent of the total amount of the warranty expense at issue was due to a single claim. Tung Mung claims that the total amount of warranty claims paid in 1997 with respect to U.S. sales was aberrational compared to Tung Mung's general warranty experience. According to Tung Mung, the amount on the single claim was three times the amount paid by Tung Mung with respect to all home market warranty claims, despite the fact that home market sales during the POI were ten times as high as U.S. sales. Tung Mung asserts that there is no difference between the products sold to various markets which would account for such a huge swing. In fact, Tung Mung claims that the only difference would be whether or not the coils are trimmed, which Tung Mung claims has no bearing on the size or quantity of warranty claims. In addition, Tung Mung alleges that there is no difference in Tung Mung's warranty policy with respect to different markets. In sum, Tung Mung argues that the aberrational claim is not reflective of Tung Mung's normal experience and should not be used in the calculation of the warranty adjustment.

Tung Mung argues that the Department frequently uses actual warranty experience with respect to sales during the POI in cases involving steel, rather than the surrogate method. Tung Mung claims that in general, because steel is further processed quickly, warranty claims are made within a few months of sale. Tung Mung contends that since generally there is no significant lag in claims for merchandise such as steel, there is no reason for the Department to use the surrogate method. Tung Mung claims that, at verification, Tung Mung demonstrated that no claims had been made with respect to the coils sold to the U.S. market, many months after the close of the period of investigation.

Department's Position: We disagree with petitioners. Tung Mung provided warranty claim information on a transaction-specific basis; thus, an allocation of POI warranty expenses to POI sales is not warranted. The allocation of warranty expenses applies to situations where it is not possible to tie POR/POI warranty expense to POR/POI sales. The Department has recognized that in certain situations, warranty expenses cannot be reported on a transaction-specific basis, due to time lags between the warranty expenses incurred and sales associated with the warranty. Therefore, where warranty expenses cannot be reported on a transaction-specific basis, an allocation of POR/POI warranty expenses to POR/POI sales is deemed necessary. *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From France, et. al.; Final Results of Antidumping Duty Administrative Review,* 62 FR 2081, 2095 (January 15, 1997). Here, respondent stated that it reported warranty claims on a transaction-specific basis and this fact was confirmed at verification. *See* Questionnaire Response at p. B–31; Verification Exhibit 8. We verified documentation supporting the fact that the warranty expense at issue is associated with a non-POI sale. We also examined documentation showing that there were no warranty expenses associated U.S. POI-sales were incurred in 1997 and 1998. *See* Verification Exhibit 8. Therefore, because we have transaction-specific information with regard to warranty expenses, we only made adjustments for POI warranty expenses associated with POI sales.

Comment 17: Duty Drawback

Petitioners argue that Tung Mung failed to provide sufficient evidence demonstrating that it meets the two prong test required for duty drawback adjustments; therefore, the Department should reject Tung Mung's claims for duty drawback adjustments. Petitioners note that it is the Department's practice to allow an upward adjustment to U.S. price for duty drawback only if the respondent meets the following requirements: (1) That there is a link between the import duty and the rebate granted; and (2) that the respondent has sufficient imports of raw materials used in the production of the final exported product to account for the drawback received on the export product, citing *Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review,* 61 FR 69077 (December 31, 1996) (''*Pipe and Tube from Turkey*''); *Oil Country Tubular Goods from Korea: Final Results of Antidumping Duty Administrative Review,* 64 FR 13169, 13172 (March 17, 1999). Petitioners assert that the Department has rejected duty drawback adjustment claims in their entirety where respondent failed to satisfy either part of Department's two-part test. Petitioners assert that the Department has denied a duty drawback adjustment to U.S. price where it is found that the respondent's duty drawback was based on the FOB sales prices of its finished goods for export and exceeded substantially the amount of customs duties it paid to import raw materials directly, citing *Stainless Steel Round Wire from India; Final Determination of Sales at Less than Fair Value,* 64 FR 17319, 17320 (April 9, 1999). Petitioners argue that the Department has made it clear that the respondent must document a direct link between duties paid and rebates received and that there are sufficient imports of raw materials to account for the drawback claim, citing *Pipe and Tube from Turkey* at 69078. Petitioners claim that Tung Mung has not sufficiently documented its claimed adjustment for duty drawback and therefore adjustments for duty drawback should be denied.

In both its case and rebuttal briefs, Tung Mung argues that it has satisfied the two-prong test for allowing a duty drawback adjustment, thus the Department should make an adjustment for the entire duty drawback adjustment claimed by Tung Mung. Tung Mung argues that the two-prong test for duty drawback adjustments does not require that each individual drawback payment be physically matched to imported raw materials. Furthermore, Tung Mung maintains that the Department recognizes the fungibility of material, as does U.S. law in the U.S. duty drawback program, citing 19 U.S.C. section 1313(b).

Tung Mung claims that it has fulfilled the requirements of the two-prong test for duty drawback adjustments. Tung Mung asserts that at verification it demonstrated the direct link between the import duty and the drawback, by providing examples of the documentation required to obtain duty drawback, including the drawback application form which is required to list the specific importation(s) with respect to which the drawback is claimed. In addition, Tung Mung claims that the Taiwan Ministry of Finance verifies each duty drawback application to ensure that the amount is not excessive.

Tung Mung argues that if it is determined that Tung Mung is not entitled to a duty drawback adjustment, the Department should treat the duty drawback payment as an offset to cost since as demonstrated at verification, duty drawbacks reduced Tung Mung's cost of production. Tung Mung cites *Solid Urea from Germany; Final Results of Antidumping Duty Administrative Review,* 62 FR 61271 (November 17, 1997), which held that an adjustment cost with respect to government benefits received was appropriate where the benefits are linked to specific costs. Tung Mung argues that the instant case is distinguishable from *Stainless Steel Round Wire from India,* where the government payment at issue was not related to the amount of import duty paid, but instead was based on the selling price of the finished goods. Tung Mung finds that case different from the instant case in that the Department specifically found that the benefits received by respondent substantially exceeded the amount of import duties paid. Tung Mung asserts that at verification it demonstrated that duty drawback payments are recorded in its cost accounting records, which demonstrates that the duty drawback payments are associated with raw material costs.

Department's Position: We disagree with petitioners' argument that Tung Mung's reported duty drawback adjustment should be disallowed. At verification, Tung Mung provided adequate information to support its claimed duty drawback adjustment. Specifically, at verification, we examined documentation for selected sales showing a direct link between duties paid and rebates received and that there are sufficient imports of raw materials to account for the drawback claim. *See* Verification Exhibit 4. At verification Tung Mung demonstrated that the sales tied to the duty drawback adjustment, and furthermore, that the expenses traced to Tung Mung's accounting ledgers. See Verification Exhibit 4. Moreover, we examined duty drawback applications which showed the quantities imported and quantities on which drawbacks were paid. *Id.* We noted that petitioners have made no specific allegations that the quantities appearing in the verification exhibit are insufficient. Therefore, since Tung Mung has sufficiently demonstrated that it meets the two-prong test for duty drawback adjustments, we will accept the claimed adjustments. *Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review,* 61 FR 69077, 69078 (Dec. 31, 1996).

Comment 18: U.S. Price

Petitioners argue that Tung Mung failed to report gross unit price for U.S. sales in the currency in which the transaction was incurred, which petitioners claim is contrary to the Department's longstanding practice. In addition, petitioners allege that the reporting of these sales in New Taiwan dollars causes distortions to the gross unit price and the margin calculation. Petitioners charge that Tung Mung's reporting of gross unit price has an expansive effect, affecting multiple variables such as gross unit price, total value, bank charges, credit expenses, indirect selling expenses, and domestic inventory carrying costs. Petitioners assert that the Department's questionnaire instructs respondents to report all revenues and expenses in the currency in which the transaction was incurred; moreover, petitioners argue that this method of reporting is in accordance with the Department's longstanding practice, citing *Stainless Steel Wire Rod from Korea; Final Determination of Sales at Less than Fair Value* (''*Wire Rod from Korea*''), 63 FR 40404, 40413 (July 29, 1998).

Petitioners argue that Tung Mung has not demonstrated that it meets the exceptions to the requirement of reporting expenses and revenues in the currency in which the transaction was incurred. Petitioners note that in *Steel Wire Rod from Canada; Final Determination of Sales at Less Than Fair Value* (''*Steel Wire Rod from Canada*''), 63 FR 9182, 9185 (February 24, 1998) the Department permitted respondent to report certain freight expenses in Canadian dollars because (1) respondent provided advance notification to the Department that it could not report the currency, in which the freight expense was incurred and (2) the Department verified that respondent used a daily rate when these expenses were recorded in its accounting records. Petitioners assert that Tung Mung has not met either of these requirements. Rather, petitioners assert that Tung Mung stated that it records the sales amount using the customer's exchange rate. Petitioners find Tung Mung's statement confusing, given that U.S. transactions were paid in U.S. dollars because there would be no need to note an exchange rate on its payment. Moreover, petitioners assert that Tung Mung would not have been burdened to report sales in the appropriate currency, since it only involved a few number of transactions.

Petitioners cite *Certain Corrosion Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel from Canada; Final Results of Antidumping Duty Administrative Review* (''*Certain Corrosion Resistant Carbon Steel from Canada*''), 63 FR 12726, 12727 (March 16, 1998) as another case in which the Department made an exception to the requirement of reporting an expense in which the transaction was incurred. In *Certain Corrosion Resistant Carbon Steel from Canada,* the Department allowed respondent to report expenses in the currency in which the transaction was not incurred because the Department found that the exchange rate has been stable during the period of review. Petitioners argue that the circumstances of *Certain Corrosion Resistant Carbon Steel from Canada* are contrary to that of the instant case because the exchange rate for New Taiwan dollars has been unstable during the POI. Therefore, petitioners assert that Tung Mung failed to cooperate to the best of its ability by not reporting gross unit price in the currency in which it was incurred. Consequently, petitioners submit that the Department should apply partial adverse facts available and apply Tung Mung's highest non-aberrant dumping margin to Tung Mung's U.S. direct sales.

Tung Mung argues that petitioners' claim that the Department should apply facts otherwise available to Tung Mung's U.S. Sales to a certain customer should be rejected. Tung Mung asserts that petitioners are mistaken in their claim that Tung Mung could not have invoiced its U.S. customers in NT dollars. Tung Mung asserts that although Tung Mung received payment in U.S. dollars, for each sale to the certain customer it issued both a commercial invoice expressed in U.S. dollars and also a Government Uniform Invoice in NT dollars, citing the Verification Report at p. 9. Tung Mung claims that it was the NT dollar figure from the Government Uniform Invoice that was entered into Tung Mung's books. Tung Mung further argues that the Department cannot apply adverse facts available because Tung Mung informed the Department that it had received payment for the sales in U.S. dollars and the Department did not ask it to change the information on the sales tape. Tung Mung argues that the Department cannot apply adverse facts available unless a respondent has specifically failed to cooperate with a request for information, citing 19 CFR 351.308(a). Therefore, Tung Mung argues that petitioners' suggestion that the Department use an adverse inference with respect to these sales is misplaced.

Department's Position: We agree with petitioners that the Department's standard questionnaire requires all parties to ''report the sale price, discounts, rebates and all other revenues and expense in the currencies in which they were earned or incurred.'' *See* Questionnaire at B–20. The Department accepted respondent's method of reporting these expenses for the preliminary determination. The Department has in limited circumstances allowed exceptions to this rule. *See Corrosion Resistant Steel from Canada* and *Steel Wire Rod from Canada.* In *Corrosion Resistant Steel,* the Department allowed respondent to report U.S. gross unit price in Canadian dollars based on the reasoning that the Canadian dollar was stable and the Department verified that respondent maintained expenses in Canadian dollars in its accounting records. As discussed earlier in this notice in Comment 1, we determined that the

New Taiwan dollar was relatively stable. Moreover, during our review of U.S. sales traces, we verified that Tung Mung maintains its records in its domestic currency, New Taiwan dollars (as with *Corrosion Resistant Steel from Canada*) and found no discrepancies in Tung Mung's reporting of sales. *See* Verification Report at p. 9 and Exhibit 2. Moreover, a review of the sales traces reveals that the difference between the exchange rate recorded on Tung Mung's GUI invoice and the Department's exchange rate data is negligible. *See Analysis Memorandum: Tung Mung* at p. 6. Therefore, we did not apply facts available to respondent's gross unit price for not reporting the U.S. price in U.S. dollars.

Comment 19: U.S. Packing Expenses

Petitioners argue that the Department should apply partial adverse facts available for variable and fixed overhead packing expenses. Petitioners argue that Tung Mung has provided conflicting statements regarding Tung Mung's inability to report variable and fixed overhead packing expenses. Petitioners argue that Tung Mung was instructed twice by the Department, in the questionnaire and in the supplemental questionnaire, to report the unit cost of packing, including variable and fixed overhead expenses, yet failed to do so, stating that ''it would be extremely difficult and time consuming for Tung Mung to segregate packing expenses in the manner requested,'' citing the Supplemental Questionnaire at 23. However, petitioners note that Tung Mung gave a different statement at verification where Tung Mung said that it did not report packing overhead because ''it didn't think that it was required to since packing was sub-contracted labor,'' citing the Verification Report at p. 10. Petitioners charge that Tung Mung failed to cooperate to the best of its ability since it was aware the Department's requirement to report packing overhead expenses and failed to provide a verifiable reason for its inability to report such expenses. Petitioners therefore argues that Department should apply partial adverse facts available to variable and fixed overhead expenses associated with additional export packing.

Respondent argues that the Department should not add overhead expense to packing costs and should reject petitioners' argument to apply adverse facts available in adjusting Tung Mung's reported export packing costs for overhead. Tung Mung asserts that it does not pay benefits to the individuals who perform packing labor and regards these individuals as independent contractors. For this reason, Tung Mung believed that it was unnecessary to include overhead in packing costs. Tung Mung claims that its statement made in its response that ''it would be extremely difficult and time-consuming to separate packing expenses in the manner requested by the Department'' did not refer to the breakout of overhead expenses, but rather to the Department's request that Tung Mung provide the basic cost of packing that is used for all coils, whether sold domestically or exported. Tung Mung alleges that any overhead attributable to expenses other than employee benefits would be extremely small, given the fact that the area occupied by the packing operations was ''tiny'' and the equipment used in packing minimal.

Tung Mung asserts that it has been fully cooperative through the course of this proceeding. Tung Mung argues against petitioners' proposed ''facts available'' adjustment of applying the highest calculated percentage difference between the reported material cost and total cost of manufacturing, insisting that this would be distortive. Specifically, Tung Mung claims that petitioners' proposed adjustment includes costs that are not incurred in export packing and also double counts certain expenses. Tung Mung claims that Tung Mung claims that the full manufacturing conversion costs include direct labor costs, as well as all personnel benefits for the manufacturing workers. Tung Mung asserts that the full manufacturing conversion costs include depreciation incurred on all of the manufacturing activities performed at Tung Mung. Tung Mung also claims that packing is part of the final production process. Tung Mung alleges that the Department routinely ignores adjustment of small magnitude and that should the Department determine an adjustment is warranted, the Department has all the data on the record necessary to perform an adjustment.

Department's Position: We agree with petitioners and adjusted packing expense to include packing overhead by adopting the adjustment method proposed in petitioners' case brief on April 20, 1999. The Department's Questionnaire requires that respondents include the cost of labor, materials and overhead in packing unit cost. See Questionnaire at p. B–27 and C–31. Although Tung Mung used subcontracted labor for packing, Tung Mung admitted that packing operations were performed at the premises of Tung Mung. Thus, it can be inferred that Tung Mung incurred overhead expenses attributable to packing other than personnel benefits. Tung Mung erroneously assumed that there was no need to provide the overhead expenses. Furthermore, Tung Mung failed to justify the claim that the collection of these expenses is burdensome. Therefore, we agree with the petitioners that the use of partial adverse facts available is appropriate in this case. As to the use of the adjustment proposed by the petitioners, we believe it is a reasonable approximation of the overhead component of the packing cost. Tung Mung did not provide any alternative adjustment method to correct for the unreported overhead expenses. We disagree with Tung Mung that the record contains information that can be used for this adjustment without undue difficulties on the part of the Department. Therefore, for this final determination, we have recalculated Tung Mung's reported U.S. packing expenses. *See Analysis Memorandum: Tung Mung,* p. 5.

Comment 20: Direct Selling Expenses

Petitioners argue that Tung Mung failed to provide direct selling expenses associated with visits to U.S. customer's customers. Petitioners note that at verification, the sales manager for Tung Mung made a statement indicating that he had visited the U.S. customer and met with Tung Mung's customer's U.S. customers to discuss merchandise quality. Petitioners argue that Tung Mung should have reported expenses incurred for its customer's customer in its reported direct selling expenses. Petitioners assert that since Tung Mung knew that it incurred these expenses on behalf if its customer, the Department should find that Tung Mung failed to cooperate to the best of its ability. Therefore, citing section 776(a)(2)(A), petitioners argue that the Department should apply partial adverse facts available and use Tung Mung's Sales Department expenses reported in computer field DINDIRSU as a U.S. direct selling expense.

Tung Mung argues that petitioners' claim that Tung Mung failed to provide direct selling expenses with respect to a sales trip taken by the company's sales manager to visit TCI's U.S. customers is unfounded. Tung Mung argues that record facts do not demonstrate that the sales manager's trip was taken during the period of investigation. Moreover, Tung Mung asserts that total business expenses, which were reported in the September 24, 1998 response and later confirmed at verification, shows that total business expenses are ''hardly enough'' to support a business trip to the United States. Tung Mung further contends that the verification report makes no indication that the expense at issue was incurred with respect to specific sales, which would require the travel expenses to be treated as direct selling expenses. Tung Mung asserts that the Department's regulation 351.410(c) defines 'direct selling expenses' as ''expenses * * * that result from, and bear a direct relationship to, the particular sale in question.'' Tung Mung objects to petitioners' suggestion to apply adverse facts available by treating Tung Mung's indirect expenses as direct selling expenses for US sales because the details of Tung Mung's business trip expenses incurred in connection with export are on the record. Tung Mung argues that even if the Department was justified in applying adverse facts available, the business trip expenses for export sales reported on the record should be the maximum amount used.

Department's Position: We disagree with petitioners that there is sufficient record evidence to infer that respondent withheld information regarding direct selling expenses incurred on behalf of its customers. The sales manager's statement (that he had visited the customer at issue and met with Tung Mung's customer's U.S. customers to discuss merchandise quality) at verification was not made in response to questions relating to selling expenses, but related to the verification team's questions regarding Tung Mung's knowledge of the ultimate destination of home market sales. *See* Verification Report at p. 8. There is no evidence to indicate that the sales manager's statement was anything but general in nature or referred specifically to an actual expense directly related to specific sales (whether or not within the POI). As respondent notes, the Department's regulations define 'direct selling expenses' as ''expenses * * * that result from, and bear a direct relationship to, the particular sale in question.'' *See* 19 CFR section 351.410(c). We do not have any evidence showing that the statement made at verification directly relates to a particular sale, and we verified that business trip expenses were adequately accounted for, we will not adjust direct selling expenses alleged travel expenses related to U.S. sales.

Comment 21: Year-End Adjustments

Petitioners argue that the Department should include all year-end adjustments in the calculation of Tung Mung's cost of production and constructed value. Petitioners assert that Tung Mung stated that it had a net year-end adjustment. Petitioners argue that Tung Mung stated that it did not include the year-end adjustment in its reported cost of production, but considered the year-end adjustment in the denominator of the general and administrative and financial expense calculation. Petitioners allege that the result of Tung Mung's reporting is that there is an ''apples-to-oranges'' comparison. Petitioners claim that the percentages of general and administrative expenses and financial expenses as a percentage of cost of sales have been lowered due to the consideration of the year-end adjustment in the cost of goods sold, and these percentages are being applied to an understated cost of manufacture (due to the lack of consideration of the year-end adjustment). Therefore, petitioners argue that the Department should recalculate reported cost of manufacture to include the net year-end adjustments.

Tung Mung did not comment on this issue.

Department's Position: We disagree with petitioners. At verification, we determined that the year-end accruals and adjustments at issue are minimal, accounting for a small percent increase in Tung Mung's reported costs. *See* Verification Report at p. 13. In addition, the effect of the year-end accruals and adjustments on reported costs is offset by Tung Mung's over-reporting of costs, which was discovered at verification. *See* Verification Report at p. 11. Since the year-end adjustments at issue are minimal, we did not recalculate reported cost of manufacture to include the net year-end adjustments, as proposed by petitioners.

Comment 22: General and Administrative Expenses

Petitioners argue that the Department should recalculate Tung Mung's general and administrative (''G&A'') expenses to reflect all of Tung Mung's G&A expenses. Petitioners charge that Tung Mung based its G&A expense ratio only on expenses within the stainless steel division. Petitioners claim that Tung Mung's G&A ratio fails to account for expenses from the parent group. Petitioners argue that the Department twice requested information on how Tung Mung computed its company's G&A expense ratio, and Tung Mung refused to provide the requested data. Petitioners allege that Tung Mung's reported G&A ratio is artificially low as evidenced by the fact that the G&A ratio is lower than the cost of goods sold ratio (without elaborating further). Petitioners argue that Tung Mung's claim that its parent, Tuntex Group did not incur any G&A expenses on behalf of Tung Mung is both undocumented and dubious. Specifically, they point out that it is unlikely that the Tuntex Group did not incur any G&A expenses on behalf of Tung Mung, given that Tuntex Group has a board of directors, a Tuntex Group chairman, the Group Chairman's office, a Project Department, and a Chairman, all of which overlook the Tuntex Group, including Tung Mung. Thus, petitioners urge the Department to recalculate G&A expense to account for expenses incurred on behalf of Tung Mung by the Tuntex Group. Petitioners argue that the Department, at a minimum, should base G&A expenses on the cost of goods sold ratio.

Tung Mung objects to petitioners' claim that Tung Mung's G&A expenses were incorrectly reported. Tung Mung asserts that its ''parent'' group, Tuntex Group, is not a corporate entity, but rather consists of several companies that are loosely affiliated through cross shareholdings. Tung Mung maintains that the Department verified financial statements and confirmed that Tung Mung is not consolidated with the Tuntex Group. *See* Verification Report at p. 3. Tung Mung also asserts that petitioners overlook the fact that Tung Mung reported that it pays a portion of the salary of the Chairman and his support staff, and that this expense is included in Tung Mung's G&A expenses, citing the November 12, 1998 Supplemental Response at 35, n.36. Tung Mung contends that this expense was confirmed at verification. Tung Mung argues that petitioners' proposed ratio for G&A is incorrect because it represents Tung Mung's reported corporate-wide figure for selling, general and administrative expenses. Tung Mung argues that the divisional G&A expense is more appropriate since Tung Mung's other division is completely unrelated to subject merchandise.

Department's Position: We agree with respondent. At verification, we confirmed that Tung Mung has included G&A expenses incurred with respect to the Tuntex Group in its reported G&A. We reviewed this calculation at verification and found it to be reflective of the actual cost incurred for the types of services that the parent group performed. We also confirmed at verification that the Tuntex Group is not a corporate entity but rather group of loosely affiliated companies with cross-shareholdings. As such, Tung Mung did not have consolidated financial statements. *See* Verification Report at p 3. Therefore, for the final determination, we did not recalculate Tung Mung's G&A to include additional parent group expenses.

Ta Chen

Comment 23: Facts Available

Petitioners state that section 776(a)(2) of the Act provides that if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, (3) significantly impedes a determination under the statute, or (4) provides such information, but the information cannot be verified, the Department shall, subject to sections 782(c)–(e) of the Act, use facts otherwise available in reaching its determination. In this investigation, petitioners argue, Ta Chen has tolled all of these provisions.

Petitioners cite three examples in the record that, petitioners contend, are evidence that Ta Chen withheld information that was requested by the Department. Petitioners first point to Ta Chen's failure to provide requested output from computer programs used to prepare the response and to test the completeness of Ta Chen's universe of U.S. sales. Petitioners assert that, as a result, the Department was unable to perform the completeness test of its reconciliation procedure. Petitioners also point to Ta Chen's inability to prove that, for sales allegedly made directly from a third party to TCI, payment was made directly to that third party by TCI. Rather, petitioners point to record evidence showing that TCI paid Ta Chen Taiwan and did not respond to the Department's request for Ta Chen to prove otherwise. Petitioners suggest that Ta Chen had ample time to respond given that the payment was made a significant period of time before verification. Finally, petitioners cite to Ta Chen's failure to disclose information on so-called ''triangle trades'' including a description of this sales process, the complete acquisition price, Ta Chen Taiwan's interest and banking fees, and TCI's banking fees.

Petitioners contend that Ta Chen failed to provide information in a timely manner or in the form required. Petitioners cite two instances where the Department suspended verification until Ta Chen was able to produce a general ledger and a subsidiary ledger. Petitioners note that the Department had instructed Ta Chen to prepare these documents in advance of verification. Petitioners also cite Ta Chen's failure to produce a further-manufacturing agreement and its failure to support a reconciliation between its general ledger and its invoice register. Petitioners also note that Ta Chen failed to provide a full translation of its most recent financial statements with regard to two affiliated party transactions.

Petitioners contend that Ta Chen significantly impeded the Department's investigation of middleman dumping. Petitioners cite Ta Chen's multiple requests for extensions, delays by Ta Chen in submitting its data, and the ultimate failure by Ta Chen to provide reliable information as a basis for its conclusion that the Department has been forced to severely limit its analysis period for the final determination. Petitioners assert that the Department has exceeded its normal practice by providing Ta Chen with opportunity after opportunity to cooperate. However, according to petitioners, Ta Chen's behavior has been uncooperative. Petitioners argue that the Department's verifications disclosed that Ta Chen engaged in a pattern of withholding factual information, submitting inaccurate and unverifiable sales and cost data, submitting information in an untimely manner or not in the form requested, and refusing to provide certain information requested at verification. Petitioners contend that Ta Chen further impeded the Department's investigation by submitting unexplained major changes to its data in a March 3, 1999 submission. Petitioners describe unexplained changes in the following fields: marine insurance, U.S. duty expenses, Taiwanese bank charges, Los Angeles and other warehouse expenses, transportation expenses, early payment discounts, supplier invoice dates, customer code, sale terms, gauge, finish, and constructed value information. Petitioners state that these unexplained changes cast doubt on Ta Chen's willingness to cooperate. Petitioners state that, singularly, these actions would warrant the application of total adverse facts available. However, in total, the Department has no other option but to assign a margin to Ta Chen based on total adverse facts available. However, if the Department should attempt to calculate a margin based on submitted data, petitioners argue that the Department should reject Ta Chen's unexplained March 3, 1999 data changes.

Petitioners assert that Ta Chen provided information that could not be verified and provide several examples of this type of information. Petitioners point to the alleged direct sales from a third party to TCI. Petitioners point to proprietary record evidence that, it contends, supports the conclusion that the sale was made through Ta Chen Taiwan and contradicts Ta Chen's claims that these were direct sales. Petitioners also cite record evidence that TCI's invoicing system and auditor's adjustments were not verified by the Department. Other examples cited by petitioners include: Ta Chen's inability to demonstrate that it did not further-manufacture SSSS that was subsequently sold in or to the United States and that it could not because it did not record the further-manufacturing activity in its accounting system; Ta Chen's failure to demonstrate that merchandise involved in a triangle trade was purchased from a vendor other than YUSCO or Tung Mung; Ta Chen's inability to account for yield loss on sales that were further-manufactured in the United States; Ta Chen's failure to report charges incurred upon opening a letter of credit; and Ta Chen's failure to inform the Department that there were additional sales made after its ''self-selected'' cut-off date. Petitioners also cite other examples of information that the Department ''was not able'' to verify.

Petitioners state that, by themselves, the deficiencies discovered by the Department at verification would warrant the use of facts available. In combination, they warrant the use of total adverse facts available. Petitioners contend that these deficiencies are so material and have such a significant impact that the Department should determine that Ta Chen failed to act to the best of its ability in this investigation and has been uncooperative. Petitioners argue that it is not practicable to provide Ta Chen ''with an opportunity to remedy or explain the deficiencies'' discovered at verification as called for under section 782(d) of the Act because the deficiencies cut at the basic core of Ta Chen's data. Therefore, the Department should disregard Ta Chen's response and assign Ta Chen a margin based on facts available under section 776(a) of the Act.

Petitioners argue that meeting any one of the provisions under section 776(a) of the Act is, subject to sections 782 (c)–(e) of the Act, grounds for the Department to disregard a respondent's response and assign a margin based on facts available. Petitioners assert that, for the reasons discussed above, the Department should determine that all four provisions of section 776(a) have been met and that Ta Chen has not acted to the best of its ability to cooperate with the Department's investigation.

In this situation, petitioners contend, section 776(b) of the Act authorizes the application of an adverse inference in choosing among facts otherwise available. Petitioners state that the Statement of Administrative Action (''SAA'') accompanying the URAA offers the following guidance: the

Department ''may employ adverse inferences about the missing information to ensure that the party *does not obtain a more favorable result by failing to cooperate than if it had fully cooperated*'' (emphasis added). Petitioners state that, under section 776(b), the Department has a range of options.

Petitioners believe that the most reasonable option is a margin based on the highest estimated dumping margin listed in the *Initiation Notice*, after adjusting for the actual dumping margins of Ta Chen's supplier; such that the combined vendor/middleman margin will equal 77.08 percent. Petitioners do not believe that the Department should choose the highest margins indicated in its middleman dumping allegation if those alleged margins are lower than any calculated margin based on Ta Chen's incomplete reporting, because to do so would reward Ta Chen for failing to cooperate. Therefore, petitioners argue that the Department should assign a margin to Ta Chen of 77.08 percent, less its vendor's individual margin, for the final determination.

Petitioners argue that Ta Chen itself was to blame for its significant failures at verification. Petitioners point to the verification outline's notice to Ta Chen that it should prepare documentation in advance and that if it was not prepared, the Department would move to another topic and might have to consider the item unverified due to time constraints. Petitioners cite the above-mentioned two instances were Ta Chen failed to prepare ledgers in advance at the home market verification. Likewise, petitioners contend, Ta Chen was not prepared to document auditor's adjustments at the U.S. verification. Petitioners assert that this behavior continued and cites several other instances in which Ta Chen was not prepared to support its response at verification.

Petitioners dispute Ta Chen's claim that the so-called ''triangle trade'' sales are ''canceled sales.'' Petitioners state that the Department examined purchase orders, invoices, payment notices, associated expenses, and supporting ledger entries for these sales. Petitioners argue that the completion of a commercial transaction cannot reasonably be referred to as a ''canceled sale.'' Regardless, petitioners note, Ta Chen failed to disclose the ''triangle sales.''

Petitioners disagree with Ta Chen in its view that direct sales made through Company X did not go through Ta Chen Taiwan. Petitioners point to record evidence that Ta Chen Taiwan was involved in this transaction. Moreover, petitioners point out that Ta Chen is basing its claim on exhibits that refer to Company Y and not Company X, which petitioners assert is a different company with a similar name.

Petitioners also disagree with Ta Chen's ''verification comments.'' For example, petitioners argue that: Ta Chen's reporting methodology contradicted the Department's instructions in the questionnaire and supplemental questionnaire; Ta Chen was required to report all of its resales and should have provided a more reasonable database; Ta Chen did not disclose or report a yield loss on further-manufactured sales; Ta Chen was unprepared to completely trace merchandise that underwent further-manufacturing in Taiwan; Ta Chen failed to provide proof of payment for marine insurance; Ta Chen failed to report certain bank charges; and Ta Chen failed to report all purchases in its Section D database. In sum, petitioners argue, Ta Chen's behavior can be characterized as (1) withholding information requested by the Department; (2) failing to provide information in a timely manner; (3) impeding the determination; and (4) providing unverifiable information. Therefore, petitioners argue, the Department should apply the highest margin published in the *Initiation Notice* for the final determination.

Ta Chen argues that it was cooperative. Ta Chen states that it advised the Department at the outset that it would have difficulties in answering the questionnaire in a short time period and requested a simplified reporting requirement on December 10, 1998. Ta Chen contends that its February 5, 1999 and February 17, 1999 responses contained the equivalent level of information compared to its reporting in *SSPC from Taiwan*. Ta Chen states that its March 3, 1999 submission was filed to help expedite matters, address petitioners' concerns, and correct errors. In Ta Chen's opinion, it believes that the Department found no unexplained methodological changes between the March 3 and February 5, 1999 submissions at verification.

Ta Chen states that petitioners' claim that its March 3, 1999 submission contains unexplained changes misses the mark. Ta Chen claims that the change to its reported Los Angeles warehousing expenses was *de minimis*. Ta Chen claims that its reported U.S. transportation costs were reported for Los Angeles warehouse sales that underwent further manufacturing in accordance with its February 5, 1999 submission (at pages 2 and 52). Ta Chen also disputes petitioners' claims with regards to: U.S. warehousing charges, early payment discounts, supplier invoice dates, customer codes, terms of sale, gauge, finish, and control number.

Ta Chen argues that the Department's own verification outline and procedure expressly permit a respondent to submit some new factual information. Thus, Ta Chen disagrees with petitioners that the Department lawfully advised Ta Chen that ''it would not accept any new factual information from Ta Chen.'' Ta Chen contends that the information presented at the start of verification was no more than minor corrections/clarifications of its prior submissions. Moreover, Ta Chen argues, given the peculiarities of the middleman investigation, under section 351.301(b)(1) of the Department's regulations, Ta Chen would have had to submit changes/clarifications in December 1998, which was before its original questionnaire response was even due.

Ta Chen takes issue with petitioners' interpretation of the verification results. For example, Ta Chen argues that all of its U.S. sales are made by TCI and thus, completeness is largely an issue for TCI not Ta Chen Taiwan. Ta Chen states that petitioners focus on a particular completeness test, whereas Ta Chen believes that the Department had already reconciled a bridge worksheet to the response via another exercise. Ta Chen also argues that it was not required to report ''triangle trade'' sales because, Ta Chen contends, ''triangle trades'' were not sales per se because title never transferred to Company X. Ta Chen argues that the terms of sale were ''FOB Los Angeles'' and that the merchandise had already been reinvoiced back to TCI before it reached the port. Thus, Ta Chen argues, title was never transferred, citing *Nissho Iwai American Corp. v. U.S.*, 982 F.2d 505 (Fed. Cir. 1992) (*Nissho Iwai*) and ''*What Every Member of the Trade Community Should Know About Bona Fide Sales and Sales for Exportation*'' U.S. Customs Service, November 1996; *et al.* Moreover, Ta Chen argues that there is a doctrine of transitory transactions in tax law which Ta Chen believes would support the view that, at most, the ''triangle trade'' represents a canceled sale. Ta Chen disagrees with petitioners'' interpretation of record evidence for marine insurance and ocean freight for sales made through Company X. Regardless, Ta Chen argues, even if this evidence proves that Ta Chen Taiwan provided insurance or facilitated shipping, the sale would still occur between Company X and TCI and thus, does not subject it to a middleman investigation. Ta Chen also comments on numerous other aspects of its verifications, without argument.

Ta Chen argues that petitioners' suggested dumping margin, based on the highest rate alleged in the petition, is unlawful. Ta Chen argues that that rate was for manufacturers and, since middleman dumping methodology is different from the Department's normal dumping analysis, the petition rate is not applicable rendering its use unlawful and contrary to Department precedent. Moreover, if the Department finds that the verified dumping rates of all the manufacturers are below the petition rate, then the petition rate is neither probative nor corroborated. Rather, Ta Chen argues, it has been discredited and its use is unlawful according to court precedent. Ta Chen also argues that petitioners themselves have admitted that its alleged middleman dumping rate is wrong. Ta Chen also notes that the allegation was based on a price quote of a third party which, Ta Chen asserts, indicates that it was a direct sale with no middleman involvement, and that the source of the U.S. price quote for the middleman allegation was not disclosed. Thus, Ta Chen argues, the alleged middleman dumping margin was not probative or corroborated and fails to meet the statutory requirements.

Department's Position: We agree with petitioners in part. In this case, as noted above (*see* ''Facts Available''), we have determined to use facts available because we were unable to verify Ta Chen's response. Furthermore, in using facts available, we are employing an inference adverse to the interests of Ta Chen because we have determined that Ta Chen has failed to act to the best of its ability in responding to our requests for necessary information (*see* ''Adverse Facts Available'' above). Given the circumstances in this case, we disagree with petitioners that rates derived from our *Initiation Memo* would apply to a middleman situation because those estimates are based on our normal dumping methodology, whereas here, Ta Chen would have been subject to our middleman dumping methodology as defined in *SSPC from Taiwan*. Thus, for this final determination, as adverse facts available, we have selected a rate of 15.34 percent for Ta Chen's resales of Tung Mung's and YUSCO's merchandise, which reflects the highest rate from our *Middleman Initiation Memo*.

In this case, the inability to verify the completeness of Ta Chen's databases, particularly the U.S. sales database, is crucial and is a factor which, by itself, forms an adequate basis for our determination to use facts available. However, our attempted verifications yielded additional flaws in Ta Chen's response, providing further bases for our decision to employ facts available. For example, we found that Ta Chen did not report a particular type of sales process called ''triangle trading,'' or report its associated expenses and that Ta Chen could not support its claim that a sale to TCI was not YUSCO's or Tung Mung's merchandise. Ta Chen could not demonstrate that merchandise further-manufactured in Taiwan was not shipped to the United States as subject merchandise. For a complete listing of all flaws, *see Facts Available Decision Memorandum—Ta Chen*. In this regard, we note that Ta Chen's assertions regarding the verification findings are unsupported by record evidence, and as such remain mere assertions. Because of the gravity and the magnitude of the flaws in Ta Chen's response, we have determined that Ta Chen's information is unverifiable, and that there is no record evidence demonstrating that errors in Ta Chen's reporting of certain of its U.S. sales are limited and correctable. Thus, as explained above, we must use facts available in determining a margin for Ta Chen, as required under section 776(a) of the Act.

We also agree with petitioners that an adverse inference is warranted in determining a margin for Ta Chen because, as required under section 776(b), we find that Ta Chen has not acted to the best of its ability in responding to our requests for information. As noted above, Ta Chen has participated in numerous reviews and verifications in other antidumping proceedings and is aware of the type of information we require. However, despite Ta Chen's specific understanding of verification procedures, based not only on information provided in the verification outline, but also through their successful completion of verification in *SSPC from Taiwan* a mere four months prior to these verifications, Ta Chen has failed to substantiate at verification a fundamental element of its response: a complete purchase and sales reconciliation. We also find that, at verification, Ta Chen failed to produce, in a timely manner, documentation that was within its control, such as general and subsidiary ledgers, because this documentation was requested in our verification outlines (*see* Antidumping Duty Investigation of Stainless Steel Sheet and Strip in Coils from Taiwan; Ta Chen's Sales Verification Outline (''Verification Outline'' dated March 30 and April 5, 1999) . Ta Chen's comments regarding ''triangle trade'' sales and other verification findings are not persuasive that Ta Chen has failed to act to the best of its ability in responding to our requests for necessary information. Ta Chen's argument that ''triangle trade'' sales are not really ''sales'' and therefore it need not report them is incorrect. Ta Chen's reliance on tax law and U.S. Customs rulings is misplaced, because we are concerned with determining if Ta Chen sold merchandise at a price below its total acquisition costs. Our determinations are subject to Title VII of the Act rather than the Internal Revenue Code or U.S. Customs Bulletins and thus, Ta Chen should have reported these transactions. Furthermore, we note that Ta Chen made numerous other errors in its response that worked in its favor. *See Facts Available Decision Memorandum—Ta Chen*.

As we have indicated above, in accordance with our policy, we considered the overall effect of the errors to ensure that Ta Chen does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. Thus, an additional factor we have considered is the extent to which Ta Chen might have benefitted from failing to cooperate fully if we had not made our determination on the basis of facts available. *See SAA* at 870. In this case, we have determined that the use of the flawed response would have yielded a more favorable margin for Ta Chen. *See Facts Available Decision Memorandum—Ta Chen*. Thus, for this final determination, we have applied adverse facts available to Ta Chen in accordance with section 776(b) of the Act.

Comment 24: Indirect Selling Expenses

Petitioners argue that the methodology preliminarily employed by the Department to compute the middleman dumping margin has not captured the full amount of dumping. In the event that the Department does not use total adverse facts available, petitioners request that the Department make several changes to its methodology.

Petitioners believe that the Department's methodology understates the extent of the losses incurred by Ta Chen on its resales. First, petitioners argue that the Department should include TCI's total operating and financing expenses, and not Ta Chen's ''incorrectly'' reported indirect selling expenses, as part of Ta Chen's net U.S. price. Petitioners claim that Ta Chen's reported indirect selling expenses do not include a number of expenses that are general in nature. Further, petitioners maintain that verification proved that TCI's reported indirect selling expenses were distortive and understated. Petitioners cite *SSPC from Taiwan,* in which TCI ''admitted'' that it had erroneously excluded certain expenses from its indirect selling expenses and the Department recalculated TCI's indirect selling expenses based on the overall operating costs of TCI as a percentage of sales. Additionally, petitioners argue that the Department should deny Ta Chen's claimed interest income offset because Ta Chen has not demonstrated that this interest income was short-term in nature.

Petitioners claim that the Department not only asked Ta Chen to allocate total G&A over total cost of sales, but also pointed out severe deficiencies in Ta Chen's response and asked Ta Chen for complete responses. Petitioners also argue that Ta Chen should have revised its G&A figures in accordance with the final determination in *SSPC from Taiwan.* Nevertheless, according to petitioners, the record is clear with respect to Ta Chen Taiwan's sales, accounting, general management, and legal departments' involvement in SSSS sales to TCI, and therefore the Department must recalculate Ta Chen Taiwan's G&A expenses by allocating total G&A over total cost of sales.

Ta Chen argues that the dumping margin calculation should be based on the Ta Chen Taiwan G&A figures for coil only, as reported in Ta Chen's questionnaire response. If the Department does not do so, however, it should at least remove attorney fees for dumping work from Ta Chen's G&A costs. Ta Chen argues that it was not given an opportunity to revise its initial reporting of Ta Chen Taiwan interest costs and G&A. It cites *Ferro Union, Inc. & Asoma Corp.* v. *U.S.,* Slip Op. 99–27 at 41 & 44 (CIT March 23, 1999) in which the court held that the Department cannot expect a respondent to foresee the interpretation of a new term or methodology which is undergoing development, and that before resorting to facts available, the party must have a chance to remedy deficient submissions.

Department's Position: Based on our decision to apply total adverse facts available, this issue is moot.

Comment 25: Total Acquisition Cost and U.S. Price

The Department, according to petitioners, must revise its middleman dumping calculations for Ta Chen by comparing a normal value with an appropriately adjusted U.S. resale price as required by the statute. Petitioners claim that the legislative history of section 772 of the Act recognizes the Department's discretion to analyze each middleman resale so that dumping would not be masked. Petitioners further argue that the Trade Agreements Act of 1979 overturned the ruling in *Voss International Corp.* v. *United States* (''*Voss*'') in which the court rejected the administering authority's practice of setting purchase price as the producer's price to an unrelated middleman when the producer is aware that the middleman will resell the subject merchandise to the United States. Petitioners continue that Congress, according to H.R. Rep. No. 317, *supra,* at 75; S. Rep. No. 249, *supra,* at 94, (''*Senate Report*'') thus did not grant discretion to the Department to equate middleman dumping with the amount by which the middleman's adjusted resale price falls below the middleman's total acquisition cost. Rather, Congress ruled that the price between a producer and an unaffiliated middleman will serve as the basis for purchase price as long as the producer knows that the merchandise is intended for resale in the United States, and that the Department must take into account any middleman dumping along with dumping by the producer. Petitioners claim that the Department confirmed this in *Fuel Ethanol from Brazil.*

Petitioners argue that once the Department confirms that a middleman has made a substantial amount of its resales at prices substantially below its total acquisition costs, the Department must employ a statutorily defined normal value and U.S. price to compute the extent of the middleman's dumping. Petitioners state that Ta Chen's dumping margin must be calculated by comparing Ta Chen's constructed value with its net U.S. price, and that middleman dumping is not equal to the difference between Ta Chen's total acquisition cost and resale price. Petitioners express the need for a foreign referent market to provide a benchmark for a respondent's activity in the U.S. market, as prescribed in section 777A of the Act. Petitioners also argue that the Department's reliance on section 773 of the Act is not justified in measuring the amount of dumping by the middleman, since this section deals with the calculation of the cost of production of a respondent's home market sales, not the respondent's U.S. sales. Moreover, this section defines ''normal value'' with reference to home market prices or constructed value, and therefore, argue petitioners, a middleman's total acquisition costs for U.S. resales cannot satisfy this definition of normal value.

Furthermore, petitioners claim that the Department failed to calculate a proper U.S. price for Ta Chen based on constructed export price in its preliminary middleman dumping analysis because the Department failed to consider U.S. credit expenses, U.S. inventory carrying costs, in-transit inventory carrying costs, and CEP profit, as prescribed in section 772 of the Act. Petitioners further note that values for most of these expenses are not on the record and that this is another reason for the Department to resort to total adverse facts available.

Petitioners claim that the methodology directed by the statute for computing middleman dumping is essentially the methodology followed by the Department in computing dumping when transshipment is involved, and cite the *Notice of Final Determination of Sales at Less Than Fair Value: Sulphur Dyes, Including Sulphur Vat Dyes, from India* 58 FR 11835 (March 1, 1993) to illustrate their point.

Ta Chen argues that middleman dumping may not be lawfully calculated on the basis of constructed value since, according to legislative history, the Antidumping Manual, and court precedent, middleman dumping is selling below acquisition cost and related selling expenses, citing *SSPC from Taiwan, Fuel Ethanol from Brazil; Final Determination of Sales at Less Than Fair Value,* 51 FR 5572, 5573 & 5577 (February 14, 1986); *Steel Wire Strand for Prestressed Concrete from Japan; Notice of Final Court Decision and Amended Final Results of Antidumping Duty Administrative Review,* 62 FR 60688 (November 12, 1997); *Certain Forged Steel Crankshafts from Japan; Final Determination of Sales Note Less Than Fair Value,* 52 FR 36984 (October 2, 1987); and *Mitsui* v. *U.S.,* (''*Mitsui*'') 18 CIT 185 (CIT March 11, 1994). Moreover, Ta Chen argues that petitioners' arguments contradict one another as petitioners cite authority to that effect that, at most, middleman dumping can only be based on the middleman's actual expenses and whether the middleman is selling below actual cost. *Department's Position:* Based on our decision to apply total adverse facts available, this issue is moot.

Comment 26: Ministerial Errors

Petitioners claim that the Department should correct several ministerial errors in the preliminary determination calculations. First, petitioners argue that the U.S. further manufacturing variable should not be converted to a character variable because, as such, these expenses were not deducted from the

U.S. gross unit price. Secondly, petitioners argue that the Department should format the control number field to ten digits so that the ''edge'' product characteristic can be considered. Thirdly, petitioners maintain that missing values for L.A. warehousing expenses should be set to zero. Finally, petitioners assert that the Department should base its final determination on the February 5 data file, with the exception of those changes in the March 3 data file that have been explained by Ta Chen.

Ta Chen did not comment on these issues.

Department's Position: Based on our decision to apply total adverse facts available, this issue is moot.

Comment 27: Exchange Rate

Ta Chen argues that the focus of a middleman dumping investigation is whether a middleman makes an actual profit or loss on the transactions, and thus, as stated in *Fuel Ethanol from Brazil,* the Department must use a proper exchange rate to make such a conclusion. Ta Chen claims that the Department should use the exchange rate for the date TCI receives payment from the U.S. customer since that rate indicates the actual profit or loss on the transaction from the perspective of a Taiwan trading company. Furthermore, Ta Chen argues that since the Department's regulations do not address the issue of middleman dumping, the Department should not use the rate from TCI's U.S. sale simply because the regulations say to do so.

Petitioners did not comment on this issue.

Department's Position: Based on our decision to apply total adverse facts available, this issue is moot.

Comment 28: Bank Charges

Ta Chen claims that there should be no adjustment for bank charges in the CREDIT1U and CREDIT2U data fields since they are associated with internal movement of funds received from customer payments between affiliated Ta Chen entities.

Petitioners did not comment on this issue.

Department's Position: Based on our decision to apply total adverse facts available, this issue is moot.

Comment 29: Interest Costs

Ta Chen claims that it would be double counting to include both TCI's and Ta Chen Taiwan's interest costs, since all of Ta Chen Taiwan's interest costs with regard to coil are passed through to TCI and affect TCI's debt burden. If, however, the Department does include Ta Chen Taiwan interest costs, Ta Chen argues that the Department should reduce those costs for short-term interest income.

Petitioners claim that the Department should calculate Ta Chen Taiwan's interest expenses for the constructed value calculation based on Ta Chen's Taiwan's financial statement because Ta Chen Taiwan was intimately involved in the purchase and resale of SSSS. Petitioners claim that the Department's allocation of Ta Chen Taiwan's total interest expenses over Ta Chen Taiwan's total cost of sales would be consistent with *SSPC from Taiwan* and the questionnaire instructions.

Department's Position: Based on our decision to apply total adverse facts available, this issue is moot.

Comment 30: Substantial Margins

Ta Chen states that the preliminary decision offers no rationale concerning why a 2.68 percent channel rate should be considered substantially below cost, given that two percent is considered *de minimis* under the current standard for dumping margins. Moreover, as in the *SSPC from Taiwan* decision, any dumping margin should only apply to Ta Chen Taiwan since TCI, a U.S. company, should be permitted to purchase direct from a Taiwan manufacturer at the manufacturer's own dumping rate.

Tung Mung also argues that the rate found by the Department for middleman dumping, 2.61 percent, is not ''substantial.'' Tung Mung argues that it would be inappropriate to find that an entity that is not involved in the substance of the transaction, but is merely acting as a communications channel, is engaged in dumping. Tung Mung asserts that, in any event, a margin of 2.61 percent cannot be considered ''substantial'' within the meaning of the statute. Tung Mung argues that under the holding of *Fuel Ethanol from Brazil,* the Department must find that a substantial portion of the middleman's sales are at prices ''substantially'' below its acquisition costs. Tung Mung notes that in the present case, the Department found that Ta Chen's losses on its sales of Tung Mung merchandise amounted to 2.61 percent, which the Department deemed to be ''substantial.'' Tung Mung argues that this margin is only a fraction over the *de minimis* limit of two percent, and thus can hardly be deemed ''substantial.''

Petitioners argue that the Department should find that Ta Chen sold a substantial portion of its resales in the United States at prices substantially below its total acquisition costs. Petitioners state that the evidence in this case points to Ta Chen's selling a substantial volume of its resales at prices substantially below its total acquisition costs, as was the case in *Mitsui.* Petitioners also state that, as in *SSPC from Taiwan,* there can be no single threshold which constitutes substantial losses with regard to middleman dumping, because each case involves a unique set of circumstances and thus a fixed numerical guideline defining substantial losses should not be created.

Department's Position: We agree with petitioners. There can be no single threshold which constitutes substantial losses with regard to middleman dumping because each case involves a unique set of circumstances. In this case, we find that 15.34 percent for Ta Chen's purchases from Tung Mung and YUSCO, as well as the 2.61 percent calculated for Ta Chen with regard to Tung Mung's merchandise in the *Preliminary Decision,* constitute substantial losses. The Department has stated its general position in *SSPC from Taiwan* at page 15504. Moreover, because we are assigning Ta Chen a significantly higher loss percentage for this final determination, we believe that there can be no question but that such losses must be considered substantial.

Comment 31: Agency

Ta Chen contends that the transactions involving the subject merchandise do not fall within the ambit of any middleman dumping provision for the following reasons: (1) the transactions involve a direct sale between a Taiwanese manufacturer and an unaffiliated U.S. buyer; and (2) the Department cannot determine that middleman dumping is occurring because there is no middleman. Ta Chen explains that Ta Chen is merely a processor of paperwork and a communications link and is acting as an agent of TCI, Ta Chen's U.S. affiliate. Ta Chen claims that TCI initiates all purchase requests from YUSCO and Tung Mung and uses Ta Chen as a facilitator due to language barriers and time zone differences. Ta Chen further claims that there is a straight pass-through of the purchase price from YUSCO to TCI such that TCI incurs both the risk and the profit or loss on the sale.

Ta Chen states that the Department must recognize commercial law principles in its administration of the antidumping laws, citing *NSK* v. *United States,* 115 F. 3d 965 (Fed. Cir. 1997). Ta Chen claims that U.S. commercial law considers the following factors in determining whether an intermediary is acting as an agent or as a buyer: (1) (W)hether the intermediary could or did provide instructions to the seller; (2) whether the intermediary was free to sell the items at any price it desired; (3) whether the intermediary could or did select its own customers; and (4) whether the intermediary could or did order the merchandise and have it delivered for its own inventory. Ta Chen claims that the Department generally follows this analysis in determining whether sales through a U.S. subsidiary should be treated as EP or CEP transactions, citing *Stainless Steel Wire Rod from Spain,* 63 FR 40391, 40395. Ta Chen maintains that if the intermediary cannot perform these tasks and if there is a simultaneous passage of title and risk of loss from the seller to the intermediary to the buyer, then the intermediary is acting as an agent.

Ta Chen claims that an analysis of the record demonstrates that none of the aforementioned four factors exist in the instant case and thus, Ta Chen is acting as an agent. First, Ta Chen Taiwan claims that in all instances it acts on behalf of TCI with regard to U.S. sales. Second, Ta Chen claims that Ta Chen Taiwan was not permitted to sell the items to other distributors in the United States, and had no control over the U.S. prices of coil. Third, Ta Chen claims that TCI alone selected the U.S. customers to which it would subsequently sell the imported products. Fourth, Ta Chen claims that coil was shipped directly from YUSCO or Tung Mung to TCI for TCI's warehouse inventory, and therefore Ta Chen Taiwan does not maintain inventory for any products for U.S. sale. Finally, Ta Chen claims that title was transferred immediately from Tung Mung or YUSCO to TCI. Ta Chen argues that the above facts prove that TCI is the true buyer from YUSCO or Tung Mung, and Ta Chen Taiwan is merely TCI's buyer's agent. Moreover, TCI argues that the sales are direct sales between YUSCO or Tung Mung and TCI.

Ta Chen argues that the antidumping statute only applies to producers and exporters; therefore, Ta Chen contends, TCI should not be subject to the dumping determination. Ta Chen states that the Act directs the Department to determine the individual weighted average dumping margin of each known exporter and producer of the subject merchandise, and also cites *AK Steel Corp.* v. *U.S.*, Slip Op. 98–159 at 20–23 (CIT November 23, 1998) in support of this position. Ta Chen argues that it is well established under Department precedent that if suppliers sell to a trading company and had knowledge, at the time they sold their merchandise, that those sales were destined for the United States, the Department finds that suppliers are effectively acting as exporters and therefore uses their [suppliers] pricing structure to measure dumping activity, citing *Antifriction Bearings from France,* 57 FR 28360 (1992). Ta Chen argues that the manufacturers, Tung Mung and YUSCO, had knowledge that all sales to TCI were destined for the United States. In this regard, Ta Chen argues, YUSCO and Tung Mung are the exporters under Department practice.

Ta Chen argues that middleman dumping is a narrowly defined exception to the Department's general practice to use the producer's price to the U.S. in the dumping analysis. Ta Chen argues that this exception does not apply in this case. Ta Chen points to the legislative history of the Trade Agreements Act of 1979 as support that middleman dumping is limited to the issues involved in *Voss International* v. *United States*, (''Voss'') C.D. 4801 (May 7, 1979), citing *Senate Report.* Ta Chen argues that the legislative history regarding middleman dumping analysis instructs that where a producer knows that the merchandise was intended for sale to an unrelated purchaser in the United States under terms of sale fixed on or before the date of [U.S.] importation, the producer's sale price to an unrelated middleman will be used as the purchase price (''Purchase price'' may be used if transactions between related parties indicate that the merchandise has been sold prior to importation to a U.S. buyer unrelated to the producer.'' *See Senate Report*). Ta Chen argues that the instant case is distinct from *Voss* because YUSCO's and Tung Mung's terms of sale were fixed before exportation. Ta Chen concludes that the middleman dumping exception as delineated in *Voss* does not apply in the instant case, and therefore, the Department does not have the authority to investigate Ta Chen nor does it have the authority to use TCI's U.S. resale prices in the calculation of a dumping margin.

Notwithstanding this conclusion, Ta Chen argues that if the Department wishes to take on a broader view of its ability to investigate middleman dumping, in the instant case there is no sale to a middleman outside the United States who then makes the first sale to the United States. Ta Chen again cites to the *Senate Report* at 93–94:

> Regulations should be issued, consistent with present practice, under which sales from the foreign producer to middlemen and any sales between middleman *before* sale to the first unrelated U.S. purchaser are examined to avoid below cost sales by the middlemen. Emphasis added in Ta Chen brief)

Ta Chen also cites to *Fuel Ethanol* at 5577 as further support. Ta Chen claims that YUSCO and Tung Mung sell directly to TCI, an unaffiliated U.S. customer, and therefore, there is no middleman. Ta Chen argues that Department precedent demonstrates that middleman dumping is found where a foreign manufacturer sells to a trading company located in the foreign manufacturer's home market or third country which in turn is ''selling to U.S. purchasers below its acquisition or purchase cost,'' citing *Fuel Ethanol* at 5573 & 5576–77. Ta Chen asserts that the Department has never found middleman dumping where a foreign manufacturer sells to an unaffiliated U.S. company. Ta Chen argues TCI purchased coil from the Taiwan manufacturer; thus, a ''middleman'' as defined by *Fuel Ethanol* does not exist.

Ta Chen argues that the Department's decision in *SSPC from Taiwan* is contrary to the Department's own practice, U.S. commercial law principles and commercial reality. Ta Chen contends that the *SSPC from Taiwan* decision implies the finding that invoicing or transfer of title to an entity alone is sufficient to show that a sales transaction occurred. Ta Chen argues that this is contrary to law, citing *FAG (U.K.) Ltd.* v. *U.S.*, Slip Op. 98–133 at 15, n. 5 (CIT September 16, 1998) (finding that ''mere passage of title alone does not effect a sale'' if one party controls the transaction and the other to whom title passed is only acting as an agent of the controlling party, citing *AK Steel Corp., et. al.* v. *U.S.*, Slip Op. 98–159 at 7–16 (CIT Nov. 23, 1998); *J.C. Penney* v. *U.S.*, 451 F. Supp. 973, 986 (1978); and *Synthetic Methionine from Japan*, 52 FR 10600, 10601 (1987).

Second, Ta Chen charges that the decision in *SSPC from Taiwan* implies that simply because the agent is involved in the sales negotiation or initially incurs costs (which are then passed onto the buyer), it can be found that the sale is made to the agent. Ta Chen argues that this assumption found in *SSPC from Taiwan* also contradicts law and commercial reality. Ta Chen argues that the courts have acknowledged that negotiating sales and incurring expenses on behalf of the buyer are services characteristic of buying agents, citing *Jay-Arr Slimware Inc.* v. *U.S.*, 681 F. Supp. 875, 878 (CIT 1988); *J.C. Penney* v. *U.S.*, 451 F. Supp. 973, 984 (1978); *Monarch Luggage Co.* v. *U.S.*, 715 F. Supp. 1115, 116–7 (CIT 1989); and *Rosenthal-Netter, Inc.* v. *U.S.*, 679 F. Supp. 21, 23 (CIT 1988).

Third, Ta Chen finds that *SSPC from Taiwan* contradicts law by suggesting that middleman dumping can be found where there is a sale from the Taiwan producer to TCI, with Ta Chen Taiwan acting only as an agent. Ta Chen points out that *SSPC from Taiwan* cites to no supporting legal authority except *Voss*, which as argued earlier by Ta Chen, does not apply to the instant case.

Ta Chen argues that based on shipping terms, the transaction between the seller and the intermediary is not a bona fide sale. TCI argues that where the merchandise is shipped directly from the seller to the ultimate consignee, as opposed to being shipped from the seller to the intermediary and then to the ultimate consignee, the terms of sale may indicate that simultaneous passage of title occurred. According to TCI, an intermediary is considered to hold title only momentarily, if ever, and does not bear the risk of loss according to the term of sale. As such, TCI argues that based on the shipping terms, a bona fide sale would not appear to exist between the seller and intermediary, but rather between the seller and the U.S. ultimate consignee, with the intermediary potentially serving as an agent, citing *Nissho Iwai*. In addition, TCI notes that TCI's financial statements indicate that TCI is ''engaged in the business of sales of coils * * *'', citing March 3, 1999 Questionnaire Response. TCI also notes that Ta Chen Taiwan's financial statement indicate that Ta Chen Taiwan manufactures stainless steel pipe and fitting products and there is no mention that Ta Chen Taiwan sells coil, citing their February 17, 1999 submission at Exhibit 6.

Tung Mung argues that the Department should not find middleman dumping in this case because Ta Chen Stainless Steel Pipe Co., Ltd, is not a middleman. Tung Mung argues that the verifications of Tung Mung and Ta Chen made clear that Tung Mung's true customer is Ta Chen International, Ta Chen's U.S. affiliate. Tung Mung maintains that TCI makes its own decisions on what materials to purchase, based on its assessment of market conditions in the United States, and simply uses Ta Chen Taiwan as a communications link. Tung Mung asserts that verification results of Ta Chen Taiwan show that pricing decisions are being made by TCI, a U.S. corporation, rather than Ta Chen Taiwan. Tung Mung argues that the Department confirmed at verification that TCI uses Ta Chen Taiwan as an intermediary, instead of buying directly from the manufacturer, because of differences in time zones and language barriers, citing *TCI Verification Report* at p. 6.

Petitioners assert that, according to the record, the Taiwanese producers' U.S. sales of subject merchandise were in all instances to Ta Chen Taiwan, not to Ta Chen International. Petitioners point to several verification findings with regard to sales functions and corporate structure which, petitioners claim, demonstrate that Ta Chen Taiwan was intimately involved in each purchase and intra-company resale to TCI of YUSCO's and Tung Mung's products. Petitioners maintain that these verification results prove that Ta Chen Taiwan purchased the subject merchandise from YUSCO and Tung Mung and acted as a middleman in connection with the resale of YUSCO's and Tung Mung's subject merchandise in the United States.

Petitioners find suspect Ta Chen's explanation for those sales where the invoicing did not go through Ta Chen Taiwan. Petitioners note that Ta Chen claims that these sales are ''direct sales'' to TCI; however, petitioners argue that Ta Chen provides no supporting evidence for this claim. Petitioners point out that the record evidence contradicts Ta Chen's assertions that the sales at issue were direct sales to TCI. Petitioners note that Ta Chen stated that the sales in question were direct sales since a certain party directly invoiced TCI. Petitioners further note that when the Department asked TCI to prove that it directly paid the certain party, TCI could not, citing *TCI Verification Report* at page 17. Petitioners note that the documentation indicated that the party paid was in fact Ta Chen Taiwan. Moreover, petitioners maintain that other documents retrieved at verification support that the payee was in fact Ta Chen Taiwan, despite Ta Chen's claim at verification that Ta Chen Taiwan was indicated as the payee as a result of a typographical error.

Petitioners cite *Industrial Nitrocellulose from the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 64 FR 6609, 6622 (February 10, 1999), where the Department found that a U.S. selling agent was substantially involved in the sale process for the foreign company because its duties as the foreign company's agent included sales and solicitation and price negotiation. Likewise in this investigation, petitioners argue, Ta Chen Taiwan negotiated with YUSCO and Tung Mung the terms of sale and performed other sales functions associated with these sales. Thus, petitioners argue, the role of Ta Chen Taiwan was substantial and entailed much more than paper processing and aiding communications between YUSCO and Tung Mung and TCI. Petitioners conclude that the Department should find that TCI therefore acted as a middleman in the resale of the subject merchandise into the U.S. and include in the Department's dumping calculations the full extent of dumping caused by Ta Chen's pricing to its unaffiliated U.S. customers.

Department's Position: We disagree with Ta Chen that it is not the middleman for resales of YUSCO's and Tung Mung's merchandise into the U.S. market. Evidence plainly establishes that for the purposes of conducting a middleman dumping investigation, there were sales of subject merchandise between YUSCO and Ta Chen and between Tung Mung and Ta Chen which, in turn, Ta Chen resold into the United States through its U.S. affiliate, TCI. We find the activity engaged in by Ta Chen as that of a classic middleman and therefore subject to our scrutiny.

Where a producer sells its merchandise to an unaffiliated middleman, it has been the Department's long-standing practice normally to select as the U.S. price the price between the foreign producer and the unaffiliated middleman, provided that the foreign producer knew or had reason to know that its merchandise was destined for export to the United States. *See Antifriction Bearings From France*, 57 FR 28360 (1992)(Comment 18). However, if the middleman is reselling below cost, the sale between the producer and the middleman may not be an appropriate basis for establishing the total margin of any dumping that may have occurred. The legislative history to the 1979 Act makes clear that Congress recognized that middlemen may also be engaged in dumping and acknowledged that the Department had authority to investigate ''sales from a foreign producer to middlemen and any sales between middlemen before sale to the first unrelated U.S. purchaser * * * to avoid below cost sales by the middlemen.'' *See* H.R. Rep. No. 317, 96th Cong., 1st Sess. 75 (1979); and the Senate Report. Therefore, there is no question that the Department has the authority to depart from its normal practice, where circumstances warrant, and investigate whether dumping is being masked or understated by middlemen. *See Fuel Ethanol* (the legislative history of the 1979 Act sustained the Treasury Department's practice of using the price between the manufacturer and unrelated trading company for exports to the U.S. when the manufacturer knew the destination at the time of sale to the exporter, but was not intended to bar us from looking at all facets of the transaction). Where the Department determines that a substantial portion of the middleman's resales in the United States was made at below the middleman's total acquisition costs and the middleman incurred substantial losses on those resales, middleman dumping has occurred and the margin calculation is adjusted accordingly, *i.e.*, we look to the middleman's first sale to an unaffiliated customer. *See Amended Preliminary Determination; Fuel Ethanol.*

Ta Chen acknowledges that the Department has the authority to conduct middleman dumping investigations but offers various arguments against applying middleman dumping to Ta Chen. Ta Chen mainly argues that if there was not a sale between YUSCO and Ta Chen, but Ta Chen merely acted as a selling agent for its wholly-owned U.S. affiliate, TCI, there can be no middleman and thus no middleman dumping.

Here, the verified evidence establishes that YUSCO and Tung Mung made sales to Ta Chen, not directly to TCI (although Tung Mung did have a small number of direct sales to TCI, we are not considering them to be subject to our middleman investigation). Contrary to Ta Chen's assertions otherwise, Ta Chen did take legal title to the merchandise. Even though YUSCO and Tung Mung shipped the merchandise fob to TCI at a port in Taiwan, a purchaser need not take physical possession of merchandise to have legal title. Here, Ta Chen negotiated the sale with YUSCO and Tung Mung, signs a sales contract with YUSCO and Tung Mung, was invoiced by YUSCO and Tung Mung, paid YUSCO and Tung Mung for the merchandise, entered these sales into Ta Chen's book, and undertook various other activities involved in exporting and transporting the merchandise. *See* Exhibits 6 and 8 of Tung Mung's Verification Report dated April 12, 1999, page A–10 of Tung Mung's questionnaire response dated September 8, 1998. *See* also pages 5, 13 and Exhibit 9 of YUSCO's Sales Verification report dated April 12, 1999. Thus, the evidence is sufficient to establish that Ta Chen was acting as a middleman within the meaning of the antidumping law.

Further, trading companies such as Ta Chen have typically been the focus of the Department's investigation into middleman dumping allegations because most often trading companies engage in the ''successive resales from the foreign producer to the first unrelated U.S. buyer,'' thus prompting our scrutiny. *See, e.g., Electrolytic Manganese Dioxide From Japan*, 58 FR 28551 (May 14, 1993); *Fuel Ethanol; PC Strand From Japan*: Final Results of Redetermination Pursuant to Court Remand, Court. No. 90–12–00633 (August 5, 1994); see also *Consolidated International Automotive, Inc.* v. *United States*, 809 F. Supp. 125, 130 (CIT 1992).

We also disagree that we should examine Ta Chen's role in the transaction chain by applying the criteria we normally use to determine if U.S. sales are EP or CEP sales. For a more complete discussion of this issue, *see SSPC from Taiwan*, Comment 6.

Finally, given that we find that Ta Chen is a middleman, the question Ta Chen raises regarding the geographical location of the middleman is moot, since Ta Chen is located in the exporting country and hence clearly within the ambit of a middleman dumping investigation. *See e.g.*, Antidumping Manual, Chapter 7 at 5 (if the Department receives a documented allegation that the trading company located in the exporting country or a third country is reselling to the United States at prices which do not permit the recovery of its total acquisition costs, we will initiate a middleman dumping investigation).

Suspension of Liquidation

In accordance with section 735(c)(1)(B) Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final determination in the **Federal Register**. The all-others rate reflects an average of the corroborated non-*de minimis* margins alleged in the petition. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Tung Mung/Ta Chen	14.95
Tung Mung	14.95
Chang Mien	0.98
YUSCO/Ta Chen	34.95
YUSCO	34.95
All Others	12.61

Since the final weighted average margin percentage for Chang Mien is *de minimis*, Chang Mien will be excluded from an antidumping order, if issued, on stainless steel sheet and strip in coils from Taiwan as a result of this investigation.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation. This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13681 Filed 6–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–825]

Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From Italy

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

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai, Craig W. Matney, Gregory W. Campbell, or Alysia Wilson, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4087, 482–1778, 482–2239, or 482–0108, respectively.

Final Determination

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of stainless steel sheet and strip in coils from Italy. For information on the estimated countervailing duty rates, please see the Suspension of Liquidation section of this notice.

The Petitioners

The petition in this investigation was filed by Allegheny Ludlum Corporation, Armco, Inc., J&L Specialty Steels, Inc., Lukens Inc., AFL–CIO/CLC (USWA), Butler Armco Independent Union and Zanesville Armco Independent Organization, Washington Steel Division of Bethlehem Steel Corp., United Steel Workers of America (the petitioners).

Case History

Since our preliminary determination on November 9, 1998 (*Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Sheet and Strip in Coils from Italy,* 63 FR 63900 (November 17, 1998) (*Preliminary Determination*)), the following events have occurred:

We conducted verification in Belgium and Italy of the questionnaire responses of the European Commission (EC), Government of Italy (GOI), Acciai Speciali Terni S.p.A.(AST), and Arinox S.r.L. (Arinox) from November 11 through November 27, 1998. The petitioners, AST, and Arinox filed case and rebuttal briefs on February 17 and February 23, 1999. A public hearing was held on February 25, 1999. After the hearing, at the Department's request, additional comments were submitted by petitioners and respondents on March 2, 1999. On March 12, 1999, the EC submitted additional comments. On May 6, 1999, the Department solicited information from the EC clarifying information already on the record. Parties submitted comments on this information on May 11, 1999.

Scope of Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[5]

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

Injury Test

Because Italy is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Italy materially injure, or threaten material injury to, a U.S. industry. On August 5, 1998, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Italy of the subject merchandise (*see Certain Stainless Steel Sheet and Strip in Coils From France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan, and the United Kingdom*, 63 FR 41864 (August 5, 1998)).

Period of Investigation

The period of investigation for which we are measuring subsidies (the POI) is calendar year 1997.

Respondents Investigated

In this investigation there are six respondents, AST and Arinox, producers and exporters of the subject merchandise, and the governments of Italy, Terni, Liguria and the EC.

Of these two, only AST and its predecessors underwent changes in ownership during the period for which we are measuring subsidy benefits.

Corporate History of AST

The corporate history of AST is described fully in *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils form Italy* (*Plate Final*), 64 FR 15508–15509 (March 31, 1999).

Changes in Ownership

Factual information pertaining to AST, parties' comments on our methodology, our responses to those comments and the application of our change-in-ownership methodology we employed in the instant case have not changed since the *Plate Final.* Please see that notice for a full explanation (64 FR at 15509–15510).

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: Consistent with our finding in *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy*, 63 FR at 40474, 40477 (October 22, 1997) (*Wire Rod from Italy*), we have based our long-term benchmarks and discount rates on the Italian Bankers' Association (ABI) rate. Because the ABI rate represents a long-term interest rate provided to a bank's most preferred customers with established low-risk credit histories, commercial banks typically add a spread ranging from 0.55 percent to 4 percent onto the rate for other customers, depending on their financial health.

In years in which Arinox and AST or its predecessor companies were creditworthy, we added the average of

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

that spread to the ABI rate to calculate a nominal benchmark rate. In years in which AST or its predecessor companies were uncreditworthy (*see* Creditworthiness section below), we calculated the discount rates in accordance with our methodology for constructing a long-term interest-rate benchmark for uncreditworthy companies. (Arinox was not alleged to be uncreditworthy.) Specifically, we added to the ABI rate a spread of four percent in order to reflect the highest commercial interest rate available to companies in Italy. We added to this rate a risk premium equal to 12 percent of the ABI, as described in section 355.44(b)(6)(iv) of our 1989 Proposed Regulations (*see Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comment,* 54 FR 23366, 23374 (May 31, 1989) (*1989 Proposed Regulations*)). While the 1989 Proposed Regulations are not controlling, they do represent the Department's practice for purposes of this investigation.

Additionally, information on the record of this case indicates that published ABI rates do not include amounts for fees, commissions and other borrowing expenses. Because such expenses raise the effective interest rate that a company would experience, and because it is our practice to use effective interest rates, where possible, we have included an amount for these expenses in the calculation of our effective benchmark rates (*see* section 355.44(b)(8) of the *1989 Proposed Regulations* and *Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey,* 61 FR 30366, 30373 (June 14, 1996)). While we do not have information on the expenses that would be applied to long-term commercial loans, the GOI supplied information on the borrowing expenses on overdraft loans as an approximation of expenses on long-term commercial loans. This information shows that expenses on overdraft loans range from 6 to 11 percent of interest charged. Accordingly, we increased the nominal benchmark rate by 8.5 percent, which represents the average reported level of borrowing expenses, to arrive at an effective benchmark rate.

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service (IRS) for the industry-specific average useful life of assets in determining the allocation period for non-recurring subsidies. *See* the General Issues Appendix (GIA), attached to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria,* 58 FR 37217, 37227 (July 9, 1993) (*Certain Steel from Austria*). In *British Steel plc* v. *United States,* 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (CIT) held that the IRS information did not necessarily reflect a reasonable period based on the actual commercial and competitive benefit of the subsidies to the recipients. In accordance with the CIT's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies based on the average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the court in *British Steel plc* v. *United States,* 929 F. Supp. 426, 439 (CIT 1996) (*British Steel II*). In recent countervailing duty investigations, it has been our practice to follow the court's decision in *British Steel II* and to calculate a company-specific allocation period for all countervailable non-recurring subsidies.

After considering parties' comments and based upon our analysis of the data submitted by AST regarding the AUL of its assets, we are using a 12-year AUL for AST. This 12-year AUL is based on information in *Wire Rod from Italy,* 63 FR at 40477, and in the *Preliminary Determination,* 63 FR at 63903, which we find to be a good estimate of the AUL of the Italian stainless steel industry. For an explanation of why we have rejected AST's company-specific AUL, *see* our response to Comment 6. For Arinox, we are using its company-specific AUL, which is also 12 years.

Equityworthiness

In measuring the benefit from a government equity infusion, the Department compares the price paid by the government for the equity to a market benchmark, if such a benchmark exists. In this case, a market benchmark does not exist. Therefore, we examined whether AST's predecessors were equityworthy in the years they received infusions. *See Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Trinidad and Tobago,* 62 FR 50003, 50004 (October 22, 1997). In analyzing whether a company is equityworthy, the Department considers whether that company could have attracted investment capital from a reasonable private investor in the year of the government equity infusion, based on information available at that time. *See* GIA, 58 FR at 37244. Our review of the record has not led us to change our finding from that in *Wire Rod from Italy,* in which we found AST's predecessors unequityworthy from 1986 through 1988 and from 1991 through 1992 (63 FR 40477). The petitioners did not allege in the petition that Arinox received GOI equity infusions; therefore, we did not examine Arinox's equityworthiness.

Consistent with our equity methodology described in the GIA, 58 FR at 37239, we consider equity infusions into unequityworthy companies as infusions made on terms inconsistent with the usual practice of a private investor and, therefore, we have treated these infusions as grants. This methodology is based on the premise that a finding by the Department that a company is not equityworthy is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the year of the infusion. This determination is based on the information available at the time of the investment.

Creditworthiness

When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France,* 58 FR 37304 (July 9, 1993); *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela,* 62 FR 55014 (October 21, 1997).

Terni, TAS and ILVA, AST's predecessor companies, were found to be uncreditworthy from 1986 through 1993 in *Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel From Italy,* 59 FR 18357, 18358 (April 18, 1994) (*Electrical Steel from Italy*), and in *Wire Rod from Italy,* 63 FR at 40477. No new information has been presented in this investigation that would lead us to reconsider these findings. (*See* Comment 14 below regarding the issue of AST's creditworthiness in 1993.) Therefore, consistent with our past practice, we continue to find Terni, TAS, and ILVA uncreditworthy from 1986 through 1993. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil,* 58 FR 37295, 37297 (July 9, 1993). We did not analyze AST's creditworthiness in 1994 through 1997 because AST did not negotiate new loans with the GOI or EC during these years. There was no allegation in the petition that Arinox was uncreditworthy; therefore, we did not analyze its creditworthiness.

I. Programs Determined To Be Countervailable

GOI Programs

A. Equity Infusions to Terni, TAS and ILVA

The facts pertaining to AST and its predecessor companies with respect to these equity infusions and our methodology have not changed since the *Plate Final.* Please see that notice for a full explanation (64 FR at 15511–15512). Accordingly, we determine the estimated net benefit to be 0.99 percent *ad valorem* for AST. Arinox did not receive any GOI equity infusions.

B. Benefits From the 1988–90 Restructuring of Finsider [6]

The facts pertaining to AST and its predecessor companies with respect to restructuring benefits and our methodology have not changed since the *Plate Final.* Please see that notice for a full explanation (64 FR at 15512). Accordingly, we determine the estimated net benefit to be 2.71 percent *ad valorem* for AST. Arinox did not receive any benefit under this program.

C. Debt Forgiveness: ILVA-to-AST [7]

As of December 31, 1993, the majority of ILVA's viable manufacturing activities had been incorporated separately (or ''demerged'') into either AST or ILVA Laminati Piani (ILP); ILVA Residua was primarily a shell company with liabilities far exceeding assets, although it did contain some operating assets which it spun off later. In contrast, AST and ILP, now ready for sale, had operating assets and relatively modest debt loads.

We determine that AST (and consequently the subject merchandise) received a countervailable subsidy in 1993 when the bulk of ILVA's debt was placed in ILVA Residua, rather than being proportionately allocated to AST and ILP. The amount of debt that should have been attributable to AST but was instead placed with ILVA Residua was equivalent to debt forgiveness for AST at the time of its demerger. In accordance with our past practice, debt forgiveness is treated as a grant which constitutes a financial contribution under section 771(5)(D)(i) of the Act and provides a benefit in the amount of the debt forgiveness. Because the debt forgiveness was received only by privatized ILVA operations, we determine that it is specific under section 771(5A)(D) of the Act.

In the *Preliminary Determination,* 63 FR at 63904, the amount of liabilities that we attributed to AST was based on the EC's 9th Monitoring Report of the total cost of the liquidation process to the GOI. However, for this final determination, we have re-examined our methodology and determined that it is more appropriate to base our calculation on the gross liabilities left behind in ILVA Residua. *See* our response to Comment 9 and the March 19, 1999, Memorandum to Richard W. Moreland on the 1993 Debt Forgiveness.

In calculating the amount of unattributable liabilities remaining after the demerger of AST, we started with the most recent ''total comparable indebtedness'' amount from the 10th Monitoring Report, which represents the indebtedness, net of debts transferred in the privatizations of ILVA Residua's operations and residual asset sales, of a theoretically reconstituted, pre-liquidation ILVA. In order to calculate the total amount of unattributed liabilities which amount to countervailable debt forgiveness, we made the following adjustments to this figure: for the residual assets that had not actually been liquidated as of the 10th and final Monitoring Report (*see* Comment 13); for assets that comprised SOFINPAR, a real estate company, because these assets were sold prior to the demergers of AST and ILP; for the liabilities transferred to AST and ILP; income received from the privatizations of ILVA Residua's operations; for the amount of the asset write-downs specifically attributable to AST, ILP, and ILVA Residua companies; and for the amount of debts transferred to Cogne Acciai Speciali (CAS), an ILVA subsidiary that was left behind in ILVA Residua and later spun off, as well as the amount of ILVA debt attributed to CAS and countervailed in *Wire Rod from Italy,* 63 FR at 40478. *See* May 19, 1999, Calculation Memorandum and our responses to Comments 9–15 below for further information on our calculation methodology.

The amount of liabilities remaining represents the pool of liabilities that are not individually attributable to specific ILVA assets. We apportioned this debt to AST, ILP, and operations sold from ILVA Residua based on their relative asset values. We used the total consolidated asset values reported in AST's and ILP's December 31, 1993, financial results and used the sum of purchase price plus debts transferred as a surrogate for the asset value of the operations sold from ILVA Residua. Because we subtracted a specific amount of ILVA's gross liabilities attributed to CAS in *Wire Rod from Italy,* we did not include its assets in the amount of ILVA Residua's privatized assets. Also, consistent with our *Preliminary Determination,* we did not include in ILVA Residua's viable assets the assets of the one ILVA Residua company sold to IRI because this sale does not represent a sale to a non-governmental entity.

We treated the debt forgiveness to AST as a non-recurring grant because it was a one-time, extraordinary event. The discount rate we used in our grant formula included a risk premium based on our determination that ILVA was uncreditworthy in 1993 (*see* Comment 14 below and March 19, 1999, Memorandum on the Appropriate Basis for 1993 Creditworthiness Analysis of AST). We followed the methodology described in the Change in Ownership section above to determine the amount appropriately allocated to AST after its privatization. (The change in the total amount of debt forgiveness attributed to AST from the *Plate Final* changes the total percent of subsidies repaid in the 1994 privatization calculations. The change in this ratio affects the amount of subsidies repaid to the GOI for all programs which pass through this calculation.) We divided this amount by AST's total consolidated sales during the POI. Accordingly, we determine the estimated net benefit to be 6.79 percent *ad valorem* for AST. Arinox did not receive any benefits under this program.

D. Law 796/76: Exchange Rate Guarantees

The facts pertaining to AST with respect to Law 796/76 exchange-rate guarantees and our methodology have not changed since the *Plate Final.* Please see that notice for a full explanation (64 FR at 15513). Accordingly, we determine the estimated net benefit to AST for this program to be 0.82 percent *ad valorem.* Arinox did not receive any benefits under this program.

E. Law 675/77

The facts pertaining to AST with respect to Law 675/77 benefits and our methodology have not changed since the *Plate Final.* Please see that notice for a full explanation (64 FR at 15513). Accordingly, we determine the estimated net benefit from this program to be 0.07 percent *ad valorem* for AST. Arinox did not receive any benefits under this program.

[6] This program was referred to as Debt Forgiveness: Finsider-to-ILVA Restructuring in *Initiation of Countervailing Duty Investigations: Stainless Steel Plate in Coils from Belgium, Italy, the Republic of Korea, and the Republic of South Africa,* 63 FR 23272 (April 28, 1998) (*Initiation Notice*).

[7] Includes the following programs from the *Initiation Notice*: Working Capital Grants to ILVA, 1994 Debt Payment Assistance by IRI, and ILVA Restructuring and Liquidation Grant.

F. Law 10/91

The facts pertaining to AST with respect to Law 10/91 benefits and our methodology have not changed since the *Plate Final.* Please see that notice for a full explanation (64 FR at 15514). Accordingly, we determine the estimated net benefit in the POI for AST to be 0.00 percent *ad valorem.* Arinox did not receive any benefits under this program.

G. Pre-Privatization Employment Benefits (Law 451/94)

Law 451/94 was created to conform with EC requirements on government assistance related to restructuring and capacity reduction in the Italian steel industry. Law 451/94 was passed in 1994 and enabled the Italian steel industry to implement workforce reductions by allowing steel workers to retire early. During the 1994–1996 period, Law 451/94 provided for the early retirement of up to 17,100 Italian steel workers. Benefits applied for during the 1994–1996 period continue until the employee reaches his/her natural retirement age, up to a maximum of ten years. Employees at both AST and Arinox received payments under Law 451 during the POI.

In the *Plate Final* and the *Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Plate in Coils from Italy,* 63 FR 47246 (September 4, 1998) (*Plate Preliminary*), the Department determined that the early retirement benefits provided under Law 451/94 are a countervailable subsidy under section 771(5) of the Act. Law 451/94 provides a financial contribution, as described in section 771(5)(D)(i) of the Act, because it relieves the company of costs it would have normally incurred. Also, because Law 451/94 was developed for and exclusively used by the steel industry, we determined that Law 451/94 is specific within the meaning of section 771 (5A)(D) of the Act.

In the *Plate Preliminary,* we used the Cassa Integrazione Guadagni—Extraordinario (''CIG–E'') program as our benchmark to determine what the obligations of Italian steel producers would have been when laying off workers. We compared the costs the steel companies would incur to lay off workers under the CIG–E program to the costs they incurred in laying off workers under Law 451/94. We found that the steel companies received a benefit by virtue of paying less under Law 451/94 than what they would have paid under CIG–E.

In the preliminary determination of the instant proceeding, 63 FR at 63908, we changed our benchmark because record evidence suggested that the CIG–E program applied in situations where the laid-off workers were expected to return to their jobs after the layoff period. Since the workers retiring early under Law 451/94 were separated permanently from their company, we adopted the so-called ''Mobility'' provision as our benchmark. Like Law 451/94, the Mobility provision addressed permanent separations from a company.

Since then, we have learned more about the GOI's unemployment programs under Law 223/91 (including CIG–E and Mobility) and the early retirement program under Law 451/94. Based on this information, we do not believe that any of the alternatives described under Law 223/91 provides a benchmark *per se* for the costs that AST and Arinox would incur in the absence of Law 451/94. As noted above, the CIG–E program addresses temporary layoffs. The Mobility provision serves merely to identify the minimum payment the company would incur when laying workers off permanently. Under the Mobility provision, the company is first directed to attempt to negotiate a settlement with the unions prior to laying workers off permanently. Only if the negotiations fail will the company face the minimum payment required under Mobility.

Recognizing that Arinox and AST would be required to enter into negotiations with the unions before laying off workers, the difficult issue for the Department is to determine what the outcome of those negotiations might have been absent Law 451/94. At one extreme, the unions might have succeeded in preventing any layoffs. If so, the benefit to the companies would be the difference between what it would have cost to keep those workers on the payroll and what the companies actually paid under Law 451/94. At the other extreme, the negotiations might have failed and both companies would have incurred only the minimal costs described under Mobility. Then the benefit to AST and Arinox would have been the difference between what they would have paid under Mobility and what they actually paid under Law 451/94.

We have no basis for believing either of these extreme outcomes would have occurred. It is clear that AST and Arinox sought to layoff workers. However, we do not believe that the companies would simply have fired the workers without reaching accommodation with the unions. Statements by GOI officials at verification indicated that failure to negotiate a separation package with the union would lead to labor unrest, strikes, and lawsuits. Therefore, we have proceeded on the basis that AST and Arinox's early retirees would have received some support from the companies.

In attempting to determine the level of post-employment support that AST and Arinox would have negotiated with their unions, we looked to the companies' own experiences. As we learned at verification, by the end of 1993, AST had established a plan for the termination of redundant workers (as part of an overall ILVA plan). Under this plan, the early retirees would first be placed on CIG–E as a temporary measure and then they would receive benefits under Law 451/94. According to AST officials, the temporary measure was needed because ''they were waiting for the passage of the early retirement program under Law 451/94, which at the time had not been implemented by the GOI.'' Similarly, Arinox placed workers on the mobility program while waiting to enroll in the Law 451/94 early retirement program.

The evidence on the record indicates that at the time agreement was reached with the unions on the terms of the layoffs, the companies and their workers were aware that benefits would be made available under Law 451/94. In such situations, *i.e.,* where the company and its workers are aware at the time of their negotiations that the government will be making contributions to the workers' benefits, the Department's practice is to treat half of the amount paid by the government as benefiting the company. *See* GIA, 58 FR at 37225. In the GIA, the Department stated that when the government's willingness to provide assistance is known at the time the contract is being negotiated, this assistance is likely to have an effect on the outcome of the negotiations. In these situations, the Department will assume that the difference between what the workers would have demanded and what the company would have preferred to have paid would have been split between the parties, with the result that one-half of the government payment goes to relieving the company of an obligation that would exist otherwise. *See* GIA, 58 FR at 37256. This methodology was upheld in *LTV Steel Co.* v. *United States*, 985 F. Supp. 95, 116 (CIT 1997) (*LTV Steel*).

Therefore, with respect to AST, Arinox and their workers, we determine the following: (1) Under Italian Law

223/91, both companies would have been required to negotiate with their unions about the level of benefits that would be made to workers separated permanently from the company, and (2) since AST, Arinox, and their unions were aware at the time of their negotiations that the GOI would be making payments to those workers under Law 451/94, the benefit to AST and Arinox is one half of the amount paid to the workers by the GOI under Law 451/94. *See* Memorandum to Susan H. Kuhbach on Law 451/94—Early Retirement Benefits dated May 19, 1999.

Consistent with practice, we have treated benefits to AST and Arinox under Law 451/94 as recurring grants expensed in the year of receipt. *See* GIA, 58 FR at 37226. To calculate the benefit received by the companies during the POI, we multiplied the number of employees who were receiving early retirement benefits during the POI by the average salary. In the case of AST, the Department had information specifying salary amounts by worker type, so we applied this average instead of a broader salary average. *See Plate Final,* 64 FR at 15515. Since the GOI was making payments to these workers equaling 80 percent of their salary, and one-half of that amount was attributable to AST and Arinox, we multiplied the total wages of the early retirees during the POI by 40 percent. We then divided this total amount by total consolidated sales during the POI. On this basis, we determine the estimated net benefit during the POI to AST to be 0.69 percent and Arinox 0.57 percent *ad valorem.*

H. Law 181/89: Worker Adjustment and Redevelopment Assistance [8]

The facts pertaining to AST with respect to Law 181/89 benefits and our methodology have not changed since the *Plate Final.* Please see that notice for a full explanation (64 FR at 15515). Consequently, we determine the estimated net benefit to AST in the POI for this program to be 0.00 percent *ad valorem.* Arinox did not receive any benefits under this program.

I. Law 488/92

Law 488/92 provides grants for industrial projects in depressed regions of Italy. The subsidy amount is based on the location of the investment and the size of the enterprise. The funds used to pay benefits under this program are derived in part from the GOI and in part from the Structural Funds of the European Union (EU). To be eligible for benefits under this program, the enterprise must be located in one of the regions in Italy identified as EU Structural Funds Objective 1, 2 or 5b.

We determine that this program constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. The grants are a financial contribution under section 771(5)(D)(i) of the Act providing a benefit in the amount of the grant. Because assistance is limited to enterprises located in certain regions, we determine that the program is specific under section 771(5A)(D) of the Act.

According to AST officials, although the company has applied for aid under this program, no approval has yet been granted and no funds have yet been disbursed. Accordingly, we determine the estimated net benefit to AST to be 0.00 percent *ad valorem.*

Under this program during the POI, Arinox received one grant, disbursed in two portions. We have treated benefits under this program as non-recurring because each grant requires separate government approval. The benefit to Arinox was calculated as the sum of the two portions provided. Because this sum is greater than 0.5 percent of Arinox's sales, we allocated the benefit over Arinox's AUL. We divided the benefit allocated to the POI by Arinox's total sales during the POI. Accordingly, we determine the estimated net benefit to Arinox to be 0.12 percent *ad valorem.*

EU Programs

A. ECSC Article 54 Loans

The facts pertaining to AST with respect to ECSC Article 54 loan benefits and our methodology have not changed since the *Plate Final.* Please see that notice for a full explanation (64 FR at 15515). Accordingly, we determine the estimated net benefit to AST to be 0.11 percent *ad valorem.* Arinox did not have any outstanding Article 54 loans during the POI.

B. European Social Fund

The European Social Fund (ESF), one of the Structural Funds operated by the EU, was established to improve workers' opportunities through training and to raise workers' standards of living throughout the European Community by increasing their employability. There are six different objectives identified by the Structural Funds: Objective 1 covers projects located in underdeveloped regions, Objective 2 addresses areas in industrial decline, Objective 3 relates to the employment of persons under 25, Objective 4 funds training for employees in companies undergoing restructuring, Objective 5 pertains to agricultural areas, and Objective 6 pertains to regions with very low population (*i.e.,* the far north).

During the POI, AST received ESF assistance for projects falling under Objectives 2 and 4, and Arinox received assistance under Objective 2. In the case of AST, the Objective 2 funding was to retrain production, mechanical, electrical maintenance, and technical workers, and the Objective 4 funding was to train AST's workers to increase their productivity. The grants Arinox received were for worker training.

The Department considers worker-training programs to provide a countervailable benefit to a company when the company is relieved of an obligation it would have otherwise incurred. *See Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") From Italy,* 61 FR 30287, 30294 (June 14, 1996) (*Pasta From Italy*). Since companies normally incur the costs of training to enhance the job-related skills of their own employees, we determine that this ESF funding relieves AST and Arinox of obligations they would have otherwise incurred.

Therefore, we determine that the ESF grants received by AST and Arinox are countervailable within the meaning of section 771(5) of the Act. The ESF grants are a financial contribution as described in section 771(5)(D)(i) of the Act which provide a benefit to the recipient in the amount of the grants.

Consistent with prior cases, we have examined the specificity of the funding under each Objective separately. *See Wire Rod from Italy,* 63 FR at 40487. In this case, the Objective 2 grants received by AST and Arinox were funded by the EU, the GOI, the regional government of Umbria acting through the provincial government of Terni for AST, and the regional government of Liguria for Arinox. In *Pasta From Italy,* 61 FR at 30291, the Department determined that Objective 2 funds provided by the EU and the GOI were regionally specific because they were limited to areas within Italy which are in industrial decline. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. The provincial government of Terni and regional government of Liguria did not provide information on the distribution of their grants under Objective 2. Therefore, since the regional governments failed to cooperate to the best of their ability by not supplying the requested information on the distribution of grants under Objective 2, we are assuming, as adverse facts

[8] Includes the Decree Law 120/89: Recovery Plan for Steel Industry program contained in *Initiation Notice.*

available under section 776(b) of the Act, that the funds provided by the governments of Terni and Liguria are specific.

In the case of Objective 4 funding, the Department has determined in past cases that the EU portion is *de jure* specific because its availability is limited on a regional basis within the EU. The GOI funding was also determined to be *de jure* specific because eligibility is limited to the center and north of Italy (non-Objective 1 regions). *See Wire Rod from Italy,* 63 FR at 40487. AST has argued that this decision is not reflective of the fact that ESF Objective 4 projects are funded throughout Italy and all Member States, albeit under the auspices of separate, regionally limited documents (*see* Comment 16). We agree with AST that it may be appropriate for us to revisit our previous decision regarding the *de jure* specificity of assistance distributed under the ESF Objective 4 Single Programming Document (SPD) in Italy. Our decision in *Wire Rod from Italy* was premised upon our determination in the *Final Affirmative Countervailing Duty Determination; Certain Fresh Atlantic Groundfish from Canada,* 51 FR 10055 (March 24, 1986) (*Groundfish from Canada*). In that case, respondents argued that benefits provided under the General Development Agreement (GDA) and Economic and Regional Development Agreements (ERDA) were not specific because the federal government had negotiated these agreements with every province. We did not accept this argument because the GDAs and ERDAs ''do not establish government programs, nor do they provide for the administration and funding of government programs.'' Instead, the Department analyzed the specificity of the ''subsidiary agreements'' negotiated individually under the framework of the GDA and ERDA agreements.

In contrast to *Groundfish from Canada,* 51 FR at 10066, the agreements negotiated between the EU and the Member States (*i.e.,* Single Programming Documents and Community Support Frameworks) both establish government programs and provide for the administration and funding of such programs throughout the entirety of the European Union. Therefore, if we were to consider all the EU-Member State agreements together, we would arguably be unable to determine that the program is *de jure* specific.

Notwithstanding this argument, given the lack of information on the use of Objective 4 funds by either the EC or GOI, we must, as adverse facts available in the instant case, find the aid to be *de facto* specific. Both the EC and GOI stated that they were unable to provide us with the industry and region distribution information for each Objective 4 grant in Italy despite requests in our questionnaires and at verification. While the GOI, at verification, provided a list of grantees that received funds under the multiregional operating programs in non-Objective 1 regions, it declined the opportunity to identify the industry and region of such grantees (*see* February 3, 1999, memorandum on the Results of Verification of the GOI at 16). Furthermore, the regional governments have refused to cooperate to the best of their ability in this investigation despite our requests. Therefore, we continue to find that the aid received by AST is specific.

The Department normally considers the benefits from worker-training programs to be recurring. *See* GIA, 58 FR at 37255. However, consistent with our determination in *Wire Rod from Italy,* 63 FR at 40488, that these grants relate to specific, individual projects, we have treated these grants as non-recurring grants because each required separate government approval.

Because the amount of funding for each of AST's projects was less than 0.5 percent of AST's sales in the year of receipt, we have expensed these grants received in the year of receipt. Two of AST's grants were received during the POI. For these grants, we divided this benefit by AST's total sales during the POI and calculated an estimated net benefit of 0.01 percent *ad valorem* for ESF Objective 2 funds and 0.03 percent *ad valorem* for ESF Objective 4 funds. In the case of Arinox, since the amount of ESF Objective 2 funding was more than 0.5 percent of Arinox's sales in the year of receipt, we have allocated these grants over Arinox's AUL. We divided the benefit allocated to the POI by Arinox's total sales during the POI. Accordingly, we determine the estimated net benefit to Arinox for this program to be 0.34 percent *ad valorem*.

II. Programs Determined To Be Not Countervailable

A. AST's Participation in the THERMIE Program

The facts pertaining to the THERMIE program and our analysis of that program have not changed since the *Plate Final.* Please see that notice for a full explanation (64 FR at 15517).

IV. Other Programs Examined

A. Loan to KAI for Purchase of AST

The facts pertaining to the loan to KAI for the purchase of AST have not changed since the *Plate Final.* Please see that notice for a full explanation (64 FR at 15517). Using even the most adverse of assumptions, the estimated net benefit to AST for this program would be 0.00 percent *ad valorem,* when rounded. Therefore, we find it unnecessary to analyze this program.

B. Brite-EuRam

The facts pertaining to the Brite-EuRam program have not changed since the *Plate Final.* Please see that notice for a full explanation (64 FR at 15517–15518). Consistent with the *Plate Final,* we are not making a determination on the countervailability of the Brite-EuRam program in this proceeding. Should an order be put in place, however, we will solicit information on the Brite-EuRam program in a future administrative review, if one is requested. *See* 19 CFR 351.311(c)(2).

V. Programs Determined To Be Not Used

GOI Programs

A. Benefits from the 1982 Transfer of Lovere and Trieste to Terni (called ''Benefits Associated With the 1988–90 Restructuring'' in the *Initiation Notice*)
B. Law 345/92: Benefits for Early Retirement
C. Law 706/85: Grants for Capacity Reduction
D. Law 46/82: Assistance for Capacity Reduction
E. Debt Forgiveness: 1981 Restructuring Plan
F. Law 675/77: Mortgage Loans, Personnel Retraining Aid and VAT Reductions
G. Law 193/84: Interest Payments, Closure Assistance and Early Retirement Benefits
H. Law 394/81: Export Marketing Grants and Loans
I. Law 341/95 and Circolare 50175/95
J. Law 227/77: Export Financing and Remission of Taxes

EU Programs

A. ECSC Article 56 Conversion Loans, Interest Rebates and Redeployment Aid
B. European Regional Development Fund
C. Resider II Program and Successors
D. 1993 EU Funds

Interested Party Comments

Comment 1: The Extinguishment v. Pass-Through of Subsidies during Privatization

The facts at hand regarding this issue, parties' arguments, and our response to those arguments have not changed since the *Plate Final.* Please see that notice for a full explanation (Comment 1, 64 FR at 15518–15519).

Comment 2: Calculation of ''Gamma''

The facts at hand, parties'' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final.* Please see that notice for a full explanation (Comment 2, 64 FR at 15519).

Comment 3: Calculation of the Purchase Price

AST argues that the Department undervalued the subsidies repaid in the preliminary determination by basing the purchase price only on the cash paid for the company. Instead, AST suggests that the purchase price should also include the debt assumed by the purchasers as part of the sales transaction.

AST maintains that including assumed debt in the purchase price is appropriate because buyers and sellers are indifferent as to the mix of cash paid and debt assumed; a dollar of debt assumed, AST argues, is equivalent to a dollar of cash paid. If the buyers of ILVA's stainless division had offered only the cash portion of their offer and had not agreed to assume the debt, AST contends that their bid would not have been accepted.

To support its argument, AST offers the example of purchasing a house with an assumable mortgage. A person wanting to buy the house, according to AST, has several financing options: (1) Paying cash for the total sales price, (2) paying a down payment for some portion of the sales price and obtaining a new mortgage on the balance, or (3) assuming the existing mortgage and paying cash for the balance. AST states that, in all cases, the purchase price of the home remains the same.

Moreover, AST contends, by not including assumed debt in the purchase price, the Department's privatization methodology for determining the amount of subsidies repaid will render different results depending upon the mix of assumed debt and cash required in a particular purchase.

The petitioners counter by stating that the cash price paid for a company already reflects the liabilities in that the price paid is the valuation by the buyer of the company as a whole, including assumed liabilities. In addition, the petitioners claim that it is the Department's well-established practice not to add assumed liabilities to the purchase price citing *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany,* 62 FR 55490, 55001 (October 22, 1997) (*Wire Rod from Germany*), and *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Canada,* 62 FR 54972, 54986 (October 22, 1997) (*Wire Rod from Canada*), as two cases in which the Department declined expressly to make an upwards adjustment to price to account for assumed liabilities/obligations. In looking at AST's example of a home purchased with an assumable mortgage, the petitioners point out that the value of that home to the buyer is the net equity position-the difference between the value of the home and the mortgage. Additionally, the petitioners point out that the seller of the home only receives the amount of equity in the home and not the full market value.

Department's Position: For purposes of this final determination, we have continued to calculate the purchase price as the amount of cash received and have not included the amount of debt assumed by the purchasers of AST. As noted by petitioners, it has not been the Department's practice to include assumed debt as part of the purchase price in calculating the amount of subsidies that are repaid through a privatization transaction (*see* cases cited by petitioners). Moreover, beyond its mere assertion that buyers and sellers are indifferent as to the mix of cash paid and debt assumed, AST has not provided any information to support its claim that cash paid and debt assumed by the buyer are interchangeable. *See also* our response to Comment 3 in the *Plate Final* (64 FR at 15520).

Comment 4: Repayment in Spin-Off Transactions

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final.* Please see that notice for a full explanation (Comment 4, 64 FR at 15520).

Comment 5: Sale of a Unit to a Government Agency

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final.* Please see that notice for a full explanation (Comment 5, 64 FR at 15520).

Comment 6: Use of Company-Specific AUL

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final.* Please see that notice for a full explanation (Comment 6, 64 FR at 15521).

Comment 7: Revision of AST's Volume and Value Data

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final.* Please see that notice for a full explanation (Comment 7, 64 FR at 15521–15522).

Comment 8: Ratio Adjusting the Benefit Stream for the Sale of AST

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final.* Please see that notice for a full explanation (Comment 8, 64 FR at 15522).

Comment 9: Use of Gross Versus Net Debt in 1993 Debt Forgiveness Calculation

AST argues that the record of this case establishes a precise amount that represents the ''actual cost to the GOI'' for the liquidation of ILVA, based on the EC's strict monitoring. Assuming that the Department countervails these costs, AST argues that the Department cannot consider the benefit to the recipients to be larger than the amount calculated by the EC as the actual cost to the GOI.

AST states that, in past cases, such as *Al Tech Specialty Steel Corp.* v. *United States,* 661 F. Supp. 1206, 1213 (CIT 1987), the Department concluded that it would be inappropriate to look behind the action of a tribunal charged with the administration of a liquidation process. AST states that the GOI would have been subject to significant legal penalty had it failed to abide by the requirements of the EC-supervised liquidation. Thus, AST implicitly argues that the Department should accept the amount of remaining debt calculated by the EC, without examining the underlying calculation of this remaining debt figure.

Furthermore, AST asserts that, because buyers should be indifferent to the mix of cash paid and debts assumed in purchasing a company, the Department's methodology inappropriately attributes a greater amount of debt forgiveness to a company whose buyers assume less debt but pay a higher cash price. In fact, claims AST, if the GOI had paid down the same amount of ILVA's liabilities calculated as uncovered in the EC's Monitoring Reports prior to the liquidation process, each of the companies could have been ''sold'' entirely for a transfer of debt (*i.e.*, no cash transfer) in the amount of transferred assets. In this event, AST argues, there would be no residual debt and the Department's methodology would lead it to countervail only the grant given prior to the liquidation process.

The petitioners state that the Department, consistent with its practice, should consider the total amount of ILVA's liabilities and losses forgiven on behalf of AST at the time of its spin-off as the benefit to AST. *See, e.g., Electrical Steel from Italy,* 59 FR at 18365, and *Certain Steel from Austria,* 58 FR at 37221. The petitioners assert that the income received as a result of the sales of ILVA's productive units should not be deducted from the gross amount of ILVA's losses and liabilities for three reasons. First, the petitioners argue, the debt forgiveness occurred prior to the actual sales of ILVA's productive units and, thus, should be treated separately. Second, the petitioners contend, the amount of income at the time of the sales was greater than it would have been without the debt reduction. Finally, according to the petitioners, the Department's change-in-ownership methodology accounts separately for repayment of prior subsidies associated with the purchase price of the company sold.

Department's Position: We disagree with AST that we are precluded from ''looking behind'' the EC's Monitoring Report. While the EC's Monitoring Report is a useful source of information about the liquidation of ILVA, the methodologies the EC uses to measure and report amounts associated with the liquidation may not be appropriate for our purposes, *i.e.,* for identifying and measuring the countervailable benefit to AST from the GOI liquidation activities. For example, we could not rely on calculations based on the cost to the government rather than the benefit to the recipient.

As we understand AST's argument, rather than carry out the liquidation of ILVA and privatization of ILVA's constituent parts as it did, the GOI could simply have forgiven the ILVA Group's debt up to the point where assets equaled liabilities (and the Group's net equity was zero). In turn, each of the constituent parts of ILVA could be ''sold'' with assets equal to liabilities at a price of zero. Under this scenario, the total countervailable subsidy under the Department's methodology would clearly be the amount of debt forgiven, which corresponds to the amount in the EC's Monitoring Report. However, because the privatization was structured so that ILVA's constituent parts took certain liabilities with them when they were privatized and because the Department does not include debt assumed as part of the purchase price, the amount of the debt forgiveness and, consequently, the amount of the subsidy the Department found was vastly larger that the amount in the EC's Monitoring Report. In AST's view, this anomaly should be addressed by treating the amount of debt forgiveness reported by the EC as a grant to the new companies (and, hence, not passing through the change-in-ownership calculation), while the debt assumed by the purchasers should be included in the purchase price in calculating the amount of old subsidies that are repaid through privatization.

As discussed above in response to Comment 3, the Department's practice is not to include debt assumed by the buyer as part of the purchase price, and AST has not supported its assertion that buyers and sellers would be indifferent as to the mix of cash paid and debt assumed. *See also* our response to Comment 3 in the *Plate Final* (64 FR at 15520). Without support for this premise, we believe that AST's proposed methodology measures the cost to the Government of Italy of liquidating ILVA and not the benefit to AST resulting from the assignment and forgiveness of debt involved in the AST's demerger.

Comment 10: 1993 Debt Forgiveness Apportionment

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 10, 64 FR at 15523).

Comment 11: ILVA Residua Asset Value

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 11, 64 FR at 15523).

Comment 12: Use of Consolidated Asset Values for 1993 Debt Forgiveness Calculation

The facts at hand, parties' arguments regarding this issue and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 12, 64 FR at 15523–15524).

Comment 13: ILVA to AST Debt-Forgiveness Methodology

AST argues that, if the Department maintains the debt-forgiveness methodology it used in the *Plate Final*, it should make certain adjustments to its calculation to improve its accuracy. Specifically, AST asserts that the Department's methodology overstates the amount of liabilities assigned to AST as debt forgiveness by understating both the amount of residual assets liquidated and the amount of liabilities that were transferred in the privatization of ILVA Residua's operations. AST claims that the Department can correct both of these errors by basing its calculation on the ''total comparable indebtedness'' as calculated in the EC 10th Monitoring Report rather than ILVA Residua's 1993 financial statement.

Although the Department declined to make the requested adjustments as clerical-error corrections in the *Plate Final*, AST asserts that additional information exists on the record of the instant case that would allow the Department to make the requested adjustments in the final determination. Specifically, AST states that the Department's May 6, 1999, Memorandum to File, detailing a telephone conversation between Department personnel and the EC official who was in charge of compiling the Monitoring Reports, provides definitive support to make the requested changes. AST asserts that this telephone conversation confirmed that the Department did not take into account additional, ''non-financial'' (*e.g.,* accounts payable, accruals), liabilities that were transferred to the companies privatized from ILVA Residua, and that certain other residual assets, other than just liquid assets, were sold in the liquidation process. AST states that the EC official also confirmed that the Monitoring Report methodology accounts for both of these issues. Furthermore, while AST admits that the Department in past cases has only reduced the remaining liability pool by liquid assets, AST states that this was because it was not known whether any other assets had value. However, in this case, AST asserts, the Department has information on the value of all residual assets in the EC's Monitoring Reports. Despite the petitioners' claims in the *Plate Final*, AST submits that the Department did not specifically reject the use of the Monitoring Reports in the *Plate Final* but rather ''re-examined'' its methodology with regard to a different issue, the use of gross versus net debt (discussed in Comment 9).

The petitioners argue that the Department should not alter its calculation of the 1993 debt forgiveness adopted in the *Plate Final* because the suggested changes are not supported by record evidence, are based on events that happened after the 1993 demerger, and contain other errors. The petitioners contend that the Department found, in its May 4, 1999, Memorandum on Ministerial Errors in the *Plate Final*, that the Monitoring Reports did not support the changes suggested by AST. Thus, the EC official's ''mere references'' to this report supporting AST's alleged errors in the May 6 telephone conference does not provide ''definitive proof of AST's claim,'' states the petitioners. Additionally, the petitioners argue that the amount of non-financial debts that were allegedly transferred with the privatized companies may have been influenced by changes in the amounts of such debt after the 1993 demergers. While the petitioners admit that, if actually transferred, it would be appropriate to deduct any of ILVA's non-financial debts, they argue that the record does not establish any such non-financial debts transferred as tied to pre-demerger ILVA. Continuing, the petitioners argue that at the time of AST's demerger, ILVA Residua's liquidators could only be assured that its liquid assets would sell at their stated value. The fact that certain fixed and capital assets were sold later is irrelevant to the Department's intent to calculate the debt forgiveness conferred at the moment of AST's demerger, the petitioners posit. The petitioners also contend that the Department already accounted for fixed-asset sales through its change-in-ownership methodology such that it would be inappropriate to deduct these sales from ILVA's total indebtedness. Last, petitioners argue that AST's proposed calculation methodology uses the 1998 rather than the 1993 ''total comparable indebtedness'' figure from the Monitoring Reports incorrectly, and that the amount AST subtracted for the pre-demerger sale of assets should be added rather than subtracted.

Department's Position: In contrast to the *Plate Final*, the record of the instant case confirms AST's assertion that a greater amount of liabilities than we accounted for in the *Plate Final* were actually transferred with ILVA Residua's privatized assets and that the ''total comparable indebtedness'' reported in the Monitoring Reports more accurately reflects the residual assets that were sold in liquidation than the amount of ''liquid assets'' we used in the *Plate Final*. We agree with AST that we did not reject the use of the Monitoring Reports in the *Plate Final* but rather changed our methodology to capture the debt-forgiveness benefit to AST by starting with the gross rather than the net debt (*see* our response to Comment 9). We also agree with AST that our typical practice of deducting only liquid assets from total liabilities left in a shell company is based on the presumption that the value of other residual assets is unknown and difficult to determine, and is likely to be far less than their book value. However, in this case, the Monitoring Reports provide an actual accounting of the liquidation process through June 1998. We note that 423 billion lire of non-liquid assets remained in ILVA Residua as of June 1998. Because we do not know what the actual value of these assets will be in liquidation, nor will there be any further monitoring of their liquidation by the EC (*see* May 6, 1999, Memorandum to File), we increased the indebtedness we allocated to ILVA's viable assets by this amount. Additionally, while it is possible that the composition of the non-financial debts transferred in the sales of ILVA's viable assets changed somewhat after the demergers of AST and ILP, there is no evidence on the record to indicate that such debts, which arise as a direct result of the operations of the business units privatized, would have changed dramatically over this time period.

We do not agree with the petitioners that our methodology is to calculate the amount of debt forgiveness as of the moment AST was demerged. While we have set the benefit stream to AST to begin with the demerger, we view AST's demerger as only one part of the process of liquidating ILVA. That process involved a series of actions, including the demergers of AST and ILP. If we were to look only at the assets and liabilities that had been disposed of by the time of AST's demerger, we would be ignoring much of the liquidation activity inappropriately. For example, CAS had not been sold as of the time of AST's demerger. Thus, under the petitioners' approach, subsidies which we assigned to CAS in *Wire Rod* would also be assigned to AST just because of the sequence of events.

We also disagree with the petitioners that we had accounted for the residual assets in question already in our change-in-ownership methodology. None of the residual assets at issue constitute ''productive units'' (*i.e.*, a collection of assets capable of generating sales and operating independently, *see GIA* at 37268). Therefore, application of the change-in-ownership methodology would be inappropriate. Instead, it is appropriate to net the liquidation value of these individual assets against residual liabilities in the same manner as liquid assets. Last, because the 1998 ''total comparable indebtedness'' provides a more accurate basis than the similar 1993 figure, we have used this as the starting point of our calculation.

While we have not altered our determination with regard to the issue of gross debt versus net debt, we can address both that issue and calculate a more accurate amount of debt forgiveness by using the final ''total comparable indebtedness'' figure reported in the 10th Monitoring Report as the starting point of our calculation. For an overview of our calculation methodology, *see ILVA to AST Debt Forgiveness* section above.

Comment 14: 1993 Creditworthiness

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 13, 64 FR at 15524).

Comment 15: ILVA Asset Write-Downs

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 14, 64 FR at 15524–15525).

Comment 16: ESF Objective 4 Specificity

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 15, 64 FR at 15525).

Comment 17: ESF Objective 3

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 16, 64 FR at 15525).

Comment 18: Law 10/91

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 17, 64 FR at 15525–15526).

Comment 19: Specificity of THERMIE

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 18, 64 FR at 15526).

Comment 20: Law 675 Bond Issues

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 19, 64 FR at 15526).

Comment 21: 1988 Equity Infusion

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final.* Please see that notice for a full explanation (Comment 20, 64 FR at 15526–15527).

Comment 22: Law 451/94

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final.* Please see that notice for a full explanation (Comment 21, 64 FR at 15527).

Comment 23: Law 675/77—Worker Training Program

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final.* Please see that notice for a full explanation (Comment 22, 64 FR at 15527–15528).

Comment 24: Law 796/76 Benefit Calculation

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final.* Please see that notice for a full explanation (Comment 23, 64 FR at 15528).

Comment 25: AST's Brite-EuRam Grant

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final.* Please see that notice for a full explanation (Comment 24, 64 FR at 15528).

Comment 26: ECSC Article 56 Aid

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final.* Please see that notice for a full explanation (Comment 25, 64 FR at 15528).

Comment 27: ECSC Article 54 Loans

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final.* Please see that notice for a full explanation (Comment 26, 64 FR at 15528–15529).

Comment 28: Exclusion of Floor Plate from the Scope of the Investigation

AST requests that the Department exclude floor plate from the scope of the instant proceeding. AST argues that floor plate should not be included in the scope of this investigation because floor plate is not manufactured in the United States, it does not compete with any product manufactured in the United States or with imports of other covered products, and it is materially different from the other products subject to this investigation. Furthermore, AST argues that floor plate has only one end-use, which is as flooring material and it cannot be used for any other application that requires a smooth surface, as is a common requirement of end-uses of stainless steel. Lastly, AST argues that the Department has the inherent authority to exclude products from the scope of an investigation that are not included properly therein.

The petitioners object to AST's request to exclude floor plate from the scope of this investigation. The petitioners argue that floor plate falls clearly within the scope of this case. Furthermore, the petitioners cite *Melamine Institutional Dinnerware Products from the People's Republic of China,* 62 FR 1708 (January 13, 1997), as evidence of the Department's clear and consistent practice of examining the interests of the domestic industry in defining the scope of a case. The petitioners point out that numerous requests to exclude certain products from the scope have been considered and, where there was no interest on the part of the domestic industry, the petitioners have excluded such products from the scope as evidenced in the revisions to the initial scope definition set forth in the *Preliminary Determination.* The petitioners object to AST's argument that, in order for a product to remain within the scope, the domestic industry must be producing currently. The petitioners state that often products are included in the scope of an investigation because they are similar to and competitive with the domestic like product.

Department's Position: We disagree with AST. Despite AST's arguments, the scope as set forth in the *Preliminary Determination* covers merchandise described as floor plate if it is less than 4.75 in thickness. The scope specifically describes the subject merchandise as ''flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness' and notes further that ''[t]he subject sheet and strip may also be further processed (e.g., cold-rolled, polished aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.'' *See Notice of Initiation of Countervailing Duty Investigations: Stainless Steel Sheet and Strip in Coils From France, Italy, and the Republic of Korea Notice of Initiation,* 63 FR 37521 (July 13, 1998). Additionally, the petitioners have objected to the exclusion of floor plate from the scope of the investigation. Furthermore, we have addressed this issue earlier. *See* Memorandum to the File regarding Scope Changes in *Stainless Steel Sheet and Strip in Coils from Korea, Italy and France,* dated December 14, 1998. Therefore, the Department has not amended the scope of the investigation to exclude stainless steel floor plate.

Comment 29: Termination of Investigation of Arinox

The petitioners argue that the Department should terminate its investigation of Arinox for failure to comply with the statute and agency regulations and, furthermore, the Department should assign Arinox the ''All Others'' rate. The petitioners object to the Department's acceptance of Arinox's information, given the company's failure to comply with the Department's instructions for submitting factual information. The petitioners point out that Arinox has consistently neglected to serve its responses on the petitioners and, by not enforcing the statutory requirement to serve interested parties with all information submitted, the Department has deprived the petitioners of the opportunity to submit comments on potential subsidies to Arinox. Moreover, the petitioners assert, by accepting the procedurally defective submissions of Arinox and calculating a *de minimis* subsidy rate in the *Preliminary Determination* based on those submissions, the Department would exclude Arinox from the scope of the countervailing duty order at the outset of this proceeding, thus precluding the petitioners from ever analyzing Arinox's data and the Department from assessing the potential countervailable benefits.

Arinox states that it is a small company and was unfamiliar with the process of serving its submissions on interested parties. Arinox argues that it has cooperated fully with the Department's investigation by providing information as requested. Arinox points out that, at verification, the company welcomed Department personnel and provided information requested in order to verify the information provided. Arinox argues that since it has cooperated fully in the investigation and the Department verified the information provided by the company, it would be inappropriately punitive to apply the ''All Others'' rate to Arinox. Finally, Arinox maintains that it is a fairly new company which has never been owned by the Italian government and the only programs in which it participated are small social programs which help depressed areas in Italy.

Department's Position: The Department recognizes the petitioners' concerns regarding the failure of Arinox to comply with the statutory requirement to serve all interested parties with its responses to the Department's questionnaires in a timely fashion. However, the Department believes that Arinox, a *pro se* company, was operating in good faith and to the best of its ability in attempting to respond to the Department's requests for information. Although Arinox's responses to our questionnaires and other information were not served immediately upon the petitioners, it submitted this information in a timely fashion, was sufficiently complete so as to provide a reliable basis for our determination, was capable of being used without undue difficulty, and we provided it to the petitioners shortly before the preliminary determination. We conducted the verification of Arinox approximately three weeks later and verified the accuracy of Arinox's submissions. This three-week period provided the petitioners with a reasonable amount of time to make substantive comments regarding any potential subsidies to Arinox prior to verification. For these reasons and consistent with sections 782(c)(2) and (e) of the Act, the Department has continued to calculate a separate *ad valorem* subsidy rate for Arinox in this final determination.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, and examining relevant accounting records and original source documents. Our verification results are detailed in the public versions of the verification reports, which are on file in the Central Records Unit.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual rate for each company investigated. We determine that the total estimated net countervailable subsidy rate is 12.22 percent *ad valorem* for AST and 1.03 percent *ad valorem* for Arinox. The All Others rate is 12.09 percent, which is the weighted average of the rates for both companies.

In accordance with our *Preliminary Determination*, we instructed the U.S. Customs Service to suspend liquidation of all entries of stainless steel sheet and strip in coils from Italy, which were entered or withdrawn from warehouse, for consumption on or after November 17, 1998, the date of the publication of our *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after January 2, 1999, but to continue the suspension of liquidation of entries made between November 17, 1998, and January 1, 1999. We will reinstate suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13683 Filed 6–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–835]

Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea

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

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Eva Temkin or Richard Herring, Office of CVD/AD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

Final Determination

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to certain producers and exporters of stainless steel sheet and strip in coils from the Republic of Korea. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

Petitioners

The petition in this investigation was filed by Allegheny Ludlum Corporation, Armco, Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. (collectively referred to hereinafter as the petitioners).

Case History

Since the publication of our preliminary determination in this investigation on November 17, 1998 (*Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 63 FR 63884 (Preliminary Determination)), the following events have occurred:

We conducted verification of the countervailing duty questionnaire responses from February 2 through February 12, 1999. In addition, portions of the questionnaire responses were verified from December 3 through December 18, 1998, during our verification of the countervailing duty investigation of Stainless Steel Plate in Coils from Korea. Because the final determination of this countervailing duty investigation was aligned with the final antidumping duty determination (*see* 63 FR at 63885), and the final antidumping duty determination was postponed (*see* 64 FR 137), the Department on January 13, 1999, extended the final determination of this countervailing duty investigation until no later than May 19, 1999 (*see* 64 FR 2195). On January 27, February 2, 10, and 12, April 12 and 13, 1999, the Department released its verification reports to all interested parties.

The Department issued decision memoranda on the issue of direction of credit by the Government of Korea (GOK) and the operations of the Korean domestic bond market on March 4 and March 9, 1999, respectively, during the countervailing duty investigation of Stainless Steel Plate in Coils from the Republic of Korea. *See Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15530, 15533 (March 31, 1999) (*Stainless Steel Plate from Korea*). These memoranda were placed on the record in this investigation on March 31, 1999. Petitioners and respondents filed case briefs on April 21, 1999, and rebuttal briefs were filed on April 28, 1999.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR Part 351 (April 1998).

Scope of Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than

0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[5]

Injury Test

Because the Republic of Korea (Korea) is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry. On August 9, 1998, the ITC announced its preliminary finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Korea of the subject merchandise (*see Certain Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan and the United Kingdom*, 63 FR 41864 (August 9, 1998)).

Period of Investigation

The period of investigation for which we are measuring subsidies (the POI) is calendar year 1997.

Use of Facts Available

As discussed in our preliminary determination, both Sammi Steel Co., Ltd. (Sammi) and Taihan Electric Wire Co., Ltd. (Taihan), two producers of subject merchandise, failed to respond to the Department's questionnaire. *See Preliminary Determination*. Since the preliminary determination in this investigation we have not been presented with new information on this issue. Therefore, we have continued to find that Sammi and Taihan each have failed to cooperate to the best of their abilities, and, in accordance with 776(b) of the Act, have continued to apply an adverse facts available (AFA) rate to these two companies. This rate was based on the petition, as well as our findings in the *Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea*, 58 FR 37338 (July 9, 1993) (*Steel Products from Korea*), and additional findings in this proceeding.

In *Steel Products from Korea*, we determined a country-wide *ad valorem* subsidy rate of 4.64 percent based on many of the same programs alleged in this case. Therefore, we are using the highest published *ad valorem* rate of 4.64 percent that was calculated in *Steel Products from Korea* as representative of the benefits from the industry-wide subsidies alleged in this petition, and received by the other respondents in this investigation. In addition, we are also applying a facts available rate to Sammi and Taihan for a subsidy program newly examined in this investigation, POSCO's two-tiered pricing structure to domestic customers. We found this program to be countervailable, and calculated company-specific program rates for Dai Yang and Inchon; as discussed below, we used Inchon's calculated rate for this program as adverse facts available for Sammi and Taihan. (A detailed discussion of this program can be found in the ''Programs Determined to be Countervailable'' section of this notice.)

Therefore, in Taihan's case, we used the 4.64 rate from *Steel Products from Korea* because the subsidy programs alleged in this investigation, with the exception of the one new allegation, are

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

virtually identical to the programs for which the 4.64 rate in *Steel Products from Korea* was calculated. In addition, in accordance with section 776(b)(4) of the Act, for the two-tiered pricing program, we are applying the highest calculated company-specific rate for this program to Taihan as adverse facts available, 2.36 percent *ad valorem*, the company-specific program rate for Inchon. We added this 2.36 percent rate to the 4.64 percent rate (representing the program rates of the other subsidy allegations) to arrive at a total *ad valorem* rate of 7.00 percent as adverse facts available for Taihan.

In Sammi's case, in addition to applying the 4.64 rate from *Steel Products from Korea* for most of the programs covered in this investigation and the 2.36 rate for POSCO's two-tiered pricing structure, we calculated a rate for one other program that was not previously investigated: POSCO's purchase of Sammi Specialty Steel. This program is addressed below in the ''Programs Determined to be Countervailable'' section of this notice. We used information provided in the petition, in the verification reports of POSCO and the Government of Korea, in POSCO's questionnaire responses, and additional information placed on the record of this investigation, for the calculation of the program rate for POSCO's purchase of Sammi Specialty Steel. We then added the rate calculated for this program and the rate representing the subsidy conferred by POSCO's two-tiered pricing structure to the other programs' rate of 4.64 percent *ad valorem* calculated in *Steel Products from Korea*, which is representative of the benefits from the other industry-wide subsidies alleged in the petition and received by the other respondents. We thus arrived at a total *ad valorem* rate of 59.30 percent as adverse facts available for Sammi.

Petitioners also alleged that Sammi benefitted from two other company-specific subsidies: (1) A ''national subsidy'' and (2) 1992 emergency loans. With respect to the alleged ''national subsidy,'' we have not deviated from the methodology established in the *Preliminary Determination*. We continue to treat this ''national subsidy'' as a grant bestowed upon Sammi, and employ the Department's grant methodology. *See* the *General Issues Appendix*, which is appended to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37225, 37227 (July 9, 1993) (*GIA*). Because the total amount of the national subsidy is less than 0.50 percent of Sammi's 1993 sales, the subsidy was expensed in the year of receipt. Thus, there is no benefit under this program during the POI.

The petitioners also alleged that in 1992 the GOK directed a package of 132 billion won in ''emergency loans'' to Sammi in order to save the company from bankruptcy. In our preliminary determination we calculated a separate subsidy rate for this allegation. However, we have reconsidered this facts available calculation in this final determination. In *Steel Products from Korea*, we investigated the allegation that the GOK directs banks in Korea to provide loans to the steel industry. This program was determined to be countervailable, and a calculated subsidy rate for this program is included as part of the facts available rate applied in this determination. Because we have already accounted for the subsidy provided by the GOK's direction of credit in our facts available rate taken from *Steel Products from Korea*, we have not calculated an additional subsidy rate for this allegation.

The Statement of Administrative Action accompanying the URAA clarifies that information from the petition and prior segments of the proceeding is ''secondary information.'' *See* Statement of Administrative Action, accompanying H.R. 5110 (H.R. Doc. No. 103–316) (1994) (SAA), at 870. If the Department relies on secondary information as facts available, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate such information using independent sources reasonably at its disposal. The SAA further provides that to corroborate secondary information means simply that the Department will satisfy itself that the secondary information to be used has probative value. However, where corroboration is not practicable, the Department may use uncorroborated information.

With respect to the programs for which we did not receive information from uncooperative respondents, the information was corroborated either through the exhibits attached to the petition or by reviewing determinations in other proceedings in which we found virtually identical programs in the same country to be countervailable. Specifically, with respect to Taihan, the programs alleged in the current investigation were virtually identical to those found to be countervailable in *Steel Products from Korea*. We were unable to corroborate the rate we used for Taihan, because the petition did not contain countervailing duty rate information for these programs. Therefore, it was not practicable to corroborate such a rate. However, we note that the SAA at 870 specifically states that where ''corroboration may not be practicable in a given circumstance,'' the Department may nevertheless apply an adverse inference. Further, in Sammi's case (in addition to the programs from *Steel Products from Korea* discussed above), we corroborated the newly-alleged programs with the information provided in the petition, *i.e.*, Sammi's financial statements for years 1993 through 1996, and numerous public press articles. Specifically, Sammi's financial statements show a line item entitled ''national subsidy.'' The financial statements further indicate that Sammi's debt burden was very high and that the company was not making interest payments that reflected the significant debt load. This demonstrates that the GOK may have entrusted or directed government and/or commercial banks to provide the type of emergency loan package to Sammi in 1992 that was alleged in the petition. Moreover, news articles indicate that the GOK was trying to rescue Sammi, and that this effort included both the emergency loans in 1992 and POSCO's purchase of Sammi Specialty Steel.

Additionally, the Department initiated an investigation with respect to a fourth new allegation, ''Financial Assistance in Conjunction with the 1997 Sammi Steel Company Bankruptcy.'' The petitioners alleged that the GOK mitigated the effects of Sammi's bankruptcy with the use of countervailable subsidies. According to petitioners, when Sammi filed for receivership in March 1997, the GOK: (1) Provided grants and other rescue aid which were directed through a consortium of Sammi's rivals, and (2) rescheduled Sammi's debt through a combination of loan forgiveness and reduced interest rate loans.

We requested information concerning this program from the GOK and Sammi. While Sammi chose not to cooperate in this investigation, the GOK responded to the Department's questionnaires, stating that there was no consortium and that no grants were provided to Sammi. The GOK further stressed that Sammi's debt was addressed in the context of normal bankruptcy proceedings. In our preliminary determination we calculated no benefit from this program, but we stated we would continue to seek information that would enable us to make a facts available determination about this program in our final determination. Therefore, during our verification of POSCO, we examined various accounts of POSCO to determine whether POSCO provided any assistance to Sammi similar to that alleged by petitioners. We did not find a provision of assistance to Sammi or write-off of Sammi's debt by POSCO. In addition, during our verification of the Government of Korea, we examined Sammi's Bankruptcy Reorganization Plan, which included Sammi's 1997 balance sheet and income statement. Our examination of these documents revealed no government assistance to Sammi in the form of grants or write-off of debt. Therefore, we have not calculated a subsidy rate for this allegation. However, because Sammi did not respond to our request for information, we will continue to examine this allegation in any subsequent administrative review.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: During the POI, the respondent companies had both won-denominated and foreign currency-denominated long-term loans outstanding which had been received from government-owned banks, Korean commercial banks, overseas banks, and foreign banks with branches in Korea. A number of these loans were received prior to 1992. In the 1993 investigation of *Steel Products from Korea*, the Department determined that, through 1991, the GOK influenced the practices of lending institutions in Korea and controlled access to overseas foreign currency loans. *See Certain Steel Products from Korea*, 58 FR at 37338, and the ''Direction of Credit'' section below. In that investigation, we determined that the best indicator of a market rate for long-term loans in Korea was the three-year corporate bond rate on the secondary market. Therefore, in the final determination of this investigation, we used the three-year corporate bond rate on the secondary market as our benchmark to calculate the benefits which the respondent companies received from direct foreign currency loans and domestic foreign currency loans obtained prior to 1991, and still outstanding during the POI. These rates were reported by the GOK in its September 10, 1998, questionnaire response (public version on file in the Department's Central Records Unit, Room B–099).

For years in which the companies under investigation have been deemed uncreditworthy, we calculated the discount rates according to the methodology described in the *GIA*. Specifically, due to the necessary use of adverse facts available with regard to Sammi, we used the highest commercial bank loan interest rates available, and added a risk premium equal to 12 percent of the commercial lending rate, in accordance with the methodology outlined in the *GIA*.

In this investigation, the Department also examined whether the GOK continued to control and/or influence the practices of lending institutions in Korea between 1992 and 1997. Based on our findings, discussed below in the ''Direction of Credit'' section of this notice, we are using the following benchmarks to calculate the companies' benefit from long-term loans obtained in the years 1992 through 1997: (1) For countervailable, foreign-currency denominated loans, we are using, where available, company-specific, weighted-average U.S. dollar-denominated interest rates on the companies' loans from foreign bank branches in Korea; and (2) for countervailable won-denominated loans, where available, we are using company-specific three-year corporate bond rates. Where unavailable, we continue to use a national average three-year corporate bond rate on the secondary market, consistent with our preliminary determination. We are also using three-year company-specific corporate bond rates, where applicable, as discount rates to determine the benefit from non-recurring subsidies received between 1992 and 1997.

We continue to find that the Korean domestic bond market was not controlled by the GOK during the period 1992 through 1997, and that domestic bonds serve as an appropriate benchmark interest rate. *See Analysis Memorandum on the Korean Domestic Bond Market*, dated March 9, 1999 (public document on file in the Department's Central Records Unit, Room B–099 (CRU)). On February 5, 1999, POSCO, Inchon, and Dai Yang submitted information in response to the Department's request for the companies' average interest rate on corporate bonds for each year 1992 through 1997. *See* POSCO's February 5, 1999 questionnaire response, Inchon's February 5, 1999 questionnaire response, and Dai Yang's February 5, 1999 questionnaire response (public versions on file in the CRU). Dai Yang had no corporate bonds (other than a previously reported convertible bond) issued during the period 1992–1997; therefore, we continue to use the national-average three-year corporate bond rate as a benchmark for this company. Additionally, Inchon had not issued any bonds prior to 1997; thus, we continue to use the national-average three-year corporate bond rates as a benchmark for Inchon between 1992 and 1996. Because POSCO was unable to retrieve data on the bond issuance fees the company paid in the years 1992 through 1996, we have added to the average interest rate for each of those years the bond issuance fees that POSCO paid in 1997.

Dai Yang did not have U.S. dollar loans from foreign bank branches in Korea. Therefore, we had to rely on a dollar loan benchmark that is not company-specific, but provides a reasonable representation of industry practice, to determine whether a benefit was provided to Dai Yang from dollar loans received from government banks and Korean domestic banks. Our first alternative was to use a national-average benchmark, but we were unable to identify a national-average dollar benchmark from foreign bank branches in Korea. Therefore, we used the interest rates on dollar loans from foreign bank branches in Korea received by another respondent in this investigation, Inchon, as a benchmark for Dai Yang's dollar loans from government banks and Korean domestic banks. For a further discussion on our selection of a dollar-loan benchmark for Dai Yang, see Comment 9.

Benchmarks for Short-Term Financing: For those programs which require the application of a short-term interest rate benchmark, we used as our benchmark company-specific weighted-average interest rates for commercial won-denominated loans for the POI. Each respondent provided to the Department its respective company-specific, short-term commercial interest rate.

Allocation Period: In the *Preliminary Determination*, we allocated nonrecurring subsidies received by POSCO and Sammi over 15 years. (No other company received nonrecurring subsidies.) We invited interested parties to comment on this allocation period. We received no objections from the interested parties on the use of a 15 year allocation period. Therefore, for the reasons specified in the *Preliminary Determination* and in the *Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils From the Republic of Korea*, 64 FR 15530, 15531 (March 31, 1999), we continue to determine that the appropriate allocation period is 15 years for this investigation.

Treatment of Subsidies Received by Trading Companies: We required responses from the trading companies because the subject merchandise may be subsidized by means of subsidies provided to both the producer and the exporter of the subject merchandise. Subsidies conferred on the production and exportation of subject merchandise benefit the subject merchandise even if the merchandise is exported to the

United States by an unaffiliated trading company rather than by the producer itself. Therefore, the Department calculates countervailable subsidy rates on the subject merchandise by cumulating subsidies provided to the producer with those provided to the exporter. During the POI, POSCO and Inchon exported subject merchandise to the United States through trading companies. We required that the trading companies provide responses to the Department with respect to the export subsidies under investigation.

We continue to find that one of the trading companies, POSTEEL, is affiliated with POSCO within the meaning of section 771(33)(E) of the Act because POSCO owned 95.3 percent of POSTEEL's shares as of December 31, 1997. The other trading companies are not affiliated with POSCO. Additionally, according to its response, Inchon is affiliated with one of the trading companies, Hyundai. This reported affiliation is based upon cross-shareholdings and common board members within the Hyundai group. The trading company, Hyundai, responded to the Department's questionnaire concerning subsidies that it had received during the POI. In the current proceeding, the status of affiliation does not affect the inclusion of subsidies provided to trading companies in the respondents' calculated subsidy rates. Therefore, we are not making a determination of affiliation of Inchon and Hyundai within the meaning of section 771(33) of the Act.

Under section 351.107 of the Department's regulations, when the subject merchandise is exported to the United States by a company that is not the producer of the merchandise, the Department may establish a ''combination'' rate for each combination of an exporter and supplying producer. However, as noted in the ''Explanation of the Final Rules'' (the Preamble), there may be situations in which it is not appropriate or practicable to establish combination rates when the subject merchandise is exported by a trading company. In such situations, the Department will make exceptions to its combination rate approach on a case-by-case basis. *See Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27303 (May 19, 1997).

In the *Preliminary Determination* of this investigation, we determined that it was not appropriate to establish combination rates. This determination was based on two main facts: first, the majority of the subsidies conferred upon the subject merchandise were received by the producers; second, the difference in the levels of subsidies conferred upon individual trading companies with regard to the subject merchandise is insignificant. Combination rates would serve no practicable purpose because the calculated subsidy rate for a producer and a combination of any of the trading companies would effectively be the same rate. As no new information has been presented since the *Preliminary Determination* which would cause us to reconsider this methodology, we are not calculating combination rates in the final determination of this investigation.

Instead, we have continued to calculate rates for the producers of subject merchandise that include the subsidies received by the trading companies. To reflect those subsidies that are received by the exporters of the subject merchandise in the calculated *ad valorem* subsidy rate, we used the following methodology: for each of the seven trading companies, we calculated the benefit attributable to the subject merchandise. We then factored that amount into the calculated subsidy rate for the relevant producer. In each case, we determined the benefit received by the trading companies for each export subsidy, and weighted the average of the benefit amounts by the relative share of each trading company's value of exports of the subject merchandise to the United States. These calculated *ad valorem* subsidies were then added to the subsidies calculated for the producers of subject merchandise. Thus, for each of the programs below, the listed *ad valorem* subsidy rate includes countervailable subsidies received by both the producing and trading companies.

Creditworthiness

As discussed in the *Preliminary Determination*, we initiated an investigation of Inchon's creditworthiness from 1991 through 1997, and of Sammi's creditworthiness from 1990 to 1997, to the extent that nonrecurring grants, long-term loans, or loan guarantees were provided in those years. In the *Preliminary Determination*, we found Inchon to be creditworthy, but we found Sammi to be uncreditworthy for the years 1990 through 1997. We received no comments from the interested parties relating to our analysis of Inchon's and Sammi's creditworthiness. Thus, for the reasons specified in the *Preliminary Determination*, we determine that Inchon is creditworthy and that Sammi is uncreditworthy for the years 1990 through 1997. *See Preliminary Determination*, 63 FR at 63888.

I. Programs Determined To Be Countervailable

A. Direction of Credit

In the 1993 investigation of *Steel Products from Korea*, the Department determined (1) that the GOK influenced the practices of lending institutions in Korea; (2) that the GOK regulated long-term loans provided to the steel industry on a selective basis; and (3) that the selective provision of these regulated loans resulted in a countervailable benefit. Accordingly, all long-term loans received by the producers/exporters of the subject merchandise were treated as countervailable. The determination in that investigation covered all long-term loans bestowed through 1991. *See* 58 FR at 37339.

In this investigation, petitioners allege that the GOK continued to control the practices of lending institutions in Korea through the POI, and that the steel sector received a disproportionate share of low-cost, long-term credit, resulting in the conferral of countervailable benefits on the producers/exporters of the subject merchandise. Petitioners assert, therefore, that the Department should countervail all long-term loans received by the producers/exporters of the subject merchandise that were still outstanding during the POI.

1. *The GOK's Credit Policies Through 1991*

As noted above, we previously found significant GOK control over the practices of lending institutions in Korea through 1991, the period investigated in *Steel Products From Korea*. This finding of control was determined to be sufficient to constitute a government program and government action. *See* 58 FR at 37342. We also determined that (1) the Korean steel sector, as a result of the GOK's credit policies and control over the Korean financial sector, received a disproportionate share of regulated long-term loans, so that the program was, in fact, specific, and (2) that the interest rates on those loans were inconsistent with commercial considerations. *Id.* at 37343. Thus, we countervailed all long-term loans received by the steel sector from all lending sources.

In this investigation, we provided the GOK with the opportunity to present new factual information concerning the government's credit policies prior to 1992, which we would consider along with our finding in the prior investigation. The GOK has not provided new factual information that would lead us to change our determination in *Steel Products from Korea*. Therefore, we determine that the provision of long-term loans in Korea through 1991 results in a financial contribution within the meaning of section 771(5)(D)(i) of the Act. This finding is in conformance with the SAA, which states that ''section 771(5)(B)(iii) encompasses indirect subsidy practices like those which Commerce has countervailed in the past, and that these types of indirect subsidies will continue to be countervailable.'' SAA at 925. In accordance with section 771(5)(E)(ii) of the Act, a benefit has been conferred to the recipient to the extent that the regulated loans are provided at interest rates less than the benchmark rates described under the ''Subsidies Valuation'' section, above.

We also determine that all regulated long-term loans provided to the producers/exporters of the subject merchandise through 1991 were provided to a specific enterprise or industry, or group thereof, within the meaning of section 771(5A)(D)(iii)(III) of the Act. This finding is consistent with our determination in *Steel Products from Korea. See* 58 FR at 37342.

POSCO, Inchon and Dai Yang all received long-term loans prior to 1992 that remained outstanding during the POI. These included loans with both fixed and variable interest rates for all three responding companies. To determine the benefits from the regulated loans with fixed interest rates, we applied the Department's standard long-term loan methodology and calculated the grant equivalent for the loans. For the variable-rate loans, we compared the amount of interest paid during the POI on the regulated loans to the amount of interest that would have been paid at the benchmark rate. We then summed the benefit amounts from all of the loans attributable to the POI and divided the total benefit by each company's total sales. On this basis, we determine the countervailable subsidy rates to be 0.17 percent *ad valorem* for POSCO, 0.06 percent *ad valorem* for Inchon, and 0.04 percent *ad valorem* for Dai Yang.

2. *The GOK's Credit Policies From 1992 Through 1997.*

The Department's preliminary analysis of the GOK's credit policies from 1992 through 1997 is contained in the March 4, 1999, *Memorandum Re: Analysis Concerning Post 1991 Direction of Credit*, on file in the CRU (Credit Memo). As detailed in the Credit Memo, the Department preliminarily determined that the GOK continued to control directly and indirectly the lending practices of most sources of credit in Korea through the POI. The Department also preliminarily determined that GOK-regulated credit from domestic commercial banks and government-controlled banks such as the Korea Development Bank (KDB) was specific to the steel industry. This credit conferred a benefit on the producer/exporters of the subject merchandise in accordance with section 771(5)(E)(ii) of the Act, because the interest rates on the countervailable loans were less than the interest rates on comparable commercial loans. *See* Credit Memo at 15–17. Finally, we preliminarily found that access to government-regulated foreign sources of credit in Korea did not confer a benefit to the recipient, as defined by section 771(5)(E)(ii) of the Act, and, as such, credit received by respondents from these sources was found not countervailable. This determination was based on the fact that credit from Korean branches of foreign banks were not subject to the government's control and direction. Thus, respondents' loans from these banks served as an appropriate benchmark to establish whether access to regulated foreign sources of funds conferred a benefit on the respondents. On the basis of that comparison, we found that there was no benefit. *See id.* at 18. The comments we received from the parties have not led us to change the basic findings detailed in the Credit Memo.

In the preliminary determination we examined, as a separate program, loans provided under the Energy Savings Fund, and found that these loans were countervailable. *See Preliminary Determination*, 63 FR at 63890. However, on the basis of our findings detailed in the Credit Memo, we now determine that these loans are countervailable as directed credit, rather than as a separate program. These loans are policy loans provided by banks that are subject to the same GOK influence that is described in the Credit Memo. Accordingly, they are countervailable as directed credit, and we have included these loans in our benefit calculations. Thus, on the basis of our finding in the credit memo, and the modifications to the calculations discussed in the comments section, below, for the GOK's post-1991 credit policies, we determine the countervailable subsidy rates to be less than 0.005 percent *ad valorem* for POSCO, less than 0.005 percent *ad valorem* for Inchon, and 0.08 percent *ad valorem* for Dai Yang.

B. Purchase of Sammi Specialty Steel Division by POSCO

In February 1997, POSCO purchased the specialty steel bar and pipe division of Sammi for 719.4 billion won. This division became POSCO's Changwon facility. Petitioners alleged that POSCO was directed by the government to purchase the Sammi Specialty Steel Division as a matter of national interest as opposed to one of economic merit. Petitioners alleged that the GOK used its ownership in POSCO as a vehicle for the subsidization of Sammi. Thus, petitioners allege that POSCO's purchase of the Sammi Specialty Steel Division provided a countervailable benefit to Sammi.

As noted in the ''Use of Facts Available'' section of this notice, Sammi did not respond to the Department's questionnaires. POSCO has provided certain documents relevant to this purchase, but Sammi's lack of response to our questionnaires means that significant portions of information required by the Department to analyze this program have not been provided. Thus, in making this determination, we have relied, in part, on both information provided by POSCO and information provided in the petition with respect to this allegation. In accordance with section 776(b) of the Act, the Department may use an inference that is adverse to the interest of a party when selecting from facts otherwise available when the party has failed to cooperate with a request for information. As discussed in the ''Use of Facts Available'' section, we determined that Sammi has failed to cooperate by not answering the Department's questionnaire.

Based on the information on the record, we determine that the actions of POSCO should be considered as an action of the GOK because POSCO is a government-controlled company. During the POI, the GOK was the largest shareholder of POSCO. The shareholdings of the GOK are approximately ten times larger than the next largest shareholder. Indeed, the next two largest shareholders of POSCO are domestic banks, the credit of which has been determined to be directed by the GOK (*see* the ''Direction of Credit'' section of this notice). In order to further maintain its control over POSCO, the GOK has enacted a law, as well as placed into the Articles of Incorporation of POSCO, a requirement that no individual shareholder except the GOK can exercise voting rights in excess of three percent of the company's common stock. According to POSCO, the GOK intends to maintain the individual ownership limit of three percent until the end of 2001.

In addition, the Chairman of POSCO is appointed by the GOK. The Chairman of POSCO during the POI was the former Deputy Prime Minister and the Minister of the GOK's Economic

Planning Board, and was appointed as POSCO's chairman by the Korean president. Half of POSCO's outside directors are appointed by the GOK and the Korean Development Bank (three by the GOK and one by the government-owned KDB.) During the POI, the appointed directors of POSCO included a Minister of Finance, the Vice Minister of the Ministry of Commerce and Industry, the Minister of the Ministry of Science and Technology, and a Member of the Bank of Korea's Monetary Board. POSCO is also one of three companies designated a ''Public Company'' by the GOK. One of the other ''Public Companies'' is the state-run utility company, KEPCO.

Over the course of this investigation, we have reviewed numerous documents that relate to this purchase, including the valuation studies and the purchase contract between POSCO and Sammi. The purchase price of 719.4 billion won agreed upon by POSCO and Sammi included money both for the assets that POSCO was purchasing and for the repayment of debt associated with these assets. Ostensibly, Sammi used the proceeds from the sale to pay debts owed by its other divisions.

Because no information was provided by Sammi with respect to this program, as facts available the determination of the countervailability of this program was based upon information gathered from POSCO, the GOK, information provided in the petition, and from public documents regarding POSCO's purchase of Sammi which have been placed on the record of this investigation. This information indicates that POSCO purchased the speciality steel division of Sammi Steel as the result of government pressure. The current Chairman of POSCO has confirmed that the POSCO purchase of Sammi's speciality steel division was the result of outside political pressure. The Chairman characterized POSCO's decision in 1997 to purchase the production facilities from Sammi in an attempt by the government to prevent Sammi's bankruptcy as ''a mistake.'' At the time of the Sammi purchase, the Chairman of POSCO had been appointed by the former president. In addition, at the time of the purchase, a POSCO director stated that the decision to purchase Sammi's speciality steel division ''transcends economic merit.'' Internal proprietary documents of POSCO (which are on the record in this investigation) echo this statement. At the time of the purchase, the company was operating at less than 60 percent of its capacity. In addition, Sammi had shown a profit only once since 1991 and lacked strong future prospects. *See Memorandum to the File Re: Source Documents on Government Control of POSCO, Sammi Purchase by POSCO, and POSCO Pricing* (Source Document Memo).

Internal government auditors also examined POSCO's purchase of the Sammi speciality steel division. A report issued by the Board of Audit and Inspection (BAI) criticized POSCO's purchase of the Sammi plant. The BAI found fault with POSCO's investment decision resulting from poor feasibility studies. The BAI noted that, according to POSCO's own internal business plan, the internal rate of return (IRR) of new investments should be over 10 percent. However, the BAI noted that POSCO did not even examine Sammi's IRR when it decided to purchase the Sammi plant. The BAI concluded that Sammi's IRR is much lower than the minimum required by POSCO's own internal regulations for new investments. The BAI also stated that, in estimating the future profits and losses of an investment, POSCO's own internal regulations state that it should assume an investment's prices would remain constant for 15 years. However, as the BAI noted with respect to the Sammi purchase, POSCO assumed that prices would increase two percent a year. Thus, profit from the purchase was overestimated. POSCO's deviation from its own internal regulations on estimating future profit and loss resulted in calculations that anticipated profits from the Sammi investment within four years of the purchase date. If POSCO had followed its own internal regulations, it would have expected to incur losses on its purchase of Sammi for an additional 14 years.

In addition to noting that POSCO failed to follow its own internal regulations in its purchase of Sammi's speciality steel division, the BAI found other fundamental problems with the purchase of Sammi's Changwon facility. The BAI stated that at the time of the purchase of the Changwon plant, there was both oversupply and overproduction in the speciality steel industry. The BAI noted that, while supply at the time of the purchase was 240 million tons, the demand for speciality steel was only 110 million tons. Therefore, the BAI concluded that there was no reason for POSCO's ''hasty'' undertaking of Sammi's ''old equipment.'' The BAI also stated that because POSCO contracted to purchase the Sammi facility without clarifying the state of the equipment and labor force, the Changwon Tax Office and Labor Committee may require POSCO to pay an additional 80 billion won for both Sammi employees' retirement, and unforeseen tax consequences and administrative litigation. The BAI report also stated that POSCO paid Sammi 21.4 billion won for steel-making techniques that were already either developed by POSCO or widely used in the steel industry.

The information on the record demonstrates that POSCO is a government-controlled entity; that POSCO's decision to purchase the Sammi speciality steel division was the result of government pressure; that Sammi was in poor financial straits; that POSCO failed to follow its own internal regulations regarding new investments when making the investment decision to purchase Sammi; and that, overall, the purchase of Sammi did not make good economic sense. For these reasons, the Department determines that POSCO's purchase of the Sammi speciality steel division provided a countervailable benefit and a financial contribution to Sammi under section 771(5)(D) of the Act. In accordance with section 771(5A)(D)(i) of the Act, we also find that this program is specific to Sammi.

During verification of POSCO's questionnaire response, POSCO officials stated that Sammi was also trying to sell its specialty steel division to other companies. However, as Sammi has refused to cooperate in this investigation, we have no information as to whether any potential investor expressed an interest in purchasing Sammi's speciality steel division for any price. As adverse facts available, we are assuming that were it not for POSCO's purchase, Sammi's Changwon facility would not have been sold to a commercial investor due to the poor financial condition of the company and the overcapacity in the stainless steel market at the time of the POSCO purchase. In addition, according to POSCO's own internal guidelines regarding new investments, POSCO should not have purchased Sammi's Changwon facility. Further information on the record also demonstrates that the decision to purchase the stainless steel facility from Sammi was based upon political and government influence in order to provide funds to Sammi to forestall its eventual bankruptcy. The information on the record indicates that, absent the GOK's control of POSCO and its influence on POSCO's decision to purchase the Changwon facility, Sammi would not have been able to sell its stainless steel division; therefore, we consider the full amount of the purchase price paid to Sammi by POSCO to constitute a countervailable benefit.

To calculate the benefit to Sammi from this purchase, we treated the amount of the purchase price, 719.4 billion won, as a non-recurring grant and allocated it over the average useful life of assets in the industry. For a discussion of the AUL, see the ''Subsidies Valuation'' section of this notice. Based on this methodology, we calculated a countervailable subsidy of 52.30 percent *ad valorem* for Sammi for this program during the POI.

C. GOK Pre-1992 Infrastructure Investments at Kwangyang Bay

In *Steel Products from Korea,* the Department investigated the GOK's infrastructure investments at Kwangyang Bay over the period 1983–1991. We determined that the GOK's provision of infrastructure at Kwangyang Bay was countervailable because we found POSCO to be the predominant user of the GOK's investments. The Department has consistently held that a countervailable subsidy exists when benefits under a program are provided, or are required to be provided, in law or in fact, to a specific enterprise or industry or group of enterprises or industries. *See Steel Products from Korea,* 58 FR at 37346.

No new factual information or evidence of changed circumstances has been provided to the Department with respect to the GOK's infrastructure investments at Kwangyang Bay over the period 1983–1991. Therefore, to determine the benefit from the GOK's investments to POSCO during the POI, we relied on the calculations performed in the 1993 investigation of *Steel Products from Korea,* which were placed on the record of this investigation by POSCO. In measuring the benefit from this program in the 1993 investigation, the Department treated the GOK's costs of constructing the infrastructure at Kwangyang Bay as untied, non-recurring grants in each year in which the costs were incurred.

To calculate the benefit conferred during the POI, we applied the Department's standard grant methodology and allocated the GOK's infrastructure investments over a 15-year period. *See* the allocation period discussion under the ''Subsidies Valuation Information'' section, above. We used as our discount rate the three-year corporate bond rate on the secondary market, the same rate used in *Steel Products from Korea.* We then summed the benefits received by POSCO during 1997, from each of the GOK's yearly investments over the period 1983–1991. We then divided the total benefit attributable to the POI by POSCO's total sales for 1997. On this basis, we determine a net countervailable subsidy of 0.29 percent *ad valorem* for the POI.

D. Export Industry Facility Loans

In *Steel Products from Korea,* 58 FR at 37328, the Department determined that export industry facility loans (EIFLs) are contingent upon export, and are therefore export subsidies to the extent that they are provided at preferential rates. In this investigation, we provided the GOK with the opportunity to present new factual information concerning these EIFLs, which we would consider along with our finding in the prior investigation. The GOK has not provided new factual information that would lead us to change our determination in *Steel Products from Korea.* Therefore, we continue to find that EIFLs are provided on the basis of export performance and are export subsidies under section 771(5A)(B) of the Act. We also determine that the provision of loans under this program results in a financial contribution within the meaning of section 771(5)(D)(i) of the Act. In accordance with section 771(5)(E)(ii) of the Act, a benefit has been conferred on the recipient to the extent that the EIFLs are provided at interest rates less than the benchmark rates described under the ''Subsidies Valuation'' section, above. We note that this program is also countervailable due to the GOK's direction of credit; however, we have separated this program from direction of credit because it is an export subsidy, and therefore requires a different benefit calculation.

Dai Yang was the only respondent with outstanding loans under this program during the POI. To calculate the benefit conferred by this program, we compared the actual interest paid on the loan with the amount of interest that would have been paid at the applicable dollar-denominated long term benchmark interest rate as discussed in the ''Subsidies Valuation'' section, above. When the interest that would have been paid at the benchmark rate exceeds the interest that was paid at the program interest rate, the difference between those amounts is the benefit. We divided the benefits derived from the loans by total export sales. On this basis, we determine that Dai Yang received from this program during the POI a countervailable subsidy of 0.08 percent *ad valorem*.

E. Short-Term Export Financing

The Department determined that the GOK's short-term export financing program was countervailable in *Steel Products from Korea* (*see* 58 FR at 37350). During the POI, POSCO and Dai Yang were the only producers or exporters of the subject merchandise that used export financing.

In accordance with section 771(5A)(B) of the Act, this program constitutes an export subsidy because receipt of the financing is contingent upon export performance. A financial contribution is provided under this program within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. To determine whether this export financing program confers a countervailable benefit to POSCO and Dai Yang, we compared the interest rate POSCO and Dai Yang paid on the export financing received under this program during the POI with the interest rate each company would have paid on a comparable short-term commercial loan. See discussion above in the ''Subsidies Valuation Information'' section with respect to short-term loan benchmark interest rates.

Because loans under this program are discounted (*i.e.,* interest is paid up-front at the time the loans are received), the effective rate paid by POSCO and Dai Yang on their export financing is a discounted rate. Therefore, it was necessary to derive a discounted benchmark interest rate from POSCO's and Dai Yang's company-specific weighted-average interest rate for short-term won-denominated commercial loans. We compared this discounted benchmark interest rate to the interest rates charged on the export financing and found that the program interest rates were lower than the benchmark rate. In accordance with section 771(5)(E)(ii) of the Act, we determine that this program confers a countervailable benefit because the interest rates charged on the loans were less than what POSCO and Dai Yang would have had to pay on a comparable short-term commercial loan.

To calculate the benefit conferred by this program, we compared the actual interest paid on the loans with the amount of interest that would have been paid at the applicable discounted benchmark interest rate. When the interest that would have been paid at the benchmark rate exceeded the interest that was paid at the program interest rate, the difference between those amounts is the benefit. Because POSCO and Dai Yang were unable to segregate their export financing applicable only to subject merchandise exported to the United States, we divided the benefit derived from the loans by total exports. On this basis, we determine a net countervailable subsidy of less than 0.005 percent *ad valorem* for POSCO, and 0.04 percent *ad valorem* for Dai Yang.

F. Reserve for Export Loss—Article 16 of the TERCL

Under Article 16 of the Tax Exemption and Reduction Control Act (TERCL), a domestic person engaged in a foreign-currency earning business can establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of net income for the respective tax year. Losses accruing from the cancellation of an export contract, or from the execution of a disadvantageous export contract, may be offset by returning an equivalent amount from the reserve fund to the income account. Any amount that is not used to offset a loss must be returned to the income account and taxed over a three-year period, after a one-year grace period. All of the money in the reserve is eventually reported as income and subject to corporate tax either when it is used to offset export losses or when the grace period expires and the funds are returned to taxable income. The deferral of taxes owed amounts to an interest-free loan in the amount of the company's tax savings. This program is only available to exporters. During the POI, Dai Yang, Inchon, Samsun, Samsung, Sunkyong, and Daewoo used this program. Although POSCO did not use this program during the POI, its exports of the subject merchandise were shipped through trading companies which did use this program during the POI (Samsun, Samsung, Sunkyong, and Daewoo). Neither Inchon nor Dai Yang shipped through any trading companies that received benefits from this program, although both Inchon and Dai Yang received benefits as exporters.

We determine that the Reserve for Export Loss program constitutes an export subsidy under section 771(5A)(B) of the Act because the use of the program is contingent upon export performance. We also determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan.

To determine the benefits conferred by this program, we calculated the tax savings by multiplying the balance amounts of the reserves as of December 31, 1996, by the corporate tax rate for 1996. We treated the tax savings on these funds as short-term interest-free loans. Accordingly, to determine the benefits, the amounts of tax savings were multiplied by the companies' weighted-average interest rates for short-term won-denominated commercial loans for the POI, described in the ''Subsidies Valuation Information'' section, above. Using the methodology for calculating subsidies received by trading companies, which also is detailed in the ''Subsidies Valuation Information'' section of this notice, we determine a countervailable subsidy of less than 0.005 percent *ad valorem* attributable to POSCO, a subsidy of 0.15 percent *ad valorem* for Inchon, and a countervailable subsidy of 0.01 percent *ad valorem* attributable to Dai Yang.

G. Reserve for Overseas Market Development—Article 17 of the TERCL

Article 17 of the TERCL operates in a manner similar to Article 16, discussed above. This provision allows a domestic person engaged in a foreign trade business to establish a reserve fund equal to one percent of its foreign exchange earnings from its export business for the respective tax year. Expenses incurred in developing overseas markets may be offset by returning from the reserve, to the income account, an amount equivalent to the expense. Any part of the fund that is not placed in the income account for the purpose of offsetting overseas market development expenses must be returned to the income account over a three-year period, after a one-year grace period. As is the case with the Reserve for Export Loss, the balance of this reserve fund is not subject to corporate income tax during the grace period. However, all of the money in the reserve is eventually reported as income and subject to corporate tax either when it offsets export losses or when the grace period expires. The deferral of taxes owed amounts to an interest-free loan equal to the company's tax savings. This program is only available to exporters. The following exporters of the subject merchandise received benefits under this program during the POI: Dai Yang, Hyosung, Hyundai, POSTEEL, Samsun, Samsung, and Sunkyong, and Daewoo. Although Inchon and POSCO did not use this program during the POI, these companies' exports of the subject merchandise were shipped through trading companies which did use this program during the POI: Inchon shipped through Hyundai, and POSCO shipped through Hyosung, POSTEEL, Samsun, Samsung, and Sunkyong, and Daewoo. Dai Yang did not ship through trading companies during the POI.

We determine that the Reserve for Overseas Market Development program constitutes an export subsidy under section 771(5A)(B) of the Act because the use of the program is contingent upon export performance. We also determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan.

To determine the benefits conferred by this program during the POI, we employed the same methodology used for determining the benefit from the Reserve for Export Loss program. We used as our benchmark interest rate, each company's respective weighted-average interest rate for short-term won-denominated commercial loans for the POI, described in the ''Subsidies Valuation Information'' section above. Using the methodology for calculating subsidies received by trading companies, which also is detailed in the ''Subsidies Valuation Information'' section of this notice, we calculate a countervailable subsidy of 0.01 percent *ad valorem* for this program during the POI for POSCO, 0.01 percent *ad valorem* for Inchon, and 0.01 percent *ad valorem* for Dai Yang.

H. Investment Tax Credits

Under the TERCL, companies in Korea are allowed to claim investment tax credits for various kinds of investments. If the tax credits cannot all be used at the time they are claimed, the company is authorized to carry them forward for use in later tax years. During the POI, the respondents used various investment tax credits received under the TERCL to reduce their net tax liability. In *Steel Products from Korea,* we found that investment tax credits were not countervailable (*see* 58 FR at 37351); however, changes in the statute effective in 1995 have caused us to revisit the countervailability of the investment tax credits.

POSCO claimed or used the following tax credits in its fiscal year 1996 income tax return which was filed during the POI: (1) Tax credits for investments in facilities for research and experimental use and investments in facilities for vocational training or assets for business to commercialize new technology under Article 10; (2) tax credits for vocational training under Article 18; (3) tax credits for investment in productivity improvement facilities under Article 25; (4) tax credits for investment in specific facilities under Article 26; (5) tax credits for temporary investment under Article 27; and (6) tax credits for specific investments under Article 71 of TERCL. Inchon claimed or used: (1) Tax credits for investments in technology and human resources under Article 9; and (2) tax credits for investment in productivity improvement facilities under Article 25. Dai Yang also claimed or used tax credits under Articles 9 and 25.

For these specific tax credits, a company normally calculates its authorized tax credit based upon three or five percent of its investment, *i.e.*, the company receives either a three or five percent tax credit. However, if a company makes the investment in domestically-produced facilities under these Articles, it receives a 10 percent tax credit. Under section 771(5A)(C) of the Act, which became effective on January 1, 1995, a program that is contingent upon the use of domestic goods over imported goods is specific, within the meaning of the Act. Because Korean companies receive a higher tax credit for investments made in domestically-produced facilities, we determine that investment tax credits received under Articles 10, 18, 25, 26, 27, and 71 constitute import substitution subsidies under section 771(5A)(C) of the Act. In addition, because the GOK foregoes collecting tax revenue otherwise due under this program, we also determine that a financial contribution is provided under section 771(5)(D)(ii) of the Act. Therefore, we determine this program to be countervailable.

To calculate the benefit from this tax credit program, we examined the amount of tax credit the companies deducted from their taxes payable for the 1996 fiscal year. In its fiscal year 1996 income tax return filed during the POI, POSCO deducted from its taxes payable credits earned in the years 1992 through 1995, which were carried forward and used in the POI in addition to POSCO's 1996 deduction. We first determined the amount of the tax credits claimed which were based upon the investment in domestically-produced facilities. We then calculated the additional amount of tax credits received by the company because it earned tax credits of 10 percent on investments in domestically-produced facilities rather than the regular three or five percent tax credit. Next, we calculated the amount of the tax savings earned through the use of these tax credits during the POI and divided that amount by POSCO's total sales for the POI. Neither Inchon nor Dai Yang carried forward any tax credits from previous years. Therefore, to calculate their rates we calculated the additional amount of the tax savings earned on investments in domestically-produced facilities and divided that amount by each company's total sales for the POI. On this basis, we determine a countervailable subsidy of 0.18 percent *ad valorem* to POSCO, 0.06 percent *ad valorem* to Inchon, and 0.41 percent *ad valorem* to Dai Yang from this program during the POI.

I. Electricity Discounts Under the Requested Load Adjustment Program

Petitioners alleged that the respondents are receiving countervailable benefits in the form of utility rate discounts. The GOK reported that during the POI the government-owned electricity provider, KEPCO, provided the respondents with three types of discounts under its tariff schedule. These three discounts were based on the following rate adjustment programs in KEPCO's tariff schedule: (1) Power Factor Adjustment; (2) Summer Vacation and Repair Adjustment; and (3) Requested Load Adjustment. *See* the discussion below in ''Programs Determined To Be Not Countervailable'' with respect to the Power Factor Adjustment and Summer Vacation and Repair Adjustment discount programs.

The GOK introduced the Requested Load Adjustment (RLA) discount in 1990, to address emergencies in KEPCO's ability to supply electricity. Under this program, customers with a contract demand of 5,000 KW or more, who can curtail their maximum demand by 20 percent or suppress their maximum demand by 3,000 KW or more, are eligible to enter into a RLA contract with KEPCO. Customers who choose to participate in this program must reduce their load upon KEPCO's request, or pay a surcharge to KEPCO. During the POI, both POSCO and Inchon participated in this program.

The RLA discount is provided based upon a contract of two months, normally July and August when the demand for electricity is greatest. Under this program, a basic discount of 440 won per KW is granted between July 1 and August 31, regardless of whether KEPCO makes a request for a customer to reduce its load. During the POI, KEPCO granted 44 companies RLA discounts even though KEPCO did not request these companies to reduce their respective loads. The GOK reported that because KEPCO increased its capacity to supply electricity in 1997, it reduced the number of companies with which it maintained RLA contracts in 1997. In 1996, KEPCO had entered into RLA contracts with 232 companies.

At the preliminary determination, we found that discounts provided under the RLA were distributed to a limited number of customers, *i.e.*, a total of 44 customers during the POI. Therefore, we determined that the RLA program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act. We also stated in the preliminary determination that, given the information the GOK provided on the record regarding KEPCO's increased capacity to supply electricity and the resulting decrease in KEPCO's need to enter into a large number of RLA contracts during the POI, we would further investigate the *de facto* specificity of this discount program at verification. We stated that it was the GOK's responsibility to demonstrate to the Department on what basis KEPCO chose the 44 customers with which it entered into RLA contracts during the POI.

Based on the information which we obtained at verification, we analyzed whether this electricity discount program is specific in fact (*de facto* specificity), within the meaning of section 771(5A)(D)(iii) of the Act. We find that the GOK failed to demonstrate to the Department a systematic procedure through which KEPCO selects those customers with which it enters into RLA contracts. The GOK simply stated that KEPCO enters into contracts with those companies which volunteer for the discount program. If KEPCO does not reach its targeted adjustment capacity with those companies which volunteered for the program, then KEPCO will solicit the participation of large companies. We note that KEPCO was unable to provide to the Department the percentage of 1997 RLA recipients which volunteered for the program and the percentage of those recipients which were persuaded to cooperate in the program. Therefore, we continue to find that the discounts provided under the RLA were distributed to a limited number of users. Given the data with respect to the small number of companies which received RLA electricity discounts during the POI, we determine that the RLA program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act. The benefit provided under this program is a discount on a company's monthly electricity charge. A financial contribution is provided to POSCO and Inchon under this program within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue foregone by the government.

Because the electricity discounts are not ''exceptional'' benefits and are received automatically on a regular and predictable basis without further government approval, we determine that these discounts provide a recurring benefit to POSCO and Inchon. Therefore, we have expensed the benefit from this program in the year of receipt. *See GIA*, 58 FR at 37226. To measure the benefit from this program, we summed the electricity discounts which POSCO and Inchon received from KEPCO under the RLA program during the POI. We then divided that amount by POSCO's and Inchon's total sales value for 1997.

On this basis, we determine a net countervailable subsidy of less than 0.005 percent *ad valorem* for both POSCO and Inchon.

J. Loans From the National Agricultural Cooperation Federation

According to Dai Yang's September 10, 1998, questionnaire response, the company received a loan administered by the National Agricultural Cooperation Federation (NACF). The loan was given at an interest rate which is below the benchmark interest rate described in the ''Subsidies Valuation'' section of the notice. Moreover, under the terms of this loan, the regional government (that of Ansan City) paid a portion of the interest. Although this Ansan City-administered program is only available to small- and medium-sized enterprises, the loan approval criteria indicates that export performance is also an important criterion for approval. Applications for these loans are evaluated on a point system. The applicant receives 10 out of a possible 100 ''points'' if it is a promising small and medium size business. However, the applicant can also receive 10 points if its exports comprise over twenty percent of its total sales. In addition, an applicant can garner 10 points if it is involved in overseas market development. Therefore, two of the criteria of loan approval are based upon export performance.

Under section 771(5A)(B) of the Act, an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. Dai Yang did meet the criteria of having over twenty percent of sales in export markets, and so may have qualified based on these export criteria. Further, pursuant to section 351.514 of the Department's regulations (63 FR at 65381), Dai Yang did not demonstrate that it was approved to receive these benefits solely under non-export criteria. Thus, after examination of this program, we determine that Dai Yang's receipt of this loan to be a *de facto* export subsidy pursuant to section 771(5A)(B) of the Act. In addition, by paying a portion of the interest on the loan, the actions of the Ansan City government confer a benefit in accordance with section 771(5)(E)(ii) of the Act. Therefore, we determine this program to be countervailable.

In the *Preliminary Determination*, we treated this loan as a short-term loan because it is rolled over annually with a revised interest rate. However, record evidence indicates that all of the interest rates for the life of the loan were set at the time the loan was approved. Thus, we believe that it is more reasonable to measure the benefit from this loan using the Department's long-term fixed rate loan methodology. We used as our benchmark the rate described in the ''Subsidies Valuation'' section of the notice, above. We divided the benefit calculated in the POI by Dai Yang's total exports during 1997. On this basis, we determine the countervailable subsidy attributable to Dai Yang during the POI to be 0.04 percent *ad valorem*.

K. POSCO's Two-Tiered Pricing Structure to Domestic Customers

In our supplemental questionnaire, we requested information from POSCO and the other respondents regarding an allegation that the GOK mandates POSCO to subsidize local manufacturers by selling them steel at 30 percent below the international market price. In response to this allegation, POSCO stated that no such program exists. However, in its response, POSCO provided information regarding its pricing structure in the domestic and export markets.

We verified that POSCO maintains three different pricing systems which serve different markets: domestic prices in Korean won for products that will be consumed in Korea; direct export prices in U.S. dollars or Japanese yen; and, local export prices in U.S. dollars. POSCO's local export prices are provided to those domestic customers that purchase steel for further processing into products that are exported. During the POI, POSCO sold hot-rolled stainless steel coil, which is the main input in the subject merchandise, to Dai Yang and Inchon, which used the coil to produce subject merchandise sold both as exports and in the domestic market. POSCO is the only Korean producer of hot-rolled stainless steel coil.

As noted earlier, POSCO is a government-controlled company. (*See* the discussion relating to government control of POSCO in the program ''Purchase of Sammi Speciality Steel Division by POSCO''.) POSCO sets different prices for the identical product for domestic purchases based upon the purchasers' anticipated export performance. Therefore, when POSCO sells hot-rolled stainless steel coil to Dai Yang and Inchon to be used to manufacture subject merchandise which is exported, POSCO charges a lower price than the price charged on the identical hot-rolled stainless steel coil sold to the companies for manufacturing subject merchandise to be sold in the domestic market. Because POSCO charges a lower price based upon export performance, this pricing policy constitutes an export subsidy under section 771(5A)(B) of the Act. Because exporters are charged a lower price, this program also provides a financial contribution to the exporters under section 771(5)(D).

The benefit from this type of export subsidy is based upon the difference in the price charged to exporters and the price charged for domestic consumption. The only exception is for pricing programs which fall under Item (d) of the Illustrative List of Export Subsidies, which is provided for in Annex I of the Agreement on Subsidies and Countervailing Measures.[6] Item (d) allows governments to maintain a program which provides different prices based upon export or domestic consumption if certain strict criteria are met by the government. However, POSCO's dual pricing policy does not fit within the parameters of the Item (d) exception. Therefore, the benefit from this program is based upon the difference between the prices charged by POSCO for export and the prices charged by POSCO for domestic consumption.

To determine the value of the benefit under this program, we compared the monthly weighted-average price charged by POSCO to Dai Yang and Inchon for domestic production to the monthly weighted-average price charged by POSCO to respondents for export production, by grade of hot-rolled coil. We then divided the amount of the price savings by the value of exports of the subject merchandise during the POI. On this basis, we determine that Dai Yang received a countervailable subsidy of 0.87 percent *ad valorem* from this program, and that Inchon received a countervailable subsidy of 2.36 percent *ad valorem* from this program during the POI.

II. Programs Determined To Be Not Countervailable

A. Electricity Discounts Under the Power Factor Adjustment and Summer Vacation and Repair Adjustment Programs

KEPCO provided three types of discounts under its tariff schedule during the POI. These three discounts were based on the following rate

[6] A subsidy arises under Item (d) from the provision by governments or their agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of export goods, on terms or conditions more favourable than for provision of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favorable than those commercially available on world markets to their exporters.

adjustment programs in KEPCO's tariff schedule: (1) Power Factor Adjustment; (2) Summer Vacation and Repair Adjustment; and (3) Requested Load Adjustment. *See* the separate discussion above in regard to the countervailability of the ''Requested Load Adjustment'' program.

With respect to the Power Factor Adjustment (PFA) program, the GOK reported that the goal of the PFA is to improve the energy efficiency of KEPCO's customers which, in turn, provides savings to KEPCO in supplying electricity to its entire customer base. Customers who achieve a higher efficiency than the performance standard (*i.e.*, 90 percent) receive a discount on their base demand charge.

We verified that the PFA is not a special program, but a normal factor used in the calculation of a customer's electricity charge which was introduced in 1989. The PFA is available to all general, educational, industrial, agricultural, midnight power, and temporary customers who meet the eligibility criteria. The eligibility criteria are that a customer must: (1) Have a contract demand of 6 KW or more; (2) have a power factor that exceeds the 90 percent standard power factor; and (3) have proper facilities to measure its power factor. If these criteria are met, a customer automatically receives a PFA discount on its monthly electricity invoice. During the POI, over 600,000 customers were recipients of PFA discounts.

With the aim of curtailing KEPCO's summer load by encouraging customer vacations or the repair of their facilities during the summer months, the GOK introduced the Summer Vacation and Repair Adjustment program (VRA) in 1985. Under this program, a discount of 550 won per KW is given to customers, if they curtail their maximum demand by more than 50 percent, or 3,000 KW, through a load adjustment or maintenance shutdown of their production facilities during the summer months.

The VRA discount program is available to all industrial and commercial customers with a contract demand of 500 KW or more. The VRA is one of several programs that KEPCO operates as part of its broad long-term strategy of demand-side management which includes curtailing peak demand. We verified that over eight hundred customers, from a wide and diverse range of industries, received VRA discounts during the POI.

We analyzed whether these electricity discount programs are specific in law (*de jure* specificity), or in fact (*de facto* specificity), within the meaning of section 771(5A)(D)(i) and (iii) of the Act. First, we examined the eligibility criteria contained in the law. The Regulation on Electricity Supply and KEPCO's Rate Regulations for Electric Service identify companies within a broad range of industries as eligible to participate in the electricity discount programs. With respect to the PFA, all general, educational, industrial, agricultural, midnight power, and temporary customers who have the necessary contract demand are eligible to participate in the discount program. The VRA discount program is available to a wide variety of companies across all industries, provided that they have the required contract demand and can reduce their maximum demand by a certain percentage. Therefore, based on our analysis of the law, we determine that the PFA and VRA electricity programs are not *de jure* specific under section 771(5A)(D)(i) of the Act.

We also examined evidence regarding the usage of the discount electricity programs and found no predominant use by the steel industry. The information on the record demonstrates that discounts under the PFA and VRA are distributed to a large number of firms in a wide variety of industries. Therefore, after analyzing the data with respect to the large number of companies and diverse number of industries which received electricity discounts under these programs during the POI, we determine that the PFA and VRA programs are not *de facto* specific under section 771(5A)(D)(iii) of the Act. Accordingly, we determine that the PFA and VRA discount programs are not countervailable.

B. GOK Infrastructure Investments at Kwangyang Bay Post-1991

The GOK has made the following infrastructure investments at Kwangyang Bay since 1991: Construction of a road from Kwangyang to Jinwol, construction of a container terminal, and construction of the Jooam Dam. The GOK stated that pursuant to Article 29 of the Industrial Sites and Development Act, it is the national and local governments' responsibility to provide basic infrastructure facilities throughout the country, and the nature of the infrastructure depends on the specific needs of each area and/or the types of industries located in a particular area. The GOK provides services to companies through the use of the infrastructure facilities and charges fees for the services based on published tariff rates applicable to all users.

With respect to the GOK's post-1991 infrastructure investments at Kwangyang Bay, the GOK argues that the construction of the infrastructure was not for the benefit of POSCO. The GOK reported that the purpose of developing the Jooam Dam was to meet the rising demand for water by area businesses and households. The supply capacity of the Sueochon Dam, which was constructed prior to 1991, cannot meet the area's water needs and, therefore, a second dam in the Kwangyang Bay area was built. The GOK further reported that the Jooam Dam does not benefit POSCO because POSCO receives all of its water supply from the Sueochon Dam. At verification, we obtained information which demonstrates that the Jooam Dam's water pipe line connects neither to the Sueochon Dam nor to POSCO's steel mill at Kwangyang Bay. Accordingly, POSCO cannot source any of its water supply from the Jooam Dam and, therefore, the company is not benefiting from the GOK's construction of the Jooam Dam.

The GOK also constructed a container terminal at Kwangyang Bay to relieve congestion at the Pusan Port and to encourage the further commercial development of the region. The GOK stated that, given the nature of the merchandise imported, produced, and exported by POSCO at Kwangyang Bay, this container terminal cannot be used by POSCO's operations. According to the responses of the GOK and POSCO and the information obtained at verification, neither steel inputs nor steel products can be shipped through the container terminal at Kwangyang Bay. Given the nature of steel inputs (*e.g.*, bulk products like scrap) and finished steel products (*e.g.*, bundled bars and plate), products such as these would or could not be loaded or unloaded from a ship through a container terminal and, therefore, the facility is not used by steel producers.

The road from Kwangyang to Jinwol was constructed in 1993. The GOK stated that this is a general service, public access road available for, and used by, all residents and businesses in the area of Kwangyang Bay. According to the GOK, the reason for building the public highway was not to serve POSCO, but to provide general infrastructure to the area as part of the GOK's continuing development of the country and to relieve a transportation bottleneck. At verification, we obtained information on the road and learned that, in fact, it is utilized by both industries in the area to transport goods and by residents living in the Kwangyang Bay area.

Based on the information obtained at verification regarding the GOK's infrastructure investments at

Kwangyang Bay since 1991, we determine that the GOK's investments in the Jooam Dam, the container terminal, and the public highway were not made for the benefit of POSCO. Therefore, we find that these investments are not providing countervailable benefits to POSCO.

C. Port Facility Fees

In the 1993 investigation of *Steel Products from Korea*, the Department found that POSCO, which built port berths at Kwangyang Bay but, by law, was required to deed them to the GOK, was exempt from paying fees for use of the berths. POSCO was the only company entitled to use the berths at the port facility free of charge. The Department determined that because this privilege was limited to POSCO, and because the privilege relieved POSCO of costs it would otherwise have had to pay, POSCO's free use of the berths at Kwangyang Bay constituted a countervailable subsidy. The Department stated that each exemption from payment of the fees, or ''reimbursement'' to POSCO, creates a countervailable benefit because the GOK is relieving POSCO of an expense which the company would have otherwise incurred. *See Steel Products from Korea*, 58 FR at 37347–348.

With respect to the instant investigation, since 1991, POSCO, at its own expense, has built new port facilities at Kwangyang Bay. Because title to port facilities must be deeded to the GOK in accordance with the Harbor Act, POSCO transferred ownership of the facilities to the GOK. In return, POSCO received the right to use the port facilities free of charge, and the ability to charge other users a usage fee until the company recovers all of its investment costs. At the preliminary determination, we determined that because POSCO is exempt from paying port facility fees, which it otherwise would have to pay, and the government is foregoing revenue that is otherwise due, POSCO's free usage of the port facilities provided a financial contribution to the company within the meaning of section 771(5)(D)(ii) of the Act. We also found that the exemption from paying port facility charges is specific under section 771(5A)(D)(iii) of the Act, because POSCO was the only company exempt from paying these port facility fees during the POI. During verification, we discovered that Inchon also participated in this program.

Since our preliminary determination, we have gathered further information with respect to the Harbor Act and the number and types of companies which have built infrastructure which, as required by law, were subsequently transferred to the government. At verification, we learned that, because the government does not have sufficient funds to construct all of the infrastructure a company may need to operate its business, the GOK allows a company to construct, at its own expense, such infrastructure. However, the Harbor Act prohibits a private company from owning certain types of infrastructure, such as ports. Therefore, the company, upon completion of the project, must deed ownership of the infrastructure to the government pursuant to Article 17–1 of the Harbor Act. Because a company must transfer to the government its infrastructure investment, the GOK, under Articles 17–3 and 17–4 of the Harbor Act, grants the company free usage of the facility and the right to collect fees from other users of the facility until the company recovers its investment cost. Once a company has recovered its cost of constructing the infrastructure, the company must pay the same usage fees as other users of the infrastructure facility.

We verified that under the Harbor Act, any company within any industrial sector is eligible to construct infrastructure necessary for the operation of its business provided that it receives approval by the Administrator of the Maritime and Port Authority to build the facility. We learned that if the ownership of the infrastructure, which the company built, must transfer to the government, then the company, by law, has the right to free usage of that facility and the ability to collect fees from other users of the facility. The right of free usage and the ability to collect user fees are granted to every company which has to deed facilities to the GOK. The free usage and collection of user fees continues only until the company which built the facility recaptures its cost of constructing the facility.

Further, at verification we learned that in permitting a company to build infrastructure subject to the Harbor Act requirements, the GOK has in place a procedure for approving a company's investment costs and for monitoring the company's free usage and collection of user fees. Because the GOK allows a company, for a period of time, to use for free the infrastructure it built, the GOK, through the respective port authority, reviews each infrastructure project to assess the cost. The port authority then approves a certain monetary amount for the infrastructure through a settlement process with the company. A company can only receive free usage of a facility up to the monetary amount approved by the port authority.

At verification, we obtained documentation which indicates that since 1991, a diverse grouping of private sector companies across a broad range of industrial sectors have made a number of investments in infrastructure facilities at various ports in Korea, including at Kwangyang Bay. In each case, the company which built the infrastructure was required to transfer it to the GOK, and received free usage of the infrastructure and the ability to collect user fees from other companies until they recover their respective investment costs. POSCO and Inchon were not the only companies entitled to use a particular port facility infrastructure, which it built, free of charge.

As a result of the information obtained at verification, we have revisited our preliminary determination that POSCO's exemption from paying port facility charges is specific under section 771(5A)(D)(iii) of the Act. As discussed above, we verified that since 1991, a diverse grouping of private sector companies representing a wide cross-section of the economy have made a large number of investments in infrastructure facilities at various ports in Korea, including numerous investments at Kwangyang Bay. Those companies which built infrastructure that was transferred to the GOK, as required by the Harbor Act, received free usage of the infrastructure and the ability to collect user fees from other companies which use the facilities, until they recover their respective investment costs. POSCO and Inchon are only two of a large number of companies from a diverse range of industries to use this program. Accordingly, we determine that this program is not specific under section 771(5A)(D)(iii) of the Act. Therefore, we find that this program is not countervailable.

III. Programs Determined To Be Not Used

Based on the information provided in the responses and the results of verification, we determine that the companies under investigation either did not apply for or receive benefits under the following programs during the POI:

A. Tax Incentives for Highly-Advanced Technology Businesses under the Foreign Investment and Foreign Capital Inducement Act

B. Reserve for Investment under Article 43–5 of TERCL

C. Export Insurance Rates Provided by the Korean Export Insurance Corporation

D. Special Depreciation of Assets on Foreign Exchange Earnings

E. Excessive Duty Drawback

Petitioners alleged that under the Korean Customs Act, Korean producers/exporters may have received an excessive abatement, exemption, or refund of import duties payable on raw materials used in the production of exported goods. The Department has found that the drawback on imported raw materials is countervailable when the raw materials are not consumed in the production of the exported item and, therefore, the amount of duty drawback is excessive. In *Steel Products from Korea,* we determined that certain Korean steel producers/exporters received excessive duty drawback because they received duty drawback at a rate that exceeded the rate at which imported inputs were actually used. *See Steel Products from Korea,* 58 FR at 37349.

At verification, we learned that the refund of duties only applies to imported raw materials that are physically incorporated into the finished merchandise. Items used to produce a product, but which do not become physically incorporated into the final product, do not qualify for duty drawback. We confirmed that the National Technology Institute (NTI) maintains a materials list for each product, and only materials that are physically incorporated into the final product are eligible for duty drawback.

We verified that the NTI routinely conducts surveys of producers of exported products to obtain their raw material input usage rate for manufacturing one unit of output. With this information, the NTI compiles a standard usage rate table for imported raw material inputs which is used to calculate a producer/exporter's duty drawback eligibility. In determining an input usage rate for a raw material, the NTI factors recoverable scrap into the calculation. In addition, the loss rate for each imported input is reflected in the input usage rate. At verification, the GOK confirmed that the factoring of reusable scrap into usage rates is done routinely for all products under Korea's duty drawback regime.

We also confirmed during our verification that there is no difference in the rate of import duty paid and the rate of drawback received. The rate of import duty is based on the imported materials and the rate of drawback depends on the exported merchandise and the usage rate of the imported materials. The companies pay import duties based on the rate applicable to and the price of the imported raw material. The companies then receive duty drawback based on the amount of that material consumed in the production of the finished product according to the standard input usage rate. Accordingly, the rate at which the respondents receive duty drawback is the amount of import duty paid on the amount of input consumed in producing the finished exported product.

Based on the information on the record, we determine that the respondents have not received duty drawback on imported raw materials that were not physically incorporated in the production of exported merchandise. As in *Steel Products from Korea,* we also determine that the respondents appropriately factored recovered scrap into its calculated usage rates and that the duty drawback rate applicable to the respondents takes into account recoverable scrap. *See Steel Products from Korea,* 58 FR at 37349. Therefore, we determine that the respondents have not received excessive duty drawback.

IV. Programs Determined To Be Terminated

Based on information provided by the GOK, we determine that the following program does not exist:

Unlimited Deduction of Overseas Entertainment Expenses

In *Steel Products from Korea,* 58 FR at 37348–49, the Department determined that this program conferred benefits which constituted countervailable subsidies because the entertainment expense deductions were unlimited only for export business activities. In the present investigation, the GOK reported that Article 18–2(5) of the Corporate Tax Law, which provided that Korean exporters could deduct overseas entertainment expenses without any limits, was repealed by the revisions to the law dated December 29, 1995. According to the GOK, beginning with the 1996 fiscal year, a company's domestic and overseas entertainment expenses are deducted within the same aggregate sum limits as set by the GOK. As a result of the revision to the law, overseas entertainment expenses are now treated in the same fashion as domestic expenses in calculating a company's income tax. Therefore, we determine that this program is no longer in existence.

Interested Party Comments

Comment 1: The GOK's Pre-1992 Credit Policies: New Factual Information Concerning Foreign Currency-Denominated Loans

Respondents assert that the Department ignored new factual information on the record of this proceeding concerning domestic foreign currency loans. Specifically, respondents submitted information indicating that from 1986 through 1988, interest rates on domestic foreign currency loans were only subject to an interest rate ceiling, and that after 1988, banks and other financial institutions were free to set the interest rates on these loans subject only to the ceiling established by the Interest Limitation Act. Respondents claim that the Department ignored this information and incorrectly assumed that the reimposition of interest rate ceilings on Korean won loans after a failed attempt at liberalization in 1988 also applied to domestic foreign currency loans.

Respondents further state that the Department found at verification that the interest rate liberalization program applied solely to lending rates in Korean won. Therefore, for all domestic foreign currency loans received prior to 1992, there is no basis for the Department's determination that interest rates on these loans were regulated and that these loans provided countervailable subsidies.

According to petitioners, the Department's finding that pre-1992 direct foreign loans provided a countervailable subsidy was correct and supported by the evidence on the record. Petitioners contend that the issue at hand is the GOK's control over access to the foreign loans, not control of the interest rate. Petitioners further state that respondents have provided no new evidence to disprove this finding and nothing in the new law is contrary to either the Department's 1993 determination, or the determination in *Stainless Steel Plate from Korea.*

Department's Position: The alleged ''new'' information cited by respondents in their brief concerning interest rates on domestic foreign currency loans was considered by the Department in *Steel Products From Korea,* and again in *Stainless Steel Plate from Korea.* The discussion addressing the GOK's strict control of interest rates specifically states that ''[i]nterest rate ceilings on domestic foreign currency loans were also maintained until 1988.'' *See Steel Products From Korea,* 58 FR at 37341. Thus, the Department considered the fact that the *de jure* controls over domestic foreign currency loans were removed after 1988 in reaching its conclusion that these loans continued to be subject to indirect GOK influence. Respondents' contention that ''window guidance'' (*i.e.,* the GOK's indirect control over interest rates) applied only to domestic won loans is also without merit.

The Department examined this question and reached the opposite conclusion in *Steel Products From Korea.* The Department reiterated this conclusion in *Stainless Steel Plate from Korea,* where it also noted that independent bankers had stated that ''interest rates were once again regulated until the early 1990s, through a system of ''window guidance.'''' Under this system commercial banks were effectively directed by the government not to raise interest rates above a certain level. While this statement is contained within the discussion of the failed 1988 liberalization plan, the bankers did not distinguish between domestic and foreign rates of lending by domestic commercial banks. Finally, in calling for the prohibition of ''window guidance'' over financial institutions'' loan rates, the Presidential Commission did not refer only to won-denominated rates. As noted above, the Department's findings in *Steel Products From Korea* took into account respondents' ''new'' information. This finding has since been upheld by the Court in *British Steel plc* v. *United States,* 941 F. Supp 119 (CIT 1996) (British Steel II), and by the Department in its final determination of *Stainless Steel Plate from Korea.* For these reasons our finding concerning the countervailability of pre-1992 foreign currency denominated loans from domestic sources remains unchanged in this final determination.

Comment 2: Post-1991 GOK Credit Policies: Whether POSCO Received Long-Term Loans From Korean Banks At Favorable Interest Rates

Respondents contend that, according to the Department's own calculations in *Stainless Steel Plate from Korea,* POSCO did not receive a benefit from favorable interest rates from regulated and directed sources of credit during the 1992–1997 period, and hence there is no countervailable subsidy in this time period. Respondents propose that the ''minuscule benefits'' found are merely a result of rounding errors caused by the use of weighted-average benchmarks during a period of fluctuating interest rates. Alternatively, the insignificant benefit found in the *Stainless Steel Plate from Korea* determination may have resulted from variations in the LIBOR base rate on all of these loans. Respondents do not argue with the Department's use of three-year corporate bonds as representative of the long-term market rate for won loans in Korea.

Petitioners rebuttal argument is twofold. As an initial matter, the calculations from *Stainless Steel Plate from Korea* that are cited by respondents contain an error. When this error is corrected, it becomes apparent that there was a benefit to POSCO from its long-term won-denominated loans. Secondly, even if this benefit is minimal, it falls within the rubric of the GOK's direction of credit, and was therefore properly countervailed.

Department's Position: As detailed in the Credit Memo, we have determined that access to government-regulated foreign sources of credit did not confer a benefit to POSCO, as defined by section 771(5)(E)(ii) of the Act, and, as such, credit received by respondents from these sources was found not countervailable. Petitioners' argument that this decision was based on a calculation error is based on an incorrect characterization of these loans as fixed rate loans. Because these loans have variable interest rates, our methodology is to calculate the benefit at the time the interest on the loan is paid. For these reasons, we find that there was no benefit from direct foreign loans received by POSCO in 1997.

Comment 3: The GOK's Pre-1992 Credit Policies: Whether Direct Foreign Loans Constitute a Financial Contribution Within the Meaning of the Act

According to respondents, the only government regulation of direct foreign loans consisted of an interest rate ceiling. Respondents state that the GOK could not, under its regulations, direct or induce foreign lenders to provide loans to POSCO; nor could it regulate (and reduce) the interest rates these lenders would charge on such loans. Rather, these loans were negotiated directly between foreign banks and POSCO without the GOK's direct or indirect involvement. As such, respondents' state that the Department's preliminary finding that direct foreign loans are countervailable is in conflict with the ''financial contribution'' standard of section 771(5)(D)(i) of the Act. Respondents assert that direct foreign loans from foreign banks do not constitute countervailable subsidies because there is no government financial contribution. Respondents further claim that the Department did not explain in its preliminary determination how loans from foreign sources could constitute a financial contribution by the GOK.

Moreover, respondents state that these loans do not meet the ''entrusts or directs'' standard of the Act, because (1) they can not be characterized as a contribution that ''would normally be vested in the government,'' and (2) the requirement that the practice of lending by the foreign entity ''does not differ in substance from practices normally followed by the government'' is not met in this instance. Furthermore, because access to direct foreign loans was restricted by the GOK on the basis of a borrowers' ability to access the market without a government or bank guarantee, POSCO would have been able to receive direct foreign loans at the interest rates obtained on its own and without government involvement.

Respondents also address the Department's assertion in the new countervailing duty regulations (and the Statement of Administrative Action) that its indirect subsidy standard remains unchanged under the ''financial contribution'' standard of the Post-Uruguay Round law, specifically referring to the indirect subsidy practices countervailed in *Steel Products from Korea.*[7] Respondents state that to simply subsume direct foreign loans from foreign entities within the broad claim of an unchanged indirect subsidy standard (and the endorsement in the SAA of *Steel Products From Korea*) is ''overly simplistic and legally in error.''

Petitioners dispute respondents' assertion that the GOK's control over access to direct foreign loans does not constitute a financial contribution, within the meaning of the Act. Petitioners state that this question has been addressed by the SAA, which specifically references the Department's indirect subsidy findings in *Steel Products From Korea* to illustrate that the indirect subsidy standard includes the GOK's control over access to direct foreign loans. Petitioners contend that to accept respondents' argument would be to repudiate the interpretation of the statute in the SAA. Petitioners note, moreover, that the Department preliminarily found in the Credit Memo that the GOK's control over the Korean financial system continued through the POI and included the control of access to direct foreign loans.

Department's Position: As petitioners correctly note, respondents' arguments concerning this issue have been fully

[7] *Countervailing Duties; Final Rule,* 63 FR 65348, 65349 (November 25, 1998) (*CVD Final Rule*); SAA at 926.

addressed by the Congress through its approval of the SAA and the *CVD Final Rule*.[8] In *Steel Products From Korea,* the finding of government control was determined to be sufficient to constitute a government program and government action, as defined by the Act. Moreover, in the preliminary determination, we did not revisit that prior determination, and also found that the subsidy identified meets the standard for a subsidy as defined by the post-URAA Act. *Preliminary Determination,* 63 FR at 63890.

While respondents contend that subsuming GOK-controlled access to direct foreign loans from foreign entities within the SAA's claim of an unchanged indirect subsidy standard is ''overly simplistic and legally in error,'' the clear and unambiguous language of the SAA is that Congress intended the specific types of indirect subsidies found to be countervailable in *Steel Products From Korea* to continue to be covered by the Act, as amended by the URAA. The Department's final countervailing duty regulations are equally clear on this issue: the preamble confirms that the standard for finding indirect subsidies countervailable under the URAA-amended law ''is no narrower than the prior U.S. standard for finding an indirect subsidy as described in *Steel Products from Korea*.'' *See CVD Final Rule*, 63 FR at 65349. For these reasons, we have not changed our preliminary determination concerning the countervailability of pre-1992 direct foreign loans.

Comment 4: The GOK's Pre-1992 Credit Policies: Benchmark Applied to Determine the Benefit From Foreign Currency-Denominated Loans

Respondents challenge the Department's use of a won-denominated benchmark to calculate the countervailable benefit from POSCO's outstanding pre-1992 long-term foreign currency-denominated loans. According to respondents, the Department's long established methodology is to compare countervailable loans with a benchmark in the same currency. Respondents cite the *Final Affirmative Countervailing Duty Determination: Certain Apparel from Thailand,* 50 FR 9818, 9824 (1985), which states that, the ''benchmark must be applicable to loans denominated in the same currency as the loans under consideration.'' Respondents also note that this standard was articulated in the *Final Affirmative Countervailing Duty Determination: Cold-rolled Carbon Steel Flat-rolled Products from Argentina,* 49 FR 18006 (April 26, 1984) (*Cold-Rolled Steel From Argentina*). In that case, the Department stated:

> [f]or loans denominated in a currency other than the currency of the country concerned in an investigation, the benchmark is selected from interest rates applicable to loans denominated in the same currency as the loan under consideration (where possible, interest rates on loans in that currency in the country where the loan was obtained; otherwise, loans in that currency in other countries, as best evidence). The subsidy for each year is calculated in the foreign currency and converted at an exchange rate applicable for each year. *Id*. at 18019.

Respondents contend that this policy was reiterated in the Department's new regulations, the preamble to which refers to the currency of the loans as one of ''the three most important characteristics'' in determining the benchmark. *CVD Final Rule*, 63 FR at 65363. Thus, respondents assert that the Department (1) did not consider any other commercially-viable alternatives (such as those rates ''in other countries''); (2) ignored any reference to its long-standing policy of comparing loans in the same currency; and (3) provided no explanation for abandoning that policy. Accordingly, respondents state that the Department must revise its calculation of the benefit from foreign currency-denominated loans, using a benchmark that is in conformance with its policy and regulations.

Petitioners dispute respondents' benchmark argument, stating that the Department clearly rejected this argument in *Stainless Steel Plate from Korea*. While petitioners do not dispute that it is the Department's preference to use a benchmark in the same currency, the Department made clear in the final determination of *Stainless Steel Plate from Korea* that such a comparison was not appropriate when it reaffirmed its determination from *Steel Products from Korea.*

Department's Position: Respondents' arguments concerning the Department's methodology for measuring benefits from countervailable foreign currency-denominated long-term loans are partially correct. As stated in the *Stainless Steel Plate from Korea* determination, it is true that in most instances we measure the benefit from countervailable foreign currency loans by comparing such loans with a benchmark denominated in the same currency, provided the borrower would otherwise have had access to such foreign currency loans. However, in the context of the Korean financial system prior to 1992, this methodology is not appropriate. 64 FR at 15540. Specifically, in *Steel Products From Korea,* the Department found that all sources of foreign currency-denominated credit were subject to the government's control and direction, and were countervailable. Therefore, these sources of foreign currency credit, including overseas markets, could not serve as an appropriate benchmark, and the Department had to determine the rate that companies would have had to pay absent government control. That rate was the corporate bond yield on the secondary market. *See Steel Products From Korea,* 58 FR at 37346; and *Stainless Steel Plate from Korea,* 64 FR at 15540.

Respondents assert that the Department did not consider any other commercially viable alternatives. Respondents ignore, however, the fact that the corporate bond yield on the secondary market was the only alternative, unregulated, and commercially viable source of financing in Korea. Accordingly, this was the only viable benchmark with which to measure the benefit from government-regulated sources of credit. None of respondents' arguments in this investigation have led us to change our determination in *Steel Products From Korea,* which was reiterated in *Stainless Steel Plate from Korea*. Therefore, our finding concerning POSCO's pre-1992 foreign currency-denominated long-term loans remains unchanged in this final determination.

Comment 5: The GOK's Pre-1992 Credit Policies: Whether Direct Foreign Loans Are Not Countervailable Pursuant to the Transnational Subsidies Rule

Respondents assert that pursuant to the so-called ''transnational subsidies rule,'' funds provided from sources outside a country under investigation are not countervailable. Specifically, respondents state that section 701(a)(1) of the Act applies only to subsidies provided by the government of the country in question or an institution located in, or controlled by, that country. In support of this contention, respondents cite *North Star Steel* v. *United States,* 824 F. Supp. 1074 (CIT 1993) (*North Star*), in which the Court upheld the Department's determination that an Inter-American Development Bank loan guaranteed by the Government of Argentina on behalf of the recipient was not subject to the countervailing duty law. In particular, the CIT stated that ''[t]his determination is consistent with the purpose of the countervailing duty law, which is 'intended to offset the unfair competitive advantage that foreign

[8] Although the *CVD Final Rule* is not controlling in this investigation, it does represent a statement of the Department's practice and interpretations of the Act, as amended by the URAA.

producers would otherwise enjoy from * * * subsidies paid by their government.' '' *North Star,* 824 F. Supp. at 1079 (quoting *Zenith Radio Corp.* v. *United States,* 437 U.S. 443, 456 (1978)). Respondents also cite a case in which the Department refused to initiate an investigation of private, foreign co-financing of a World Bank project, stating that ''[f]or the same reasons [applicable to funds from the World Bank], a loan granted by a group of Japanese banks and insurance companies [in the Philippines] * * * would not be countervailable.'' *See Initiation of Countervailing Duty Investigation: Certain Textiles and Textile Products from the Philippines,* 49 FR 34381 (August 30, 1984).

Petitioners assert that the Department's determination does not contravene the transnational subsidy rule because the subsidy in this case is based on controlled access to credit, and not on a differential in interest rates. The fact that the payment of the funds comes from a private source outside of Korea is irrelevant. According to petitioners, the case law cited by respondents does not involve situations in which a foreign government conferred countervailable subsidies by controlling access to third country financial sources. In addition, petitioners note that these cases predate the changes in the statute that expressly recognize indirect subsidies provided through private actors.

Department's Position: Respondents' assertion concerning the transnational subsidies rule is incorrect. Respondents made this same argument in *Steel Products From Korea* (*see* 58 FR at 37344) and in *Stainless Steel Plate from Korea* (*see* 64 FR at 15539). In upholding the Department's determination in *Steel Products From Korea,* the Court did not find in any way that the Department's determination with respect to direct foreign loans was in conflict with the transnational subsidies rule, as argued by respondents in that prior investigation. The cases cited by respondents are also not relevant to the facts of this investigation because those cases deal with funds from foreign governments or international lending or development institutions. This investigation, however, concerns the Korean government's control over access to funds from overseas private sources of credit.

More specifically, however, the Department rejected respondents' argument both in *Steel Products From Korea* and in *Stainless Steel Plate from Korea* because the benefit alleged was not the actual funding of direct foreign loans, but rather the ''preferential access to loans that are not generally available to Korean borrowers.'' *Steel Products From Korea,* 58 FR at 37344; *Stainless Steel Plate from Korea,* 64 FR at 15539. The GOK was found to control this access and because the steel industry received a disproportionate share of these low-cost funds, this preferential access was found to confer a countervailable benefit on the steel industry. Nothing argued by respondents in this investigation would lead us to change these prior determinations concerning direct foreign loans. Therefore, our preliminary determination remains unchanged.

Comment 6: Post-1991 GOK Credit Policies: Whether Foreign Currency Loans from Domestic Branches of Foreign Banks are Countervailable

Petitioners argue that, contrary to its decision in *Stainless Steel Plate from Korea,* the Department should find countervailable access to foreign currency loans extended by foreign bank branches located in Korea. Petitioners contend that the same conditions which led the Department to find the existence of direction of credit for domestic bank sources are present in the case of foreign currency loans extended by foreign bank branches in Korea. Moreover, there is no affirmative evidence to justify overturning the 1993 determination of GOK control over domestic branches of foreign banks. Petitioners assert that the Department mistakenly relied on a lack of any substantive discussion in the record concerning the influence of the GOK on foreign banks as affirmative evidence that no such controls exist. According to petitioners, there is little, if any, meaningful discussion about the direct or indirect influence of GOK regulations and policies on the operation of foreign banks in Korea in the record, including the verification reports. Thus, petitioners argue that the Department does not have a basis for its determination in *Stainless Steel Plate from Korea* that foreign currency loans from branches of foreign banks in Korea are not countervailable.

Petitioners argue that pursuant to the Court of International Trade's (CIT) recent ruling in *Al Tech Specialty Steel Corp.* v. *United States,* the Department may not infer the truth of certain facts from lack of any contradictory evidence on the record, and so may not conclude that, absent evidence to the contrary, the GOK did not exert improper controls or influence over foreign commercial banks.[9] Rather, petitioners argue that the Department is required to support or authenticate with record evidence (*i.e.,* verify) any factual assertion on which it relies. Slip Op. 98–136 at 9 (CIT 1998). Petitioners state that, in this case, the Department has violated that principle by failing to gather and verify the necessary facts in support of the conclusion reached.

Moreover, petitioners assert that what little record evidence is available demonstrates that GOK control over foreign banks in Korea is equivalent to that over Korean domestic banks. The petitioners argue that, according to record evidence, foreign commercial banks and domestic banks are on an ''equal footing,'' and must therefore be subject to the same controls. In particular, petitioners cite to the General Bank Act, the Bank of Korea Act, and the Foreign Exchange Management Law, noting that foreign banks are also subject to the provisions of these laws. Petitioners also refer to the Department's finding that the BOK and MOFE have equal authority to control and monitor all banks, and acted a manner such that, ''[t]o a significant extent, these institutions [BOK and MOFE] continued to intervene directly and indirectly in the lending activities of commercial banks.'' Directed Credit Memo at 6.

Petitioners assert that because the Department found that foreign banks were controlled indirectly by the GOK in *Steel Products from Korea,* and because the Department did not find any practical changes in the GOK's indirect role on lending rates and appointment of bank officials between 1991 and 1997, there is no evidence to support the conclusion that these controls ceased to exist for foreign banks. Specifically, petitioners argue that the GOK maintained indirect control over foreign banks in two ways: (1) By influencing lending rates; and (2) by influencing the appointment of bank officials. With regard to lending rates, petitioners argue that (as indicated in the *Presidential Report*) foreign commercial banks must be subject to the same ''window guidance'' as domestic commercial banks to prevent interest rates from increasing. *See Presidential Report* at 29. According to petitioners, risk-averse, profit-motivated foreign commercial banks would only charge such low interest rates in the Korean

[9] Slip Op. 98–136 at 9, 1998 WL 661461 (Ct. Int'l Trade Sept. 24, 1998)(''After having failed to uncover evidence to corroborate Isibar's statement on the industry standard, Commerce should then have either concluded that the claim was unverifiable or continued the investigative process until corroborating evidence was obtained'').

market if GOK policies restricted either the interest rates or borrowers' access to credit from those banks. Moreover, petitioners maintain instead that there is not sufficient evidence to determine that foreign banks were without GOK influence in the selection of bank officials at Korean branches.

In rebuttal, respondents argue that the petitioners' cite to *Al Tech* is not pertinent. The reasoning of *Al Tech* does not logically extend to this case because there is no evidence to support a conclusion of direction and control over Korean branches of foreign banks. Respondents advance that the record evidence, including meetings with commercial bankers, incontrovertibly indicates that there is no Korean government control of these banks. Rather, petitioners resort to using generalities and speculation about the operation of the Korean banking system and its provisions, which pertain neither to direction of credit to the steel industry, nor to the Department's *de facto* finding of direction of credit. Respondents also reject petitioners argument because petitioners do not present any evidence of the means by which the GOK controlled or directed the lending practices of these foreign bank branches, in contrast to the Department's findings regarding the domestic commercial banks. Rather, foreign banks' most important source of funds is their head offices; this provides them with both greater autonomy from the Korean banking system and a lower cost of funds than that available to Korean commercial banks. Respondents note that petitioners' focus on government controls on the inflow of foreign funds is misplaced, as the GOK is primarily concerned with the domestic money supply, while the inflow of foreign currency is linked to the use of these funds.

Finally, respondents point out that the GOK does not, and does not need to, influence these banks to lend to POSCO. Respondents reiterate that POSCO is one of the best companies in Korea, and, given POSCO's strong credit rating and reputation, most commercial banks would like to lend to the company.

Department's Position: First, we note that petitioners make the statement that because the Department found government control over domestic branches of foreign banks in our 1993 decision in *Steel Products from Korea* that it is incumbent on the Department to rely on affirmative evidence that this control has been repealed. Petitioners argue that the record evidence in this investigation provides no affirmative evidence of any such repeal. Petitioners are incorrect. First, we must make the basic point that the specific GOK control of domestic branches of foreign banks during the period 1992 through 1997, which is at issue here, was not examined in *Steel Products from Korea.* As such, there is no ''affirmative evidence'' to ''repeal.'' In addition, in *Steel Products from Korea*, our determination of GOK control was based on the entirety of the financial system in Korea as existed pre-1992. In this current investigation, we determined that the more appropriate basis of examination of direction of credit after 1991 is an analysis of GOK control with respect to each aspect of the different types of commercial banks in Korea, including domestic banks and foreign bank branches.

More importantly, with respect to petitioners' argument on this issue, as a matter of law, the countervailability of the GOK's control over domestic branches of foreign banks during the period 1992 through 1997, which was not examined in the 1993 decision in *Steel Products from Korea*, can only be based upon the information on the record in this current investigation. As detailed above and explained in the Credit Memo, the information on the record in this investigation demonstrates that while the GOK controls domestic commercial banks it does not control branches of foreign banks in Korea.

Petitioners' contention that record evidence establishes that the Korean branches of foreign banks were subject to the same GOK controls and direction that applied to domestic commercial banks is not supported by the record. The record evidence cited by petitioners does not amount to GOK control and direction of these institutions' operations and lending practices.

The 1996 and 1998 OECD reports do not support petitioners' arguments. While the 1996 OECD report discusses funding levels by foreign banks in Korea, nowhere does that report state that these banks were subject to the GOK's control or direction. Moreover, the 1998 OECD Report, in discussing the weakness of the Korean banking system, and in attributing responsibility for that weakness partly to the government's direct and indirect intervention in the operations of commercial banks, mentions only domestic commercial banks, not foreign banks. In fact, the report discusses the inability of domestic commercial banks, after their privatization, to ''develop the autonomy [from the government] needed in a market economy.''

Contrary to their arguments, petitioners' reliance on the reports issued by the Presidential Commission for Financial Reform, quoted by the Department in the Credit Memo, is equally misplaced. The section of the Presidential Report titled ''Deregulation of Access to Foreign Capital Markets,'' cited by petitioners, refers to regulations governing access to foreign capital markets, not regulations governing foreign currency-denominated loans from domestic branches of foreign banks in Korea.[10] Regulations governing access to foreign capital markets are quite separate from those governing domestic branches of foreign banks in Korea. To the extent that the Presidential Commission addressed domestic foreign currency loans, it addressed the lifting of restrictions on the usage of these funds, which is limited mostly to the importation of machinery from abroad. This has nothing to do with any GOK controls over the operations of domestic branches of foreign banks.

Petitioners also support their argument with the contention that foreign banks are subject to some of the same regulatory provisions contained in the General Bank Act that govern domestic commercial banks. However, the Department's analysis in the Credit Memo did not rely on these regulatory provisions but on the record evidence that the GOK continued to influence the lending practices of these domestic commercial banks indirectly, in part because these banks did not develop autonomy from the government. As we explained in the Credit Memo, the weakness of domestic banks vis-a-vis the government was in part an outgrowth of the government's historical role in allocating credit in accordance with policy objectives. Also, the corporate governance structure of Korea's commercial banks (weak ownership structure, lack of autonomy in appointing banking officials) contributed to their weakness vis-a-vis the government. The fact that the GOK's indirect involvement in commercial banking operations continued into the 1990s exacerbated this problem. *See* Credit Memo at 8–9. Foreign banks in Korea, however, were not subject to this same influence. Their sources of funds were their head offices and, as respondents correctly illustrate, appointment of their senior officials was not subject to influence by the GOK. Moreover, there is no evidence that the GOK played a role in the distribution of these funds by the Korean branches. Petitioners proffer no evidence that foreign banks in Korea were

[10] *Financial Reform in Korea: The First Report (Presidential Report I)* at 22 (April 1997), Exhibit MOFE–9 of the MOFE Verification Report, on file in the CRU.

''inescapably influenced by the controls on every other sector of the banking industry.'' Rather, they speculate that these banks would be no less influenced than their Korean counterparts by the lead of the Korean Development Bank and the Bank of Korea to extend credit to certain government-favored projects. This is not a conclusion reached by any of the commercial bankers at verification, and petitioners do not point to any evidence that would support this contention. We also note that petitioners' view of the GOK's motivation to control foreign sources of money to keep interest rates from falling is not consistent with one of the alleged methods of control, *i.e.*, limits on interest rates through ''window guidance.''

The fact that foreign banks in Korea did not account for a significant amount of total lending in Korea is not sufficient evidence to lead us to conclude that POSCO would not have been able to raise sufficient funds from this source. Rather, the record shows that loans from foreign banks in Korea were a significant source of POSCO's borrowing, and credit from these banks was not controlled by the GOK.

Petitioners have correctly argued that the Department is required to support or authenticate with record evidence factual assertions relied upon in our final determinations. Indeed, section 782(i) of the Act requires the Department to verify the information used in making a final determination. In this investigation, petitioners alleged that the GOK controlled the allocation of credit in Korea during the years 1992 through 1997. Therefore, once a credible allegation was made, the responsibility of the Department was to solicit and develop factual information to determine whether the GOK was directing credit during those years. In this investigation, the Department properly examined individually the various sources of long-term credit in Korea. This examination included, among other sources, loans from foreign banks with branches in Korea.

Because of the complexity of this issue, a government's control and its allocation of credit within its borders, the Department conducted four days of meetings with commercial and investment banks and with economic and financial research institutes in Korea. During this intensive four-day period with experts in the operation of the commercial credit market in Korea, we focused on all aspects of the alleged GOK control of banks in Korea, including its alleged control of foreign banks. In these meetings we sought information on the aspects and measures used by the government in its control of credit and financial institutions in Korea. Information provided to us by these banking and financial experts on the measures used by the GOK to control banks and allocate credit in the Korean financial market was summarized in our Bankers Report.

Based in large part on the information which was gathered during these meetings, we determined that the actions of the GOK in the Korean financial system support the conclusion that the GOK controls credit through both government-owned banks, such as the Korean Development Bank, and Korean domestic banks; however, no similar control was found for foreign banks operating in Korea. As noted in the facts detailed above, and in the Credit Memo, our determination that the GOK does not control the lending decisions and allocation of credit of foreign banks operating in Korea is supported by the information on the record in this investigation.

Comment 7: Post-1991 GOK Credit Policies: Whether POSCO's Access to Foreign Securities Markets Results in Countervailable Benefits

According to petitioners, extensive record evidence, in particular the Department's findings at verification, shows that access to foreign sources of funds, including foreign securities, was strictly controlled by the GOK through the POI. Petitioners assert that, as recognized by POSCO, the MOFE restricted access to foreign securities markets with the purpose of maintaining low levels of cost of funds for certain companies. Petitioners state that interest rates on foreign credit markets were five to seven percentage points lower than those on domestic foreign currency loans, and petitioners charge that the GOK's goal of preventing inflationary effects necessitated the maintenance of this interest rate differential. In addition, petitioners claim that the GOK's control over access to foreign funds constitutes a financial contribution within the meaning of the Act, in particular, the ''entrusts or directs'' standard of section 771(5)(B)(iii) of the Act.

Respondents note that in the recent *Stainless Steel Plate from Korea* final determination, the Department determined that POSCO's alleged ''preferential access'' to regulated foreign sources of funds did not confer a benefit. They state that the record evidence in this case also supports a finding that access to foreign securities did not confer a benefit to POSCO. Respondents also dispute petitioners' claim that access to foreign securities constitutes a financial contribution within the meaning of the Act, stating that petitioners' interpretation of the ''entrust or directs'' standard is unreasonable. Respondents state that this standard cannot encompass private actions by independent foreign parties that are consistent with market-oriented behavior at market-determined interest rates.

Department's Position: In the Credit Memo, we stated that there are three elements required to find a potential subsidy countervailable: (1) A financial contribution is made by a government or public body; (2) a benefit is conferred on the recipient; and (3) the subsidy is specific. If one of these three elements is not met, the subsidy is not countervailable. In accordance with section 771(5)(E)(ii) of the Act, we examined whether a benefit has been conferred on the recipient, POSCO, from foreign securities issued in overseas markets. We also preliminarily determined that POSCO's access to government-regulated foreign sources of credit did not confer a benefit to the recipient, as defined by section 771(5)(E)(ii) of the Act, and, as such, is not countervailable. *See* Credit Memo at 18. As discussed in *Comment 5,* above, we continue to find that branches of foreign banks are not subject to the GOK's control and direction. Therefore, we continue to find that access to government-regulated foreign sources of credit did not confer a benefit, because the rates obtained on foreign securities, even though access to them was limited, were not less than those on foreign currency loans available to respondent companies in Korea. As such, there is no need to address the additional comments raised by petitioners and respondents above.

Comment 8: Whether Lending From Domestic Branches of Foreign Commercial Banks Is an Appropriate Benchmark for Long-term Financing

Petitioners dispute the Department's decision in *Stainless Steel Plate from Korea* that because the GOK did not control or direct credit provided by the domestic branches of foreign commercial banks, the interest rate on certain such loans is an appropriate benchmark for determining the benefit from (1) foreign currency loans from Korean commercial banks extended post-1991 and (2) foreign securities offerings. Petitioners argue that since record evidence establishes the GOK's control of credit from domestic branches of foreign commercial banks, the Department must use an alternative benchmark from an uncontrolled domestic source. Petitioners assert that the Department should instead continue to apply the methodology established in *Steel Products from Korea (1993),* and use the domestic corporate bond rate.

Respondents claim that there is substantial evidence on the record to support the Department's finding that the GOK neither controls nor directs the operations of foreign commercial banks. Therefore, loans from these banks are appropriate as benchmark commercial loans.

Department's Position: We have determined that the GOK does not control credit from domestic branches of foreign banks. *See Comments 5 and 6,* above. Because these uncontrolled foreign banks provided foreign currency loans, interest rates on these loans are the appropriate benchmarks to use in calculating the benefit from foreign currency loans provided to the respondents from government-owned banks and government-controlled domestic banks. For the reasons discussed in *Comment 6,* we disagree with petitioners' arguments that funding from domestic branches of foreign banks cannot serve as an appropriate benchmark to measure any potential benefit from regulated foreign currency-denominated sources of credit, *e.g.,* foreign securities from abroad.

Comment 9: Dai Yang's Long-Term Interest Rate Benchmark for Dollar-Denominated Loans

Respondents argue that, absent loans by Korean branches of foreign banks, the Department should use the average interest rates charged on domestic foreign currency loans from Korean branches of foreign banks to POSCO and Inchon as a benchmark for calculating the benefit from Dai Yang's domestic foreign currency loans. Respondents note that the use of this industry-specific data would be in line with the Department's policy of using industry-specific benchmarks when company-specific benchmarks were not available. Alternatively, respondents assert that the Department may use data solely from Inchon if the Department determines that to be more appropriate.

Petitioners reject the use of an ''industry-specific'' benchmark, as proposed by Dai Yang. While respondents cite to the Department's *1989 Proposed Regulations* in support of this practice, there is no such standard established in the *1997 Proposed Regulations,* which indicates that the Department will use a national average rate absent company-specific benchmark information. Moreover, petitioners suggest the impracticality of this suggestion, as the stated purpose of a benchmark rate is to reflect the ''amount the firm would pay on a comparable commercial loan(s) that *the firm could actually obtain on the market.*'' 19 C.F.R. 351.505(a)(1) (emphasis added). Given the varied financial status of firms, there is no reason to believe that one firm's rates are an acceptable surrogate for another firm. Therefore, the Department should use the national average interest rate benchmark to determine the benefit on all long-term financing, loans and bonds.

Department's Position: While petitioners are correct that it is the Department's practice to use a national average interest rate benchmark when company-specific rates are unavailable, we were unable to locate a national average rate for domestic branches of foreign banks, or any other appropriate surrogate national average rate in this case. Additionally, it is the Department's long-standing practice to compare countervailable foreign currency-denominated loans to a benchmark in the same currency, as discussed in *Comment 7* above, making the use of the won-denominated interest rate benchmark, as suggested by petitioners, inappropriate in this circumstance. *See e.g., CVD Final Rule,* 63 FR at 65363; *see also, Certain Apparel from Thailand,* 50 FR at 9824 (''benchmark must be applicable to loans denominated in the same currency as the loans under consideration),'' and *Cold-Rolled Steel From Argentina,* 49 FR at 18019 (''the benchmark is selected from interest rates applicable to loans denominated in the same currency as the loan under consideration'').

In the past, where the Department has found that a company-specific factor is a reasonable representation of industry practice, we have used such information as the most appropriate surrogate. *See Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy,* 63 FR 40474, 40477 (July 29, 1998). As stated in the Department's *CVD Final Rule,* 63 FR at 65408, section 351.505(a)(2)(i), ''* * * the Secretary normally will place primary emphasis on similarities in the structure of the loans (*e.g.,* fixed interest rate v. variable interest rate), the maturity of the loans (*e.g.,* short-term v. long-term), and the currency in which the loans are denominated.'' Based on the similarities in the circumstances and structure of Inchon's and Dai Yang's lending practices, we find that the rate calculated from Inchon's loans by Korean branches of foreign banks is the most appropriate benchmark.

Comment 10: Inchon's Long-Term Loan Benchmark

Respondents propose that, consistent with the recent *Stainless Steel Plate from Korea* final determination and its regulations, the Department should use the interest rates on Inchon's long-term foreign currency loans from Korean branches of foreign banks to calculate a company-specific weighted-average U.S. dollar-denominated benchmark rate for Inchon. If the Department finds that Inchon's domestic foreign currency loans and direct foreign loans constitute directed credit, it should then use this calculated company-specific benchmark for calculating the benefits conferred upon Inchon.

In rebuttal, petitioners contend that the methodology used to calculate POSCO's company-specific weighted average dollar denominated benchmark interest rate, which Inchon proposes to continue using in this investigation, deviates substantially from the Department's established policy. It is the Department's practice to use a benchmark that is based on the year in which a long-term loan obligation was assumed. However, the methodology used by the Department understated the benefit to producers of subject merchandise by failing to countervail certain loans.

Department's Position: Consistent with the Department's long-term policy, and with the methodology established in the final determination of *Stainless Steel Plate from Korea,* it is appropriate to calculate a company-specific weighted-average U.S. dollar-denominated benchmark based on loans extended by Korean branches of foreign banks to calculate the benefit to Inchon from domestic foreign currency loans and direct foreign loans.

Petitioners argue that this is inconsistent with the Department's practice of using a benchmark based on the year in which a loan was received. While petitioners are correct that this is the Department's standard practice, in this case, annual information was not available. Moreover, it is also the Department's standard practice to compare government-regulated credit to a benchmark denominated in the same currency, if such a benchmark is available, as discussed in *Comment 7,* above. This is in accordance with Department policy and past practice. *See e.g., CVD Final Rule,* 63 FR at 65363; *see also, Certain Apparel from Thailand,* 50 FR at 9824 (quoting, ''benchmark must be applicable to loans denominated in the same currency as the loans under consideration),'' and *Cold-Rolled Steel From Argentina,* 49

FR at 18019 (quoting, ''the benchmark is selected from interest rates applicable to loans denominated in the same currency as the loan under consideration''). Therefore, we believe that the benchmark calculation methodology determined in *Stainless Steel Plate from Korea* is the most reasonable surrogate.

Comment 11: Post-1991 GOK Credit Policies: Whether POSCO Received Disproportionate Benefits From GOK-Regulated Long-Term Loans

Respondents argue the Department erred when it determined that all producers of the subject merchandise received a disproportionate share of long-term loans, in spite of POSCO's demonstration, according to the Department's own GDP test, that it did not. Respondents indicate that it is within the Department's authority to address, on a company-specific basis, those companies that may have received a disproportionate share of long-term loans; however, it is not within the Department's authority to generalize the impact of benefits received by specific companies onto an entire industry, thereby finding disproportionality against a company whose loan shares were demonstrably not disproportionate.

Respondents state that the appropriate legal standard is whether a domestic subsidy ''is a specific subsidy, in law or in fact, to an enterprise or industry * * *.'' (quoting section 771(5A)(D) of the Act). Because POSCO is ''an enterprise'' as defined by the statue, and constitutes ''the industry'' for which the Department must make a determination concerning the existence of a domestic subsidy from the purported directed credit, the Department must find that the subsidy is not specific to POSCO.

According to petitioners, respondents' contention that the Department must examine whether disproportionate benefits have been provided to POSCO is a misinterpretation of the law. In particular, petitioners state that the statute dictates that the Department will find *de facto* specificity when either an enterprise or an industry receives disproportionate benefits. The record, petitioners note, shows that the Korean iron and steel industry received a disproportionate amount of a subsidy.

Department's Position: We disagree with respondents' arguments. The fact that POSCO borrowed very little from those sources of credit that were found to be *de facto* specific to the steel industry during the relevant period is irrelevant. The clear language of the statute is that a subsidy is specific when ''an enterprise *or* an industry receives a disproportionately large amount of the subsidy.'' Section 771(5A)(D)(iii)(III) of the Act (emphasis added). Thus, when a subsidy is specific to an industry, even if it is not specific to an enterprise that is part of that industry, the Department will find that subsidy to be countervailable, even if the actual subsidy to the enterprise is very small.

While respondents may characterize this approach as ''collective guilt,'' the Department has in numerous cases found countervailable relatively small subsidies to a respondent firm on the basis of disproportionate use by the industry to which the respondent belongs. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Steel Products from Brazil,* 58 FR 37295, 37299 (July 9, 1993) (*Certain Steel from Brazil*). Indeed, this is not an unusual fact pattern for *de facto* specificity findings under, for example, large research and development programs. As such it is not surprising that under respondents' suggested approach, the Department would rarely find a subsidy to be de facto specific, because subsidies under a program are frequently not received on a disproportionate basis by a single enterprise. Finally, we agree with petitioners that respondents' attempt to link certain methodologies that are conducted on a company-specific basis to the specificity analysis is also without merit. The quantification of the benefit is simply not germane to the Department's analysis concerning specificity.

Comment 12: Countervailability of POSCO's Two-Tiered Pricing System

Respondents argue that POSCO's pricing decisions are not influenced by the GOK, and that the pricing structure in question is consistent with commercial considerations and is widely used by companies in numerous industries in Korea. RespondentsThey state that two-tiered pricing has evolved as a natural response to market competition: because the competing imports are eligible for duty drawback, companies in Korea must set local export prices to compete with duty-exclusive import prices. Otherwise, respondents claim, POSCO would lose business to competing importers. Further, respondents argue that the Department's methodology used in the preliminary determination was based upon the flawed assumption that there are no major differences between different hot-rolled stainless coils, and that the Department failed to consider quality and terms-of-sale differences in its price comparisons as required under section 771(5)(E)(iv) of the Act, which sets forth the standards for determining the adequacy of remuneration.

Petitioners agree with the Department's preliminary determination that POSCO supplied exporters of subject merchandise with preferentially priced hot-rolled stainless steel coil, and that this practice constitutes a countervailable export subsidy. Petitioners state that the Department should continue to use import prices for hot-rolled stainless steel coil as the benchmark for calculating the benefit conferred by this program, consistent with the Department's practice of using the world market price as a benchmark. As an alternative, petitioners propose the use of a weighted-average of the home market prices and import prices as the benchmark price.

Petitioners rebut respondents' argument that POSCO's pricing system is consistent with commercial considerations, and disagree with respondents' claim that this pricing schemeystem is necessary in order for POSCO to compete with foreign competitors. Petitioners maintain that the attribution of commercial benefits to a subsidy program such as this one is irrelevant, as commercial considerations—such as the loss of business—do not mitigate the countervailability of such subsidies. Moreover, the language of the statute states that the adequacy of remuneration will be measured ''in relation to prevailing market conditions * * * for goods purchased in the country which is subject to the investigation.'' Therefore, POSCO's competition with imported material is also immaterial.

Department's Position: Because POSCO, a government-owned entity, charged lower prices to respondent companies for inputs that were used to produce subject merchandise for export, this program constitutes an export subsidy in accordance with section 771(5A)(B) of the Act. We disagree with respondents' claim that there was no GOK control or intervention in POSCO's pricing decisions. As discussed in the ''Programs Determined to be Countervailable'' section of this notice, we have determined that the actions of POSCO are the actions of the GOK because POSCO is a government-controlled company. Respondents also indicate that POSCO has no incentive to sell to its competitors at subsidized prices. However, as discussed above, POSCO is a government-controlled company, and record evidence indicate that the GOK does influence POSCO's pricing decisions. *See* Source Document Memo.

The parties have put forth numerous arguments explaining how the benefit from this program should be determined under the guidelines of the adequacy of remuneration standard established in section 771(5)(E)(iv) of the Act. However, the adequacy of remuneration standard is not relevant to the program at issue. The program at issue is one in which POSCO charges different prices to Korean steel manufacturers based upon export performance. This type of dual pricing program is specifically addressed in the Illustrative List of Export Subsidies (the Illustrative List) which is provided as Annex I of the Agreement on Subsidies and Countervailing Measures. Because this type of program is specifically addressed under Item (d) of the Illustrative List, the criteria to be used to determine whether POSCO's dual pricing policy is a countervailable subsidy is the criteria set forth under Item (d), not the criteria used to determine the adequacy of remuneration as argued by the parties. Indeed, the adequacy of remuneration standard used for the provision of goods and services and the criteria used to determine the subsidy based upon price preferences for inputs used in the production of goods for exports are set forth in separate regulations. *See* section 351.511 and section 351.516 of the *CVD Final Rules.*

Additionally, respondents discussed various other market conditions, *e.g.*, quality, as factors which cause differences between POSCO's prices and those of POSCO's foreign competitors. However, as discussed in the ''Programs Determined to be Countervailable'' section of this notice, we have altered our methodology from the preliminary determination. Therefore, the products and pricing practices of only one supplier, POSCO, is considered in the Department's comparison. The Department is comparing POSCO's ''domestic'' prices to POSCO's ''local export'' prices. While factors such as quality may potentially create a price differential between different producers, these variables do not play a role in the different prices at which POSCO sells the same subject merchandise to its customers. Therefore, these arguments are not applicable.

Respondents argued that if the Department mistakenly countervailed POSCO's two-tiered pricing policy, numerous adjustments should be made to the import prices which served as the benchmark in the preliminary determination. Petitioners also put forth numerous arguments with regard to these benchmark prices. However, as discussed in the ''Programs Determined to be Countervailable'' section of this notice, we have stated the reasons for basing our comparison on prices charged by POSCO to respondents when producing for domestic sale and the prices charged by POSCO to respondents when producing for export. Therefore, the parties' arguments with regard to the use of import prices as a benchmark are not applicable.

The parties argue about the date that should be considered the ''date of sale'' by the Department. As indicated by both petitioners and respondents, this is not a dumping investigation, and the important question is when the prices being compared were set. Therefore, we based the comparison on the months in which the prices were set, which is the month in which the order was placed. Therefore, we believe that the most reasonable comparison is a monthly one, established by the order dates of the respondent firms.

Finally, respondents argue that this pricing system is not unique to POSCO, but is used by numerous companies in a variety of industries as a market response to Korea's system of duty drawback. First we note POSCO's own statements indicate that POSCO sets local export prices at levels that are below the duty-exclusive price. *See* POSCO's October 21, 1998 questionnaire response at 2. Under the countervailing duty law, a government pricing program which provides a lower price to exporters based upon export performance is a countervailable subsidy under section 771(5A)(B) of the Act. The statute and Item (d) of the Illustrative List provide the standard to be used by the Department to determine whether a countervailable subsidy has been provided by a pricing program of the type under examination in this investigation. Once the pricing program is determined to be an export subsidy under the statute, no further analysis on the countervailability of this program is required.

Comment 13: The GOK's Pre-1992 Investments Constitute Non-Countervailable ''General Infrastructure''

Respondents state that in the preliminary determination, the Department relied exclusively upon its decision in *Steel Products from Korea,* to find that the GOK's investments at Kwangyang Bay during the period 1983–1991, provided countervailable subsidies to POSCO. Respondents note that the final determination of *Steel Products from Korea,* however, was made under the Pre-Uruguay Round law and on a different factual record. Therefore, in order to carry out its statutory mandate, the Department must apply the Post-Uruguay Round law to the facts presented in this instant investigation, and revisit its preliminary determination. Under section 771(5)(B) of the Act, there is now a requirement that a financial contribution must be provided by the government in order for a countervailable subsidy to exist. Respondents further argue that under section 771(5)(D)(iii) of the Act, the term ''financial contribution'' does not include the provision of general infrastructure.

Respondents state that, although the Department's administrative determinations, and the statute itself, are silent as to the definition of ''general infrastructure'' under the new law, the Department's new CVD regulations are instructive. Respondents note that section 351.511(d) of the new regulations defines ''general infrastructure'' as ''infrastructure that is created for the broad societal welfare of a country, region, state, or municipality.'' *See CVD Final Rules.* They argue that under the Post-Uruguay Round law and the basic standard for general infrastructure articulated in section 351.511(d) of the new regulations, the GOK's pre-1992 infrastructure investments at Kwangyang Bay constitute non-countervailable ''general infrastructure.''

Petitioners note that the Department in the past has found that the Kwangyang Bay investments do not constitute general infrastructure, and urge the Department to continue this practice. *See Stainless Steel Plate from Korea,* 64 FR at 15547, and *Steel Products from Korea,* 58 FR at 37346–47.

Department's Position: Respondents are correct when they assert that general infrastructure is not considered to be a financial contribution under 771(5)(D)(iii) of the Act. However, they are incorrect when they state that the infrastructure development at Kwangyang Bay constitutes general infrastructure. As respondents have acknowledged, the statute is silent as to the definition of ''general infrastructure;'' however, they note that the Department's new CVD regulations are instructive. *See CVD Final Rules,* 63 FR at 65412. While the new CVD regulations are not applicable to this case because this investigation was initiated before the effective date of these regulations, we are referring to them, in part, for guidance as to what constitutes ''general infrastructure.''

The new CVD regulations define general infrastructure as ''infrastructure that is created for the broad societal welfare of a country, region, state or municipality.'' Thus, any infrastructure that does not satisfy this public welfare concept is not general infrastructure and is potentially countervailable. Therefore, the type of infrastructure *per se* is not dispositive of whether the government provision constitutes ''general infrastructure.'' Rather, the key issue is whether the infrastructure is developed for the benefit of the society as a whole. For example, interstate highways, schools, health care facilities, sewage systems, or police protection would constitute general infrastructure if we found that they were provided for the good of the public and were available to all citizens and members of the public. Infrastructure, such as industrial parks and ports, special purpose roads, and railroad spur lines that do not benefit society as a whole, does not constitute general infrastructure within the meaning of the new CVD regulations, and is countervailable if the infrastructure is provided to a specific enterprise or industry and confers a benefit.

The infrastructure provided at Kwangyang Bay was not provided for the good of the general public; instead, it was built to support POSCO; therefore, it does not constitute ''general infrastructure.'' It is clear from the record that the infrastructure provided for POSCO's benefit at Kwangyang Bay is *de facto* specific, and that POSCO is the dominant user. *See Steel Products From Korea,* 53 FR at 37346–47. Therefore, the infrastructure at Kwangyang Bay is countervailable. Indeed, the ''Explanation of the Final Rules'' (the Preamble) to the new CVD regulations, which respondents assert are instructive on this issue, specifically cites to the infrastructure provided at Kwangyang Bay in *Steel Product From Korea* as an example of industrial parks, roads, rail lines, and ports that do not constitute ''general infrastructure,'' and which are countervailable when provided to a specific enterprise or industry. *See CVD Final Rules,* 63 FR at 65378–79.

Comment 14: GOK's Pre-1992 Investments Are Not Countervailable Because They Are ''Tied'' to Kwangyang Bay

Respondents state that, in the preamble to the new regulations, the Department has adopted the practice of attributing subsidies that can be ''tied'' to particular products to those products. *See CVD Final Rules,* 63 FR at 65400. With respect to the instant investigation, respondents argue that the alleged subsidies are ''tied'' to the products that are produced at POSCO's Kwangyang Bay facility. Since the subject merchandise is not produced at the Kwangyang Bay facility, the subject merchandise does not benefit in any way from the allegedly subsidized general infrastructure at Kwangyang Bay. Respondents contend that it would run counter to the Department's practice, and common sense, to attribute countervailable benefits to products that cannot benefit from the alleged subsidies. They also note that under the Department's past practice, where a subsidy is ''tied'' only to non-subject merchandise, that subsidy is not attributed to the merchandise under investigation. *See Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings from India,* 62 FR 32297, 32302 (June 13, 1997).

Respondents argue that the Department was faced with a similar factual situation as the instant case in the *Final Affirmative Countervailing Duty Determination: Iron Ore Pellets from Brazil,* 51 FR 21961, 21966 (June 17, 1986) (*Iron Ore Pellets from Brazil*). In that case, petitioners argued that infrastructure and regional tax benefits provided to the Carajas mine project should be attributed to the respondent even though respondent did not produce (or intend to produce) subject merchandise at the Carajas mine project. The Department rejected petitioners' argument finding that the infrastructure and tax benefits were, by definition, only for the Carajas mine project. Because the respondent did not produce subject merchandise at the Carajas mine project, the Department did not consider this program countervailable with respect to subject merchandise.

Respondents contend that, rather than directly addressing the fact that the alleged subsidies are tied to Kwangyang Bay, the Department has instead mis-cited to its earlier finding in *Steel Products from Korea.* They note that in the preliminary determination of the instant investigation the Department claims that the alleged subsidy in *Steel Products from Korea* was treated as ''untied.'' However, respondents state that nowhere in *Steel Products from Korea* does it state that the alleged subsidy was being treated as ''untied.'' In fact, respondents state that the issue of whether the subsidies were tied or untied never arose in that investigation because the subject merchandise was produced at both of POSCO's steel facilities and, therefore, it was unnecessary for the Department to characterize the alleged subsidy as either ''tied'' or ''untied.'' They argue that in mischaracterizing its finding in *Steel Products from Korea*, the Department is attempting to bootstrap that finding into the instant investigation.

In their rebuttal brief, petitioners reject the respondents' argument that the Department is attempting to bootstrap its finding in *Steel Products from Korea* into the instant investigation. In *Steel Products from Korea*, petitioners state that the Department, by dividing the benefit attributable to the POI by POSCO's total sales, clearly treated the grants as untied benefits. *See Steel Products from Korea,* 58 FR at 37347. The Department clearly reiterated this position in *Stainless Steel Plate from Korea,* 64 FR 15549. Therefore, petitioners argue, the Department should continue to find Kwangyang Bay infrastructure investments ''untied'' in the final determination.

Department's Position: First, we note that the attribution, or ''tying,'' of a subsidy to a particular product or market is a long-standing policy of the Department, not one recently adopted in the new CVD regulations. Also, it has been the practice of the Department to attribute the benefit conferred from an ''untied'' domestic subsidy to the recipient's total sales. (This is how the subsidy rate was calculated for the Kwangyang Bay subsidy in *Steel Products from Korea.*) By contrast, if the subsidy was, for example, tied to export performance, then the Department would only attribute the benefit of the subsidy to the recipient's export sales.

Respondents' argument that the infrastructure subsidy provided to POSCO is tied to only certain of POSCO's production is flawed. Part of respondents' argument rests upon the premise that a regional subsidy can be tied to only the subsidy recipient's production in that region. If this allocation methodology were adopted and the Department tied regional subsidies to production in a particular region, the Department would essentially be forced to calculate factory-specific subsidy rates. In addition, if such a methodology were applied, then foreign companies could easily escape collection of countervailing duties by selling the production of a subsidized region domestically, while exporting from a facility in an unsubsidized region. This allocation methodology has been clearly rejected by the Department. *See, e.g., Final Negative Countervailing Duty Determination: Fresh Atlantic Salmon from Chile,* 63 FR 31437, 31445–46 (June 9, 1998) (stating, ''[T]he Department does not tie the benefits of federally provided regional programs to the product produced in the specified regions.'') Indeed, the Department has explicitly rejected this argument in the new CVD regulations cited by respondents in support of their argument on this issue. *See CVD Final Rules,* 63 FR at 65404. The infrastructure development at Kwangyang Bay provided a benefit to POSCO and, as discussed further below, the benefit from the subsidy is untied and is attributed to POSCO's total sales.

Respondents' argument is also flawed because respondents have misinterpreted the attribution methodology. Attribution of the benefit of a subsidy is based upon the information available at the time of bestowal. The concept of ''tying'' a subsidy at the time of bestowal can be traced back to *Certain Steel Products from Belgium*. *See Final Affirmative Countervailing Duty Determination: Certain Steel Products from Belgium,* 47 FR 39304, 39317 (September 7, 1982). At the time of bestowal of the subsidy conferred by the Kwangyang Bay infrastructure, the benefit of the subsidy was to POSCO, not to a specific product line. Thus, the benefit cannot be tied to any specific product, but instead, is an untied benefit provided by the GOK to POSCO. Once it is determined that an untied subsidy has been provided to a firm, the Department will attribute that untied subsidy to the firm's total sales, even if the products produced by the firm differ significantly from the time when the subsidy was provided. The Department will not examine whether product lines have been expanded or terminated since the time of the subsidy's bestowal.

Finally, we note that respondents' reliance on *Iron Ore Pellets from Brazil* is misplaced. First, in both *Iron Ore Pellets from Brazil* and in the Kwangyang Bay subsidy at issue in this investigation, the determination of attribution of a subsidy was made at the time of bestowal, which is consistent with Department policy. Thus, in both cases, the Department applied the same standard in determining whether a subsidy was tied or untied. Second, the subsidy alleged in *Iron Ore Pellets from Brazil* was alleged to have been provided to an input into the subject merchandise, an issue distinct from the issue in the instant investigation. We further note that the treatment of input subsidies at issue in *Iron Ore Pellets from Brazil* has changed since 1986. *See e.g.,* section 351.525(b)(6)(iv) of the *CVD Final Rules* and *Final Results of Countervailing Duty Administrative Review: Industrial Phosphoric Acid from Israel,* 63 FR 13626 (March 20, 1998). Thus, if the identical subsidy issue cited in *Iron Ore Pellets from Brazil* were before the Department today, it is uncertain whether the same decision would be made in 1999 as was made in 1986.

Comment 15: The Department Erred in Treating the Alleged Benefit to POSCO as a Grant

Respondents note that, in the preliminary determination, the Department determined that the GOK's costs of constructing the infrastructure at Kwangyang Bay constituted grants to POSCO. In treating these costs as grants to POSCO, respondents argue, the Department has ignored the fact that the GOK owns these facilities and charges POSCO the normal user fees for the services provided. They assert that it is erroneous as a matter of law and contrary to Department precedent to countervail as grants infrastructure that the respondent does not own and where normal user fees are paid to use the infrastructure services. (*Citing,* sections 771(5)(D)(i) and (E)(iv) of the Act, and the *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel,* 52 FR 25447, 25451 (July 7, 1987) (*IPA from Israel; Final Determination*).)

Respondents contend that rather than treating the infrastructure investments as grants, the Department should have analyzed the issue as one of whether the infrastructure services were provided ''for less than adequate remuneration,'' citing section 771(5)(E)(iv) of the Act. They note that adequacy of remuneration is the new statutory provision for determining whether the government's provision of a good or service constitutes a countervailable subsidy. According to section 771(5)(E) of the Act, the adequacy of remuneration with respect to a government's provision of a good or service shall be determined in relation to prevailing market conditions (*i.e.,* price, quality, availability, marketability, transportation, and other conditions of purchase or sale) for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review.

Respondents state that the Department addressed a similar issue in *IPA from Israel; Final Determination.* At issue in that case were certain rail lines built (and owned) by the Israeli government for ''the almost exclusive use of a few chemical companies. *See IPA from Israel; Final Determination,* 52 FR at 25447. The Department recognized that any benefit to be derived from the infrastructure was related to the use of that infrastructure, and since the respondent in question paid for such use, the question was whether the payments for such use were higher or lower than those paid by other users for similar services. The Department determined that the rates paid were not preferential and, therefore, that no benefit or subsidy existed.

Respondents also state that in *Certain Steel Products from Brazil,* the Department applied a similar analysis. In that case, the Department determined that ''The fees charged * * * reflected standard fees applied to all users of port facilities, thus, they are non-specific.'' *Certain Steel Products from Brazil* at 37300. *See also, Final Affirmative Countervailing Duty Determination: Carbon Steel Wire Rod from Trinidad and Tobago,* 49 FR 480, 486 (Jan. 4, 1984) (*Carbon Steel Wire Rod from Trinidad and Tobago*).

Respondents argue, in the alternative, that if the Department continues to treat these benefits as ''grants,'' then these grants must be pro-rated based upon the actual benefit to POSCO. They note that the GOK provided information on the use of these facilities and, where possible, POSCO's portion of the total usage during the POI. Since POSCO is not the only company that benefits from the infrastructure investments at Kwangyang Bay, the Department cannot simply attribute the entire benefit from the GOK's infrastructure investments to POSCO. The benefit found must be allocated proportionate to POSCO's use of these facilities at Kwangyang Bay during the POI.

In their rebuttal brief, petitioners state that respondents are blurring the distinction between the original provision of specific infrastructure investments and the adequacy of remuneration of fees charged for the future use of the infrastructure. In addition, petitioners argue that the investment grants should not be ''pro-rated'' based on POSCO's use of the facilities, because POSCO is the dominant beneficiary. Petitioners note that in *Steel Products from Korea,* the Department determined that Kwangyang Bay was specifically designed for POSCO. *See Steel Products from Korea,* 58 FR at 37347. Petitioners point out that the Department specifically clarified this point in the recent final determination of *Stainless Steel Plate from Korea. See Stainless Steel Plate from Korea,* 64 FR at 15,550.

Department's Position: The Kwangyang Bay infrastructure subsidy under investigation in *Steel Products from Korea, Stainless Steel Plate from Korea,* and this investigation is not the fee charged by the government for use of rail and port facilities, as was the issue in the cases cited by respondents. Indeed, we found an alleged program providing ''preferential'' port charges to the Korean steel industry not to exist in *Steel Products from Korea*. Therefore, the cases cited by respondents are not relevant to the treatment of the Kwangyang Bay subsidy.

The benefit under this subsidy program to POSCO was the creation of Kwangyang Bay to support POSCO's construction of its second integrated steel mill. The building of this infrastructure to support POSCO's expansion, which was planned years before POSCO commenced production at Kwangyang Bay, was the benefit countervailed in *Steel Products from Korea* and in this investigation. Thus, the benefit conferred by this subsidy program to POSCO, and the benefit that must be measured, is the construction of these facilities, rather than the fees charged to POSCO for their use. Therefore, it is reasonable to measure the benefit from this program by treating the costs of constructing the Kwangyang Bay facilities for POSCO as nonrecurring grants.

In addition, we also disagree with respondents' argument that we should pro-rate this subsidy between POSCO and to other companies currently located at Kwangyang Bay. Again, respondents have misinterpreted the nature of the benefit. The infrastructure at Kwangyang Bay was built to support POSCO's expansion and its creation of its second integrated steel mill. Therefore, the program is a subsidy provided to POSCO, and the benefit from the program is properly attributed to POSCO.

Comment 16: The Department Should Exclude Dai Yang's ''Merchandise'' Sales From its Reported Sales Denominator

Petitioners argue that the Department should exclude the amount of ''merchandise sales,'' or goods resold, from Dai Yang's sales denominator in its final analysis. Petitioners reason that these sales, which were discovered at verification, are sales of goods not produced by Dai Yang, and so should not be included in Dai Yang's sales figures.

Respondents argue that it is hypocritical for petitioners to argue, on one hand, that the ''untied'' subsidies which POSCO allegedly received from the pre-1992 infrastructure investments at Kwangyang Bay should be attributed to the production of subject merchandise, while on the other hand Dai Yang's ''merchandise'' sales should be left out of the calculation because they are ''untied.''

Department's Position: According to the *GIA*, it is the Department's aim to ''capture every part of the sales transaction that could benefit from subsidies'' in the total sales denominator. *GIA*, 58 FR at 37237. Moreover, it is the Department's long-standing position that production subsidies are tied to a company's domestic production. Following the approach outlined in *Certain Steel from France* (1993), we have applied the Department's ''tied'' analysis to this situation. *See*, GIA, 58 FR at 37236. The presumption that the subsidies at issue are tied to domestic production has not in any way been rebutted by respondents, and respondents have not attempted to show that Dai Yang's ''merchandise'' sales should appropriately be included in the sales denominator. We therefore determine that the appropriate sales denominator is the total of Dai Yang's domestically produced merchandise, and we have excluded Dai Yang's ''merchandise'' sales, as these are not sales of goods produced by the company.

Respondents argue that it is inconsistent to exclude ''untied'' sales while concurrently countervailing a subsidy which is ''untied'' to the production of subject merchandise. However, this position is not inconsistent. Subsidies received for infrastructure, for example, indirectly benefit production. Thus, it is reasonable to countervail such a subsidy. However, to include in the sales denominator sales of merchandise that were not produced by the particular respondent would be unreasonable, as this merchandise is clearly not part of the production process.

Comment 17: Countervailability of Long-Term Loans Where Dai Yang Did Not Have Interest Payments Due During the POI

Respondents state that it is the Department's methodology to calculate the benefit from long-term variable rate loans at the time the interest on the loan would be paid; hence no benefit exists on a loan if no interest was due during the POI. Respondents argue that the Department's methodology for measuring the benefit from fixed rate loans requires the same result. Therefore, respondents conclude that there is no benefit from either fixed or variable rate long-term loans if no interest payments were due on those loans in 1997.

Department's Position: We agree with respondents that it has been the Department's long-standing policy to calculate the benefit of a long-term fixed-rate loan assigned to a particular year by calculating the difference in interest payments for that year, *i.e.*, the difference between the interest paid by the firm in that year on the government provided loan and the interest the firm would have paid on a comparable commercial loan. *See* section 771(5)(E)(ii) of the Act. Because our methodology is to calculate the benefit at the time the interest on the loan would be paid on the comparison loan, and because no interest payment would have been made during the POI, we find that there is no benefit to Dai Yang from these loans.

Comment 18: The Loan That Dai Yang Received From the National Agricultural Cooperation Foundation Was Not Specific and Is Thus Not Countervailable

Respondents argue that the Department erred in its preliminary finding that the loan that Dai Yang received from the National Agricultural Cooperation Foundation was countervailable as an export subsidy because Dai Yang had provided the wrong evaluation criteria in its questionnaire response. Respondents assert that the record evidence, in particularly the evidence gathered at verification, indicates that this loan program was generally available to small and medium size enterprises (SMEs), and that companies were not evaluated for these loans based on export performance. Respondents conclude that this loan is not an export subsidy, is non-specific, and, hence is not countervailable.

Petitioners argue that this loan should be countervailed as an export subsidy, or alternatively as a GOK policy loan. According to petitioners, the fact that this loan program was available only to SMEs is not pertinent. The evidence on the record supports the conclusion that export performance is a factor in the availability of NACF loans; that the loans are advertised as ''small and medium size company loan'' does not negate the fact that export status is a criteria for eligibility.

Respondents disagree with the assertion that Dai Yang's loan from the NACF is countervailable as a GOK-directed policy loan. It is Ansan City, and not the GOK, which funds and administers this loan program. Respondents assert that since the GOK was not involved, this program lies outside the rubric of GOK direction of credit. Rather, respondents reiterate that the correct standard is whether the program was specific within Ansan City which, as discussed above, it was not.

Department's Position: We disagree with respondents' assertion that the criteria for approval of lending under this program is not contingent upon export performance. While new information was presented at verification which indicated that this program is available only to small- and medium-sized enterprises, the loan approval criteria indicates that export performance is also an important criterion for approval. According to the loan approval criteria, export performance and overseas market development are two of the factors considered in the approval process. As the Department has found this program to be a countervailable export subsidy, petitioners argument that it should be countervailed as direction of credit is moot.

Comment 19: The Department Should Not Include the Subsidy From Dai Yang's Export Industry Facility Loan in the Cash Deposit Rate

Respondents argue that the Export Industry Facility Loan that Dai Yang had outstanding during the POI should not be countervailed because: (1) As verified, the program was terminated in 1994; and (2) Dai Yang's outstanding balance was paid off in early 1998. Hence, there can be no future benefit to Dai Yang. Respondents argue that according to the Department's regulations, such a program-wide change may be taken into account in establishing the estimated countervailing duty cash deposit rate.

In their rebuttal brief, petitioners indicate that, as outlined in the Department's new regulations, the Department's policy is to make such an adjustment if the applicable events occurred during the POI, but before the preliminary determination. In this case, the program-wide change occurred prior to the POI, and thus is inapplicable to the current investigation. Furthermore, since the benefits did not cease until after the POI, the Department should not adjust the cash deposit rate.

Department's Position: Petitioners are correct in their contention that the Department should not adjust the cash deposit rate. Pursuant to section 355.50(d)(1) of the Department's *1989 Proposed Regulations*, and codified in section 351.526 of the *CVD Final Rule* the Secretary will not adjust the cash deposit rate where a program is terminated and, ''the Secretary determines that residual benefits may continue to be bestowed under the terminated program.'' *See CVD Final Rule*, 63 FR at 65417. *See also, e.g., Live Swine From Canada; Final Results of Countervailing Duty Administrative Review*, 63 FR 2204. As reported by the GOK and verified by the Department, the Export Industry Facility Loan program was terminated in 1994. However, Dai Yang continued to receive countervailable benefits from this program throughout the POI.

Comment 20: The Department's Use of the Aggregate Rate Found in Steel Products From Korea for Determining a Subsidy Benefit to Sammi

Respondents argue that the country-wide *ad valorem* rate from *Steel Products from Korea* which was used as facts available should be modified to reflect the fact that three of the programs found countervailable in *Steel Products from Korea* were applicable only to POSCO: government equity infusions, infrastructure at Kwangyang Bay, and the exemption from dockyard fees. Petitioners maintain that the Department should exclude these benefits because (1) the petition did not allege these subsidies were provided to Sammi; and (2) the Department recently determined that POSCO's exemption from port fees was not a countervailable subsidy.

Petitioners rebut the suggestion that the facts available rate applied to Sammi be adjusted to account for POSCO-specific programs. Because the Department applied the rate from *Steel Products from Korea* as adverse facts available, the components of this rate are immaterial. None of the components of this rate are specific to Sammi; the Department chose to use this rate as an adequate surrogate for company-specific information. In support of this opinion, petitioners cite *Krupp Stahl A.G.* v. *United States*, 822 F. Supp. 789, 792 (CIT 1993) (*Krupp Stahl*), quoting *Asociacion Colombiana de Exportadores de Flores* v. *United States*, 704 F. Supp. 1114,1126 (CIT 1989), *aff'd*, 901 F.2d 1089 (Fed. Cir. 1990), which said that the appropriate facts available information ''is not necessarily accurate information, it is information which becomes usable because a respondent has failed to provide accurate information.''

Because Sammi did not cooperate in this investigation, there is no evidence that they did not receive benefits from the ''POSCO-specific'' programs, nor can the Department know what subsidies may have been uncovered had Sammi cooperated in the investigation. The Department may, therefore, make the adverse assumption that unreported subsidies may exist. The Department has broad discretion to define facts available, as stated in *Krupp Stahl* and in *Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185,1191 (Fed. Cir. 1993), and should use the discretion to maintain the aggregate facts available rate for Sammi.

Department's Position: Pursuant to section 776(b) of the Act, the Department chose to use the aggregate rate found in *Steel Products from Korea* as an adverse facts available representation of countervailable benefits conferred to Sammi by the GOK. Because this rate was based on many of the same programs alleged in this case, we consider it to be an appropriate basis for a facts available countervailing duty rate calculation.

We disagree with respondents' argument that because some of the program rates incorporated in the aggregate rate were specific to POSCO, the Department should exclude these POSCO-specific benefits. As indicated by petitioners, because Sammi chose not to participate in this investigation, the Department has no basis for concluding that Sammi has not benefitted, at a minimum, from the level of subsidies found applicable to the Korean steel industry in *Steel Products from Korea*. According to section 351.308(c) of the Department's regulations, the Department may use the rates found in a previous countervailing duty investigation in an adverse facts available situation. Therefore, we have relied upon the final determination of *Steel Products from Korea* as an appropriate source for adverse facts available.

Comment 21: POSCO's Purchase of Sammi's Changwon Facility

Respondents argue that the because the preliminary determination was based on a misplaced decimal in the translated version of the purchase contract, the amount of the final payment to Sammi for this facility was vastly overstated. In reality, respondents claim, the amount POSCO paid was based on the lower of the two independent third-party valuation reports. POSCO did not pay more for this facility than this study concluded that it was worth, and there was no countervailable subsidy to Sammi.

In rebuttal, petitioners point to record evidence which indicates that this sale was an attempt by the GOK to prevent Sammi's bankruptcy. Moreover, petitioners argue that the KDB's release of Sammi's collateral which enabled this purchase amounts to a grant and, hence, a financial contribution. Because this contribution was exclusive to Sammi, this subsidy meets the Department's definition of specificity. Therefore, the full purchase price paid by POSCO is countervailable as a grant.

Department's Position: While respondents are correct in their statement that the ad valorem rate determined by the Department in its preliminary determination was based on a misplaced decimal in POSCO's submission, we disagree with their contention that POSCO's purchase of Sammi's Changwon does not confer a countervailable benefit. Additional evidence acquired since the preliminary determination, however, indicates that POSCO made this purchase at the request of the GOK, and, in doing so, deviated substantially from its own internal regulations on purchasing. Therefore, we determine that POSCO's purchase of this facility provided a countervailable subsidy to Sammi. For a more detailed discussion of this program, please *see* the ''Programs Determined To Be Countervailable'' of this notice.

Comment 22: Government Financial Assistance as a Result of Sammi's Bankruptcy

Respondents argue that, as verified by the Department, when Sammi declared bankruptcy its debts were restructured and payment schedules were established for each creditor, including the KDB. There is no evidence that Sammi received government assistance in the form of grants or debt write-offs in conjunction with its bankruptcy. Instead, the Department found at verification that the KDB ceased lending to Sammi after 1996, and that once Sammi declared bankruptcy, the KDB notified Sammi that it was closing its accounts. Respondents argue Sammi's bankruptcy was consistent with normal bankruptcy procedures; therefore, the Department should conclude in its final determination that there was no GOK financial assistance provided to Sammi in conjunction with its bankruptcy and, hence, no countervailable subsidy.

Petitioners argue that, as shown by record evidence, the GOK forced POSCO to purchase Sammi's Changwon facility to either prevent or ameliorate the effects of bankruptcy on Sammi. Absent this rescue plan, and the massive equity infusion caused by the Changwon purchase, Sammi would have entered into bankruptcy earlier and have been liquidated. Alternatively, Sammi would have defaulted on loans and had its collateral seized. Petitioners propose that the Department should countervail the full value of the loan extensions to Sammi on its KDB loans.

Department's Position: Petitioners argue that POSCO's purchase of Sammi's Changwon facility, and the KDB's corresponding release of collateral, constitutes emergency assistance in conjunction with Sammi's bankruptcy. While the Department agrees that the Changwon facility was purchased by POSCO at the behest of the GOK, we disagree that the KDB's release of collateral constituted bankruptcy assistance. As verified by the Department, the KDB released the collateral in question as a result of POSCO's agreement to purchase the assets held. The bulk of POSCO's payment for the Changwon facility went to pay off Sammi's outstanding loans with respect to this facility.

While Sammi chose not to cooperate in this investigation, the GOK indicated that there was no consortium, there were no grants, and that Sammi's debt was addressed in the context of normal bankruptcy proceedings. During our verification, we examined the other respondents' accounts and financial records and did not find any provision of assistance to Sammi; nor did we find evidence of such assistance during our verification of the Government of Korea. Because our investigation revealed no government assistance to Sammi in the form of grants or write-off of debt, we have not calculated a subsidy rate for this allegation. However, because Sammi did not respond to our request for information, we will continue to examine this allegation in any subsequent administrative review. For more information regarding this program, please see the ''Use of Facts Available'' section of this notice.

Comment 23: Calculation of the Benefit From Sammi's 1992 ''Emergency Loans''

Respondents argue that the Department made numerous mistakes in its calculation of the countervailable benefit from the ''emergency loans'' in the preliminary determination. The Department's premise that the entire amount of 132 billion won remained outstanding during the POI, and that these were interest-free loans, is flawed. Further, Sammi's 1997 balance sheet indicates that there must have been little, if any, of these ''emergency loan'' funds outstanding during the POI, and that Sammi would have been unable to make payments on any loans from March to December 1997, since Sammi was under court receivership at this time. Respondents also argue that according to Sammi's 1996 balance sheet, Sammi had less than 132 billion won in outstanding long-term loans at the end of 1996, before the POI began.

Petitioners claim that the Department should reject this suggestion and reaffirm the methodology used in the preliminary determination, because there is not enough information on the record to justify any other course of action. The Department has no way of knowing whether the loans in question were forgiven between 1992 and 1996, which would account for the 1997 balance sheet statement. Petitioners again cite *Krupp Stahl* (*See Comment 22*) to support the idea that whether Sammi was actually subject to a subsidy of the full amount of the loans is irrelevant because of Sammi's refusal to cooperate. Because Sammi chose not to participate in this investigation, and therefore the record contains insufficient and unverified evidence, the full amount of the emergency loans should be countervailed.

Department's Position: As discussed in the ''Programs Determined to be Countervailable'' section of this notice, we determined that the aggregate rate from *Steel Products from Korea* which we have applied to Sammi as adverse facts available, includes a calculated subsidy rate for the GOK's direction of credit. Because the aggregate rate from *Steel Products from Korea* includes a calculated subsidy rate for the GOK's direction of credit to the Korean steel industry, we have not calculated an additional subsidy rate for this allegation that the GOK directed banks in Korea to provide loans to Sammi in 1992. Indeed, in the petition, this allegation of the provision of the 1992 loans to Sammi is included as part of petitioners' allegation of directed credit, and references our determination is Steel Products from Korea. Therefore, parties' comments with respect to the quantification of the benefit from the ''emergency loan'' package are not germane.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with the government and company officials, and examining relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the CRU of the Department of Commerce (Room B–099).

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual subsidy rate for each of the companies under investigation. We determine that the total estimated net countervailable subsidy rates are as follows:

Producer/exporter	Net subsidy rate (percent)
POSCO	0.65
Inchon	2.64
Dai Yang	1.58

Producer/exporter	Net subsidy rate (percent)
Sammi	59.30
Taihan	7.00
All Others Rate	1.68

We determine that the total estimated net countervailable subsidy rates for POSCO is 0.65 percent *ad valorem,* which is *de minimis.* Therefore, we determine that no countervailable subsidies are being provided to POSCO for its production or exportation of stainless steel sheet and strip in coils. In accordance with section 705(c)(5)(A)(i) of the Act, we have calculate the all-others rate by averaging the weighted average countervailable subsidy rates determined for the producers individually investigated. On this basis, we determine that the all-others rate is 1.68 percent *ad valorem.*

In accordance with our preliminary affirmative determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of stainless steel sheet and strip in coils from the Republic of Korea which were entered, or withdrawn from warehouse, for consumption on or after November 17, 1998, the date of the publication of our preliminary determination in the **Federal Register**. Since the estimated net countervailing duty rates for POSCO and Dai Yang were *de minimis,* these companies were excluded from this suspension of liquidation. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after March 17, 1999, but to continue the suspension of liquidation of entries made between November 17, 1998, and March 16, 1999.

We will reinstate suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. Because the estimated net countervailing duty rate for POSCO is *de minimis,* this company will be excluded from the suspension of liquidation.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13769 Filed 6–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–834]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea

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

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak (POSCO), Brandon Farlander (Inchon) or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5811, (202) 482–1082 or (202) 482–3818, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to the regulations at 19 CFR Part 351 (1998).

Final Determination

We determine that stainless steel sheet and strip in coils (''SSSS'') from the Republic of Korea are being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination, issued on December 17, 1998, (*Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils (''SSSS'') from the Republic of Korea* (''*Preliminary Determination*''), 64 FR 137 (January 4, 1999)), the following events have occurred:

On December 17, 1998, the Department postponed the final determination to 135 days after publication of the preliminary determination (*see Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils (''SSSS'') from the Republic of Korea* (''*Preliminary Determination*''), 64 FR 137 (January 4, 1999)). On December 28, 1998, respondent Pohang Iron & Steel Co., Ltd., (''POSCO'') alleged ''significant ministerial errors'' made in the Department's margin calculation for the preliminary determination. After reviewing POSCO's allegations, the Department agreed that it had inadvertently used daily rates instead of a weighted-average exchange rate, that sales made to unaffiliated companies were erroneously excluded from the calculation of normal value, and that deductions for inland freight from plant to warehouse and warehousing expenses were inadvertently excluded from the calculation of normal value. Because these errors taken together constitute a significant ministerial error, as defined in 19 CFR 351.224(g), we amended our preliminary determination. On January 26, 1999 the Department published its amended preliminary determination (*see Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Korea* (64 FR 3928)), amending

POSCO's cash deposit rate and the All Others rate from 12.59 to 3.92 percent. On February 23, 1999, the Department published a subsequent amended preliminary determination, incorporating corrected scope language. *See Notice of Preliminary Determinations of Sales at Less than Fair Value: Stainless Steel Sheet and Strip in Coils from France, Germany, Italy, Japan, Mexico, South Korea, and United Kingdom; and Amended Preliminary Determination of Sales at Less Than Fair Value, Stainless Steel Sheet and Strip from Taiwan,* 64 FR 8799 (February 23, 1999).

During December 1998, the Department conducted the cost verification of POSCO's responses to the antidumping questionnaire. On January 12, 1999, we issued our cost verification report (*see Memorandum to Neal Halper, Acting Director, Office of Accounting: Cost Verification Report—Pohang Iron and Steel Company, Ltd.* (''*Cost Verification Report*''), dated January 12, 1999). On February 12, 1999, we requested that POSCO provide narrative descriptions of certain home market variables on the first day of the home market sales verification (*see Memorandum to File: Narrative Definitions of Certain Home Market Variables*, dated February 12, 1999). From February 22 through February 26, 1999, and from March 17 through March 18, 1999, we conducted the sales verification of POSCO's responses to the antidumping questionnaire. On April 2, 1999, we issued our sales verification report on the U.S. sales verification of Pohang Steel America (''POSAM'') (*see Memorandum to the File: Report on the Verification of U.S. Sales by Pohang Steel America (''POSAM'') in the Antidumping Investigation of Stainless Steel Sheet and Strip in Coils from Korea* (''*POSAM Verification Report*'')). On April 6, 1999, we issued our sales verification report on the home market and U.S. sales verification in Seoul, Korea (*see Memorandum to the File: Report on the Sales Verification of Pohang Iron & Steel Company, Ltd.* (''*POSCO Verification Report*'')). Following verification, POSCO submitted a revised sales database reflecting its pre-verification corrections on March 8, 1999.

On February 3, 1999, we received additional comments from petitioners and, on February 11, 1999, we issued a second supplemental questionnaire to Inchon. On February 22, 1999, we received Inchon's second supplemental questionnaire response. We verified Inchon's sales and cost questionnaire responses in Inchon, South Korea, from March 1–5, 1999. On March 15–16, 1999, we verified Hyundai U.S.A., a wholly-owned U.S. subsidiary of Hyundai Corporation, an affiliated trading company of Inchon. On April 5, 1999, we issued the U.S. sales verification report (*see Memorandum to the File: Report on the Verification of U.S. Sales by Hyundai U.S.A. in the Antidumping Investigation of Stainless Steel Sheet & Strip in Coils from South Korea (''Hyundai U.S.A. Verification Report'')).* On April 8, 1999, we issued the home market sales and cost verification report (*see Memorandum to the File: Inchon Iron & Steel Co., Ltd. Home Market Sales, United States Sales, and Cost of Production Verification Report (''Inchon Verification Report''*)).

On January 21 and January 28, 1999, respondents and petitioners, respectively, submitted their requests for a public hearing, and asked that the Department extend the procedural schedule so that the hearing might follow the release of all verification reports. On April 15, 1999, respondents and petitioners submitted their case briefs and on April 21, 1999, all parties submitted their rebuttal briefs. A public hearing was held on April 26, 1999, a transcript of which has been placed on the record of this investigation.

Finally, on April 1, 1999, we asked Inchon and POSCO to submit monthly shipment data for 1996, 1997, and 1998, requested by the Department for the purposes of making a final critical circumstances determination. On April 12, 1999, both POSCO and Inchon submitted monthly shipment information as requested by the Department.

Scope of Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[5]

Period of Investigation

The period of investigation is April 1, 1997 through March 31, 1998.

Transactions Investigated

POSCO

According to section 351.403(d) of the Department's regulations, downstream sales to a home market affiliate accounting for less than 5 percent of total sales are normally excluded from the normal value calculation. In the preliminary determination, since respondent's sales to resellers did not meet the Department's 5 percent threshold, the Department has considered POSCO's sales to the affiliated service centers and, to the extent that these sales pass the arm's length test, has included these sales in our calculation of margin. Additionally, as described in Comment 5, the Department has determined that for POSCO's U.S. and home market sales the date of invoice is the appropriate date of sale as this is the date on which the material terms of sale are set. Therefore, the Department has included POSCO's sales in our margin calculation based on invoice date.

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[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

Inchon

For the final determination, the Department determines that, for Inchon's home market sales, the purchase order date is the appropriate date of sale as this is the date on which the material terms of sale are set. For U.S. sales, we determine that Hyundai U.S.A.'s invoice date (or shipment date, when shipment occurs prior to issuing the invoice) is the appropriate date of sale as this is the date on which the material terms of sale are set. *See* Comment 12 for additional information. Additionally, Inchon stated that it erroneously included in its home market sales database sales shipped during the POI but returned after the POI. Inchon provided a list of these returns. *See Inchon Verification Report,* Exhibit 1. Therefore, we have excluded the returns noted above from Inchon's home market sales database.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents, covered by the description in the *Scope of Investigation* section above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the antidumping duty questionnaire and the August 3, 1998 reporting instructions.

Fair Value Comparisons

To determine whether sales of SSSS from the Republic of Korea to the United States were made at less than fair value, we compared export price (''EP'') or constructed export price (''CEP'') to the Normal Value (''NV''), as described below in the ''Export Price/ Constructed Export Price'' and ''Normal Value'' sections of this notice.

POSCO

In the preliminary determination, for sales classified as EP by POSCO, we compared EP to NV, and compared CEP to NV for those sales the respondent identified as CEP transactions. However, as discussed in Comment 3, the Department finds that POSCO's U.S. sales through POSAM (U.S. channel 2) constitute CEP sales and has therefore compared CEP to NV for those sales. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs or CEPs for comparison to weighted-average NVs.

Inchon

For the final determination, we compared Inchon's U.S. sales through Hyundai U.S.A. (U.S. channel 1), which we classified as CEP sales (*see* Comment 19), to NV for those sales. For Inchon's sales through U.S. channel's 2 and 3, we compared EP to NV. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs or CEPs for comparison to weighted-average NVs.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (''SG&A'') and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT from EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Sheet and Strip from South Africa,* 62 FR 61731 (November 19, 1997).

In the present investigation, neither respondent requested a LOT adjustment. To ensure that no such adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Korean markets, including the selling functions, classes of customer, and selling expenses for each respondent.

POSCO

POSCO did not claim a LOT adjustment. POSCO identified two channels of distribution in the home market: (1) sales made by POSCO directly to its customers; and (2) sales made by POSCO through its selling arm, POSCO Steel Sales & Services Co., Ltd. (''POSTEEL''), to customers. Both POSCO and POSTEEL made sales to domestic trading companies, service centers, and unaffiliated and affiliated end-users. For both channels, POSCO and POSTEEL report that they perform similar selling functions. Either POSCO or POSTEEL contacted customers, managed inventory, arranged for shipment and freight, and invoiced the customer. In addition, POSCO claims that either POSCO or POSTEEL offered, as needed, technical services and warranty processing. At verification, the Department confirmed the selling functions performed by the affiliates. *See POSCO Verification Report* at 10–12. Therefore, we determine that selling functions performed in HM Channel 1 (sales made by POSCO directly to customers) are similar to selling functions performed in HM Channel 2 (sales made by POSCO through POSTEEL to customers): freight and delivery, invoicing, sales negotiation, and limited amounts of market research, warranty services, and technical advice. Because channels of distribution do not qualify as separate LOTs when the selling functions performed for each customer class are sufficiently similar, we find that the home market constitutes a single LOT.

POSCO reported three channels of distribution in the U.S. market: (1) sales made by POSTEEL directly to a U.S. end-user; (2) sales to U.S. end-users made by POSTEEL through its wholly-owned U.S. subsidiary, POSAM; and (3) sales made by POSTEEL to unaffiliated Korean trading companies for shipment to the United States. POSCO claimed two LOTs in the U.S. market, but requested no LOT adjustment for the U.S. LOT purported to be different from the home market LOT. The Department examined at verification the claimed selling functions performed by POSCO and its subsidiaries, POSTEEL and POSAM, for all U.S. sales. These selling functions included freight and delivery arrangements, invoicing customers, and extending credit. *See POSAM Verification Report,* at 4–6. As discussed in Comment 3 below, we have determined that POSCO's U.S. sales through POSAM (U.S. channel 2) should be classified as CEP transactions.

In order to determine whether NV was established at a different LOT than EP or CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between POSCO and its home market and U.S. customers. We compared the selling functions performed for home market sales with those performed with respect to the EP and CEP transactions, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market level of trade constituted a more advanced stage of distribution than the EP or CEP level of trade.

We have determined that sales made through U.S. channels 1 or 3 should be classified as EP transactions. Therefore, we have examined the selling functions performed by POSCO and/or POSTEEL, and have found that they are similar to the functions performed for home market sales. As discussed in Comment 3 below, we have determined that POSCO's U.S. sales through POSAM (U.S. channel 2) should be classified as CEP transactions. With regard to POSTEEL's selling activities and services offered to its U.S. affiliate (POSAM) for CEP sales, we note that POSCO failed to provide this information despite the Department's explicit request in its questionnaire (*see* Questionnaire at A–7). In any event, we found at verification that POSTEEL itself performs selling functions for U.S. sales. Specifically, POSTEEL conducted market research for initial customer contacts, sales negotiation, arranged for ocean freight and delivery to the U.S. port, and invoiced POSAM for sales of subject merchandise. *See POSCO Verification Report,* at 11–12. Therefore, we find that the selling activities in the U.S. market are similar to those in the home market.

Based on our analysis of the chains of distribution and selling functions performed for sales in the home market and in the U.S. market, we find that sales to all three channels of distribution are made at the same stage in the marketing process and involve nearly identical selling functions. Therefore, we determine that POSCO and its subsidiaries POSTEEL and POSAM provided a sufficiently similar degree of services on sales to all three channels of distribution, and that the sales made to the United States constitute one LOT.

Based on a comparison of the selling activities performed in the U.S. market to the selling activities in the home market, we find that there is not a significant difference in the selling functions performed in both markets, and thus, sales in both markets were made at the same LOT. Therefore, a LOT adjustment is not appropriate.

Inchon

In the home market, Inchon reported two sales channels: (1) To unaffiliated distributors; and (2) to affiliated and unaffiliated end-users. We examined record evidence to identify the selling functions performed for both channels. These selling functions included inventory maintenance, freight and delivery arrangements, and credit services. At verification, we confirmed the selling functions noted above. *See Inchon Verification Report,* at 20–21. Because there are no differences between the selling functions on sales made to either unaffiliated distributors or affiliated and unaffiliated end-users in the home market, sales through both channels constitute one LOT. Therefore, for the final determination, we conclude that sales to unaffiliated distributors and affiliated and unaffiliated end-users constitute one LOT in the home market.

For its EP and CEP sales in the U.S. market, Inchon reported three sales channels: (1) Inchon sales through Hyundai Corporation, Inchon's affiliated trading company, to Hyundai U.S.A., a wholly-owned subsidiary of Hyundai Corporation located in the United States and an affiliate of Inchon, and finally, to an unaffiliated customer; (2) Inchon sales through Hyundai Corporation, to an unaffiliated customer; and (3) Inchon sales to an unaffiliated trading customer. For purposes of our LOT analysis, Inchon's U.S. customers for all three sales channels are trading companies and distributors. We examined the selling functions performed for each of the three U.S. sales channels. These selling functions included freight and delivery arrangements, credit services, and post-sale warehousing. With the exception of post-sale warehousing for one sale in channel one, selling functions performed in the three sales channels were identical. At verification, we confirmed the selling functions noted above. *See Hyundai U.S.A. Verification Report,* at 4–6. Therefore, for the final determination, we determine that Inchon provided a sufficiently similar degree of services on sales to all three channels of distribution, and that the sales made to the United States constitute one LOT.

Further, because we determined that the U.S. LOT and the home market LOT included similar selling functions, we conclude that these sales are made at the same LOT. Therefore, a LOT adjustment for Inchon is not appropriate. For a further discussion, *see Analysis Memo: Inchon.*

Export Price/Constructed Export Price

POSCO

POSCO reported three channels of distribution for U.S. sales. In channel 1, POSCO Steel Sales and Service Co., Ltd. (''POSTEEL''), which is POSCO's affiliated trading company, sold directly to a U.S. customer. In channel 3, POSTEEL sold directly to unaffiliated Korean trading companies for resale of subject merchandise to the United States. We classified sales made through these two channels as EP sales, since the U.S. affiliate, POSAM, had no involvement in the selling process. In channel 2, however, POSAM was involved in all the sales made to unaffiliated U.S. customers, and reported that although the majority of sales were EP sales, there were some sales classified as CEP.

For U.S. sales channels one and three, we based our calculation on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise indicated.

For U.S. sales made through POSAM, we calculated CEP based on packed prices to unaffiliated customers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, U.S. Customs Duty, and U.S. brokerage and wharfage charges. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activity occurring in the United States, including direct selling expenses (credit costs, bank charges, and U.S. commissions) and indirect selling expenses. In addition, we deducted a per unit direct selling expense to account for bad debt losses incurred by POSAM for sales made to a bankrupt customer. For a further discussion of the bad debt expense and an explanation of its calculation, please refer to Comment 1, and *Memorandum to the File: Analysis for Final Determination in the Investigation of Stainless Steel Sheet and Strip in Coils from Korea—Pohang Iron & Steel Co., Ltd.,* (''*Analysis Memo: POSCO*''), dated May 19, 1999. Also, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the

Act. Finally, we added to U.S. price an amount for duty drawback pursuant to section 772(c)(1) (B) of the Act.

Inchon

For U.S. sales channels two and three, which are defined in the Level of Trade section above, we based our calculation on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise indicated. For U.S. sales channel one, which are sales made through Inchon's affiliate, Hyundai U.S.A., we based our calculation on CEP, in accordance with section 772(b) of the Act, because the merchandise was sold 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, and based on our analysis of the facts as discussed in this section.

In the preliminary determination, we found that Hyundai U.S.A., the U.S. affiliate, did more than merely act as a ''processor of sales-related documentation and a communication link with the unrelated U.S. buyer.'' *See Preliminary Determination*, 64 FR at 142. To ensure proper application of 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 demonstrates that Hyundai U.S.A.'s role exceeds that of an incidental or ancillary role. For a further discussion of this issue, *see Analysis Memo: Inchon*, and Comment 19 below.

We based EP on the packed, delivered, tax and duty unpaid price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign wharfage and loading, international freight, marine insurance, domestic inland freight, and U.S. brokerage and wharfage. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. For a further discussion of this issue, *see Analysis Memo: Inchon*.

We calculated CEP, in accordance with subsections 772(b), (c), and (d) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on the packed, delivered, duty paid or delivered prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign wharfage and loading, international freight, marine insurance, domestic inland freight, U.S. brokerage and wharfage, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs and bank charges), and indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. For a further discussion of this issue, *see Analysis Memo: Inchon*.

We made certain adjustments based on minor discrepancies noted at Inchon's U.S. verification and pre-verification corrections to several CEP transactions. For one sale, we adjusted credit expenses and the quantity and converted quantity, in MT, sold. For several sales, Inchon did not report a handling commission (*see* Comment 14). In addition, for several sales, we adjusted U.S. duty per MT and, for one sale, we adjusted marine insurance. Further, Hyundai U.S.A. had incorrectly invoiced one of its customers; hence, we adjusted multiple fields for several sales. As this information involves proprietary information, *see Analysis Memo: Inchon*.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparison'' sections of this notice.

1. Home Market Viability

As discussed in the preliminary determination, we determined that the home market was viable and no parties have contested that decision. For the final determination, we have based NV on home market sales.

2. Cost of Production Analysis

POSCO

As discussed in the preliminary determination, we conducted an investigation to determine whether POSCO made sales of the foreign like product in the home market during the POI at prices below their cost of production (''COP''). In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of POSCO's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A, interest expenses, and packing costs. We used the information from POSCO's questionnaire responses and the updated sales database (dated March 8, 1999) to calculate COP, except in the following instance.

POSCO purchased a significant amount of elements of value from affiliated parties during the POI. For each affiliated purchase, we reviewed whether the transfer price was at an arm's length price. Where appropriate, we increased POSCO's per unit costs to the market price or the supplier's cost of production, pursuant to 19 CFR 351.407(b). *See Memorandum to Neal Halper, Acting Director, Office of Accounting: Cost of Production (''COP'') and Constructed Value (''CV'') Calculation Adjustments for the Final Determination of Pohang Iron & Steel Co., Ltd. (''POSCO'') (''Cost Analysis Memorandum'')*, dated May 19, 1999. *See also*, Comment 11.

Inchon

As discussed in the preliminary determination, we conducted an investigation to determine whether Inchon made sales of the foreign like product in the home market during the POI at prices below their cost of production (''COP''). In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Inchon's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A, interest expenses, and packing costs. We used the information from Inchon's questionnaire responses and the sales database to calculate COP, except in the following instance.

Inchon stated that it erroneously used indirect selling expenses during the POI rather than the 1997 fiscal year. *See Inchon Verification Report*, Exhibit 1. We modified Inchon's G&A calculation based on a pre-verification correction.

3. Test of Home Market Sales Prices

As in our preliminary determination, we compared the weighted-average COP, adjusted where appropriate (*see* above), to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether the sales were made (1) within an extended period of time in substantial quantities, and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time.

4. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities,'' as defined in section 773(b)(2)(C)(i) of the Act, within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to weighted-average COPs for the POI , we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

Calculation of CV

As in our preliminary determination, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, interest expenses and profit. In calculating CV, we made the same adjustments as those noted above, in the ''Calculation of COP'' section of the notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Price-to-Price Comparisons

As in our preliminary determination, for those product comparisons for which there were sales at prices above the COP, we based NV on prices to home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

POSCO

We calculated NV based on the same methodology used in the preliminary determination, with the following exception. As discussed in Comment 9, we determined at verification that POSCO incorrectly excluded housing expenses from its calculation of POSAM's indirect selling expense ratio. We recalculated POSCO's indirect selling expenses reported for U.S. Channel 2 sales (sales through POSAM), and used this updated expense in deducting from NV the amount of indirect selling expenses, capped by the amount of the U.S. commissions.

Inchon

We calculated NV based on the same methodology used in the preliminary determination, with the following exceptions. In its home market pre-verification corrections, Inchon discovered that it charged interest to certain customers, when Inchon extended the due date of the promissory notes. Inchon argued that because Inchon did not reduce credit expense by the interest income, interest income should be added, as noted in Inchon's Interest Revenue for STS Customer during POI table. *See Inchon Verification Report,* Exhibit 1. We made an adjustment to account for Inchon's interest revenue because we had accepted Inchon's pre-verification correction. Additionally, we adjusted U.S. Other Transportation Expenses for several sales, based on Inchon's February 22, 1999 submission.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. If appropriate, we deducted from CV the amount of indirect selling expenses (adjusted as described in the ''Price-to-Price Comparisons'' section above) capped by the amount of the U.S. commissions.

Currency Conversion

In the preliminary determination, the Department determined that the decline in the won at the end of 1997 was so precipitous and large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, *i.e.,* as having experienced only a momentary drop in value. Therefore, the Department used daily rates exclusively for currency conversion purposes for HM sales matched to U.S. sales occurring between November 1 and December 31, 1997, and the standard exchange rate model with a modified benchmark for sales occurring between January 1, 1999 and February 28, 1999. *See Preliminary Determination,* 64 FR at 145. As discussed in Comment 2, the Department continues to find that use of daily exchange rates and modified benchmarks are warranted during the periods noted above.

In addition, as discussed in Comment 2 and *Analysis Memo: POSCO,* we have determined that the severe and precipitous drop in the value of the won from November 1997 through February 1998 necessitates the use of two averaging periods, under 19 CFR 351.414(d)(3).

Critical Circumstances

On October 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of SSSS from Korea. In accordance with 19 CFR 351.206(c)(2)(i), we preliminarily determined that critical circumstances did not exist with respect to respondents POSCO and Inchon, which the Department had preliminarily determined not to have margins over 15 percent, the first criterion for ascertaining whether critical circumstances exist. *See Preliminary Determination,* 64 FR at 145–46.

Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist if: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 735(a)(3) of the Act, the Department considers evidence of an existing antidumping order on SSSS from the country in question in the United States or elsewhere to be sufficient. We are not aware of any antidumping order in any country on SSSS from any of the countries subject to this investigation.

In determining whether an importer knew or should have known that the exporter was selling SSSS at less than fair value and thereby causing material injury, the Department normally considers margins of 15 percent for CEP sales and 25 percent for EP sales or more sufficient to impute knowledge of dumping and of resultant material injury. *See Notice of Final Determination of Sales Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China,* 63 FR 61964, 61967 (November 20, 1997); *see also Notice of Final Determination of Sales Less Than Fair Value: Manganese Sulphate from*

People's of Republic of China 60 FR 52155, 52161 (October 5, 1995).

In this investigation, respondents POSCO and Inchon, which the Department has determined have both EP and CEP sales, do not have margins over 15 percent. Based on these facts, we determine that the first criterion for ascertaining whether critical circumstances exist is not satisfied. Therefore, we determine that there is no basis to find that critical circumstances exist with respect to imports of SSSS from respondents POSCO or Inchon, pursuant to section 735(a)(3) of the Act. Therefore, we did not analyze the respondent's shipment data to examine whether imports of SSSS have been massive over a relatively short period. *See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Collated Roofing Nails from Korea,* 63 FR 25895, 25898 (May 12, 1997).

However, one respondent, Taihan Electric Wire (''Taihan'') has not responded to the Department's questionnaires, and has been assigned a margin based on facts otherwise available (*see* ''Facts Available'' section, below). As Taihan's margin exceeds 25 percent, the first criterion has been met. Also, as facts available, we consider Taihan to have had massive imports over a relatively short period. Therefore, having met both criteria, critical circumstances exist for imports of subject merchandise from Taihan. *See Preliminary Determination of Sales at Less Than Fair Value: Stainless Sheet and Strip in Coils from Japan,* 64 FR 108, 112 (January 4, 1999).

Regarding all other exporters, an ''All Others'' rate has been determined (*see* ''The All Others Rate,'' below); because this rate does not exceed 15 percent, we determine that critical circumstances do not exist for companies covered by the ''All Others'' rate.

Verification

As provided in section 782(i) of the Act, we conducted on-site verification of the information submitted by the respondents for use in our final determination. We used standard verification procedures, including examination of relevant sales, accounting and production records and original source documents provided by the respondents.

Interested Party Comments

Comment 1: POSCO—Sales to a Bankrupt Customer

Petitioners argue that POSCO's sales to a bankrupt U.S. customer are neither atypical nor insignificant, and that the Department should account for the value of these sales in its final determination. Petitioners contend that the Department should also not exclude the sales based on a ''5 percent threshold'' for the exclusion of insignificant sales from its analysis. Citing *Gulf States Tube Div.* v. *United States,* 981 F. Supp. 630 (CIT 1997) and *Certain Carbon and Alloy Steel Wire Rod from Canada,* 58 FR 62639, 62641 (November 29, 1993), petitioners argue that these cases stand for the proposition that the exclusion threshold is primarily to limit reporting of sales data that would place a disproportionate burden on the Department. Petitioners contend that no such burden exists in the instant case, as the sales are already on the record.

Petitioners maintain that sales to financially troubled customers are an everyday occurrence, and that the terms of sale usually reflect the increased risk borne by the seller. Petitioners note that the chart of accounts for the Korean parent, POSCO, includes several accounts and reserves relating to bad debt. Petitioners note that the Department's practice in an investigation is to take a ''snapshot'' of a respondent's selling practices, and that since the Department uses a weighted average of sales in its margin determination, no sales, whether or not they are atypical, should be excluded from the analysis.

Petitioner notes that in *Notice of Final Determination Sales at Less Than Fair Value: Stainless Steel Plate in Coils (''SSPC'') from the Republic of Korea (''SSPC from Korea''),* 64 FR 15444 (March 31, 1999), the Department treated the cost of the bankrupt sales as direct selling expenses allocated to all U.S. sales. Petitioners argue that this treatment was correct. Petitioners further argue that under the Department's reasoning in the preliminary determination of this investigation, there would be no consequences when an importer is not paid for subject merchandise if the sales have been classified as EP sales. Petitioners further insist that POSCO must bear fees and production costs associated with the bankrupt sales, and that these must be classified as direct selling expenses since POSCO would not have incurred them but for the customer's bankruptcy. Petitioners contend that the value of these sales is most analogous to a warranty claim, and that the Department reached this same conclusion in *SSPC from Korea and in Color Television Receivers from the Republic of Korea: Final Results of Antidumping Administrative Review (''CTVs from Korea''),* 61 FR 4408 (February 6, 1996). Petitioners note that the Department, citing *AOC Intl.* v. *United States,* 721 F. Supp. 314 (CIT 1989) and *Daewoo Elecs. Co.* v. *United States,* 712 F. Supp. 931 (CIT 1989), concluded in *SSPC from Korea,* 64 FR at 15449, that ''a bad debt expense * * * is directly related to sales of the subject merchandise,'' which petitioners contend requires a direct selling expense adjustment to starting price. Petitioners contend that since the sales were never paid for, and that future payments are highly unlikely, the expense associated with these sales should be treated in the same manner as is the expense associated with merchandise returned for warranty claims, and that there should be no ''sale'' since the sales had been written off and effectively canceled by POSCO. However, petitioners note that there is a direct selling expense associated with the sale of subject merchandise, similar to a warranty-related refund or forgiveness of payment. Petitioners contend that the loss resulting from the unpaid sales is a ''direct and unavoidable consequence of the sale,'' and that the Department should follow its own precedent in its treatment of these sales.

Petitioners also argue that, according to *Timken Co.* v. *United States,* 852 F. Supp. 1122, 1125 (CIT 1994), all selling expenses are presumed to be direct, unless the respondent can prove otherwise; petitioners further argue that as the respondent failed to meet that burden, the Department must treat these expenses associated with the bankrupt sales as direct selling expenses. In addition, petitioners argue that the expenses should be allocated to total sales of subject merchandise only, citing *Smith-Corona Group* v. *United States,* 713 F.2d 1568, 1577 (Fed. Cir.1983), wherein the court stated that the administrating authority must make a fair value comparison, comparing ''apples to apples.'' Petitioners contend that as information regarding unpaid sales of stainless steel plate in coil products is not on the record of this investigation, it would be inappropriate to include sales of these products in the denominator.

Petitioners also argue that the Department should not include the bankrupt sales in its margin determination, comparing these sales to merchandise that was returned or lost in transit, which would not be considered a sale. Petitioners further argue that sales made to a bankrupt customer where there is no reasonable expectation of payment cannot be considered as ''sales'' and must instead be considered as a direct selling expense. Petitioners contend, however, that should the Department include the sales in its margin analysis, it must impute a credit period, and should assume that payment was made on the date of the final determination.

Petitioners argue that POSCO has provided no support for its contention that unpaid sales to the bankrupt customer represent indirect selling expenses. They contend that in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea* (''*SSWR from Korea*''), 63 FR 40404, 40406 (July 29, 1998), the Department treated an *accrual* for bad debt as an indirect selling expense, not an actual expense. Petitioners distinguish that treatment with the instant case, wherein POSCO incurred a tangible loss directly related to the sales of subject merchandise. In *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China* (''*Bicycles from the PRC*''), 61 FR 19026, 19044 (April 30, 1996) , petitioners contend, the Department never addressed the issue of whether the bad debt expense was a direct or an indirect selling expense: ''(t)hese expenses (have) been deducted from U.S. price as part of CEP deductions. Because we are not making a corresponding CEP offset * * * the classification of these expenses as direct or indirect is moot.'' Petitioners argue that in *Bicycles from the PRC*, there was no indication on the record that the expenses in question were accruals or actual expenses, or whether they involved subject merchandise. Petitioners note that there are no such questions in the instant case, and that the expenses are clearly actual and directly related to subject merchandise. Petitioners note that *Final Determination of Sales at Less Than Fair Value: Certain Fresh Cut Flowers from Columbia* (''*Flowers from Columbia*''), 52 FR 6842 (March 5, 1987), cited by POSCO, is also distinguishable from this investigation. In *Flowers from Columbia*, petitioners note, it was not clear from the record whether the bad debt expense was related to subject merchandise, or whether the company had written off the bad debt. In the instant case, petitioners argue, the bad debt expense is directly related to subject merchandise, and the respondent has written off the sale.

However, petitioners do not agree with the Department's statement in *Flowers from Columbia* that it ''consider(s) bad debt, by its very nature, to be an indirect selling expense since, under generally accepted accounting principles (''GAAP''), bad debt is recovered over time by future price increases.'' Instead, they note that GAAP is concerned with the measurement of economic activity at the time when such measurements are recorded. In addition, petitioners argue that basic accounting principles require a finding that such an expense would not have occurred but for the making of a sale. Petitioners argue that the accumulated costs incurred to generate a sale are recognized when the merchandise is sold, and that therefore, the costs associated with the bankrupt sales are directly related to the sales, since absent the sale, they would not have been recognized in POSCO's or POSAM's accounting system.

Petitioners further contend that POSAM's transfer price for the bankrupt sales is not a valid basis for determining the amount of the direct selling expense. Petitioners argue that the transfer price is a meaningless figure for dumping purposes, and that the Department should use, as it did in the *SSPC from Korea*, the more objective benchmark of the constructed value of the sales.

Respondent argues that sales for which it never received payment due to the customer's bankruptcy are atypical, and that inclusion of these sales would distort the margin calculation. POSCO notes that in the preliminary determination of this investigation, the Department did not include the sales in the margin calculation, but did include the cost of those sales (namely, the transfer price between the parent company and the U.S. affiliate) as an indirect selling expense. However, as respondent notes, the Department chose a different treatment of these sales in *SSPC from Korea*, including the sales to the bankrupt customer in the calculation of U.S. price and allocating the actual cost of producing the merchandise (rather than the transfer price) over all U.S. sales of subject merchandise as a per unit direct selling expense. Respondent claims that this treatment increased POSCO's preliminary deposit margin by over 300 percent.

POSCO argues that the Department has ample discretion to exclude U.S. sales in an investigation where it finds that the sales are atypical, not part of the respondent's ordinary business practice, and would undermine the fairness of the comparison, citing *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Colombia* (''*Roses from Colombia*''), 60 FR 6980, 7004 (February 6, 1995), and *Final Determination of Sales at Less Than Fair Value: Professional Electric Cutting and Sanding/Grinding Tools from Japan*, 58 FR 30144, 30146 (May 26, 1993). Respondent notes that the Department has used this discretion in an investigation because the initial deposit rate is intended as an estimate of future behavior, which should not be calculated on extraordinary or unusual circumstances, citing *Koenig* v. *United States*, 15 F. Supp. 2d 834, 841 (CIT 1998), wherein the court distinguished between investigations, which are intended to determine an estimated margin on future sales, and a review, which is intended to assess actual duties. POSCO maintains that the unpaid sales in the instant investigation constitute less than 5 percent of total U.S. sales, while in the companion investigation of stainless steel plate in coils, the quantity was higher. POSCO notes that the Department has traditionally treated 5 percent as its threshold measure for determining significance, citing 19 CFR 351.403(d) (stating that downstream sales to affiliates in the home market accounting for less than 5 percent of total sales are excluded from the normal value calculation); and 19 CFR 351.404(b) (stating that a home market is viable if it accounts for five percent of sales to the United States). Respondent argues that petitioner's suggestion that these sales are not atypical is wrong. POSCO notes that the scenario ''devised'' by petitioners in which a home market customer receives a discount for high volume sales is in no way analogous with the situation involved in the instant case. POSCO points to the fact that voluntary discounts and terms of sale are negotiated by parties; in the instant case, the customer's bankruptcy was not under POSCO's control.

Respondent argues that its U.S. affiliate, POSAM, has otherwise never sold merchandise to a customer that did not eventually pay, and as the Department verified, POSAM does not have an account for bad debt in its accounting system. Accordingly, POSCO maintains that these sales must be considered atypical and should not be included in the margin calculation. In addition, respondent maintains that the inclusion of these sales would undermine the fairness of the pricing comparison and distort the margin, as they maintain occurred in *SSPC from Korea*.

Respondent contends that the Department further erred in *SSPC from Korea* when it treated sales made to a bankrupt customer as both sales for the purposes of the margin calculation and bad debt in terms of allocating the cost of the sales as a per unit direct selling expense. POSCO maintains that by treating the transactions as both sales and bad debt, the Department would render the most distortive outcome possible, violating the United States' obligations under the WTO Antidumping Agreement to make a fair comparison between export price and the normal value, citing *Federal-Mogul Corp.* v. *United States*, 872 F. Supp. 1011 (CIT 1994) and *Melamine Chemicals* v. *United States* (''*Melamine*''), 732 F.2d 924, 933 (Fed. Cir. 1984). Respondent further adds that, contrary to petitioners' contention, the Department has the authority to take into account ''extraordinary events'' that were ''infrequent in occurrence,'' as cited by petitioners from *Floral Trade Council* v. *United States*, 16 CIT 1014, 1016–17 (1992). POSCO argues that the inclusion of these sales in the margin calculation would constitute an unfair comparison between export price and normal value.

POSCO argues that it reported the transactions as sales rather than bad debt because the transactions coincide with the Department's definition of a sale and because POSCO fully expected to be paid for these sales. Respondent notes that in administrative reviews the Department normally leaves unpaid sales in the database for purposes of the margin calculation, rather than to treat them as a bad debt expense. As support for this contention, respondent cites *Brass Sheet and Strip from Sweden, Final Results of Antidumping Administrative Review*, 60 FR 3617, 3621 (January 18, 1995); *Polythylene Terephthalate Film, Sheet and Strip from Korea: Final Results of Administrative Review*, 60 FR 42835, 42839 (August 17, 1995); and *Certain Internal-Combustion, Industrial Forklift Trucks from Japan: Final Results of Antidumping Administrative Reviews* (''*Forklift Trucks*''), 57 FR 3167, 3173 (January 28, 1992). Respondent maintains that in these cases the Department applied a credit period to the unpaid sales to reflect the credit expense in the final margin. POSCO notes that in *Forklift Trucks*, the Department treated the unpaid sales as subject sales since the merchandise had been sold in the normal course of trade in the period of review.

POSCO argues that the Department also erred in its reliance on *CTVs from Korea*. Respondent argues that *CTVs from Korea* was an administrative review, not an investigation. As such, POSCO contends that the Department is responsible in the instant case for calculating a cash deposit rate that can be relied on as a predictor and reasonable estimate of future duties, whereas in a review, an actual assessment is made and exclusions are not ordinarily allowed. Respondent argues that in *CTVs from Korea*, the bad debt treated as a direct selling expense was associated with sales in a prior period and recorded in the company's bad debt expense account. Therefore, POSCO contends that the Department did not treat the unpaid sales as sales in the database and simultaneously as bad debt, instead allocating the expense amount as a direct expense to the period of review sales that were actually paid.

POSCO further contends that the Department's policy is to treat recognized bad debt as an indirect selling expense rather than a direct selling expense. As support for this contention, respondent cites to several cases: *Flowers from Columbia*, 52 FR at 6850; *SSWR from Korea*, 63 FR at 40406; and *Bicycles from the PRC*, 61 FR at 19041. Respondent further points out that the Department recognized the cost of these sales as an indirect selling expenses, based on the definition of indirect expenses as those which are incurred whether or not a sale is made. POSCO contends that the cost of these sales bear no direct relationship to any other sale on the database, and that the cost, represented by POSAM's payment to POSCO, would have been incurred even if POSAM made no other U.S. sales. POSCO argues that for these reasons, the cost of these sales is not a direct selling expense, and should not be allocated to subject merchandise alone, but to all of POSCO's U.S. sales.

Respondent argues that the Department's purpose for treating bad debt as a direct expense in *CTVs from Korea* was to avoid distortion. POSCO argues that in *Daewoo Electronics* v. *United States*, 712 F. Supp. 931, 938 (CIT 1989), cited in *CTVs from Korea*, the CIT remanded the Department's determination, finding that the Department's practice of disregarding selling expenses for bad debt losses, while granting adjustments for warranty expenses which were not directly related to the sales under review, was arbitrary and likely to result in distorted margin calculations. Respondent maintains that the CIT did not direct the Department to treat bad debt as a direct selling expense in all cases, but to avoid distortion in the margin.

POSCO argues that even if the Department were to treat the cost of sales as a direct selling expense, it should do so based on the transfer price from the parent company to the affiliate, rather than the constructed value of the merchandise. Respondent argues that in *CTVs from Korea*, the bad debt directly expensed was based on the amount recorded as bad debt in the respondent's normal books and records, not on the cost of production. Respondent contends that the Department verified that POSAM records the transfer price between itself and POSTEEL as the cost of its sale, that the expense was captured in POSAM's financial statements, not POSCO's, and that POSAM does not have any accounts for bad debt in its accounting system.

Therefore, respondent argues that the cost reflected in POSAM's accounting records, which POSCO argues is the transfer price, should be the basis for any allocation of bad debt expense.

Respondent further argues that, should the Department include the cost of the bankrupt sales in its margin calculation, the cost should be allocated over all U.S. sales of stainless steel, not just restricted to sales of subject merchandise. POSCO notes that the total amount of stainless steel sales for the POI had been verified and recorded as part of the Department's verification, and that therefore, there is no reason why any recognized expense should not be allocated over sales of all stainless products.

Respondent argues that petitioner's comparison between the bankrupt sales and defective or lost merchandise is incorrect. POSCO contends that defective merchandise is generally returned to the producer and either resold or reincorporated into the production process. Likewise, POSCO argues that lost merchandise is covered by insurance and would not be accounted for in an investigation. Respondent maintains that while a producer can be held responsible for defective merchandise resulting in a warranty claim, a customer's bankruptcy is beyond the producer's control, and that therefore, these transactions should be excluded from the Department's analysis to the extent that they cause distortion to the margin.

Department's Position: We agree with petitioners in part. Although we disregarded the sales in the preliminary determination, we have reconsidered our determination and find that the sales to the bankrupt customer for which payment was not received should be included in the margin analysis. POSCO reported the bankrupt sales as U.S. sales because the material terms of sale were final, as required under the statute. Section 772(a) of the Act. There was nothing atypical about the terms of the sales at the time they were made; we agree with petitioners that there is an inherent risk, when selling to customers on a credit basis, that the customer might not make full or even partial payment. Moreover, the price of the sales themselves is not necessarily distortive because, at the time they were made, POSCO was not aware that the customer would declare bankruptcy. Therefore, these sales must be included in the database. In addition, respondent's arguments regarding the relative significance of these sales compared to POSAM's total sales is inapposite. Although the Department employs a 5 percent threshold in regard to other issues in investigations (namely, reporting of downstream sales and home market viability), none of the instances described by respondent apply to this case.

As petitioners have noted, the Department uses the 5 percent threshold, for example, in determining whether to require a party to report home market (or U.S.) downstream sales data. Where that data, even if it constitutes less than 5 percent, has already been supplied, there is no basis for the Department to refuse to use such data. Furthermore, the Department has chosen a 5 percent benchmark to ease the administrative burden of an investigation, operating under the general assumption that there is less likelihood of introducing distortions into the margin calculation if fewer than 5 percent of a sales database is excluded. The Department, however, is not persuaded by respondent's argument that the exclusion of reported sales is necessary to eliminate distortions. As noted above, there is nothing atypical or distortive about the price of such sales because, at the time of such sales, POSCO was not aware that the customer would declare bankruptcy.

We also disagree with respondent's claim that the Department ''double counted'' the sales by including the sales in the margin calculation and treating the cost of the sales as a direct selling expense. As the Department noted in *SSPC from Korea*, and in *CTVs from Korea*, it is our practice to ''include sales which incur bad debt in the database and treat the bad debt expense as a direct selling expense when the expense is incurred on sales of subject merchandise.'' *See SSPC from Korea*, 64 FR at 15448, and *CTVs from Korea*, 61 FR at 4412. In addition, in *Notice of Final Determination of Sales at Less Than Fair Value: Foam Extruded PVC and Polystyrene Framing Stock from the United Kingdom*, 61 FR 51411, 51417 (October 2, 1996), the Department treated bad debt expenses as direct selling expenses, as they were ''incurred with respect to sales of the subject merchandise and to specific customers which went bankrupt during the POI.'' Consequently, as in *SSPC from Korea*, we have treated the bad debt expense as a direct selling expense. However, we have not imputed a credit period for these sales, due to its distortive effect on the margin. Thus, the Department did not double-count the cost of the unpaid sales.

Furthermore, contrary to respondent's contention, the appellate court ruling in *Melamine* is not relevant to the credit expense issue in the instant case. In *Melamine*, the Court ruled that margins created solely through fluctuations in exchange rates would be unreal, unreasonable, and unfair. Unlike exchange rate fluctuations, companies can control credit expenses through negotiation and contractual agreement. In the instant case, POSAM's decision to sell to this particular customer and extend credit was solely within its control. POSAM could have chosen to insure itself against the risk that this (or any) customer would not pay, as do other companies which sell on a credit basis. Finally, POSAM could also have negotiated different terms of sale, which in fact it did when it sold subject merchandise to the same customer on a cash-on-delivery basis after the customer had declared bankruptcy.

With regard to the classification of the expense related to these sales, at verification, the Department found that POSAM reversed the sales in its books at year-end by issuing negative invoices to the customer for the unpaid merchandise in question. *See POSAM Verification Report* at 6, and Exhibit 6. Although POSAM does not maintain separate bad debt accounts, these sales have been effectively classified as a type of bad debt. As in *SSPC from Korea* and *CTVs from Korea*, this bad debt expense is directly related to sales of the subject merchandise. *See AOC International* v. *US*, 721 F. Supp. 314 (CIT 1989) and *Daewoo Electronics* v. *US*, 712 F. Supp. 931 (CIT 1989). We have determined that the bad debt expense should be treated as a direct selling expense, since but for the sale made to the bankrupt customer, the bad debt expense would not have been incurred. We agree with petitioners that the cases cited by POSCO do not support its contention that the Department has a practice of treating bad debt expense as an indirect selling expense in all instances. In all three cases, *Bicycles from the PRC*, *Flowers from Columbia*, and *SSWR from Korea*, either the bad debt expensed was an accrual versus an actual expense, or the bad debt could not be tied to sales of subject merchandise. In the instant case, there is no dispute that the expense was incurred, since POSAM's own records indicate that the sales had been written off, and that the expense was directly related to sales of subject merchandise.

We also agree with petitioners that it is most appropriate to use an objective measure of the expense incurred for these unpaid sales (namely, the constructed value of the sales), rather than an intra-company transfer price which may not accurately reflect the cost of the merchandise. The constructed value of the sales are determined based on the actual cost of the inputs to the subject merchandise, which have been verified by the Department in its Cost Verification. The transfer price's basis is unknown, and may be based on a percentage of sale price basis, or a fixed amount equally unrelated to the actual cost of the product in question. In addition, we agree with petitioners that the most appropriate allocation of the cost of the sales would be to sales of subject merchandise, as the expenses plainly resulted from subject merchandise sales. As petitioners noted, the Department is required to make a fair value comparison on a fair basis, comparing ''apples to apples,'' citing *Smith-Corona Group* v. *United States*, 713 F.2d. 1568, 157 (Fed. Circ. 1983), and as the bad debt directly relates only to subject merchandise sold to a U.S. customer, the appropriate calculation is to allocate the direct selling expense over the total U.S. sales of subject merchandise. For our calculation of the per unit direct selling expense, *see Analysis Memo: POSCO*.

Comment 2: POSCO—Multiple Averaging Periods

Petitioners argue that the Department should calculate weighted-average prices for multiple averaging periods to account for the devaluation of the Korean won during the POI. Noting that the Department accounted for this devaluation in the preliminary determination by using daily and modified exchange rates during the devaluation period, petitioners contend that this treatment did not adequately account for the decline in the won, because the rates were tied to the date of sale reported by respondents. Petitioners urge the Department to calculate two separate weighted-average price comparisons for each product under investigation to avoid a dilution of pre-existing dumping margins solely as the result of the severe and precipitous drop in the value of the won.

Petitioners argue that in recent investigations involving Korea (*i.e. SSPC from Korea* and *Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from the Republic of Korea* (''*Rubber from Korea*''), 64 FR 14865

(March 29, 1999)), the Department has determined that multiple averaging periods are appropriate. In fact, in a review of the Department's preliminary determination, petitioners find that there are virtually no findings of sales at less than fair value during the November 1997—March 1998 period, which coincides with the period of currency devaluation. Petitioners argue that these results were directly related to the Department's failure to adequately account for the decline in the won.

Petitioners also argue that section 777A(d)(1)(A) of the Act allows the Department to employ an average-to-average comparison of U.S. sales to the relevant home market or third country sales, and, according to the Statement of Administrative Action (''SAA''), time is a factor which may affect the comparability of sales. Petitioners contend that the effect of the currency decline on POSCO's costs and prices would be ''blended'' together with pre-crisis costs. They cite to *Melamine,* noting that dumping margins should not be artificially eliminated because of unanticipated changes in the exchange rate. Petitioners also cite several cases supporting the Department's authority to make special adjustments to take extraordinary circumstances into account, including *Floral Trade Council* v. *United States,* 16 CIT 1014 (1992), and *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Presses and Components Thereof, Whether Assembled or Unassembled, from Japan,* 61 FR 38139, 38153 (July 23, 1996). Petitioners specifically cite to two cases involving adjustments for currency issues, *Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose from Brazil,* 55 FR 23120 (June 6, 1990); and *Certain Fresh Cut Flowers from Columbia: Final Results and Partial Recission of Antidumping Duty Administrative Review,* 62 FR 53287, 53297 (October 14, 1997), and refer to these cases as illustrative of the Department's authority to use a variety of methods to compare prices in determining whether sales at less than fair value exist. In addition, petitioners note that the Department's regulations allow it to employ special procedures for exchange rate conversion where foreign currencies appreciate vis-a-vis the dollar so that currency fluctuations do not ''create'' dumping margins. Petitioners urge the Department to adopt similar measures in this case to prevent currency fluctuations from reducing dumping margins, and cite to *Koyo Seiko,* 20 F.3d 1156, 1159 (Fed. Cir. 1994) as indicative of the Department's obligation to rely on alternative methods to calculate dumping margins to ensure a fair result.

Petitioners argue that POSCO's arguments against the use of shorter averaging periods are without merit. Petitioners contend that the fact that different product matches could result from using shorter averaging periods does not outweigh the need to employ multiple periods given the sudden and precipitous drop in the won's value. Petitioners also argue that POSCO's contention that the use of daily exchange rates is sufficient to account for the drop in the currency is invalidated by the Department's use of shorter periods in a significant inflation scenario. Petitioners also maintain that respondent's argument that use of shorter periods in the instant case will result in arguments for multiple periods in all cases involving exchange rate fluctuations is incorrect, and note that the extraordinary two-month 47 percent drop in the won's value cannot equate to a typical currency fluctuation.

Respondent POSCO argues that the Department has no basis for a decision to alter the standard price comparison period. POSCO contends that because the Department has already applied a mechanism to address the exchange rate fluctuations (namely, adjusting the exchange rates used in the calculation of export price/constructed export price and normal value) in the preliminary determination of this investigation, there is no further need to alter the comparison period in the final determination. Citing the Department's policy bulletin on this issue (*Policy Bulletin 96–1: Currency Conversions,* 61 FR 9434 (March 8, 1996)), respondent maintains that the Department's treatment of exchange rates in the preliminary determination ensured that exporters, when setting U.S. prices, would know with certainty the exchange rate the Department would use in a dumping analysis. POSCO contends that the use of averaging periods would eliminate this certainty, and allow for manipulation of the margin. Respondent further argues that the Department's own regulations under the Uruguay Round Agreements Act (''URAA'') stipulate that the Department may only use weighted averages for shorter periods ''when normal values, export prices or constructed export prices differ significantly over the course of the period of investigation.'' POSCO contends that it sold subject merchandise based on negotiated prices and whatever ''macroeconomic conditions'' existed in the market during the POI. POSCO argues that the mere fact that exchange rates fluctuated during the POI does not demonstrate that its prices, pricing practices, and/or costs changed during the POI.

POSCO further argues that in recent cases, the Department has not varied the averaging period due to exchange rate fluctuations alone. Citing *Notice of Final Determination of Sales At Less Than Fair Value: Certain Mushrooms from Indonesia* (''*Mushrooms*''), 63 FR 72268, 72272 (December 31, 1998), respondents contend that the case reflects the Department's decision not to use two averaging periods to account for the effect of currency devaluation. POSCO also cites *Notice of Preliminary Determination of Sales at Less Than Fair Value; Postponement of Final Determination: Certain Preserved Mushrooms from Indonesia,* 63 FR 41783, 41785 (August 5, 1998) (''*Preserved Mushrooms*''). Although POSCO states that the Department noted in both *SSPC from Korea* and *Mushrooms* that it also considers prolonged large changes in exchange rates, respondent maintains that the changes in won during the POI were addressed by the Department's currency conversion policy. Respondent points to another case, *Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan (''Polyvinyl Alcohol*''), 61 FR 14064, 14069 (March 29, 1996), which the Department distinguished in *Mushrooms* based on the facts of that case: the respondent (in *Polyvinyl Alcohol*) ''changed the way it conducted business with its principal home market customers, including its price structure, while at the same time, U.S. prices and input cost trends moved in tandem (citing *Preserved Mushrooms,* 63 FR at 41785). Respondent argues that, as in *Preserved Mushrooms,* it did not change the way it conducted its business or its pricing structure during the POI.

Respondent also argues that the use of multiple periods has the potential to distort the margin for reasons wholly unrelated to the exchange rate. As an example, POSCO notes that the use of shorter averaging periods may result in U.S. sales being matched to less similar home market sales because of sales patterns wholly unrelated to currency issues. POSCO argues that the purpose of calculating margins based on POI averages is to eliminate the impact of such patterns on the overall margin. Citing *Melamine,* 732 F.2d at 932, POSCO contends that basing a margin on a factor beyond the control of the exporter would be unreal, unreasonable, and unfair.

Department's Position: We agree with petitioners. Given the economic situation in Korea during the POI, it is most appropriate to use daily and modified exchange rates in this case, for the reasons explained in the preliminary determination, and to employ two averaging periods in calculating the dumping margin. Under section 777A(d)(1)(A) of the Act, the Department has broad authority to use a number of methodologies in calculating the average prices used to determine whether sales at less than fair value exist. More specifically, under 19 C.F.R. 351.414(d)(3), the Department may use averaging periods of less than the POI when normal value, export price, or constructed export price varies significantly over the POI. In this investigation, in the last five months of the POI, NV (in dollars) differed significantly from NV earlier in the POI, due primarily to a significant change in the underlying dollar value of the won, evidenced by the precipitous drop in the won's value that began in November 1997 and continued through December 1997. In the span of two months, the won's value decreased by more than 40 percent in relation to the dollar. Consequently, it is appropriate to use two averaging periods to avoid the possibility of a distortion in the dumping calculation. Moreover, we disagree with respondent's claim that the use of averaging periods is dependent upon a change in a respondent's selling practices. In the final determination of *Preserved Mushrooms,* the Department stated that ''in addition to changes in selling practices, we believe that we should also consider other factors, such as prolonged large changes in exchange rates, in determining whether it is appropriate to use more than one averaging period.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Indonesia,* 63 FR 72268, 72272 (December 31, 1998). Therefore, for both POSCO and Inchon, we have used two averaging periods for the final determination: January through October 1997 and November 1997 through March 1998.

Comment 3: POSCO—CEP vs. EP

Petitioners argue that the Department should classify sales made through POSCO's U.S. affiliate as CEP sales. Petitioners note that the Department has found that where the U.S. subsidiary: (1) was the importer of record and took title to the merchandise; (2) financed the relevant sales transactions; (3) arranged and paid for further processing; and (4) assumed the seller's risk, such sales were classified as CEP sales (citing *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); and upheld in *Final Results,* 62 FR 18404 (April 15, 1997). Petitioners argue that POSCO's U.S. affiliate meets the criteria set forth in that case. They contend that POSAM was the importer of record, financed the sales to the U.S. customer, and assumed the risk associated with these sales (as is evident with regard to the bankrupt sales). Although no further processing was reported after importation, petitioners argue that POSAM was responsible for other post-importation services, such as arranging customs clearance, U.S. freight, invoicing customers, and collecting payment.

In addition, petitioners note that in *SSPC from Korea,* the Department determined that POSAM is more than a processor of sales-related documentation, and that all sales through the affiliate were CEP sales. Petitioners contend that POSAM is the only contact for the U.S. customer, follows up initial contacts made by the Korean parent, incurs the cost of unpaid sales, and is responsible for collecting payment from customers. Petitioners also cite to several other cases wherein the Department reclassified sales as CEP transactions when the respondents' U.S. affiliates were found to have significant selling functions in the United States (*e.g.* following up on calls made to U.S. customers; market research for POSTEEL; receiving and preparing orders; and collecting payments from customers).

Petitioners also argue that the Department should infer from POSAM's size, both in terms of its staff and its asset value, that POSAM is involved in setting U.S. prices. Petitioners urge the Department to find as a general proposition that the mere existence of a U.S. subsidiary the size of POSAM is a strong indication that the activity of the staff must be ''significant.'' Petitioners note that the level of sales and expenditures attributed to POSAM indicate that POSAM has a significant involvement in setting prices for the subject merchandise. In addition, petitioners contend that POSAM's selling expenses should be deducted from the starting price, and should be modified to reflect expenses for only those sales made to unaffiliated parties.

Petitioners argue that the Department has found in all recent cases, with the single exception of *SSWR from Korea,* that U.S. sales made through POSCO's affiliate warrant CEP treatment, citing *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews* (''*Carbon Steel from Korea-3rd Review*''), 63 FR 13170, 13182–183 (March 18, 1998); and *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews* (''*Carbon Steel from Korea—4th Review*''), 64 FR 12927, 12937-38 (March 16, 1999).

POSCO argues that its sales through POSAM meet the Department's criteria for classification as EP sales. Citing *Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review: Circular Welded Non-Alloy Steel Pipe from Korea,* 62 FR 55574, 55579 (October 27, 1997), respondent notes that the Department considers whether (1) the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) this was the customary commercial channel between the parties involved; and (3) the functions of the U.S. affiliates were limited to that of processors of sales-related documentation and communication links with the unaffiliated U.S. buyer. POSCO argues that the Department has classified sales as EP when all three criteria have been met, and has considered the routine functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, citing *Industrial Phosphoric Acid from Belgium; Preliminary Results of Antidumping Duty Administrative Review,* 63 FR 25830, 25831 (May 11, 1998) and *AK Steel Corporation* v. *United States,* Slip Op. 98–159, 1998 WL 846764 (CIT, November 23, 1998).

Respondent argues that POSAM's role in U.S. sales is that of a processor of sales-related documentation. POSCO argues that POSTEEL, POSAM's Korean-based affiliate, determines the material terms of sale, and performs all sales-related activities, with the exception of arranging freight for certain delivered sales, and arranging credit for certain transactions. POSCO contends that POSAM communicates inquiries, purchase orders, and confirmations between the U.S. customer and POSTEEL, and that it has no negotiating authority, as petitioners suggest. POSCO states that, contrary to petitioners' contention, POSAM is not the first and only point of contact for the U.S. customer, noting that POSCO or POSTEEL originated all of the contacts and relationships with U.S. customers, and that the Korean affiliates maintain direct contact with these customers through marketing trips to the United

States. POSCO acknowledges that POSAM discusses the U.S. market situation and prices with its parent in order to provide insight to POSCO since POSAM is closer to the market. Respondent also contends that petitioners' claim that POSAM's size indicates the level of involvement in sales is inaccurate. POSCO argues that the Department verified that only two employees at POSAM's headquarters are responsible for sales of subject merchandise (as well as other product sales) along with two accounting personnel who are responsible for processing payment information for all customers and all products. Respondent argues that petitioners' suggestion that the extent of POSAM's involvement can be directly linked to the value of merchandise recorded in POSAM's accounting records is totally irrelevant, and points out that processing an invoice takes the same amount of time no matter what its value. POSCO contends that, contrary to petitioners' claim, the ''mere existence'' of a U.S. subsidiary does not dictate CEP treatment.

Citing *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Belgium,* 56 FR 56359, 56362 (November 4, 1991) and *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland,* 56 FR 56363, 56371 (November 4, 1991), POSCO contends that the Department has held that the fact that an affiliated U.S. company quotes prices to U.S. customers does not lead to CEP designations, nor does a U.S. affiliate's identifying and maintaining contact with customers. POSCO also cites to *Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia,* 57 FR 38465, 38469 (August 25, 1992), noting that the Department found that the role of a branch office whose functions include ''receiving orders, preparing and executing order confirmations, invoices, packing lists, and other sales-related documentation, and receiving and processing payments from customers' was not sufficient to classify the affiliates' activities as beyond those of a mere processor of documents or communications link.

Respondent further argues that petitioners' suggestion that the Department segregate POSAM's indirect selling expenses by product is wholly without merit. POSCO contends that, at verification in New Jersey, the Department examined the activities of POSAM's employees, and found that the sales and support staff are responsible for all sales. Respondent notes that allocating POSAM's total indirect selling expenses across all of its sales is the method by which the Department has calculated all other reviews and investigations with which POSCO is involved, including *SSPC from Korea.*

Department's Position: We agree with petitioners that sales through POSAM are more appropriately treated as CEP transactions. Although the facts in this investigation are similar to the facts in the stainless steel wire rod determination cited by respondent, there are several significant differences on the record of the present case which lead the Department to change its decision from the preliminary determination and conclude that POSCO's U.S. sales through POSAM warrant classification as CEP sales, as we did in *SSPC from Korea.*

The Department treats sales through an agent in the United States as CEP sales, unless the activities of the agent are merely ancillary to the sales process. Specifically, where sales are made prior to importation through a U.S. based affiliate to an unaffiliated customer in the United States, the Department examines several factors to determine whether these sales warrant classification as EP sales. As respondents have noted, these factors are: (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer without being introduced into the physical inventory of the affiliated selling agent; (2) whether this sale is the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent is limited to that of a ''processor of sales-related documentation'' and a ''communication link'' with the unrelated U.S. buyer. Where the factors indicate that the activities of the U.S. selling agent are ancillary to the sale (*e.g.,* arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. selling agent is substantially involved in the sales process (*e.g.,* negotiating prices), we treat the transactions as CEP sales. *See Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Administrative Review,* 62 FR 18389, 18391 (April 15, 1997); *Mitsubishi Heavy Industries* v. *United States*, Slip Op. 98–82 at 6 (CIT, June 23, 1998).

We note that neither party has disputed that POSCO's U.S. sales through POSAM meet the first two criterion of the Department's standard. Therefore, the determining factor in this case is the degree of involvement by POSAM in the sales process. In the preliminary determination, the Department based its EP classification of sales through POSAM on POSCO's statement that POSTEEL determined price and terms of sale. However, in our preliminary determination, we noted that we would conduct an in-depth examination of the most appropriate classification of POSCO's U.S. sales through POSAM (*i.e.,* CEP versus EP) at verification. *See Preliminary Determination,* 64 FR at 142.

Although POSTEEL performs many selling activities for U.S. sales through POSAM, including meeting with potential U.S. customers of the subject merchandise (*see POSCO Verification Report,* at 11–12 and Exhibit 15), the record does not support POSCO's assertion that POSAM is merely a processor of sales-related documentation. First, POSAM is the primary point of contact for the U.S. unaffiliated customer. POSAM officials explained that because of the time zone difference and the cost of long distance, it would be expensive and inconvenient for the customer to contact POSTEEL directly. *See POSCO Verification Report* at 11. In addition, POSAM also conducts, albeit informally, market research for POSTEEL, in that POSAM officials report market conditions and pricing information to POSTEEL.

Also, as demonstrated by the unpaid sales to the bankrupt customer, POSAM incurs the ''seller's risk'' for U.S. Channel 2 sales. The record indicates that it was POSAM, not POSTEEL, who incurred the cost of the unpaid sales, as POSAM pre-pays POSTEEL. *See POSAM Verification Report* at 6. Moreover, it is POSAM, not POSTEEL, who is responsible for collecting payment from the customer through bankruptcy proceedings. *See POSAM Verification Report,* Exhibit 9. Bearing such financial risk is indicative of a seller, not a mere facilitator. This selling arrangement between POSAM and POSTEEL differs from the one between POSAM and Changwon, addressed in *SSWR from Korea,* where the ''U.S. customers remit payment to POSAM, which *subsequently* transfers the payment to POSTEEL, which, in turn, transfers it to Changwon.'' *See SSWR from Korea,* 63 FR at 40419 (emphasis added).

Therefore, because of the significant risk incurred by POSAM in addition to its other selling activities, we find that POSAM's activities are more than ancillary to the sales process and have classified POSCO's U.S. sales through POSAM as CEP transactions.

Additionally, we disagree with petitioners that the reported indirect selling expenses for POSAM should be adjusted. Petitioners have not stated that POSCO's calculation was incorrect or is in any way distortive. We verified POSCO's calculation of POSAM's indirect selling expense at verification and noted no discrepancies. *See POSAM Verification Report* at 11–12. Thus, for CEP sales, we have deducted an amount for indirect selling expenses incurred in the United States using POSCO's reported indirect selling expense for POSAM.

Comment 4: POSCO—Local Letter of Credit Sales

Respondent argues that the Department should calculate normal value for ''local'' sales made in the home market based on the U.S. dollar price at which those sales were invoiced. Local sales are sales of subject merchandise to home market customers who will further process the merchandise into non-subject products for export. Respondent maintains that although POSCO is paid in Korean won, the amount of payment is based on the U.S. dollar-invoiced price. Respondent contends that because POSCO's local sales are denominated and invoiced in U.S. dollars, the invoiced prices do not require conversion to won for U.S. comparison prices, and that the conversion of the U.S. dollar price to won and then back to dollars is not only unnecessary, but would significantly distort the margin. Respondent cites to *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Columbia* (*''Roses from Columbia*''), 60 FR 6980, 7006 (February 6, 1995), noting that the Department agreed and accepted the U.S. prices for sales invoiced in U.S. dollars, notwithstanding that the respondent received payment from the customer in the home market currency. Respondent argues that in the final determination in *SSPC from Korea,* the Department's concern was that POSCO's customers paid for local sales in won, the sales amounts were recorded in won in POSCO's accounting records, and that the exchange rates utilized by POSCO to determine the won equivalents were different from those exchange rates used by the Department. Respondent contends that the fact that payment is made in won is irrelevant, since both the contract and the invoice reflect a U.S. dollar price, and that sales are converted to won for the purposes of consistency with POSCO's accounting records, which are maintained in won.

Petitioners claim that the use of the dollar value for local sales in the home market would be inappropriate, given that POSCO receives payment in won. Petitioners distinguish this case from *Roses from Columbia* by noting that in that case, the Department was factoring in the effects of inflation in the cost-of-production analysis, costs were converted into dollars; the payments in local currencies had reflected the prevailing exchange rate, and all home market sales had been invoiced in dollars and paid in pesos. Petitioners further contend that in *Roses from Columbia,* the decision to use U.S. dollar-based prices was presumably made for convenience and consistency, as costs were also dollar-denominated. Petitioners further note that the disparity between the exchange rates reflected in the price conversion and the rates used by the Department is too great to reconcile, and is in contrast to the situation in *Roses from Columbia.* Petitioners argue that the use of a constant index such as the dollar is used by the Department in the face of currency depreciation or significant deflation, and should not be applied selectively to reduce a dumping margin.

Department's Position: We agree with petitioners. First, we believe that respondent's reliance on *Roses from Columbia* is misplaced. In that case, all prices and costs, both in the home market and in the U.S., were dollar denominated, and the exchange rates reflected in the dollar-to-peso conversion coincided with the exchange rates used by the Department. Given these facts, the use of dollar-denominated prices provided consistency throughout the Department's analysis in that case. Neither of these facts are present in the instant case. At verification, we found that local sales are the only sales made in the home market that are expressly linked to a dollar value, but that the sale is ultimately a won-denominated sale. Additionally, the vast majority of the costs incurred for home market and U.S. sales are denominated and paid by POSCO in won. *See POSCO Verification Report at* 14–18. Finally, as we note above, there is a disparity between the exchange rates reflected in POSCO's accounting records and those used by the Department (*see POSCO Verification Report,* Exhibit 17). Although the sales are linked to a dollar value, there is no question that the respondent receives payment in won, and therefore, the use of the dollar-denominated gross unit price for local letter of credit sales in the home market is unwarranted. In addition, in recent cases involving POSCO (*e.g. SSPC from Korea,* and *Carbon Steel from Korea—3rd Review),* the Department has used the won-denominated price for local letter of credit sales in the home market because we found that, as in the instant case, the local sales were paid in won and recorded in POSCO's accounting records in won, and the exchange rates used by POSCO were dissimilar from those used by the Department. *See SSPC from Korea,* 63 FR at 15456.

Comment 5: POSCO—Date of Sale

Petitioners argue that the Department should use the order confirmation date as the date of sale for both home market and U.S. sales unless the circumstances of a particular sale indicated use of some other date. They contend that the Department ''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 the sale,'' including price and quantity. *See* 19 CFR 351.401(i). Petitioners contend that the Department has the authority to treat order date as the date of sale, and has done so in the recent past, citing *Final Results of Antidumping Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea (''Pipe from Korea''),* 63 FR 32833, 32835–36 (June 16, 1998)). Petitioners argue that the documents included in the Department's verification exhibits illustrate that, with the exception of special circumstances (involving bankrupt sales) the material terms of sale are set on the order date and do not change prior to shipment and invoice. Petitioners maintain that documentation reviewed at verification indicates that POSCO knew well before actual shipment the order quantity of the invoice. Petitioners note that, with the exception of two sales involving merchandise originally intended for a bankrupt customer, the other seven sales (involving either a home market or a U.S. sale) reviewed at verification did not involve changes in quantity or price from order date to invoice date.

Petitioners argue that for U.S. sales in channel 2, the Department should use as the date of sale the date of POSAM's invoice to the U.S. customer, rather than the date of POSTEEL's invoice to POSAM. Petitioners further contend that this invoice is meaningless because it represents the transfer price on an intra-company transaction.

Respondent does not deny that the Department has the discretion to use a date other than invoice date as date of sale, but noted that in *SSPC from Korea,* the Department chose not to alter its date of sale methodology. POSCO disputes that use of invoice date requires that price and/or quantity change frequently between order date and invoice date, contending that the fact that whether material terms change after the order date does not diminish the fact that they could and sometimes do change, so that material terms are not firmly established as of the order date. Respondent cites to recent cases as precedent for the Department's decision to use invoice date as date of sale, including *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada,* 64 FR 2173, 2178 (January 13, 1999), wherein the Department found at verification that quantity changed between the order date and the invoice date, and determined that invoice date was the most appropriate date to use in accordance with normal practice. POSCO distinguishes the instant case from *Pipe from Korea,* wherein the material terms had been set in the U.S. contract, and that subsequent changes were immaterial in nature. Contrary to petitioners' contention, POSCO argues that the documents provided at verification support invoice date as the date of sale, rather than order date, as petitioners claim. Respondent further argues that the Department's obligation with regard to date of sale is to determine when price and quantity are normally finalized, and that the reason for a change in terms is irrelevant to the Department's analysis. Therefore, POSCO submits that there is no reason for the Department to deviate from its standard practice of using invoice date as date of sale.

Respondent believes that the Department, in its preliminary determination, properly used the date of POSTEEL's invoice to POSAM as the date of sale since the material terms of sale were finalized upon shipment to the customer from Korea (the point at which POSTEEL issues its invoice to POSAM). Moreover, POSCO maintains that the Department has a well-established rule that the date of sale must precede or be equal to the date of shipment, citing *Carbon Steel from Korea—4th Review.* Respondent further argues that petitioners' contention that the invoice between POSTEEL and POSAM is meaningless is immaterial to the determination of the date of sale. POSCO notes that use of an invoice date between a U.S. affiliate and its unaffiliated customer would only be appropriate with regard to CEP transactions.

Department's Position: We agree with respondents in part. Under the Department's regulations, we normally use date of invoice as the date of sale. 19 CFR 351.401(i). However, we may use another date, such as date of order confirmation, if that date better reflects the date on which the material terms of the sale were established. In adopting this regulation, we explained that the purpose was, whenever possible, to establish a uniform event which could be used as the date of sale. *Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27348–49 (May 19, 1997). We further explained that we do not treat an initial agreement as establishing the material terms of sale between the buyer and seller when changes to such an agreement are common, even if, for a particular sale, the terms did not actually change. Consequently, our analysis focuses on whether changes are sufficiently common to allow us to conclude that initial agreements should not be considered to finally establish the material terms of sale. As discussed in detail in the *Analysis Memo: POSCO* (at 1–2), a review of the sales documentation supports POSCO's contention that certain material terms of sale (*i.e.,* price and quantity) are subject to change until the invoice date. Moreover, we find petitioners' contention that the record supports use of order confirmation date as date of sale to be without merit. As the Department noted in *Carbon Steel from Korea—4th Review,* ''even if documentation from a few sample U.S. sales suggests that essential terms of sale did not change after initial contract date, this does not demonstrate that essential terms of sale were not subject to change after the initial contract date, or that essential terms of sale did not in fact change after the initial contract date for significant numbers of sales.'' *See Carbon Steel from Korea—4th Review,* 64 FR at 12935. While we note that, at verification, we discovered that POSCO's methodology in determining the frequency of pricing changes overstated the actual number of occurrences (*see Analysis Memo: POSCO*), based upon our examination of the frequency of pricing changes for home market sales, and for U.S. sales classified as EP transactions, we have determined that invoice date is the appropriate date for date of sale. However, in keeping with the Department's practice, the date of sale cannot occur after the date of shipment. Therefore, when the date of shipment precedes the date of the invoice to the first unaffiliated purchaser in the United States, we have used shipment date as the date of sale, in accordance with recent reviews involving POSCO (*see Carbon Steel from Korea—4th Review, 64 FR at 12935, citing Carbon Steel from Korea—3rd Review,* 63 FR at 13172–73).

Comment 6: POSCO—Sales of Non-Prime Merchandise

POSCO argues that in the final determination, the Department should distinguish between prime and secondary merchandise. POSCO explains that it had submitted control numbers corresponding to each product reported as subject merchandise, and assigned to each control number a suffix of either ''P'' for prime merchandise or ''N'' for non-prime merchandise. However, respondent noted that the Department truncated the suffix from the control numbers, collapsing prime and non-prime material for the purposes of the cost test. Respondent argues that the Department's methodology contradicts its practice of distinguishing between prime and secondary merchandise in its analysis. POSCO cites to *Memorandum from Roland L. MacDonald to Joseph A. Spetrini,* dated April 19, 1995 (''*Carbon Steel Memorandum*''), and *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands* (''*Carbon Steel from the Netherlands*''), 61 FR 48465 (September 13, 1996), wherein the Department segregated secondary merchandise from prime merchandise for the purposes of conducting the arm's length test, the cost test, and the margin calculation. POSCO notes that the Department also segregated secondary from prime merchandise in *SSPC from Korea* and should follow the same methodology in the instant case.

Petitioners argue that the Department should not distinguish between prime and secondary merchandise for purposes of its cost test. Petitioners contend that a respondent can selectively label merchandise as ''non-prime'' in order to avoid having low-priced sales tested with other sales of the same control number, and cause below-cost home market prices to artificially pass the cost test. Petitioners further contend that *Carbon Steel from the Netherlands* stands for the proposition that the Department acknowledges that prime and secondary merchandise incur identical costs. Citing *Extruded Rubber Thread from Malaysia: Final Results of Antidumping Duty Administrative Review,* 63 FR 12752 (March 16, 1998), petitioners note that the Department's practice is not to distinguish between first and second quality merchandise in conducting the cost test.

Department's Position: We agree with respondent. As noted in the *Carbon Steel Memorandum,* ''separating prime and seconds for the cost test has the benefit of facilitating an untainted analysis of the majority of sales (prime merchandise).'' *See Carbon Steel Memorandum* at 4. Consistent with *Carbon Steel from the Netherlands* and *IPSCO,* 965 F.2d 1056 (Fed. Cir. 1992), in this case, POSCO has reported the same cost of production for sales of prime and non-prime merchandise. However, we do not regard prime and non-prime merchandise as identical for the purposes of our analysis, as prime and secondary products are typically fundamentally different from each other, since the latter normally possess defects resulting from errors in the production process. For this reason, the Department's model matching methodology in fact prevents any matches of prime to non-prime merchandise. In the instant case, POSCO noted that merchandise classified as non-prime does not meet any standard specification (*see* POSCO's November 23, 1998 supplemental response at 15), and at verification we examined POSCO's coding process for prime vis-a-vis non-prime and noted no discrepancies (*see POSCO Verification Report* at 5).

The cost test compares the price and cost of all comparison market sales, by model (identified by control number, or ''CONNUM''). Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that the below-cost sales were not made in ''substantial quantities.'' If we were to combine prime and non-prime sales for a given CONNUM in the cost test (thereby affecting whether the 20 percent threshold has been met), sales of prime could be disregarded in the calculation of NV or, alternatively, sales of below-cost non-prime could be the basis of NV, solely because the analysis combined prime with secondary merchandise. This result would stem from the fact that it is more likely that non-prime sales are sold below cost.

Further, we note that petitioners reliance upon *Extruded Rubber Thread from Malaysia* is misplaced. In that case, as in the *Carbon Steel Memorandum*, the Department ran separate cost tests for prime and non-prime merchandise in order to avoid distortions. Thus, for the final determination in the instant case, we have distinguished prime from non-prime merchandise using POSCO's reported control numbers for purposes of the cost test and margin analysis.

Comment 7: POSCO—Application of Facts Available for U.S. Sale

Petitioners argue that POSCO failed to report a U.S. sale to the Department and that facts available based on the highest transaction margin calculated for reported sales should be applied to this ''unreported'' quantity. Petitioners also contend that two invoices excluded from the U.S. sales database based on POSTEEL's invoice date should be included as POSAM's invoice date for these sales is within the POI, and should be similarly factored into the margin calculation with the highest transaction margin.

Respondents argue that the U.S. sale to which petitioners refer had been discovered during the Department's Korean verification, and had been reported as a correction at the New Jersey verification (*see POSAM Verification Report*, at 1 and Exhibit 1). POSCO contends that the other sale to which petitioner refers as having been incorrectly excluded from the database is a sale whose shipment date is before the POI, and that therefore, the sales had been properly excluded from the U.S. sales database.

Department's Position: We agree with respondent. The U.S. sale that respondent inadvertently excluded from the sales database was accepted by the Department as a minor correction at the beginning of the New Jersey sales verification. Information relating to the sale was examined and verified. In addition, the two sales shipped prior to the POI were correctly excluded from the sales database, as the Department recognizes the date of sale as the earlier of POSAM's invoice date to the U.S. customer or the date of shipment from Korea. As such, the use of facts available for these sales is unwarranted.

Comment 8: POSCO—Correction of POSTEEL's Credit Expense for U.S. sales

Petitioners contend that the Department should correct credit for U.S. sales involving POSTEEL to reflect the revision noted in the Department's verification report (*see POSCO Verification Report*, at 2). Respondent argues that it had presented the correction to U.S. credit expense for POSTEEL for all U.S. channel 1 and 3 sales in its pre-verification corrections, that it had presented the Department with an updated sales listing incorporating the correct rate on March 8, 1999, and that no other revisions are necessary.

Department's Position: We agree with respondent. POSCO presented its pre-verification correction to POSTEEL's short-term borrowing rate for U.S. dollars and the corresponding corrections to U.S. credit expenses for sales in channels 1 and 3. In addition, POSCO had presented these corrections in an updated sales listing, and we find that no other revisions are required.

Comment 9: POSCO—POSAM's Indirect Selling Expenses

Petitioners argue that POSAM's indirect selling expenses were understated. Petitioners urge the Department to add to POSAM's indirect selling expense figure the amount of short-term interest incurred by POSAM, claiming that such offsets to indirect selling expenses have been explicitly rejected by the Department (citing *Extruded Rubber Thread from Malaysia*, 63 FR 12578). In addition, petitioners also argue that the amount of housing expenses for POSAM employees incurred in the year of consideration should be added to total indirect selling expenses.

Respondent contends that the Department's policy and practice is to deduct short-term interest expenses from indirect selling expense figures, as these short-term interest expenses relate to financing accounts receivable. Because credit expense is calculated separately, respondent argues that the inclusion of the short-term interest expense would constitute double counting credit expenses in the U.S. market, citing *SSPC from Korea and Carbon Steel from Korea—4th Review* in support of this contention. Respondent further contends that the housing expenses noted by petitioners bear no relation to POSAM's sales during the POI, and therefore, do not require inclusion. However, POSCO does note that once income derived from housing is deducted from the expense, the net expense has a negligible effect on the ratio.

Department's Position: We agree in part with respondents. It is the Department's practice to exclude short-term borrowing expenses in the calculation of indirect selling expenses when credit expense has been otherwise accounted for, and the borrowing expense is clearly related to sales, as in *SSPC from Korea and Carbon Steel from Korea—4th Review*. However, we note that the housing expenses found at verification should be included (less housing income) in the calculation of the indirect selling expense ratio, as the housing expenses related to housing provided for POSAM's employees, and no evidence presented at verification indicated that the expenses bore no relation to POSAM's sales during the POI. *See POSAM Verification Report* at 12. For this calculation, *see Analysis Memo: POSCO*.

Comment 10: POSCO—Offset to Financial Expenses

Petitioners argue that foreign exchange gains and interest income should not be allowed because the Department's verification revealed that POSCO could not support its reported offsets to financial expenses. Petitioners state that the reported financial expense ratio should be recalculated for the final determination.

Respondent asserts that its financial expenses were correctly reported. POSCO explains that the Department verified the reasonableness of its reported short-term interest income and the foreign exchange gains and losses related to debt for the consolidated company.

Department's Position: We agree with respondent. POSCO calculated consolidated short-term interest income and consolidated foreign exchange gains and losses based on the relative percentage of these items from the unconsolidated financial statements. At verification we examined the figures used in the calculation and traced them to POSCO's unconsolidated financial statements. Since POSCO's unconsolidated financial statements comprise a significant portion of its consolidated financial statements, we consider the allocation based on the unconsolidated percentages to be a reasonable surrogate.

Comment 11: POSCO—Affiliated Party Purchases

Petitioners argue that the Department should amend POSCO's reported costs by valuing raw material inputs purchased from affiliated parties at the highest of transfer price, COP, or market price in accordance with the major input rule. Petitioners argue that the major input rule requires the Department to value purchases from affiliated parties at the highest of transfer price, the affiliate's COP, or market value, as cited in section 773(f)(3) of the Act. Petitioners note that the Department's February 4, 1999 cost verification report indicates that POSCO's weighted-average purchase price for some affiliated party inputs occurred at prices that were less than the related parties' COP. Petitioners state that POSCO failed altogether to report a market price benchmark for an additional alloy, which requires the Department to apply facts available for the alloy.

POSCO asserts that material inputs purchased from affiliated parties do not meet the statutory definition of a major input and represent arm's length transactions based on the relationship of the price paid to the affiliated supplier and the cost incurred by that supplier. POSCO claims that even if the Department were to define one or more of the inputs as a major input, there is no basis on which to adjust the submitted costs.

Department's Position: We agree in part with respondent and in part with petitioners. POSCO obtained three inputs from both affiliated and non-affiliated suppliers. Sections 773(f)(2) and (3) of the Act allow the Department to test whether transactions between affiliated parties are at arm's length. Section 773(f)(2) allows the Department to test whether transactions between affiliated parties involving any element of value are at prices that ''fairly reflect * * * the market under consideration.'' Section 773(f)(3) allows the Department to test whether transactions between affiliated parties involving a major input are above the affiliated supplier's cost of production. In other words, if an understatement in the value of an input would have a significant impact on the reported cost of the subject merchandise, the law allows the Department to insure that the transfer price or market price is above the affiliated suppliers' cost. The determination as to whether an input is considered major is made on a case-by-case basis. *See Antidumping Duties; Final Rule*, 62 FR 27296, 27362 (May 19, 1997). In determining whether an input is considered major, among other factors, the Department looks at both the percentage of the input obtained from affiliated suppliers (verses un-affiliated suppliers) and the percentage the individual element represents of the subject merchandise's COM (*i.e.* whether the value of inputs obtained from an affiliated supplier comprises a substantial portion of the total cost of production for subject merchandise).

In the instant case, we looked at these percentages for each of the three inputs. For one of the three inputs we found that section 773(f)(3) of the Act does apply to POSCO's purchases from affiliated parties. *See Memorandum to Neal Halper: Cost of Production (''COP'') and Constructed Value (''CV'') calculation adjustments for the Final Determination of Pohang Iron & Steel Co., Ltd. (''POSCO''),* dated May 19, 1999. For this input, we then compared the transfer price between POSCO and its affiliated supplier to that supplier's actual cost of production. Since the affiliated supplier's actual cost of production exceeded the transfer price, we have increased the COM of the subject merchandise to reflect the cost of the affiliated supplier. However, for the other two inputs we have determined that because of the limited amounts of these inputs obtained from affiliated suppliers and the relatively small percentage that the individual elements represent of the subject merchandise's COM, section 773(f)(3) of the Act does not apply. Furthermore, for these two inputs we found that the transfer price with POSCO's affiliates are reflective of a market price. Therefore, we have accepted the transfer price from POSCO's affiliate as the cost with respect to these inputs and have not adjusted the COM of the subject merchandise, pursuant to section 773(f)(2) of the Act.

Comment 12: Inchon—Date of Sale

Petitioners argue that, based on the verified record, the appropriate date of sale for home market sales is the invoice date. Petitioners argue that Inchon does not accept the basic terms of sale until the shipment request is entered into the warehousing/shipping document which coincides with the issuance of the invoice to the customer. Petitioners cite the Department's verification findings, which state that a ''sale representative enters the order into the system and awaits sales approval. Inchon's sales team explained that price and quantity terms had to be approved by sales management; once approval is gained, the sales team enters a shipment request to the warehousing/shipping department.'' *See Inchon Verification Report,* at 20. Petitioners argue that, based on the above verification findings, Inchon does not accept the material terms of sale until ''sometime after the order is received from the customer.'' Also, petitioners argue that it is the Department's preference to use the invoice date unless the material terms of sale are established at a different date, citing *Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27349 (May 19, 1997).

Respondent agrees with petitioners that, for home market sales, the invoice date should be used, instead of the purchase order/order confirmation date. Respondent argues that the use of the purchase order date in the preliminary determination is directly contrary to the Department's date of sale regulations, which state that ''[i]n 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.'' *See* 19 CFR 351.401(i). Inchon argues that while the vast majority of home market sales are filled from inventory on hand, and the shipping and invoicing takes place within one or two days of the order, if Inchon does not have a requested product in inventory, it will (if the order is approved) produce the product. Respondent concludes that if Inchon produces the product, the essential terms of sale often change between the purchase order date and the invoice date; thus, the most appropriate date of sale is the invoice date.

For U.S. sales, petitioners argue that the Department should use the order date/contract date as the date of sale, and not the invoice date, as the Department preliminarily determined. Petitioners note that ''once material terms and schedules are set, a firm offer is sent by Inchon to Hyundai Corporation, which sends its firm offer to Hyundai U.S.A., which finally sends a firm offer to the final customer.'' *See Inchon Verification Report,* at 21. Also, petitioners support their argument by citing to the verification report: ''[a]ccording to Inchon, it also sends a sales contract to the final contract [sic], which lists all terms of the sale; this contract is signed by both parties.'' *Id.*

Petitioners argue that the Department should use the date of contract/order as the U.S. date of sale unless there is record evidence that demonstrates that ''the material terms of sale change frequently enough on U.S. sales so as to give both buyers and sellers any expectation that the final terms will differ from those agreed to in the contract'', citing *SSPC from Korea* and Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Final Results of Antidumping Duty Administrative Review (''Circular Welded Non-Alloy Steel Pipe From the Republic of Korea''), 63 FR 32833, 32836 (June 16, 1998).

Petitioners argue that respondent's two sales examples (*see* Inchon's November 19, 1998 response, at 21 and Exhibit A–28) do not demonstrate a change in the material terms of sale between the date of contract/order and the invoice date. In the first example, petitioners argue that the U.S. customer asked for a split-shipment of the quantity ordered and it did not cancel the quantity. In the second example, ''the customer sent a purchase order requesting multiple products; however, Inchon agreed to supply one of the products from each of the purchase orders.'' Petitioners argue that this example only illustrates Inchon's sales process, where Inchon only sends a firm contract to the customer after the material terms of sale are established.

Petitioners allege that the sales processes in the home market and in the U.S. market differ because home market sales are usually made from inventory and U.S. sales are made-to-order.

Petitioners argue another comparison point between the U.S. and home market sales concerning the terms of payment and invoicing; however, as this subject involves proprietary information, please *see Inchon Analysis Memorandum for the Final Results of the 1997/1998 Investigation for Stainless Steel Sheet and Strip in Coils from Korea (''Analysis Memo: Inchon'')* for a more complete discussion of this issue. Petitioners argue that the Department, in a similar factual situation (*Circular Welded Non-Alloy Steel Pipe From the Republic of Korea,* 63 FR at 32835), noted differences between the U.S. and home market sales process. In the above Korean case, petitioners noted that the Department used the invoice date for home market sales from inventory and the date of contract for U.S. made-to-order sales.

Furthermore, petitioners argue that Inchon's price and quantity change chart is inaccurate. *See* Exhibit C–24 of Inchon's November 19, 1998 response. Petitioners note that respondent claims that this chart illustrates that the price and quantity changed between order date and the invoice date on 17% of U.S. sales, by sales volume. Petitioners argue that an accurate comparison would be to compare any price or quantity changes between Inchon's contract/order date and invoice date, and not between the customer's purchase order date and the invoice date. Petitioners argue that, based on the Hyundai U.S.A. verification exhibits, there were no changes in the material terms of sale (*i.e.,* price or quantity) between Inchon's contract/order date and the invoice date.

Finally, petitioners argue that if the Department disagrees with petitioners' above arguments to use the date of contract/order as the U.S. date of sale, the Department should use the date of invoice from Hyundai U.S.A. to the unaffiliated U.S. customer and not the date of invoice from Inchon to either unaffiliated customers (channel 3) or affiliated customers (channels 1 and 2).

Respondent argues that, for U.S. sales, the Department should continue to use Inchon's invoice date as the date of sale. Respondent argues that petitioners were incorrect in stating that Inchon's specific example of a change in quantity from the contract to the invoice was a split shipment contract. Respondent argues that in this example, the final shipment was canceled by the U.S. customer because of a failure to agree on a price and that this information was verified by the Department. Respondent argues that this is an example of how the material terms of sale (in this case, quantity) can change after the date of contract. Respondent argues that petitioners understand that Inchon uses the terms ''PO'' and ''contract'' interchangeably and that the reference to ''P/O QTY,'' in Exhibit C–24 of Inchon's November 19, 1998 response refers to the customer contract quantities, and that the quantities in both the purchase order and customer contract are the same. Also, respondent argues that in similar cases where there are documented changes in material terms of sale, the Department has used the invoice date as the date of sale. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada,* 64 FR 2173, 2178 (January 13, 1999).

Respondent also disagrees with petitioners' argument that if the Department uses invoice date as the date of sale, the Department should use the invoice date from Hyundai U.S.A. to the unaffiliated U.S. customer. Respondent argues that using this invoice date is contrary to the Department's long-standing position that date of sale may not be after the date of shipment to the unaffiliated customer, citing *Carbon Steel from Korea—3rd Review,* 63 FR at 13172–73. Respondent notes that the Department did use the invoice date to the unaffiliated customer for U.S. sales through POSAM, the U.S. affiliate of POSCO in *SSPC from Korea*; however, the U.S. sales through POSAM were classified as CEP sales, and not EP sales. *See SSPC from Korea,* 64 FR at 15456.

Department's Position: We disagree with both parties' assertions that we should use invoice date for home market sales. For our preliminary determination, we used the purchase order/order confirmation date as the home market date of sale because, by respondents' own admission, ''there would rarely be significant differences in the sales terms'' between order date and invoice date. *See* Inchon's November 19, 1998 supplemental questionnaire response. Finally, at verification, we noted that for the home market sales traces, there were no changes in the material terms of sale between order date and invoice date.

Inchon's case brief states that when Inchon accepts an order for a product which it does not have in inventory, it produces the requested product, and, in these instances, the essential terms of sale can often change. This fact (of which, we note, we were aware at the time of our preliminary determination) does not change the fact that, for the large majority of Inchon's home market sales, the essential terms of sale do not change between order date and invoice date. As we noted in the preamble to the governing regulations, we have established a ''preference for using a single date of sale for each respondent, rather than a different date of sale for each sale.'' *See* Preamble, 62 FR at 27348. In this case, where the record assertions and evidence support the conclusion that the essential terms of sale for the ''vast majority'' of sales are established at order date, our preference to utilize a uniform date of sale leads to our conclusion that order date is the more appropriate date. Similarly, we note that petitioners' reference to our verification findings regarding the sales process does not contradict Inchon's statements that ''the vast majority'' of home market sales are made from inventory and that the terms of sale rarely change between the purchase order date and the invoice date. Hence, we disagree with both petitioners and respondent's arguments and continue to determine that the purchase order date, and not the invoice date, is the most appropriate sale date for home market sales in this case.

For U.S. sales, we disagree with petitioners' arguments to use the purchase order date instead of the invoice date from Inchon to either unaffiliated customers (channel 3) or affiliated customers (channels 1 and 2). While we agree with petitioners' argument that Inchon's home and U.S. sales process differ, it does not automatically follow that we must therefore use invoice date for home market sales and purchase order date for U.S. sales. We note that in the case cited by petitioners, *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea* (63 FR at 32836), the Department considered a factual pattern in which ''[t]he material terms of sale in the U.S. [were] set on the contract date and any subsequent changes [were] usually immaterial in nature or, if material, rarely [occurred].'' This is not the situation for Inchon's U.S. sales, where Inchon has provided evidence that there were changes to the essential terms of sale for a significant portion of its U.S. sales. For example, we note that the two examples cited by Inchon, as well as its price and quantity change chart (*see* Exhibit C–24 of Inchon's November 19, 1998 response), demonstrate that the material terms of sale can and do change often enough to justify using invoice date. Therefore, for U.S. sales, we determine that Hyundai U.S.A.'s invoice date (or shipment date, if earlier) is the appropriate date of sale for Inchon's U.S. sales.

Moreover, for U.S. sales, we disagree with respondent's arguments that Inchon's invoice date should be used as the date of sale for the final determination. For U.S. sales categorized as either EP or CEP transactions, it is the Department's practice to use the date of the invoice to the first unaffiliated purchaser in the United States. We note that for Inchon's sales made through Hyundai Corporation, respondent has provided the date of Inchon's invoice to Hyundai Corporation as the invoice date rather than the date of Hyundai Corporation's invoice to the first unaffiliated U.S. purchaser. However, as noted above in Comment 5, the date of sale cannot occur after the date of shipment. Therefore, when date of shipment to the first unaffiliated purchaser in the United States precedes the date of the invoice, we will use shipment date as the date of sale (*see Carbon Steel from Korea—4th Review,* 64 FR at 12935, citing Carbon Steel from Korea—3rd Review, 63 FR at 13172–73).

Comment 13: Inchon—Net Price vs. Gross Unit Price

Petitioners argue that the Department should recalculate both home market credit expenses and indirect selling expenses based on the net price (*i.e.*, after accounting for billing adjustments) rather than the gross unit price. Petitioners argue that Inchon used incorrect formulas for its calculation of home market credit expenses and indirect selling expenses, which were listed on pages B–27 and B–31, respectively, of Inchon's September 23, 1998 response.

Respondent rebuts petitioners' argument that the Department should adjust Inchon's home market credit and indirect selling expenses based on the net price because these adjustments would be ''insignificant adjustments'' within the meaning of 19 CFR 351.413 (1998). Respondent argues that these adjustments do not affect the calculation of Inchon's normal value by more than 1 percent, and would be a waste of the Department's time and resources to implement.

Department's Position: We agree with petitioners and have recalculated both home market credit expenses and indirect selling expenses based upon net price. As noted in the original questionnaire in this case, the Department uses in its margin calculations a price net of adjustments, such as discounts, rebates, and post-sale price adjustments, that are reflected in the purchaser's net outlay. *See* 19 CFR 351.102(b) and 351.401(c). This calculation formula error was noted in petitioners' February 3, 1999 alleged deficiency comments. Respondent's argument for us to use 19 CFR 351.413 to justify not making the calculation formula change is unfounded. As noted in the preamble to the governing regulations, ''[section] 351.413 give[s] the Department the flexibility to determine, on a case-by-case basis, whether it should disregard a particular insignificant adjustment.'' *See* Preamble, 62 FR 27372. It would be more of a burden upon the Department to calculate a margin both with the adjustment and without the adjustment, compare the results, and determine whether the adjustment is ''insignificant.'' Therefore, we have used Inchon's net price to the customer as the basis for credit and indirect selling expenses.

Comment 14: Inchon—U.S. Handling Commission Fee Adjustment

Petitioners argue that the Department should apply the highest per unit handling commission fee to all Hyundai U.S.A. sales with a particular term of payment, as partial facts available, because the Department discovered at verification that Inchon failed to disclose the handling commission fee. Because Inchon did not report the handling commission fee and because the Department discovered the fee at the Hyundai U.S.A. verification, petitioners argue that the Department should apply facts available and use the highest per unit handling commission fee for those U.S. sales with this particular term of payment.

Respondent argues that at Inchon's U.S. verification, Inchon realized that it had inadvertently excluded a handling commission fee for certain of its U.S. sales, and that the Department should apply the actual transaction-specific adjustment, based on the calculations in U.S. Verification Exhibit 12. Respondent argues that the Department should not apply facts available or adverse facts available because the Department has the information on the record to make the transaction-specific adjustments. Also, respondent argues that this is the type of minor correction that the Department normally makes after verification.

Department's Position: We agree with respondent and will apply the U.S. handling commission fee transaction-specific adjustments, where applicable. We discovered, and then calculated, the handling commission fee expenses at verification for all U.S. sales. *See Hyundai U.S.A. Verification Report,* Exhibit 12. We disagree with petitioners' argument to apply partial facts available. First, there is no missing information with respect to these minor adjustments. Second, the Department verified the accuracy of these minor adjustments for all U.S. sales. Thus, the application of facts available is unwarranted. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administration Review: Certain Pasta from Turkey*, 63 FR 68,429, 68,432 (December 11, 1998) (Department adjusted freight expenses to reflect verification findings, despite an argument that the ''adjustment is negligible and may be ignored,'' citing 19 CFR 351.413.) Therefore, for the final determination, we have adjusted for these expenses on a transaction-specific basis. *See Analysis Memo: Inchon* for a discussion of the calculations.

Comment 15: Inchon—Converted Quantity

Petitioners argue that the Department should use the converted quantity field in the U.S. sales database, with quantities in metric tons, instead of the quantities reported in field QTYU, which, petitioners argue, contains mixed units of measurement, for the purposes of calculating an overall antidumping margin.

Respondent Inchon agrees with petitioners that the Department should use the converted quantity field in the U.S. sales database for the quantity sold.

Department's Position: We agree with both parties that we should use the converted quantity field from the U.S. sale database. Because Inchon had to convert some U.S. sales from short tons into metric tons, using the converted quantity field in the U.S. sales database assures us that the quantities used for the final determination are based upon the same measurement, which is an actual per ton basis, for each transaction.

Comment 16: Inchon—Other Freight Expenses

Petitioners argue that the Department should correct the U.S. sale database based on the discovery, at verification, of an error regarding Inchon's failure to include a standard handling fee as part of other freight expenses for a particular U.S. sales observation.

Respondent agrees with petitioners that the Department should correct the error discovered at verification. However, respondent argues that this handling fee pertains only to merchandise which Inchon exported through the ports of Pusan or Pohang. Thus, respondent argues that, in making the handling fee adjustments, the database should be adjusted only when Inchon shipped through the ports of Pusan or Pohang.

Department's Position: We agree with both parties that, based on our findings at verification, Inchon had not added a standard handling fee for all shipments through the ports of Pohang and Pusan. This error was discovered during verification and the correct figure was calculated for the U.S. sales observation. *See Inchon Verification Report*, at 1. Additionally, we agree with respondent that the error exists only with respect to those sales which were exported through Pusan or Pohang. This conclusion is consistent with the information gathered at verification. *See Inchon Verification Report*, Exhibit 18. Therefore, for the final determination, we will adjust the expenses associated with domestic inland freight to the port of export for all applicable U.S. sales.

Comment 17: Inchon—Scrap Recovery Value

Petitioner's argue that the Department should reject Inchon's new methodology for calculating scrap recovery. Previously, Inchon valued scrap recovery based on net realizable value. However, at the start of verification, Inchon changed the valuation methodology to the actual sales value. Petitioners argue that the Department should accept Inchon's original scrap recovery rate based on net realizable value because that method is based on Inchon's normal books and records. Petitioners cite section 773(f)(1)(A) of the Act, which states that costs shall normally be calculated based on the records of the exporter or producer if those records are prepared in accordance with the home country's generally accepted accounting principles, and reasonably reflect the cost of producing the merchandise.

Petitioners claim that there is no evidence on the record to suggest that Inchon's normal accounting of scrap recovery costs recorded in its normal books and records are not reasonable. Furthermore, petitioners assert that this change in methodology and the submission of new factual information was not a minor correction; thus it was untimely filed and pursuant to section 351.302(d) of the regulations, the Department should not consider or retain in the official record of the proceeding untimely filed information. Petitioners claim that the Department only accepts new information at verification when: (1) The need for that information was not evident previously, (2) the information makes minor corrections to information already on the record, or (3) the information corroborates, supports, or clarifies information already on the record. Petitioners assert that on all points, Inchon's submission of new factual information is not a minor correction.

Inchon states that in the normal course of business it values scrap at its net realizable value. However, to comply with the Department's policy to reduce material costs by the actual revenue received on sales of scrap during the POI, Inchon provided a revised scrap recovery calculation based on actual scrap revenue. Inchon asserts that the information used in the new scrap recovery calculation was placed on the record in its November 19, 1998 supplemental D response in exhibit D–21. Thus, petitioner's argument that the information was submitted untimely are without merit.

Department's Position: We agree with petitioners' assertion that the net realizable value scrap recovery method should be used in for this case. Inchon uses the net realizable method in its normal books and records which reasonably reflects the costs associated with the production and sale of the subject merchandise, pursuant to section 773(f)(1)(A) of the Act. We agree that the actual scrap value, as opposed to a standard or theoretical scrap value, should be used to reduce material costs. However, the costs associated with obtaining the scrap (i.e., transportation and processing costs) should be deducted from the actual sales revenue to arrive at a net value for scrap used as a reduction in material costs. Inchon has not provided sufficient evidence to demonstrate that the net realizable method does not reasonably reflect costs, and therefore, should not be relied upon in the stainless steel sheet and strip case.

Comment 18: Inchon—Depreciation

Petitioners argue that Inchon's change in useful lives and change in depreciation method was not justified nor consistent with the depreciation methodologies that it employed in prior years. Petitioner's cite *Carbon Steel from Korea—3rd Review*, where the Department denied respondent's change in useful life, even though the change was in accordance with Korean GAAP. In that case, the Department found that the respondent failed to sufficiently justify the change, and therefore, the Department calculated the depreciation expense based on the original useful lives of the assets. Petitioners assert that in the instant case, Inchon did not provide sufficient justification for the changes and the depreciation should be recalculated based on the original method and useful lives of the assets.

Inchon argues that its change in depreciation methodology is fully consistent with Korean GAAP. Inchon cites section 773(f)(1)(A) of the Act which requires the Department to base its calculation of costs on GAAP in the country of manufacture unless the result is distortive. Inchon claims that the petitioners have not demonstrated any such distortion. Furthermore, Inchon asserts that *Carbon Steel from Korea—3rd Review* cited by petitioners is not applicable because it involves an administrative review. Inchon states that in administrative reviews, the Department must be concerned about possible distortions arising from changes in methodology from one review period to another, which could result in some costs never being captured in any review period. Additionally, in a review, the Department may have legitimate concerns about respondents making strategic changes to accounting methodologies in order to affect dumping margins. Inchon argues that in the instant case neither concern is applicable because in this initial investigation, the change in depreciation methods and change in useful lives occurred before the dumping case was filed.

Department's Position: We agree with Inchon. At verification we examined the change in depreciation method and useful lives, noting that the changes were neither unusual nor unreasonable. These changes were reflected in Inchon's December 31, 1997 audited financial statements in accordance with Korean generally accepted accounting principles. In addition, the change in depreciation method and useful lives occurred prior to the initiation of this investigation. We agree that, where changes in accounting principles and costing methodologies occur subsequent to the initiation of an antidumping proceeding, the Department has concerns about the possible distortions which could result. However, since Inchon provided evidence that its change in depreciation methods and useful lives were reasonable, and that the change occurred in a time period prior to the initiation of the investigation, we have relied on the new methodologies and have not made adjustments to Inchon's depreciation expense.

Comment 19: Inchon—CEP vs. EP

Respondent argues that the Department should determine that Inchon's channel one U.S. sales are EP sales, and not CEP sales as preliminarily determined. Respondent stated that ''[i]n determining whether U.S. sales made by an affiliated U.S. importer prior to importation should be classified as EP or CEP sales, the Department considers whether: (1) The merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) this was the customary commercial channel between the parties involved; and (3) the functions of the U.S. sales affiliates were limited to that of processors of sales-related documentation and communications links with the unaffiliated U.S. buyer,'' citing *Preliminary Results of Antidumping Review: Circular Welded Non-Alloy Steel Pipe from Korea,* 62 FR 55574, 55579 (October 27, 1997). Respondent also argues that when the above three criteria are met, the Department classifies the transactions as EP sales, citing, *e.g., Industrial Phosphoric Acid from Belgium,* 63 FR 25830, 25831 (May 11, 1998); *Independent Radionic Workers of America* v. *United States,* 19 CIT 375 (1995); and *AK Steel Corporation* v. *United States,* Slip Op. 98–159, WL 846764 (CIT, November 23, 1998).

Respondent argues that in this investigation, the first two criteria are met because Inchon's channel one U.S. sales through Hyundai U.S.A. were shipped directly from the manufacturer to the unaffiliated U.S. customer, which is the customary commercial channel of distribution for Inchon's channel one U.S. sales. Respondent notes that for one invoice, which covered four U.S. transactions, at the unaffiliated U.S. customer's request, Hyundai U.S.A. arranged for a brief period of warehousing at a commercial warehouse at the U.S. port of entry. Respondent argues that this post-sale warehousing does not void Inchon's claim for EP treatment because: (i) it was done at the customer's request; (ii) the goods never entered the inventory of Hyundai U.S.A.; and (iii) after warehousing, the goods were shipped directly to the unaffiliated U.S. customer.

Concerning the third criterion, respondent argues that Hyundai U.S.A. acted as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer. Respondent argues that Hyundai U.S.A.'s role was therefore that of a classic sales processor and communications link: forwarding orders to Inchon for approval, serving as a contact point for customer inquiries, arranging for importation, freight, and delivery to the customer, and performing invoicing and payment collection functions on behalf of Inchon. More specifically, respondent argues that the Hyundai U.S.A. Verification Report demonstrates Hyundai U.S.A.'s limited role in these transactions. First, respondent argues that Inchon, not Hyundai U.S.A., identified U.S. channel one customers and determined which potential customers should be served through this sales channel. Respondent also argues that Inchon's own sales personnel would travel from Korea to make joint sales calls for important U.S. customers. *See Hyundai U.S.A. Verification Report,* at 4. Second, respondent argues that it does not have a specific department or division for stainless steel sales and the U.S. sales through Hyundai U.S.A. were sold by sales personnel that are primarily responsible for other non-subject products. Third, respondent argues that Hyundai U.S.A. was not responsible for setting prices or other key terms of sale, and that, while Hyundai U.S.A. personnel were familiar with Inchon's prices and did communicate current prices to U.S. customers, Hyundai U.S.A. had no authority to accept or approve sales of subject merchandise. Respondent argues that Inchon approved all sales and Inchon, after receiving a sales inquiry from Hyundai U.S.A., would often change the material terms of sale, which the Department verified.

In addition, respondent argues that none of the following activities justify the Department's preliminary determination that Hyundai U.S.A.'s sales should be CEP sales: (i) that Hyundai U.S.A. sometimes quotes prices to unaffiliated customers, (ii) that Hyundai U.S.A. arranged for post-sale warehousing for one customer, (iii) that Hyundai U.S.A. invoices and collects payment from the U.S. customer, and (iv) that Hyundai U.S.A. extends credit to the U.S. customer.

Citing *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Belgium,* 56 FR 56359, 56362 (November 4, 1991) and *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland,* 56 FR 56363, 56371 (November 4, 1991), respondent contends that the Department has held that the fact that an affiliated U.S. company quotes prices to U.S. customers does not lead to CEP designations, nor does a U.S. affiliate's identifying and maintaining contact with customers. Respondent also cites to *Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia,* 57 FR 38465, 38469 (August 25, 1992), noting that the Department found that the role of a branch office whose functions include ''receiving orders, preparing and executing order confirmations, invoices, packing lists, and other sales-related documentation, and receiving and processing payments from customers'' was not sufficient to classify the affiliate's activities as beyond those of a mere processor of documents or communications link. Respondents also cite *E.I. DuPont de Nemours & Co.* v.

United States, 841 F. Supp. 1237, 1249–50 (CIT 1994) in support of this proposition.

Petitioners argue that the Hyundai U.S.A. sales are CEP because Hyundai U.S.A. solicits sales, negotiates contracts, and finalizes the sale. Petitioners argue that these activities are not ancillary activities in making the U.S. sale. Petitioners note that the Department has stated that, ''[w]here the U.S. affiliate has more than an incidental involvement in making sales (*e.g.,* solicits sales, negotiates contracts or prices) or provides customer support, we treat the transactions as CEP sales,'' citing, *e.g., Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Review* (*''Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada''*), 63 FR 12725, 12738 (March 16, 1998).

Petitioners argue that record evidence shows that Hyundai U.S.A. solicits sales. Specifically, petitioners note that the Hyundai U.S.A. Verification Report, at 4–5, states that ''Hyundai U.S.A. would contact potential customers'' and ''(w)hen only Hyundai U.S.A. is making sales calls, company officials stated that they would know Inchon's current steel market prices because they review a publicly available industry publication (with prices) and are in contact with Inchon concerning Inchon's price structure.'' Also, petitioners argue that the Hyundai U.S.A. Verification Report supports the conclusion that Hyundai U.S.A. negotiates contracts. Specifically, petitioners cite the Hyundai U.S.A. Verification Report, at 5, which states that ''negotiations would continue between Inchon, Hyundai U.S.A., and the customer.'' Petitioners argue that the above record indicates that these are not ancillary activities in making the U.S. sale, and therefore, the Department must consider sales through Hyundai U.S.A. to be CEP transactions.

Department's Position: We agree with petitioners that Inchon's sales through Hyundai U.S.A. should continue to be classified as CEP sales for the final determination. The Department treats sales through an agent in the United States as CEP sales, unless the activities of the agent are merely ancillary to the sales process. Specifically, where sales are made prior to importation through a U.S.-based affiliate to an unaffiliated customer in the United States, the Department examines several factors to determine whether these sales warrant classification as EP sales. These factors are: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer without being introduced into the physical inventory of the affiliated selling agent; (2) whether this sale is the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent is limited to that of a ''processor of sales-related documentation'' and a ''communication link'' with the unrelated U.S. buyer. Where the factors indicate that the activities of the U.S. selling agent are ancillary to the sale (*e.g.,* arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. selling agent is substantially involved in the sales process (*e.g.,* negotiating prices), we treat the transactions as CEP sales. *See Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Administrative Review,* 62 FR 18389, 18391 (April 15, 1997); *Mitsubishi Heavy Industries* v. *United States,* Slip Op. 98–82 at 6 (CIT, June 23, 1998). The Department has stated that, ''(w)here the U.S. affiliate has more than an incidental involvement in making sales (*e.g.,* solicits sales, negotiates contracts or prices) or provides customer support, we treat the transactions as CEP sales,'' citing, *e.g., Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada,* 63 FR 12725, 12738 (March 16, 1998).

In this case, we note that Hyundai U.S.A.'s level of sales activities cannot be regarded as merely ancillary. While Inchon performs many selling activities for U.S. sales through Hyundai U.S.A., including undertaking business trips to meet with potential U.S. customers of the subject merchandise (*see Hyundai U.S.A. Verification Report,* at 4), the record contradicts respondent's assertion that Hyundai U.S.A. is merely a processor of sales-related documentation.

In this case, the facts on the record, taken together, indicate that Hyundai U.S.A. plays a significant role in the sales process. First, we note that Hyundai U.S.A. ''arranged for a brief period of warehousing at a commercial warehouse at the U.S. port of entry.'' *Id.*

Second, Hyundai U.S.A. solicits sales. The record shows that, as part of the normal course of business, Hyundai U.S.A.'s employees travel with Inchon employees to make U.S. sales calls. Once Inchon had provided its affiliate a list of potential customers, ''Hyundai U.S.A. would contact these potential customers.'' In addition, Hyundai U.S.A. employees would make sales calls without Inchon employees, because Hyundai U.S.A. employees have knowledge of Inchon's prices. *Id.*

Third, Hyundai U.S.A. assumed the credit risk because it invoiced the U.S. customer and was responsible for collecting payment from the U.S. customer. Hyundai U.S.A. was not collecting the payment on behalf of Inchon, as respondent argues, but for itself. Bearing such financial risk is indicative of a seller, not a mere facilitator.

Fourth, Hyundai U.S.A. itself has noted that it also ''conducts market research and reports to Inchon on steel market conditions.'' *Id.*

All of these activities performed by Hyundai U.S.A., taken together, constitute significant selling activities, and therefore, we find that Hyundai U.S.A.'s activities are more than ancillary to the sales process and have classified Inchon's U.S. sales through Hyundai U.S.A. as CEP transactions.

Comment 20: Inchon—Packing Expense

Respondent argues that the Department should base packing expenses on the revised figures provided as a pre-verification correction. Respondent states that the packing expenses submitted by Inchon in its September 23, 1998 response, on pages B–32 and C–40 and Exhibits B–13 and C–22, were based on a certain coil size, which, respondent claims, is the smallest coil size Inchon uses. Respondent argues that using this particular certain coil size overstated packing costs because the same amount of packing cost is incurred for each coil, regardless of coil size. In its pre-verification corrections, Inchon argues that it provided an average coil size for both U.S. and home shipments, and provided revised U.S. and home packing per-unit costs. *See Inchon Verification Report,* Exhibit 1. Hence, respondent argues that the Department should accept the modified packing expense figures.

Petitioners argue that the modified packing expense figures, presented by Inchon as a pre-verification correction, are untimely new factual information that the Department should not consider or retain as part of the official record.

Department's Position: We agree with respondent and have accepted Inchon's pre-verification correction to its packing expenses. We accepted this packing expense data at the beginning of verification because we determined that it was a minor correction to the U.S. and home market sales databases, rather than new factual information. We disagree with petitioners' argument that this packing expense correction is untimely new factual information, since Inchon's packing expense correction was made with regard to the underlying coil size, which was the basis for its reported per unit packing expense. Therefore, for the final determination, we adjusted packing expenses in both the U.S. and home markets, based on Inchon's submitted pre-verification corrections. *See Analysis Memo: Inchon* for specific packing expense data.

Comment 21: Inchon—Payment Date

Respondent argues that the Inchon Verification Report was incorrect when it reported that for a U.S. sales trace, there was a discrepancy regarding whose payment date was reported on the record. *See Inchon Verification Report,* at 1–2. Respondent argues that the U.S. sales trace package (Home Market Verification Exhibit #18) has documentation which supports respondent's position concerning whose payment date was reported on the record. Petitioners did not comment on this issue.

Department's Position: We agree with respondent. We reviewed the documents included in the U.S. sales trace package in question, (*Inchon Verification Report,* Exhibit #18) and have determined that the report did not reflect the correct information on this issue. Although Inchon officials had reported that the document reflected payment to one affiliate, further examination of the document revealed that payment had been received by the correct affiliate, and that the corresponding payment date reported to the Department was correct.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administrating authority; (B) fails to provide such information by the deadlines for the submission of information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information, but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. As discussed in *Preliminary Determination,* Taihan failed to respond to the Department's questionnaire. Accordingly, we find, under section 776(a)(2)(A), that we must base our determination for that company on facts available.

Section 776(b) of the Act further provides that adverse inferences may be used for a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information (*see* also the Statement of Administrative Action (''SAA''), accompanying the URAA, H.R. Rep. No. 103–316 at 870). Given the company's refusal to comply with the Department's request for information, Taihan has failed to cooperate to the best of its ability in this investigation. A respondent's refusal to respond to the Department's request for information, much less provide information, is an extreme example of a party's failure to cooperate to the best of its ability. Therefore, the Department has determined that an adverse inference is warranted with respect to Taihan.

In this proceeding, we used the information from the petition, as adjusted by the Department for the purposes of initiation, to form the basis for a dumping margin for this respondent. Thus, consistent with the Department's practice (*see Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Germany,* 63 FR 10847 (March 5, 1998) (''*SSWR from Germany*'')), the Department is assigning to Taihan the highest margin alleged in the petition, as adjusted, for Korean producers, which is 58.79 percent (*see* June 30, 1998, ''Import Administration Antidumping Investigation Initiation Checklist (''*Initiation Checklist*'') and *Initiation of Antidumping Duty Investigations: Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom,* 63 FR 37521 (July 13, 1998) for a discussion of the margin calculations in the petition).

Section 776(c) of the Act provides that when the Department relies on ''secondary information'' (*e.g.,* the petition) as the facts available, the Department shall, to the extent practicable, corroborate that information with independent sources reasonably at the Department's disposal. The SAA accompanying the URAA clarifies that the petition is ''secondary information.'' *See* SAA at 870. The SAA also clarifies that ''corroborate'' means to determine whether the information used has probative value. *Id. See also* 19 C.F.R. 351.308(c)(1) and (d).

We reviewed the accuracy and adequacy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.,* import statistics, foreign market research reports, and data from U.S. producers). *See Initiation Checklist.* Specifically, in the petition, the petitioners based both EP and NV on foreign market research, affidavits concerning prices and freight costs, official U.S. import statistics, U.S. government sources and International Financial Statistics.

With respect to gross U.S. and home market unit prices used in the margin calculations included in the petition, which were developed based on foreign market research (*see Memorandum to the File—Re: Foreign Market Research,* dated June 20, 1998), we have compared the information provided by Inchon and POSCO with the information provided in the petition. We find that the margins provided in the petition are corroborated by the pricing and cost information provided by POSCO and Inchon. *See Memorandum to the File: Final Determination of the Sales at Less Than Fair Value Investigation of Stainless Steel Sheet and Strip in Coils (''SSSS'') from Korea: Application of Total Adverse Facts Available for Taihan Electric Wire Co., Ltd. (''Facts Available Memo''),* dated May 19, 1999. We further note that the Department has, in other cases, for facts available purposes, used margins developed in a petition that are based in part on foreign market research. *See, e.g., SSWR from Germany,* and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Melamine Institutional Dinnerware Products from Indonesia,* 61 FR 43333 (August 22, 1996).

In addition, as certain other information included in the petition's margin calculation is from public, independent sources (*e.g.,* international freight and insurance, U.S. harbor maintenance and U.S. merchandise processing fees, SG&A, and profit), we find that this information also has probative value. Finally, we also have examined the reliability of the other information provided in the petition (*see Memorandum to the File—Re: Foreign Market Research,* dated June 20, 1998), and find that it has probative value in light of the information provided on the record by Inchon and POSCO. For example, we determined that the price quotes for EP and NV reported in the petition fell within the range of price information reported in Inchon's and POSCO's responses. Similarly, for COP and CV data reported in the petition, we determined that such data also fell within the range of COP and CV data reported by Inchon and POSCO. *See Facts Available Memo.*

Based upon the above, we have determined that the information reported in the petition is corroborated in this case. Accordingly, the Department has relied on information provided in the petition as the basis of facts available.

The All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins determined entirely under section 776 of the Act. As Inchon's rate has been determined to be zero, and Taihan's rate has been determined under section 776 of the Act (determinations on the basis of the facts available), for this final determination, the all-others rate is simply the calculated rate for POSCO.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from the Republic of Korea, except for Inchon, that are entered, or withdrawn from warehouse, for consumption on or after January 4, 1999 (the date of publication of the preliminary determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Pohang Iron & Steel Co., Ltd.	12.12
Inchon Iron & Steel Co., Ltd.	0.00
Taihan Electric Wire Co., Ltd.	58.79
All Others	12.12

Since the final weighted average margin percentage for Inchon is zero, Inchon is excluded from an antidumping order on stainless steel sheet and strip in coils from the Republic of Korea as a result of this investigation.

ITC Notification

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

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13770 Filed 6–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–818]

Notice of Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From the United Kingdom

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

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Rast at (202) 482–1324 or Nancy Decker at (202) 482–0196, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

Final Determination

We determine that stainless steel sheet and strip in coils (SSSS) from the United Kingdom (U.K.) are being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

We published in the **Federal Register** the preliminary determination in this investigation on January 4, 1999. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Stainless Steel Sheet and Strip in Coils From the United Kingdom, 64 FR 85 (January 4, 1999) (Preliminary Determination). Since the publication of the Preliminary Determination, the following events have occurred:

On February 23, 1999, the Department published a correction to the preliminary determination, incorporating corrected scope language. See Notice of Correction: Preliminary Determinations of Sales at Less than Fair Value, Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, Mexico, South Korea, and United Kingdom; and Amended Preliminary Determination of Sales at Less Than Fair Value, Stainless Steel Sheet and Strip from Taiwan, 64 FR 8799 (February 23, 1999).

The Department verified the responses of the respondent, Avesta Sheffield Ltd. and Avesta Sheffield NAD, Inc. (collectively ''Avesta''), as follows: sections A (General Information), B (Home Market Sales), and C (U.S. Sales) of Avesta's responses from January 18–31, 1999, in Sheffield, Stocksbridge, and Oldbury, U.K., and from February 10–12, 1999, in Schaumberg, Illinois; and section D (Cost of Production) questionnaire responses from February 15–22, 1999, in Sheffield, U.K. See Memorandum For the Files; ''Sales Verification of Sections A–C Questionnaire Responses Submitted By Avesta,'' April 1, 1999 (Home Market Sales Verification Report); Memorandum For the Files; ''U.S. Sales Verification of Sections A & C Questionnaire Responses Submitted By Avesta,'' March 23, 1999 (U.S. Sales Verification Report); Memorandum to Richard Weible, Director, Office Eight, Enforcement Group Three; ''Verification Report on the Cost of Production and Constructed Value Data,'' April 2, 1999 (Cost Verification Report). Public versions of these, and all other Departmental memoranda referred to herein, are on file in room B–099 of the main Commerce building.

On January 29, 1999, Allegheny Ludlum Corporation, Armco, Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation, United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville

Armco Independent Organization, Inc. (petitioners), requested a public hearing in this case. On February 4, 1999, Avesta also requested a hearing. However, on April 13, 1999, and on April 16, 1999, Avesta and petitioners, respectively, withdrew their requests for a hearing; therefore, none was held. On April 9, 1999, petitioners and Avesta filed case briefs in this matter; we received rebuttal briefs from petitioners and Avesta on April 16, 1999.

Scope of the Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[5]

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

Period of Investigation

The period of investigation (POI) is April 1, 1997 through March 31, 1998.

Fair Value Comparisons

To determine whether sales of SSSS from the United Kingdom to the United States were made at less than fair value, we compared export price (EP) or constructed export price (CEP) to the normal value (NV), as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Tariff Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

Transactions Investigated

For its home market and U.S. sales, Avesta reported the date of invoice as the date of sale, given the Department's stated preference for using the invoice date as the date of sale. As explained in response to Comment 2, below, for this final determination we have continued to rely upon Avesta's invoice dates in the home and U.S. markets as the date of sale. However, should this investigation result in an antidumping duty order, we intend to scrutinize further this issue in any subsequent segment of this proceeding involving Avesta.

We have excluded from our analysis all of Avesta Sheffield Inc.'s (ASI) U.S. resales of rejected merchandise. See Comment 6 below.

Avesta has asserted that hot-rolled merchandise, which is sold only in the home market, should be considered a product of Sweden, and, as such, it should be excluded from the Department's analysis. Avesta has also asserted that a small amount of merchandise reported in the United States and/or home market databases is: (1) hot-rolled and cold-rolled in Sweden, and then further cold-rolled, annealed, and finally processed in the United Kingdom (affecting U.S. and home markets); and (2) hot-rolled and cold-rolled in Sweden and then further processed in the United Kingdom (affecting the home market). We have excluded from our analysis (1) Avesta's hot-rolled sales, and (2) those sales of merchandise that are first cold-rolled in Sweden. See Comment 13 below.

Product Comparisons

In accordance with section 771(16) of the Tariff Act, we considered all products produced by the respondent covered by the description in the ''Scope of the Investigation'' section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

Level of Trade

In our preliminary determination, we found that one level of trade (LOT) existed for Avesta in the home market. Furthermore, we found that Avesta had two LOTs in the United States, one for EP sales and one for CEP sales, and we found that a CEP offset was appropriate in accordance with section 773(a)(7)(B) of the Tariff Act. As explained in Comment 4, below, and the preliminary determination, we find that (1) one LOT existed for Avesta in the home market; (2) two separate LOTs existed for Avesta in the United States; and (3) a CEP offset is appropriate.

Export Price and Constructed Export Price

We calculated EP, in accordance with section 772(a) of the Tariff Act, for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter outside the United States, and where CEP methodology was not otherwise warranted, based on the facts of the record. For further discussion on the classification of EP sales, see Comment 1 below.

We calculated CEP, in accordance with section 772(b) of the Tariff Act, for those sales made by ASI, an affiliated U.S. sales company, to unaffiliated purchasers in the United States.

We calculated EP and CEP based on the same methodology employed in the preliminary determination, except as noted below in ''Comments'' and in the Final Sales Analysis Memorandum from Charles Rast and Nancy Decker to The File, dated May 19, 1999 (Final Analysis Memorandum).

Normal Value

Home Market Viability

As discussed in the Preliminary Determination, in order to determine whether the home market was viable for purposes of calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Tariff Act. As Avesta's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, we based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Affiliated-Party Transactions and Arm's-Length Test

Sales to affiliated customers in the home market not made at arm's-length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102. To test whether these sales were made at arm's-length prices, we compared, on a model-specific basis, the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, we excluded them from our LTFV analysis. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062, 37077 (July 9, 1993); Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Brazil, 63 FR 59509 (Nov. 8, 1998), citing to Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Cost of Production Analysis

In accordance with section 773(b)(3) of the Tariff Act, we calculated the weighted-average cost of production (COP) based on the sum of Avesta's cost of materials, fabrication, general expenses, and packing costs. In addition, on a transaction specific basis, we added to COP tolling costs for slitting work done by an unaffiliated party. We relied on Avesta's submitted COP, except in the following specific instances where the submitted costs were not appropriately quantified or valued:

We revised Avesta's financial expense ratio using British Steel PLC's consolidated financial statements. See Comment 18 below.

We adjusted the calculation of Avesta's general and administrative expense (G&A) ratio to use unconsolidated cost of goods sold of the producing entities. See Final Analysis Memorandum.

We compared the weighted-average COP for Avesta to home market sales prices of the foreign like product, as required under section 773(b) of the Tariff Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made (i) in substantial quantities within an extended period of time, and (ii) at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared COP to home market prices, less any applicable movement charges, billing adjustments, and discounts and rebates.

Pursuant to section 773(b)(2)(C)(i) of the Tariff Act, where less than twenty percent of a respondent's sales of a given product were at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that the below-cost sales were not made in ''substantial quantities.'' Where twenty percent or more of a respondent's sales of a given product during the POI are at prices less than the COP, we determine such sales to have been made in substantial quantities within an extended period of time, in accordance with sections 773(b)(2)(C)(i) and 773(b)(2)(B) of the Tariff Act. In addition, pursuant to section 773(b)(2)(D) of the Tariff Act, because we compared prices to POI-average COPs, we also determine that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time. Therefore, we disregard the below-cost sales.

Our cost test for Avesta revealed that, for certain products, less than twenty percent of Avesta's home market sales of those products were at prices below Avesta's COP. We retained all sales of those products in our analysis. For other products, more than twenty percent of Avesta's sales of those products were at prices below COP. In such cases, we disregarded the below-cost sales, while retaining the above-cost sales for our analysis. See Final Analysis Memorandum.

Price-to-Price Comparisons

For those product comparisons for which there were sales at home market prices at or above the COP, we based NV on Avesta's sales to unaffiliated home market customers or prices to affiliated customers that we determined to be at arm's-length prices. We made adjustments for billing adjustments and discounts and rebates. We made deductions, where appropriate, for foreign inland freight, warehousing, and inland insurance, pursuant to section 773(a)(6)(B) of the Tariff Act. In addition, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Tariff Act. We continued to make circumstance-of-sale (COS) adjustments in accordance with section 773(a)(6)(C)(iii) of the Tariff Act.

Price-to-Constructed Value Comparisons

In accordance with section 773(a)(4) of the Tariff Act, we based NV on constructed value (CV) if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the sum of Avesta's costs of materials, fabrication, SG&A expenses, profit, and U.S. packing expenses. See section 773(e) of the Tariff Act. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the United Kingdom. We calculated the cost of materials, fabrication, and general expenses based upon the methodology described in the ''Cost of Production Analysis'' section, above. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. When we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Tariff Act based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Analysis of Interested Party Comments

Issues Relating to Sales

Comment 1: EP versus CEP sales

Petitioners argue that the Department should reclassify Avesta's reported EP sales as CEP sales based on the evaluation of the activities of ASI, Avesta's U.S. affiliate. Petitioners, also assert that, in fact, the mere existence of the respondent's affiliate in the United States demonstrates that the respondent's sale should be classified as CEP sales.

Petitioners claim that, when sales are made prior to importation, it is the Department's practice to evaluate the following: whether the merchandise is shipped directly to the unaffiliated buyer without being introduced into the physical inventory of the selling agent; whether direct shipment to the unaffiliated buyer is the customer channel for sales of the subject merchandise between the parties involved; and whether the selling agent in the United States acts only as a processor of the sales-related documentation and a communication link with the unaffiliated U.S. buyer. Referencing the last criterion, petitioners argue that the Department has amplified its policy on evaluating the level of involvement of U.S. subsidiaries by determining that such sales are appropriately classified as CEP sales in the following instances: the U.S. subsidiary was the importer of record and took title to the merchandise; the U.S. subsidiary financed the relevant sales transactions; the U.S. subsidiary arranged and paid for further processing; and the U.S. subsidiary assumed the seller's risk.

Petitioners assert that there is ample precedent for re-classifying sales as CEP, where the Department determines that a U.S. affiliate's involvement in a sale is significant, but where the merchandise is not entered into a U.S. affiliate's inventory. Citing Extruded Rubber Thread from Malaysia: Final Results of Antidumping Duty Administrative Review, 63 FR 12752 (March 16, 1998) (Extruded Rubber Thread), petitioners argue that the Department determined sales to be CEP sales in circumstances where the U.S. sales force contacted the U.S. customer, negotiated sales terms, arranged for production and shipment, and issued final invoices and collected payment. In other instances, according to petitioners, the Department has re-classified the respondents' U.S. sales as CEP because the U.S. companies performed significant selling functions in the United States.

According to petitioners, ASI satisfies the criteria established in Extruded Rubber Thread for reclassifying ASI's EP sales as CEP sales. Petitioners argue that, as in that case, ASI is responsible for all paperwork, invoicing, and transportation. Furthermore, petitioners contend, ASI is responsible for providing quotations to the customer in the U.S. and confirming prices with the U.K. mill. They cite the Department's U.S. Sales Verification Report, noting that ASI arranges shipment logistics for clearance through Customs and shipment to the customer, performs customer credit checks, extends credit, collects payment, maintains accounts receivables, holds inventory, issues order confirmations, inputs orders, sends mill certificates and packing lists, and issues the final invoice. Furthermore, according to petitioners, the Department's pre-selected sales described in the U.S. Sales Verification Report support reclassifying ASI's EP sales as CEP sales.

Petitioners state it is evident from information collected by the Department at verification that ASI is not merely a ''paper processor'', and that although merchandise is customarily shipped directly to customers from the United Kingdom, ASI handles almost every significant aspect of making U.S. sales. Because ASI must, in general, retain employees to sell the subject merchandise, handle all the paperwork, arrange entry and transportation, administer customer accounts, and deal with late payments, its activities were not limited to that of a ''processor of sales-related documentation'' and ''communication link'' with the unaffiliated buyers.

Petitioners assert that the mere existence of ASI demonstrates its involvement in the U.S. sales process, and that its large staff comprising of an active sales force, billing and accounting staff, indicate that its activity must be ''significant''. According to petitioners, in the absence of ASI, the respondent would simply conduct operations from its home market. A true ''paper processing'' subsidiary, they state, would have an inexpensive office and small clerical staff with little more than telephone and facsimile equipment to communicate with the home office, and that an adjustment (for indirect selling expenses) to the starting price, while necessary, would be small. On the other hand, according to petitioners, a more extensive export market operation, such as ASI's, would result in a commensurately larger adjustment. Petitioners argue that, given ASI's extensive involvement in the selling process, the Department should deduct the indirect selling and operating costs of ASI from the starting price for all U.S. sales involving ASI.

Avesta argues that the Department correctly classified the U.S. sales referenced by petitioners as EP sales. Avesta contends that petitioners' claim that ASI is responsible for providing quotations to the customer in the United States and confirming prices with the U.K. mill is deceptive. Avesta points to verified evidence demonstrating that the U.K. mill sets the price for EP sales because ASI has much less familiarity with the market price for such specialized products. Also, Avesta asserts that the Department reviewed sales documentation at verification, showing that ASI requested price guidance from the mill, and that the mill quoted prices to ASI for each of the EP customers during the POI. Avesta claims that the fact that ASI does not negotiate the terms of sales distinguishes ASI's role in the sales process from that of the affiliated U.S. sales agents in the cases cited by petitioners. In all of those instances, according to Avesta, the Department's decision to reclassify U.S. sales as CEP transactions was based, at least in part, on a finding that the U.S. sales agent was involved in the negotiation of the sales.

Avesta indicates that record evidence shows that ASI's role in the sales process for certain sales of merchandise meets the Department's requirements for EP sales. According to Avesta, ASI's role for these sales is most similar to that of the U.S. affiliate in Stainless Wire Rod from Korea, in which the Department determined that the extent of the U.S. affiliate's involvement in the sales process was indicative of the involvement normally provided by a processor of sales-related documentation and a communications link. (See Stainless Wire Rod from Korea: Final Determination of Sales at Less Than Fair Value, 63 FR 40404, 40419 (July 29, 1998) (Stainless Wire Rod from Korea). Avesta states that, similarly, the Department has previously found that a U.S. affiliate whose functions include receiving orders, preparing and executing order confirmation, invoices, packing lists, and other sales-related documentation, as well as receiving and processing payments from customers, was not so substantial to conclude that it was more than a processor of documents or communications link.

Avesta argues that petitioners' assertion that the mere existence of a U.S. affiliate constitutes evidence that the respondent's U.S. sales should be characterized as CEP sales is without basis in law or Departmental practice. Avesta contends that, in Stainless Wire Rod from Korea, where sales are made prior to importation through a U.S.-based affiliate to an unaffiliated customer in the United States, the Department has recently explained that it examines several factors to determine whether the sales warrant classification as EP sales. Avesta notes that it is not the mere existence of an affiliated U.S. sales agent that determines EP versus CEP treatment of U.S. sales, but the Department's analysis of the factors enunciated in its EP/CEP test.

Avesta states that petitioners' arguments seem to ignore the fact that Avesta has reported only a small number of U.S. sales as EP sales, and that Avesta is not holding the position that all, or even a large number of U.S. sales, should be classified as EP sales. Avesta claims that, because this small quantity of sales clearly involved sales and negotiation by the U.K. mill for certain products, they were correctly classified by the Department as EP sales. Avesta asserts that this small quantity of EP sales, relative to total U.S. sales, demonstrates the inaccuracy of petitioners' characterization of the size and level of ASI, and that the activity of ASI's U.S. sales force must be significant. Avesta argues that petitioners' characterization of ASI's staff as ''large'' is not supported by record evidence and that petitioners give no indication of why the Department must assume that the activities of ASI's staff are focused on EP sales, which make up only a small percentage of total U.S. sales by ASI.

Department's Position: We disagree with petitioners that Avesta's U.S. sales should be treated as CEP sales, and have continued to treat Avesta's EP-classified U.S. sales as EP sales in the final determination. Specifically, we disagree with petitioners' contention that ASI acts as more than a communications link and processor of sales-related documentation for sales classified by Avesta as EP during the POI.

The statute defines EP price as the price at which the subject merchandise is first sold (or offered for sale) to an unaffiliated purchaser before the date of import by the exporter outside the United States. In contrast, CEP is the price at which the subject merchandise is first sold (or offered for sale), before or after the date of import, in the United States by or for the account of the exporter or by a seller affiliated with the exporter to an unaffiliated purchaser. Thus, sales made prior to import can be either EP or CEP, with the former being sold by the exporter or producer outside the United States and the latter being sold by someone in the United States who is selling for the account of the exporter or is affiliated with the exporter. In cases in which both the exporter and a U.S. affiliate, or a party in the United States acting on the exporter's behalf, are involved in the sales transaction, a case-by-case determination must be made, based on the facts associated with the transactions at issue, to determine whether such sales are properly characterized as EP or CEP sales. Normally, when a party in the United States is involved in the sale to the first unaffiliated customer, the sales are properly treated as CEP sales. However, the Department has a long history of recognizing so-called ''indirect EP sales,'' which are sales made by an exporter, with the party in the United States performing only certain ancillary functions that support the sales process. To determine whether sales are properly classified as EP in such cases the Department examines three criteria: whether (1) the merchandise is not inventoried by the importer, (2) the sale is made through a customary commercial channel for sales of this merchandise, and (3) the affiliated importer acts only as a processor of sales-related documents and as a communications link with the exporter. *See, e.g., Du Pont* v. *United States,* 841 F. Supp.1248–50 (CIT 1993); *AK Steel* v. *United States,* Court No. 97–05–00865, 1998 WL 846764 at *6 (CIT 1998) (AK Steel). Only when all three criteria are met does the Department treat the sales as EP sales. As the Court explained in AK Steel, this test is simply a means to determine whether a sale at issue is in essence between the exporter and the unaffiliated buyer, in which case the EP rules apply, or whether the role of the affiliate has sufficient substance that the CEP rules apply. *Id.*

In the instant investigation, the sales in question were made prior to importation through Avesta's affiliated U.S. sales company, ASI, to an unaffiliated customer in the United States. With respect to the first prong of the indirect EP test, the record in this case indicates that the subject merchandise was shipped directly from the U.K. mill to the unaffiliated U.S. customers. Although, as we found at verification, a small amount of ASI's mill direct sales may be delayed at the customer's request and held by ASI, record evidence during the POI does not support petitioners' contention that ASI therefore ''holds inventory.'' In fact, our sales verification report specifically states that, with respect to ASI's maintaining of inventory, ''none is maintained for EP sales.'' See U.K. Sales Verification Report. With respect to the second prong, we verified that this pattern of direct shipment is a customary commercial channel between the parties involved, and there is no indication that the sales between the parties involved any departure from this pattern.

As for the third prong, whether ASI's role in the sales process was limited to that of a ''processor of sales-related documentation'' and a ''communications link,'' we found at verification that EP and CEP-classified sales differ at the inquiry stage. Specifically, for EP-classified sales, ASI is not involved in the negotiation of sales but merely contacts the U.K. mill, which sets a price for the sales. The mill quotes the price from the mill to ASI. ASI then adds amounts for duty, brokerage, freight and handling, and a set markup to derive the price charged to the customer. We examined documentation between the U.K. mill and ASI, including price quotes and other customer-related issues. See U.S. Sales Verification Report. As with Avesta's CEP sales, ASI arranges for shipment from the port to the customer, arranges for Customs clearance, invoices the customer, and collects payment.

The facts discussed above show that the extent of ASI's involvement in the sales process, regarding certain customers whose sales were classified as EP, indicates that ASI plays an ancillary role normally played by a ''processor of sales-related documentation'' and a ''communications link.'' While ASI is involved in document-processing and other secondary activities related to the sales of subject merchandise to the U.S. customer (*e.g.,* clearing Customs, arranging for U.S. transportation, issuing invoices, and collecting payment), ASI had no substantial involvement in the sales process regarding certain customers whose sales were classified as EP, such as sales negotiation. For these EP-classified sales, the record evidence demonstrates that ASI receives pricing information from the U.K. mill to which ASI adds a set mark-up and standard amounts to cover movement expenses. Therefore, ASI does not negotiate sales terms with U.S. customers for EP-classified sales, but rather relays pricing information between the U.K. mill and the U.S. customer.

We disagree with petitioners that the mere existence of ASI demonstrates its significant involvement in the U.S. sales process. As affirmed by the Court in AK Steel, in determining whether sales should be classified as CEP sales, the Department's analysis focuses on the three requirements under the test, discussed above, all of which must be met in order to classify sales as CEP. If the petitioners' argument held true, the basis or need for such a test would not exist. Moreover, we note that the majority of Avesta's U.S. sales were reported and properly classified as CEP sales. ASI's main role is not for EP sales but rather for CEP sales. The U.S. Sales Verification Report indicates that ASI maintained a sales office for CEP sales, but that the work concerning EP sales, which would include only document processing, was done by the in-place staff.

We disagree with petitioners' argument that ASI satisfies the criteria established in Extruded Rubber Thread for reclassifying ASI's EP sales as CEP. In that case, the Department's decision to reclassify certain U.S. sales as CEP was based, in part, on determining that the U.S. sales agent was involved in the negotiation of sales. The fact that ASI is not involved in the negotiation of the terms of these sales distinguishes ASI's role in the sales process from Extruded Rubber Thread. As noted above, while ASI is involved in document-processing and other secondary activities related to the sales of subject merchandise to the U.S. customer, ASI had no substantial involvement in the sales process, such as sales negotiation, regarding certain customers whose sales were classified as EP.

The nature of the U.K. mill's involvement in the sales process for EP-classified sales, and ASI's ancillary role in the sales process for these sales, lead us to conclude that the EP-classified sales took place before the date of importation by the producer of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States. Therefore, for the final determination, we have continued to treat Avesta's EP-classified sales as EP.

Comment 2: Date of Sale

Petitioners argue that order date is the proper date for establishing the date of sale for all sales. They note that, while the Department used the invoice date as the date of sale for both home market and U.S. sales in the preliminary determination, it indicated that it would fully examine the issue at verification and incorporate its findings, as appropriate, in its analysis for the final determination. Petitioners note that the Department stated that, if order confirmation was found to be the appropriate date of sale, it may resort to facts available for the final determination, to the extent the information has not been reported.

Petitioners contend that, although Avesta claims invoice date should be used to establish the date of sale because the regulations state that the Department will ''normally'' use the date of invoice as the date of sale, Avesta's reliance on certain sections of the regulations and certain cases is selective and misrepresentative. According to petitioners, even in cases where the invoice has been used to establish the date of sale, invoice date is conditionally or provisionally accepted as the date of sale, ''* * * unless the record evidence demonstrates that the material terms of sale, i.e., price and quantity are established on a different date.'' (See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Administrative Review, 63 FR 55578, 55587–55588 (October 16, 1998) (Pipe and Tubes from Thailand).)

Petitioners indicate that record evidence in this case demonstrates that order date is the proper date for all U.S. and home market sales. They contend that the Department considers date of sale to be a factual issue, decided on a case-by-case basis. According to petitioners, in the Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Administrative Review, 63 FR 32833, 32835 (June 16, 1998) (Circular Pipe from Korea), the Department ruled that the facts of the case indicated a specific sales pattern that justified invoice date as the date of sale, even though the circumstances were not specifically noted as an exception in the regulations. Despite Avesta's attempts to downplay the importance of manufacturing to order, petitioners argue that it is clear from the U.S. and home market sales verification reports and exhibits that the company does manufacture to order, and that the evidence indicates that price and quantity are set on the order date. Petitioners also argue that there is significant evidence of a long lag time across all U.S. sales (except resales and consignment sales), and that in the rare instances where changes in the material terms of sales are made, Avesta issues a revised order acknowledgment.

Petitioners argue that the standard tolerance for the steel industry (including Avesta) is plus or minus ten percent from the quantity specified. (See Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review, 64 FR 11829 (March 10, 1999) (Cold-Rolled Steel from the Netherlands). They contend that Avesta did not provide the Department at verification any documentation in support of its alternative percentage for quantity tolerance. As a result, for the final determination, the petitioners urge the Department to accept the industry standard definition and determine that changes to order quantities of ten percent do not constitute a change in the order. Petitioners argue that the Department's review of Avesta's sales-related documentation presented at verification indicates that, in every instance where Avesta supplied sufficient information, the material terms of sale were set on the order date (or change order date) and did not change prior to shipment and invoice. They contend that this evidence refutes Avesta's claim that price and quantity are not known until invoice date, which, for U.S. sales, is often many months after the order date.

Petitioners also argue that Avesta demonstrated at verification that the prices set to customers in the United States are normally determined many months prior to invoicing, on the order or change order date, while prices set for home market customers are normally determined on the order date several weeks prior to invoicing. As a result, petitioners contend that Avesta's argument that price-setting in the two markets is defined by invoice date is commercially incompatible. Instead, petitioners assert, the degree to which a party sells at less than fair value should be determined by comparing the pricing activity when U.S. sales terms are confirmed and home market sales terms are confirmed. According to petitioners, the Department's regulations state that a date other than invoice date may be used where a different date better reflects the date upon which the material terms of sale were established by the exporter or producer. They note that the nature of Avesta's sales process and its documentation satisfy the Department's policy outlined in the preamble of the new regulations that

''* * * the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale.'' (See Antidumping Duties: Countervailing Duties, 62 FR 27296, 27349 (May 19, 1997). Thus, petitioners request that the Department consider the order date (or change order date, if appropriate) as the date of sale.

Avesta argues that the Department correctly used invoice date as the date of sale in its preliminary determination. It contends that the Department has a regulatory preference for using invoice date as the date of sale in the absence of evidence that a better date reflects the date on which the material terms of sale are established by the exporter or producer. (See Stainless Steel Plate in Coils from South Africa: Final Determination of Sales at Less Than Fair Value, 64 FR 15458, 15463 (March 31, 1999) (citing 19 C.F.R. § 351.401(i)). Avesta asserts that the Department's regulations establish a rebuttable presumption that the invoice date will serve as the date of sale, and that the Department's commentary on the regulations states that this decision reflects the Department's experience with normal business practice. Avesta states that, because petitioners have failed to establish record evidence justifying the use of order date, the Department should confirm in the final determination that invoice date properly establishes Avesta's date of sale.

Avesta contends that its questionnaire responses and verification exhibits demonstrate that the material terms can and often do change between order and invoice date for all the U.K. entities other than Billing, noting that due to the nature of Billing's business, changes between order and invoice date are unlikely. Avesta also argues that the Department should reject petitioners' claim that the standard quantity tolerance in the steel industry is plus/minus 10 percent, and that it has provided several examples on the record in this case of quantity changes made after order date beyond a ten percent tolerance level.

Avesta rejects petitioners' argument that order date is the appropriate date of sale because Avesta's situation is similar to that of the respondent in Circular Pipe from the Korea. Avesta states that in Stainless Steel Plate in Coils from Belgium: Final Determination of Sales at Less Than Fair Value, 64 FR 15476 (March 31, 1999) (Stainless Steel Plate in Coils from Belgium), petitioners similarly argued that the appropriate date of sale for the U.S. market was order date given that there exists a long lag time between order and invoice date across all U.S. sales, and that this lag time is considerably greater, on average, for U.S. sales than for home market sales. In that case, however, the Department distinguished its determination in Circular Pipe from Korea and concluded that the appropriate date of sale was invoice date. Avesta notes that, in Stainless Steel Plate in Coils from Belgium, the Department disagreed with petitioners' reliance on Circular Pipe from Korea to support the argument that the longer lag time between the date of purchase order and the date of invoice for the U.S. market, as compared to the time lag on the home market, justifies the use of order date as the date of sale. First, Avesta notes, in Circular Pipe from Korea, the Department verified that the changes to terms of sale were infrequent and not material in nature. Second, Avesta argues, Circular Pipe from Korea involved an administrative review, where the Department makes monthly (rather than annual) weighted-average comparisons; therefore, the differences in time lags between the markets were significant for comparison purposes. Avesta asserts that, unlike the respondent in Circular Pipe from Korea, Avesta has submitted numerous examples of changes in terms of sale between order date and invoice date.

Department's Position: We agree with Avesta that invoice date is the correct date of sale for all home market and U.S. sales in this investigation. Under our current practice, as codified in the Department's Final Regulations at section 351.401(i), in identifying the date of sale of the subject merchandise, the Department will normally use the date of invoice, as recorded in the producer's records kept in the ordinary course of business. See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan: Notice of Final Determination of Sales at Less Than Fair Value, 64 FR 24239 (May 6, 1999) (Steel Products from Japan). In some instances, however, it may not be appropriate to rely on the date of invoice as the date of sale because the evidence may indicate that the material terms of sale were established on some date other than invoice date. See Preamble to the Department's Final Regulations at 62 FR 27296 (1997). Therefore, despite the general presumption that the invoice date constitutes the date of sale, the Department may determine that this is not an appropriate date of sale where evidence of the respondent's selling practice points to a different date on which the material terms of sale were set.

In the present case, in response to the Department's original questionnaire, Avesta reported invoice date as the date of sale in both the U.S. and home markets. To determine whether Avesta and ASI accurately reported the date of sale, the Department included in its October 28, 1998, questionnaire a request for additional information regarding changes in the material terms of sale subsequent to order date and asked Avesta to report order date for all U.S. and home market sales. In its November 23, 1998, response, Avesta indicated that invoice date best reflects the date on which the terms of home market sales are established. Avesta also indicated that changes can and do occur in price and quantity between order date and invoice date for a large number of sales, and that the Department's request would be extremely burdensome. Avesta noted that it does not have computerized records across all five reporting U.K. entities that would allow it to obtain order date information. Also, Avesta indicated that invoice date is consistent with its internal accounting practices. Avesta reported order date for the vast majority of its U.S. sales. For purposes of our Preliminary Determination, we accepted the invoice date as the date of sale subject to verification.

At verification, we closely examined Avesta's and ASI's selling practices. We found that each U.K. entity and ASI records sales in its financial records by date of invoice. For the home market, we reviewed several sample sales for which the material terms of sale (price and quantity) changed subsequent to the original order across all the U.K. entities other than Billing (see Home Market Sales Verification Report and Final Analysis Memorandum). Additionally, during our review of sample sales, we noted instances where order information changed for reasons other than changes to price or quantity. For example, we reviewed several sample sales for which the original order was amended because of changes to delivery week and/or delivery address. In these instances, the Avesta entity updated its computer system to reflect the amended order and issued an order re-acknowledgment to the customer noting the change. We found that, because the computer systems differ across all the entities, the effect of these changes on the original order date information maintained in the systems also differs. We observed, for example, that the modified information in the computer systems for several of the entities reflected the date of the latest change, regardless of the type of change, or number of changes. Because the computer systems and data maintained in these systems regarding order date information (including changes made to orders) differ across all the entities, we found that Avesta could not consistently distinguish between changes made to the material terms of sale from other types of changes. See U.S. Sales Verification Report, Home Market Sales Verification Report, and Final Analysis Memorandum.

Consequently, we disagree with petitioners' claim that the order date (or change order date) is the most appropriate date of sale for Avesta's U.S. and home market sales because the material terms of sale would not change after that date. The fact that terms often changed subsequent to the original order, and even after an initial order confirmation, suggests that these terms remained subject to change (whether or not they did change with respect to individual transactions) until as late as the invoice date. For sales that we reviewed, we found this to be true for material terms of sale such as price and quantity, including quantity changes outside of established tolerances. (See Steel Products from Japan.)

With respect to changes in quantity, we disagree with petitioners' argument that, because Avesta did not provide evidence at verification supporting its alternative percentage quantity tolerance, the Department should accept what petitioners claim to be the industry standard definition and determine that changes to order quantities of up to ten percent do not constitute a change in the order. There is no evidence on the record in this case to suggest that the standard tolerance for the steel industry (including Avesta) is plus or minus ten percent from the quantity specified. We note that the discussion in Cold-Rolled Steel from the Netherlands concerning the industry standard definition, as cited by petitioners, is referenced only in respondent's comments of that determination, not in the Department's positions. Also, Cold-Rolled Steel from the Netherlands involved different merchandise (cold-rolled carbon steel flat products), and not merchandise subject to this investigation. There is no evidence on the record in the present case indicating that the percentage quantity tolerances for both products are the same. In Pipes and Tubes from Thailand, 63 FR at 55578, 55588, the Department indicated that ''while we agree with petitioners that changes consistent with the tolerance level established in the contract may establish a binding agreement on quantity at the contract date, our analysis of the sample contract and corresponding invoices reveals that changes frequently were made beyond the agreed upon tolerance levels. Where such changes occurred frequently after the contract date, we have relied upon a later date.''

We disagree with petitioners' argument that the Department's determination in Circular Pipe from Korea is applicable to this investigation because Avesta manufactures to order, and because there is a long time lag between the order date and invoice date for Avesta's U.S. sales, as compared to the time lag in the home market. The facts in the present case are distinguishable from those in Circular Pipe from Korea for two reasons. First, in Circular Pipe from Korea, the Department verified that changes to terms of sales were infrequent and not material in nature. As noted above, at verification we reviewed a significant number of instances in both the home market and U.S. where the material terms of sale (price and quantity) changed subsequent to the original order. Second, unlike this case, Circular Pipe from Korea involved an administrative review, where the Department makes monthly, rather than annual, weighted-average comparisons, and consequently, the differences in time lags between the markets were significant for comparison purposes. (See Stainless Steel Plate in Coils from Belgium.)

Based on Avesta's representation, and as a result of our examination at verification of sample sales and each entity's selling records kept in the ordinary course of business, we are satisfied that the invoice date should be used as the date of sale because it best reflects the date on which the material terms of sale were established for Avesta's home market and U.S. sales.

Comment 3: Sales for Consumption

Petitioners argue that the Department should apply facts available to the volume of merchandise sold to Avesta Sheffield Distribution, Ltd. (AVSD), one of the U.K. sales entities, for consumption that could not be linked to AVSD's resales. They note that in its November 2, 1998, supplemental questionnaire response, Avesta did not include in its home market sales database home market sales made to its affiliate AVSD given that there was no practical means available to determine which of those sales were made to AVSD for consumption and which were made to AVSD for resale.

Petitioners indicate that, while AVSD reported all of its sales of subject merchandise from Avesta's U.K. mills (with the exception of those sales identified in the home market sales verification report as ''processed sales—supplier id untraceable''), it did not report the coils purchased from the U.K. mills consumed in the production of non-subject merchandise. They note that Avesta reported, on November 23, 1998, in a separate database its home market sales made from Avesta Sheffield, Ltd. (ASL) and Avesta Sheffield Precision Strip, Ltd. (SPS) (U.K. producing mills) to AVSD, and that these sales were not included in the preliminary margin analysis. Petitioners also state that the Department did not address the issue of AVSD's sales for consumption in the home market in the preliminary analysis memorandum or the **Federal Register** notice. They indicate that the preliminary margin analysis did not include the total quantity and value of sales by the mills to AVSD of the subject merchandise because the volume of sales consumed by AVSD to produce non-subject merchandise cannot be linked. Petitioners assert that, for the final determination, the Department should apply adverse facts available to the volume of sales sold by the mills to AVSD for consumption that were not included in AVSD's database. Therefore, the Department should apply the highest reported home market price and lowest reported U.S. price to the volume of sales sold by the mills to AVSD for consumption.

Avesta argues that the Department should reject petitioners' argument and affirm its preliminary decision to exclude from its analysis the sales made by Avesta's mills to AVSD for consumption. Avesta contends that use of facts available is inappropriate because the company, to the best of its ability, fully complied with the Department's reporting requirements. Moreover, despite significant burden, Avesta emphasizes that it reported two home market databases.

Avesta asserts that, none of the situations referenced in section 351.308(a) of Commerce's regulations (19 CFR 351.308(a)) authorizing the Department to use facts available are present in this case. Avesta notes that it explained in its response that it did not have the practical means available to determine which mill sales were made to AVSD for consumption and which mill sales were made to AVSD for resale. Avesta states that the Department's review of the sales process at verification confirmed the accuracy of this claim and the home market sales verification report demonstrates that Avesta correctly reported that AVSD could not link mill sales to its resales.

Department's Position: We agree with Avesta. Based on the verified evidence contained in the record of this proceeding, we disagree with the petitioners that the use of facts available in this instance is warranted. Section 776(a) of the Tariff Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to section 782(d) and (e), facts otherwise available in reaching the applicable determination.

In this case, Avesta reported in its November 23, 1998, supplemental questionnaire response, two home market sales databases: the first database contained sales made by the U.K. entities, while the second one contained all home market sales from ASL and SPS to AVSD (including sales which AVSD consumed for production of non-subject merchandise). We believe that Avesta complied with the Department's reporting requirements for this information to the best of its ability. First, these databases were reported in a timely manner. Second, at verification, Avesta demonstrated, through sample sales traces, as well as during its overview of the sales process, that it cannot reasonably determine which mill sales were made to AVSD for consumption and which mill sales were made to AVSD for resale. As the Department's Home Market Sales Verification Report indicates, no information is provided to mills on material consumed by AVSD. Although the mills know which sales go to AVSD, they do not know which of those sales are further processed by AVSD. We found that, while certain information (i.e., the cast number) can identify the source of the merchandise, it cannot be used to tie back a particular purchase to the mills except by a manual review. Our review of AVSD's computer system and mill sales determined that the company had no practical means of linking incoming merchandise and the processed merchandise sold by AVSD.

In this case, we verified that Avesta is unable to segregate those sales made by the Avesta mills to AVSD for consumption from AVSD's resales of subject merchandise. Therefore, we conclude that the company reported everything that it could reasonably have been expected to report. Rather than ‘‘double-counting’’ the downstream sales by using the sales to AVSD and the sales by AVSD of the same merchandise, we have thus decided to continue to exclude from our analysis the sales made by the Avesta mills to AVSD (including sales for consumption) and use Avesta's reported downstream sales.

Comment 4: CEP Offset: Petitioners argue that the Department should disallow Avesta a CEP offset for the final determination. They contend that record evidence does not support the Department's decision in the preliminary determination that Avesta's home market sales are at a more advanced stage of distribution than its CEP sales. According to petitioners, the Department improperly made deductions from the CEP starting price prior to analyzing the LOT for CEP sales. They assert that the Department's decision to analyze the LOT based on adjusted CEP prices, rather than the CEP starting prices, is inconsistent with the Court of International Trade's (CIT) opinion in *Borden Inc. et al.* v. *United States,* Court No. 96–08–01970, Slip Op. 98–36 (March 26, 1998) (Borden), and with the Department's remand in that case. (See Final Remand Results for *Borden, Inc., et al.* v. *United States,* Consol. Court No. 96–08–01970 (August 28, 1998) (Remand Results). Petitioners claim that, should the Department rely on the CEP starting price and the associated selling functions, it would find: (1) that the CEP starting price and home market sales were made at a single LOT, (2) that the home market LOT was not more remote than the U.S. LOT, and (3) that a CEP offset is not warranted.

Petitioners maintain that the Department's home market and U.S. sales verification reports demonstrate that Avesta engages in the same type of selling activities in its dealings with ASI as it does with home market and EP sales. They state that record evidence indicates that technical services and warranties (which petitioners submit are the most significant activities in terms of defining LOT), are handled by Avesta and are included in the constructed export price between Avesta and ASI, demonstrating that Avesta does not provide warranty and after sale services related to its CEP sales. Also, according to petitioners, record evidence indicates that freight services are provided to ASI's CEP sales, demonstrating that the mill performs the same functions at the home market LOT as it does for the CEP LOT.

Avesta counters that the Borden decision is not final or conclusive because the Department is appealing that decision; therefore, the decision is not binding. (See Certain Pasta from Italy: Final Results and Partial Recission of Antidumping Duty Administrative Review, 64 FR 6615, 6618 (February 10, 1999) (Pasta from Italy).) Second, the Department's preliminary findings that the CEP LOT is the level of the constructed sale from the exporter to the importer is consistent with the statute and longstanding administrative practice. Third, record evidence now verified by the Department shows that Avesta had only one CEP LOT in the U.S. market. According to Avesta, this evidence demonstrates that the CEP LOT differed considerably from the LOT in the home market and was at a less advanced stage of distribution than the home market LOT. Avesta argues that petitioners' focus only on the provision of technical and warranty services ignores the other reported and verified selling functions. Avesta asserts that because the data available do not provide an adequate basis for making a LOT adjustment, but the home market LOT is at a more advanced stage of distribution than the CEP sales, a CEP offset remains appropriate for the final determination.

Department's Position: We agree with Avesta. The CIT has recently held that the Department's practice to base the LOT comparisons of CEP sales after CEP deductions is an impermissible interpretation of section 772(d) of the Tariff Act. See Borden, Slip Op. 98–36 at 58; see also *Micron Technology Inc.* v. *United States,* Court No. 96–06–01529, Slip Op. 99–02 (January 28, 1999). The Department believes, however, that its practice is in full compliance with the statue, and that the CIT decision does not contain a persuasive statutory analysis. Because Borden is not a final decision, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) prior to starting a LOT analysis, as articulated in the regulations at section 351.412. Accordingly, consistent with the Preliminary Determination in this case, we will continue to analyze the LOT based on adjusted CEP prices rather than the CEP starting prices. See Pasta from Italy.

In the Preliminary Determination, the Department made a CEP offset adjustment to NV. Because Avesta's home market sales were found to be at a more advanced stage of distribution than its CEP sales, we determined that these sales were at a different LOT. As the data available did not provide an appropriate basis for making a LOT adjustment, but the home market LOT was found to be at a more advanced stage than the LOT of the CEP sales, we determined that a CEP offset was appropriate in accordance with section 773 (a)(7)(B), as claimed by Avesta (see Preliminary Determination).

We disagree with petitioners' argument that, based on record evidence of Avesta's handling of technical services, warranties, and freight, Avesta engages in the same type of selling activities in its dealings with ASI as it does with home market and EP sales. While we agree with petitioners that Avesta performed these services for CEP sales and that these activities are important, based on our review at verification of all Avesta's selling functions in the United States and home market, we found that Avesta also performed other selling functions (*i.e.*, other than technical services and warranties) related to its home market and EP sales that we believe include important selling activities. For example, services such as sales and marketing support functions, negotiating prices, and maintaining inventory were also provided. (See U.S. Sales Verification Report and Home Market Sales Verification Report.)

Therefore, we believe that record evidence supports our findings in the Preliminary Determination that Avesta had only one CEP LOT in the U.S. market, and this CEP LOT differed from the LOT in the home market. Because the data available do not provide an appropriate basis for making a LOT adjustment, but the home market LOT is at a more advanced stage of distribution than the CEP sales, a CEP offset remains appropriate.

Comment 5: Sales of Proprietary Grade Used To Produce Specialty Steels

Both petitioners and Avesta comment in their case briefs and rebuttal briefs on the Department's inclusion of a proprietary grade of steel used in certain industrial blades and surgical and medical instruments. Petitioners argue that the Department should include sales of this grade in the final margin analysis. They note that Avesta stated in its November 2, 1998, questionnaire response that British Steel provided one of the U.K. mills reporting under this investigation mainly with this grade to produce two specialty steels. While petitioners agree with Avesta that one of these steel products has been excluded from the investigation, they disagree with Avesta's assertion that the second product is also not subject to this investigation. Petitioners state that they agreed to exclude from the scope of these investigations two proprietary grades of stainless steel sheet and strip in coils produced by Hitachi Metals, Ltd. and Hitachi Metals America, Ltd., GIN5 and GIN6. (See Letter from Paul C. Rosenthal to the Secretary of Commerce, September 29, 1998.) Petitioners contend that Avesta never requested an exclusion for its proprietary grade. They maintain that, in agreeing to the exclusion for Hitachi, they in no way agreed to exclude Avesta's proprietary grade.

Petitioners disagree with Avesta's assertion that record evidence demonstrates that this merchandise meets the specifications for the excluded product, as defined by petitioners and the Department. They state that this material is not identical to the specifications outlined by petitioners or the Department. For example, according to petitioners, there are differences in the minimum carbon contents for Avesta's product and the product excluded by the Department. Petitioners state that, although they have no information regarding the correct carbide density (an issue raised by Avesta, see below) of GIN5, Hitachi Metals, Ltd. and Hitachi Metals America, Ltd. identified its carbide density in several letters to the Department. (See Sonnenschein, Nath and Rosenthal Letters to the Department, dated July 29, 1998, September 8, 1998, September 11, 1998, and September 21, 1998.) Petitioners urge the Department to confirm the average density with Hitachi Metals, Ltd. and Hitachi Metals, Ltd. They state, however, that regardless of whether the correct carbide density is an average of 100 carbide particles per square micron or an average of 100 carbide particles per 100 square microns, the Department should continue to include the carbide density in its definition and not expand the range as suggested by Avesta.

Avesta argues that, to the extent the proprietary grade referred to by petitioners meets the definition of the specialty steels used in blades and surgical instruments that are excluded from the scope of the investigation, the Department should eliminate sales of this proprietary grade from its final antidumping analysis. Avesta contends that, in the preliminary determination, the Department identified three speciality steels typically used in certain industrial blades and surgical instruments which are excluded from the scope of the investigation. According to Avesta, the second of these products, an example of which is GIN5 steel, is defined both in terms of chemical content and in terms of average carbide density. However, due to the difficulties in measuring carbide density of a given shipment of scalpel steel, Avesta contends that the Department should amend its definition of this excluded product to eliminate the reference to carbide density. Alternatively, should the Department retain a carbide density measure, Avesta recommends that the Department amend the scope language to refer to a carbide density that is metallurgically feasible.

Avesta contends that, unlike chemical content, the carbide density of scalpel steel may be tested infrequently because it is time-consuming, posing a burden on foreign producers/exporters, and customers do not need to know the carbide density of particular shipment. Also, carbide density cannot be measured on an absolute scale because different magnifications of the steel will result in different measures of carbide density. Therefore, according to Avesta, the Department should amend the scope language to omit the reference to carbide density. Alternatively, should the Department retain the reference, it should at least change the specified density to one which producers may plausibly achieve. Avesta asserts that the Department's current description of the excluded GIN5-like product as having an average of 100 carbide particles per square micron is incorrect, and not feasible from a metallurgical standpoint. Avesta argues that, should the Department retain a carbide density measure, it should amend the scope to refer to particles per 100 square microns.

Also, Avesta contends that, because the carbide density of a particular product varies depending on the magnification level at which it is measured, the Department should refer to a magnification level of 9,000, which is commonly used in the industry. Avesta also urges the Department to replace the current language describing the excluded product which specifies an average carbon density, without indicating how wide or narrow is the acceptable range of carbide density. Avesta argues that the Department should replace the current language of the scope defining the excluded GIN5-like product as having a carbide density on average of 100 carbide particles per square micron with the following: ''This steel has a carbide density in the range of 50–100 carbide particles per 100 square microns when measured at a magnification level of $\times$ 9,000.''

Avesta claims that the reference in the Department's preliminary determination to GIN5 as ''an example'' of the excluded product confirms that the exclusion is not limited to Hitachi's proprietary grade, and that such a limitation would result in discriminatory treatment by the Department of similarly situated respondents producing products with the same characteristics but with different brand names. Avesta also argues that petitioners' contention that the proprietary grade referenced does not meet the specified minimum carbon content is incorrect. It asserts that Avesta routinely produces the grade at higher carbon levels than the specified minimum level, and despite petitioners' assertions, Avesta submitted evidence of this minimum carbon content, as well as all specifications for the grade as a home market sales verification exhibit. Avesta states that the specification sheet contained in Home Market Sales Verification Exhibit 15B and sales trace documentation verified by the Department show that the grade meets all the chemical content requirements for the excluded product as defined by the Department.

Department's Position: We agree with petitioners that sales of the referenced Avesta proprietary grade should be included in our final analysis, and that carbide density should remain in the definition of the noted excluded product. First, we note that Avesta's request to include magnification levels in the excluded product description is irrelevant because petitioners have not recognized this requirement as a necessary aspect of its exclusion request. Therefore, magnification is not included as a requirement/characteristic of this excluded merchandise.

Second, while we agree with Avesta that GIN 5 is merely an example of the excluded product and that the exclusion is not limited to Hitachi's proprietary grade, the evidence on the record demonstrates that Avesta's proprietary grade material only meets the chemical requirements of the excluded product. At verification, Avesta noted that, in its opinion, Avesta's proprietary grade fits within the GIN 5 definition that had been excluded from the scope. The company provided a description of its proprietary grade in several supplemental responses and in a verification exhibit (see Home Market Sales Verification Report at 29). In addition, we reviewed documentation for a sale of this merchandise. None of this information on the record provides any information regarding carbide density. Therefore, we are including Avesta's proprietary grade product in our final analysis. Should Avesta adequately demonstrate in the future that its proprietary grade complies with all the requirements of the excluded product, then Avesta's proprietary grade products would not be covered in the scope of this case.

We agree with Avesta that the measure of carbide density referenced in the Preliminary Determination is incorrect. We have revised the scope for the carbide density of the second excluded product to read: ''This steel has a carbide density on average of 100 carbide particles per 100 square microns.''

Comment 6: Resales of Rejected Merchandise

Both petitioners and Avesta comment in their case briefs and rebuttal briefs upon the Department's exclusion of U.S. resales of rejected merchandise in the preliminary determination. Petitioners argue that the Department should include in its final determination all U.S. sales, including resales of stainless sheet and strip which had been cut to length prior to resale. They disagree with Avesta's claim that U.S. resales of rejected products were not representative of Avesta's sales during the POI and constituted a negligible quantity of its overall U.S. sales. Petitioners note that, while the Department included resales of stainless sheet and strip in coils in the United States in the preliminary determination, it excluded resales of stainless sheet and strip which had been cut to length prior to resale. Petitioners argue that, for the final margin analysis, the Department should include all resales, regardless of whether the merchandise was resold in coil form or cut-to-length form, because all merchandise resold in the United States originated from subject merchandise.

Petitioners disagree with Avesta's claim that its resales in the United States are not representative. They contend that the concept of sales outside the ordinary course of trade does not pertain to U.S. sales. They state that the resales originated from sheet and strip in coils from the United Kingdom—the merchandise under investigation. Petitioners argue that ASI's resales are subject to this investigation regardless of the volume of sales they represent, and furthermore, they are on the record and have been verified by the Department.

Petitioners argue that the Department's normal practice is to include all U.S. sales in its margin calculations. They state that, prior to the URAA changes to the Tariff Act of 1930, the Department considered exclusion requests of insignificant ''outlier'' sales that make up less than five percent of the U.S. sales database based on whether the respondent established need (*i.e.,* whether the burden of collecting this data outweighed the need for the data) for the exclusion. Petitioners note that the exclusion of such ''outlier'' sales acknowledged the following: that the Department considered a six-month POI, and it calculated transaction-specific margins for each U.S. sale. Petitioners state that the Department's post-URAA current practice is to investigates a 12-month POI to capture a full snapshot of a respondent's year-long selling practices in each relevant market, and that the Department calculates a weighted-average U.S. selling price for each product, rather than for each sale. Petitioners state that this ''significantly reduces'' the likelihood that a few sales will drive margin calculations. Petitioners argue that, given this background, the Department should reconsider its policy of excluding bona fide sales of subject merchandise in the United States, and reject Avesta's assertion that these sales are not representative of its U.S. sales.

Petitioners also pose a corollary argument that, if Avesta had resold merchandise in the home market during the POI, and as a result received substantially lower prices, the Department should likewise exclude such sales because they are not representative of the 12-month POI. Petitioners contend that the Department will not exclude those resales because they will be weight-averaged with other sales, and presumably Avesta will continue to resell merchandise after the POI, so the sales are not unrepresentative. According to petitioners, Avesta has no incentive to argue for the exclusion of low-priced home market resales, or low-priced home market sales made for any reason, because such sales tend to lower dumping margins. Petitioners contend that Avesta presumably continues to resell merchandise in the United States, and that nothing about this is unrepresentative about such sales, other than the fact that these are lower-priced U.S. sales.

Avesta argues that the Department properly excluded U.S. resales of rejected merchandise from the preliminary determination. It notes that, in the preliminary determination, the Department concluded that ''if the Department determines based on verification that Avesta's claims about the nature of the resales are correct, they will not be used in the final antidumping margin calculations.'' (See Memorandum from Linda Ludwig to Joseph A. Spetrini, Limited Reporting of U.S. Sales (October 26, 1998) (Limited Reporting Memorandum).) Avesta contends that, because the Department successfully verified the information provided by ASI concerning the U.S. resales, these resales should not be included in the final margin calculations. According to Avesta, the Department examined the unusual nature of the U.S. resales, including the process for handling resales of rejected merchandise and documentation for three U.S. resales. In each of the resales reviewed, notes Avesta, the Department verified that the customer rejected the merchandise for a variety of reasons, including mechanical properties, scratches, material problems, acid marks, dirt, pits, etc. Also, Avesta states that for two of these resales, the Department verified that the rejected merchandise had been cut to length prior to resale. Accordingly, the Department properly excluded from the preliminary analysis those U.S. resales of rejected merchandise that were cut-to-length by ASI's customers before being returned, as these were not sales of merchandise under investigation. However, Avesta contends, because of the unusual circumstances surrounding ASI's resales, the Department should disregard all U.S. resales in the final determination.

Avesta also argues that the Department should exercise its discretion to exclude resales of rejected merchandise because these resales represent a very small percentage of ASI's U.S. sales during the POI. Avesta notes that, in the Limited Reporting Memorandum regarding limiting reporting of U.S. sales, the Department acknowledged that it may exclude certain U.S. sales in its less than fair value calculations where those sales have an insignificant effect on the margin, or where they are not representative of the respondent's selling practices in the United States. Avesta states that the Department also recognized that it normally considers exclusion requests pertaining to less than five percent of total U.S. sales, and that ASI's resales of rejected merchandise during the POI meet this criteria.

Avesta asserts that the resales are not representative of ASI's sales during the POI. Because ASI orders only prime quality stainless sheet and strip in coils from the United Kingdom, Avesta argues that all merchandise exported from the U.K. mills to ASI is believed to be prime when it comes off the production line. It is only when the U.S. customer receives and uncoils the merchandise, that occasionally, defects in the material may be discovered for the first time. Avesta states that, as recognized by the Department, the nature of these resales is different from typical sales of secondary merchandise, where the producer considers the merchandise to be defective and initially sells it as ''seconds.'' According to Avesta, these resales are not part of ASI's business plan, and that they differ from normal U.S. sales in that resales possess different physical characteristics from prime merchandise (*i.e.*, defects) and the rejected merchandise is resold to a different class of customers than ASI's normal, prime merchandise (*i.e.*, secondary dealers). Thus, because the small volume of ASI's imports of secondary merchandise is unintentional and the resales of this merchandise are unlike the U.S. sales of prime merchandise, these resales cannot be considered representative of ASI's normal U.S. sales activity. Additionally, Avesta argues that petitioners' position that the Department should include in its analysis resales of cut-to-length merchandise is unsupportable, given that petitioners excluded cut-to-length stainless steel sheet and strip from the scope of imported merchandise covered in their petition.

Department's Position: We agree with Avesta. On October 26, 1998, the Department issued a decision memorandum indicating that if it determines, based on verification, that Avesta's claims about the nature of its U.S. resales of rejected merchandise are correct, these sales will not be used in the final antidumping margin calculations. In this memorandum, the Department stated that it may, on occasion, exclude certain U.S. sales in LTFV comparisons, if the sales have an insignificant effect on the margin. See *Bowe Passat Reinigungs* v. *United States*, 926 F. Supp. 1138 (CIT 1996), citing *Ipsco Inc.* v. *United States*, 687 F. Supp. 633 (CIT 1988). (For a detailed analysis of this issue, see Limited Reporting Memorandum.) Based on our findings at verification, we believe that Avesta's claims regarding the volume and nature of these sales is supported by record evidence. At the U.S. verification, we found that these resales indeed represent a small share of total U.S. sales. As we noted in the U.S. Sales Verification Report at 10, these sales constitute a small part of ASI's business. Moreover, although the merchandise purchased from the U.K. mills is assumed to be prime, occasionally, defects can occur, which may not be discovered until the customer uses the merchandise.

During our review of three sample resales of this rejected merchandise, Avesta provided documentation demonstrating, in each case, that the resold merchandise had been returned by the original customer due to a number of reasons, including mechanical properties, scratches, material problems, acid marks, dirt, pits, etc. See U.S. Sales Verification Report. The resold merchandise was subsequently purchased by secondary dealers in the United States. For two of these resales, the rejected merchandise was cut to length prior to resale. Based on our findings at verification, Avesta's previous claims concerning the nature of its U.S. resales of rejected merchandise appear to be accurate.

Excluding these sales will have an insignificant effect on the margin. The sales process for these sales is highly complex, involving an initial sale, the customer's rejection of the merchandise, the subsequent resale, as well as the linking of the resale to the initial sale. These sales also involve difficult model match and programming issues. Rather than fully undertake this time-consuming and burdensome analysis, for a small number of sales which will have an insignificant effect on the margin, we are excluding all of these resales from our analysis in the final determination.

Comment 7: Sales Submitted by SPS and Billing

Petitioners argue that the Department should apply partial facts available to sales made by SPS and Billing. They indicate that Avesta presented at verification, as minor corrections, certain quantities of stainless sheet and strip in coils sold by Billing and by SPS, which should have been included in the home market database, but were omitted until verification.

Petitioners contend that it has been the Department's consistent practice, in cases where sales data are offered for the first time at verification, to accept for the record only enough documentation to establish the actual magnitude of the omission. (See, e.g., Certain Helical Spring Lock Washers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 58 FR 48833, 48835 (September 20, 1993) (Lockwashers).) Petitioners note that, in the case of Lockwashers, the Department returned the sales trace documentation pertaining to the unreported sales that the respondent submitted during verification. Petitioners reference the Department's verification outline in arguing that verification is not the appropriate time to submit new information; rather, the sole purpose of verification is to check the accuracy of questionnaire responses. They also question what facts made Avesta ''recognize'' the under-reported data during verification preparation, and argue that the company deliberately withheld it until verification. Petitioners state that, as facts available, the Department should apply the highest home market price and lowest U.S. price to the percentage of sales unreported prior to verification.

Avesta argues that the Department should include the reported data for sales by SPS and Billing in the final margin analysis, and that petitioners' suggestion that the Department apply facts available to these sales is unreasonable. Avesta notes that the sales in question are home market sales only and not U.S. sales, which are fully reported. Avesta contends that all six of the Department's conditions used to define clerical errors are met in this case. Avesta notes that these criteria are: (1) The error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgment, or a substantive error; (2) the Department must be satisfied that the corrective documentation provided in support of the clerical error allegation is reliable; (3) the respondent must have availed itself of the earliest reasonable opportunity to correct the error; (4) the clerical error allegation, and any corrective documentation, must be submitted to the Department no later than the due date for the respondent's administrative case brief; (5) the clerical error must not entail a substantial revision of the response; and (6) the respondent's corrective documentation must not contradict any information previously determined to be accurate at verification. (See Cold-Rolled Steel from the Netherlands, 64 FR at 11829.) Avesta argues that the omissions resulted from clerical errors, as explained in U.K. Sales Verification Exhibit 1. According to Avesta, the omission of SPS sales resulted from dimensional differences between the suggested definition of excluded flat wire product (the industry standard) and the flat wire definition adopted by the Department in the Preliminary Determination. Avesta notes that, at the time it submitted its home market sales file, it reasonably assumed that merchandise meeting the standards for flat wire, as defined by the industry and as endorsed by the petitioners, was excluded from the scope of the investigation. As a result, the computer program used to compile SPS'' sales file was programmed to identify sales of merchandise with a width greater than 12.7 mm (rather than 9.5 mm).

With respect to the omission of Billing sales, Avesta argues that the source of the merchandise sold was not recorded in the company's computer system, and therefore, these sales were not identified as sales of U.K. merchandise. Moreover, Avesta contends that, in the Department's review at verification of documentation concerning the omitted sales, and as part of its completeness tests, the Department was satisfied that the corrective documentation is reliable. Avesta states that petitioners' contention that the omitted sales were deliberately withheld until verification is false. According to Avesta, as soon as it discovered the omissions, it compiled as much data on the sales as possible, given the time constraints, and reported the missing transactions to the Department at the beginning of the U.K. verification. Avesta also contends that its identification of the clerical errors and submission of corrective documentation was timely as all of this information was submitted to the Department at the beginning of verification, two months prior to the due date for case briefs. Avesta argues that inclusion of the previously omitted sales does not entail a substantial revision of the response, and they represent small percentages of total home market sales during the POI. Furthermore, assuming the Department accepts the minor correction for field EDGEH for Billing's sales as presented at verification, all sales made by Billing during the POI will likely drop out of the Department's analysis for matching purposes. Lastly, Avesta asserts that the corrective documentation concerning the SPS and Billing sales does not contradict information previously determined to be accurate since it was reviewed and verified by the Department.

Department's Position: We agree with Avesta. To ensure accurate determinations, the Department's practice allows respondents to submit information at the beginning of verification to correct errors found during the course of preparing for verification. See Preamble to the Proposed Rules, 61 FR 7308, 7323 (February 27, 1996). In this case, at the outset of the verification, Avesta promptly informed the Department verifiers that it mistakenly omitted a small quantity of sales made by SPS and Billing. The company explained that it did not report these sales because of its initial confusion about the scope language with respect to SPS' sales, and because of Billing's delay to provide its sales information for a small number of sales to be included in the home market database. Given that these corrections were insignificant when compared to Avesta's total home market sales (see Final Analysis Memorandum) and that we found Avesta's explanation for these omissions reasonable, we have accepted and verified these sales in accordance with our practice of allowing respondents to correct minor errors while preparing for verification. Accordingly, we have included SPS' and Billing's sales in our final determination.

Comment 8: U.S. Warehousing

Petitioners argue that the Department should apply facts available to ASI's reported warehousing expense in the final determination. They state that the Department found at verification a discrepancy in the way that ASI recorded storage charges, as well as related charges for movement in and out of storage in its normal course of business. Petitioners contend that, in some instances, all three charges were recorded in the warehouse account, and in other instances, only storage costs were recorded in warehousing expenses. They note that, for one sale, the Department found that ASI reported only trucking charges as freight expenses, and handling in/out charges were not reported. Petitioners argue that, as facts available, the Department should apply the highest reported warehousing expense in the U.S. database to all U.S. sales.

Avesta argues that petitioners' proposed application of facts available to Avesta's warehousing expenses should be rejected and that the inadvertent omission of handling in/out charges from some U.S. sales is simply a clerical error. Avesta contends that, because these omitted charges are so small on a per pound basis, the effect of any adjustment is immaterial. Avesta indicates that the Department found discrepancies in the reported warehousing expense for only five of the 20 sales traces reviewed at verification. It contends that the Department should reject petitioners' suggestion to apply the highest reported warehousing expense to all U.S. sales. Instead, should the Department decide not to accept ASI's warehousing expenses as reported, it should only apply the highest reported value to those sales transactions for which warehousing expenses were actually incurred.

Department's Position: We disagree with petitioners that we should apply facts available to warehousing expenses and determine to accept warehousing expenses as reported. Avesta chose to employ a methodology corresponding to what it believed was its normal recording of these expenses. Six of the 20 sales examined at the U.S. verification involved marine freight invoices featuring handling in and out of storage, freight, and warehousing, while other sales either did not involve marine freight invoices or involved marine freight invoices for freight alone. For sales with marine freight invoices for handling, freight, and storage, Avesta decided to report freight as inland freight, and it presumed that handling and storage expenses would be encompassed in the warehousing account. Based on the stated methodology, of these six sales examined, two involved incorrect recording of handling, and one involved incorrect recording of warehousing, in the company's normal course of business. While freight was correctly reported to the Department for each sale, the company ''incorrectly'' recorded, in its normal course of business, freight for four of the sales. In fact, for two of the sales, freight was recorded in the warehousing account: one in the POI and one before the POI. This results in freight being considered in effect twice for one of the sales—once as freight and another time as part of average warehousing reported. Therefore, while some sales may have been under-reported, other sales were, in essence, over-reported.

Avesta reported an average per unit warehousing amount for sales warehoused during the POI. We found at verification that this calculation involved all storage expenses during the POI, including non-merchandise related records storage. While three of the six sales examined had handling and storage recorded in the warehousing account before the POI, it is reasonable to presume that in their place the warehousing account included handling and storage expenses for sales that occurred after the POI. Because, on average, the effect of any mis-recordings should be minimal, we determine to accept Avesta's warehousing expenses as reported.

Comment 9: Inland Freight Expenses

According to petitioners, the Department should apply facts available to Billing's reported inland freight expenses, plant/warehouse to customer. They note that company officials explained to the Department at verification that it would take a large manual effort to tie all invoices to the actual freight invoices, which was the reason why Avesta chose one month at random and calculated an average freight amount by customer using all invoices in that month. Petitioners contend that this methodology is not reasonable because one month is not a representative period of time. In addition, petitioners assert that this methodology fails to reflect freight charges incurred by Billing during the POI. According to petitioners, mere burden is not an excuse for failing to respond fully and accurately to the Department's questionnaire. As partial facts available, petitioners urge the Department to apply the lowest reported freight charge to Billing's home market sales.

Avesta argues that the methodology used by Billing to report inland freight from plant/warehouse to the customer is reasonable and representative of freight charges incurred by the company during the POI, and that it should be accepted by the Department. Avesta notes that the Department recently confirmed that although it prefers actual freight costs, a reasonable allocation methodology that most closely reflects actual costs is acceptable. See Final Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods From Mexico, 64 FR 13962, 13969 (March 23, 1999) (OCTG from Mexico). Avesta contends that Billing was unable to report its actual freight charges because it does not have a freight system that is able to allocate these expenses directly to customer orders. (Avesta cites its September 29, 1998, and November 23, 1998, Section B Questionnaire Responses and the Home Market Verification Report.) Because of the limitations of this system, Billing's methodology used to calculate an average freight amount by customer, based on shipments during a representative month, was reasonable. Avesta also argues that the Department verified evidence presented by Billing that demonstrated that the overall freight charge for all customers during the POI was in line with the average of freight charges for the year.

Department's Position: We agree with Avesta. While the Department prefers to have actual freight costs, a reasonable allocation that most closely reflects actual costs is acceptable. See OCTG from Mexico, 64 FR at 13969. The Department verified that Billing was unable to report its actual freight charges absent a manual search because its accounting system does not directly link transport charges to customer orders. See Home Market Sales Verification Report. While Billing did choose a month ''at random,'' we found that its methodology nonetheless avoided unrepresentative months. Billing also analyzed the amounts calculated for that month for unusually high values to ensure reasonableness. The Department verified information regarding freight rates, payments for freight, and that the overall freight charge for all customers during the POI was in line with the average freight charges for the total year. Based on our findings at verification, we therefore conclude that Avesta's methodology is reasonable, and have accepted it for the final determination.

Comment 10: Ocean Freight, Inland Freight, and Brokerage Charges

Petitioners argue that the Department should apply facts available to Avesta's reported ocean freight, inland freight, and brokerage charges. They contend that Avesta improperly calculated these expenses using gross tons, rather than net tons, which was the unit of measure of the reported sales quantity. Petitioners state that, at verification, Avesta provided sample calculations of the expenses in a verification exhibit. Petitioners recommend that the Department apply the highest reported expenses for ocean freight, inland freight, and brokerage and handling charges.

Avesta argues that the Department should reject petitioners' proposed application of facts available to ocean freight, inland freight, and brokerage charges. Avesta disagrees with petitioners that it reported these charges on gross tons, rather than net tons, for all Avesta entities. Avesta claims that, contrary to petitioners' claims, only the Sheffield Business Unit calculated its charges using this methodology. Avesta contends that petitioners fail to provide support for their assertion that Sheffield's charges for inland freight, ocean freight, and brokerage and handling should have been divided by net tons. Avesta asserts that the Department's questionnaire does not specify a preference for calculations based on either gross or net tons, and that Sheffield's calculations based on gross tons was reasonable, given that the shipping company applies its per-unit charge to gross weight when determining ocean freight charges to Sheffield. Avesta argues that, should the Department determine Sheffield's methodology is improper, a reasonable alternative to petitioners' suggestion is to apply a multiplier to the values reported for these variables for all Sheffield sales to the United States, in order to approximate a per-unit expense calculated on a net weight basis. Avesta notes that the difference in calculating these expenses using gross weight versus net-weight has a minimal impact.

Department's Position: We agree, in part, with both petitioners and Avesta. Petitioners are correct in noting that, for certain sales reviewed at verification, we found that Avesta calculated the values reported for ocean freight, inland freight, and brokerage and handling expenses in gross tons, rather than net tons. Also, we acknowledge that Avesta provided an exhibit demonstrating this methodology at verification. Our review of this exhibit, however, resulted in a finding that this methodology applies only to sales by the Sheffield Business Unit. We did not find evidence of this methodology used by the other U.K. entities in calculating ocean freight, inland freight, and brokerage and handling charges. While we agree with Avesta that the Department's questionnaire does not specifically state a preference for the calculations to be based on gross or net weight, sales and expenses should be reported on a similar basis to ensure fair comparisons in the Department's LTFV analysis. For the final determination, we have applied a multiplier to the expenses in question for all Sheffield Business Unit sales to the United States, in order to arrive at an approximation of the expenses on a net weight basis. See Final Analysis Memorandum.

Comment 11: Verification Changes

Petitioners state that many changes (affecting movement expenses, payment date, physical characteristics) were presented to the Department's verifiers at the U.S. verification, home market verification, and the cost verification, and that all of these changes (with the exception of those resulting from new factual information) should be implemented for the final margin analysis. Avesta did not comment on this issue.

Department's Position: We agree with petitioners that numerous changes were presented to the Department at the sales and cost verifications. For the final determination, we have made changes, where appropriate, to Avesta's submitted cost and sales data as discussed in our Final Analysis Memorandum.

Comment 12: Freight Revenue

Petitioners argue that the Department should deduct freight revenue from the calculation of movement expenses in the home market. They contend that the Department's preliminary margin program incorrectly failed to deduct freight charged to the customer in the home market (FREICUSH) from total movement expenses. According to petitioners, Avesta stated in its supplemental questionnaire response that FREICUSH is not included in the gross price for those AVSD (one of the U.K. sales entities) sales for which FREICUSH is shown as a separate charge; otherwise, FREICUSH is either embedded in the gross unit price or not charged.

Petitioners also contend that the Department incorrectly deducted freight charged to customers in the U.S. market (FREICUSU) from gross price in calculating revenue in the United States (REVENU), which in turn is used to calculate CEP profit. Petitioners note that, as in accordance with Avesta's questionnaire response, FREICUSU is included in the gross price. Petitioners argue that FREICUSU is revenue and should not be deducted from gross unit price in the calculation of revenue in the Department's final margin analysis.

Avesta agrees that the Department should subtract freight charged to the customer from the calculation of movement expenses in the home market but only for sales by AVSD. Avesta notes that AVSD is the only one of the five U.K. entities that reported values in the field FREICUSH without also including the FREICUSH value in gross unit price. Specifically, for Avesta observes that, those sales for which AVSD reported a positive value in field FREICUSH, the freight charged to customer is not included in gross unit price. For those sales for which AVSD reported a zero, Avesta notes that, the freight charged to customer is included in gross unit price.

Department's Position: We agree with respondent that we should subtract FREICUSH from the calculation of movement expenses only for sales by AVSD. Comparison of sales documentation obtained at the home market verification and the home market database reveals that, in reporting AVSD's sales to the Department, freight charged to the customer was not added to price of the merchandise, and the gross unit price in the home market database contains only the price of the merchandise. For other U.K. selling entities examined, we found that the gross unit price in the home market database was reported as the sum of the price charged to the customer for the merchandise, plus the price charged to the customer for freight. In order to remove all movement-related charges from the foreign prices, we subtracted movement expenses reported from gross unit price. Reported movement expenses reflect the total cost charged to Avesta for movement of the merchandise. The net movement cost incurred by Avesta would be reported movement expenses less freight revenue received from the customer. When freight charged to the customer is included in reported gross unit price, subtracting only reported movement expenses from gross unit price results in the deduction of net movement costs incurred by the respondent, leaving the price of the merchandise alone. When freight charged to the customer is not included in reported gross unit price, however, and reported movement expenses are subtracted from gross unit price, failure to also subtract freight charged to the customer from movement expenses (the same effect as adding it to gross unit price) results in the deduction from gross unit price of more than the net movement costs incurred by the respondent. Therefore, as a result of our verification findings and our clearer understanding of FREICUSH and reported gross unit price for each of the U.K. reporting entities, we have changed the methodology from our Preliminary Determination to subtract FREICUSH from movement expenses for sales made by AVSD.

We agree with petitioners that FREICUSU should not be deducted from gross unit price in calculating REVENU. We found at verification that reported gross unit price in the United States includes freight charged to customer. Therefore, as discussed above, deducting FREICUSU from REVENU results in more than the net movement costs incurred by the respondent being deducted from gross unit price in the calculation of CEP profit. Therefore, we have changed the methodology from our Preliminary Determination to remove FREICUSU from the calculation of REVENU.

As noted above, reported gross unit price in the United States includes freight charged to the customer. Therefore, when freight charged to the customer is included in reported gross unit price, subtracting only reported movement expenses from gross unit price results in the deduction of net movement costs incurred by the respondent, leaving the price of the merchandise alone. In the Preliminary Determination, we deducted both reported movement expenses and reported FREICUSU from gross unit price in calculating net U.S. price. In this final determination, we are removing FREICUSU from the calculation of net U.S. price. This methodology ensures that the treatment of freight charged to customers on U.S. sales and home market sales is consistent.

Comment 13: Hot-Rolled, Annealed and Pickled Merchandise

Avesta argues that, in the Preliminary Determination, the Department correctly determined that Avesta's sales of hot-rolled annealed and pickled SSSS should be excluded from its analysis, as this merchandise is produced in Sweden and not in the United Kingdom. Avesta explains that it hot-rolls this merchandise in Sweden and not in the United Kingdom.

Avesta maintains that annealing and pickling do not substantially transform the product, in that neither process changes the chemical composition of the merchandise. Avesta states that it cited in its questionnaire response several rulings by the U.S. Customs Service, which hold that the annealing and pickling in the United Kingdom is not a substantial transformation which confers country of origin. Avesta declares that the Customs decisions address issues of concern to the Department in rendering scope decisions, and as such, they must be given substantial weight in the Department's analysis. Avesta also holds that Stainless Steel Plate from Sweden is a comparable case also involving Avesta Sheffield. Avesta argues that, in that case, the Department rejected arguments that annealing and pickling in addition to hot-rolling is necessary to bring hot band within the definition of stainless steel plate. Avesta cites to Memorandum from Richard Weible to Joseph Spetrini re: Affirmative Scope Ruling—Stainless Steel Plate from Sweden (A–401–040), December 22, 1997 (Stainless Steel Plate from Sweden Scope Memorandum).

Petitioners did not comment on this issue.

Department's Position: We agree with Avesta that its hot-rolled sales during the POI should be excluded from our analysis as this merchandise is produced in Sweden and not in the United Kingdom. In the Stainless Steel Plate from Sweden Scope Memorandum (the public version of which is attached to the Preliminary Determination Analysis Memorandum for this case, dated December 17, 1998), we determined that hot bands rolled in Sweden from British slab are within the scope of that antidumping finding. In that case we explained that, in determining whether substantial transformation has occurred, the Department looks to whether a ''new and different article'' results from the production process. In addition to whether the production process results in a ''new and different article,'' the Department has considered value-added and process-cost in other cases involving substantial transformation. See Stainless Steel Plate from Sweden Scope Memorandum.

The instant case also involves British slabs that are hot-rolled in Sweden on the same equipment as that analyzed in the Stainless Steel Plate from Sweden Scope Memorandum. As we found in the Stainless Steel Plate from Sweden Scope Memorandum, based upon physical changes that the conversion of slab into hot band produces on the product, we conclude that the rolling of slabs into hot bands results in the production of a ''new and different article'' and constitutes a substantial transformation within the meaning of the antidumping law. See Certain Carbon Steel Butt-Weld Pipe Fittings from India: Notice of Final Determination of Sales at Less Than Fair Value, 60 FR 10545, 10546 (February 27, 1995). The processing of slabs into hot bands dramatically changes the physical characteristics of the product, drastically reducing the thickness, extending its length, changing the microstructure and significantly increasing its strength characteristics. Therefore, we find that U.K. slabs hot rolled in Sweden do not fall within the scope of this investigation. Accordingly, we are continuing to exclude hot-rolled sales in our final analysis.

Comment 14: Class or Kind

Avesta argues that, in the Preliminary Determination, the Department erred in determining that hot-rolled, annealed and pickled sheet and strip (HRAP SSSS) and cold-rolled sheet and strip (CR SSSS) are the same subject merchandise or class or kind. Avesta contends that the Department has both the authority and the obligation to modify the petition's description of class or kind when it finds that the petition has described more than one class or kind. Avesta asserts that the Department is not bound by the like product determination of the International Trade Commission (ITC), and that the Department and the ITC have separate statutory authority to make class or kind and like product determinations and may make distinct determinations.

Avesta comments that the Department considers class or kind of merchandise to establish the scope of a proceeding. Questions of class or kind most commonly arise, according to Avesta, when the Department is to determine whether particular foreign merchandise falls within the scope of an antidumping investigation.

Avesta asserts that, in determining whether products constitute one or more classes or kinds of merchandise, the Department normally considers several factors, with no single factor being dispositive. According to Avesta, these factors are: (1) Physical characteristics of the merchandise; (2) end uses; (3) interchangeability of products; (4) channels of distribution in which the merchandise moves; (5) the production process; and (6) price. (Avesta refers to High Information Content Flat Panel Displays and Display Glass Therefor From Japan, 56 FR 32376, 32381 (July 16, 1991), in which the Department applied basically the same criteria for class or kind product analysis, and to Diversified Products Corporation v. United States, 572 F. Supp. 883, 889 (CIT 1983) (Diversified Products), in which the following criteria were used: physical characteristics, end use, expectations of customers, channels of trade, and cost.) Avesta contends that analysis of these factors demonstrates that there is more than one category of merchandise under investigation. Avesta analyzed each of the factors as described below.

Regarding physical characteristics, Avesta argues that irrespective of thickness, CR SSSS are distinguished from HRAP SSSS by increased uniformity of surface and smoothness and by closer dimensional tolerances. Avesta asserts that the relative smoothness of the surface layer of the material cross-section differs between HRAP and CR by a factor of 10. Avesta further claims that the enhanced surface characteristics typically available in a cold-rolled product allow for dramatic differences in material performance pertaining to issues such as bacteria retention and ability to perform downstream metal finishing operations to achieve sanitary or aesthetic properties associated with cold-rolled stainless steels. In addition, Avesta states that CR SSSS have a tighter thickness tolerance than HRAP SSSS. Avesta holds that the differences in physical characteristics between HRAP and CR SSSS are reflected in their classification under different headings in the HTSUS and in the codes assigned by the AISI.

Regarding end uses, Avesta contends that the end uses of HRAP and CR SSSS differ substantially. Avesta notes that HRAP SSSS are used in applications that do not require the surface finish of CR SSSS or are used as feed stock for CR SSSS. Avesta maintains that HRAP SSSS are consumed by manufacturers of welded pipe, and by manufacturers of specialized equipment requiring corrosion-resistant steel (such as pulp/paper, chemical/petrochemical, etc. equipment). Avesta notes that purchases of hot-rolled material require the corrosion/heat resistance or strength characteristics of stainless steel, and do not require the surface characteristics, finish and dimensional tolerance of CR SSSS, while for purchasers of CR SSSS, surface characteristics, finish, and/or dimensional tolerance are important.

Regarding interchangeability, Avesta argues that HRAP and CR SSSS are not interchangeable. Avesta claims that CR SSSS are generally sold for applications requiring specific surface conditions or dimensional tolerances, and therefore, HRAP SSSS are generally not substitutable for CR SSSS.

Regarding channels of distribution, Avesta notes that these channels overlap for HRAP and CR SSSS overlap. Avesta further notes that, while end users have distinct requirements for these products, distributors often handle sales of both products and the same purchaser may purchase both HRAP and CR products. Nevertheless, Avesta asserts, producers and purchasers perceive the two products as distinct. Avesta maintains that it is common for steel products regarded as separate products to be handled by the same distributors, and to be purchased by the same end users for different applications. Avesta contends that the Department should not focus disproportionately on the channel of distribution portion of the analysis because sharing of a significant portion of the channels of distribution is not dispositive if the balance of the evidence supports a Department finding of two separate classes or kinds of merchandise (Avesta cites to Certain Brake Drums and Certain Brake Rotors From the People's Republic of China, 61 FR 14740 (April 3, 1996)).

Regarding production process, Avesta argues that the process involved in converting HRAP to CR SSSS is significant. Avesta notes that the U.S. Customs Service has found that such a conversion constitutes a substantial transformation of the merchandise. Also Avesta cites Rules for Determining the Country of Origin of a Good for Purposes of Annex 311 of the North American Free Trade Agreement; Rules of Origin Applicable to Imported Merchandise, 60 FR 35878, 35880 (July 12, 1995). Avesta declares that CR SSSS must undergo substantial additional processing using production equipment that is not used to produce HRAP SSSS. Avesta asserts that the process of producing CR SSSS involves significant reductions to the hot-rolled material at an ambient temperature on a reversing or tandem rolling mill and often subsequent annealing and descaling of the material, and temper rolling for coil shape and surface enhancement if deemed necessary. Avesta maintains that cold-rolling is performed in a separate mill than hot-rolling and requires separate equipment, which is reflected in Avesta's production process in which slab is hot-rolled at the Steckel mill in Sweden, followed by cold-rolling in separate facilities using separate equipment.

Regarding price, Avesta notes that the price difference between HRAP and CR SSSS is significant. Avesta argues that CR SSSS command a significant premium over HRAP SSSS, and it has attached to its brief a price comparison, by grade, of its home market sales during the POI. Avesta contends that the additional cost of transforming hot-rolled into cold-rolled material is substantial and results in the difference in their respective selling prices.

Petitioners argue that the Department correctly recognized that HRAP and CR SSSS comprise a single class or kind of merchandise. Petitioners assert that, by focusing on minor physical differences, Avesta's analysis of this issue ignores the major physical attributes and similarities of HRAP and CR SSSS. Petitioners hold that Avesta's analysis ignores all of the relevant determinations on this issue, which have uniformly found that stainless steel sheet and strip, as well as stainless steel plate, each comprise a single class or kind of merchandise, regardless of whether they are hot or cold-rolled. Petitioners specifically refer to the Department and ITC decisions, which confirm that HRAP stainless steel plate and CR stainless steel plate as comprising a single class or kind of merchandise (*i.e.*, Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea, 64 FR 15444 (March 31, 1999) and Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan, Inv. Nos. 701–TA–376–379 and 731–TA–788–793 (Prelim.) USITC Pub. No. 3107 (May 1998)). Petitioners go on to assert that, contrary to Avesta's argument, the Department and the ITC have preliminarily determined that HRAP and CR SSSS constitute a single class or kind, and single like product. Petitioners also argue that these cases affirm the Department's findings in the 1980's that HRAP SSSS and CR SSSS comprise a single class or kind of merchandise. Petitioners cite to Final Determinations of Sales at Less Than Fair Value: Certain Stainless Steel Sheet and Strip Products from Federal Republic of Germany; 48 FR 20459, 20460–61 (May 6, 1983)).

Petitioners maintain that a review of Avesta's argument demonstrates Avesta relies on two minor physical differences, surface smoothness and dimensional tolerances, for three of six criteria examined. Petitioners further assert that Avesta's analysis focuses on niche products and minor exceptions. Petitioners analyzed each of the factors also analyzed by Avesta, as summarized below.

Regarding physical characteristics, petitioners note that, while Avesta asserts that surface smoothness and closer dimensional tolerances distinguish CR SSSS from HRAP SSSS, the ITC, in its preliminary determination, found that such physical differences were minimal. Petitioners further argue that Avesta ignores the most salient physical features of SSSS—chemical composition, thickness, and annealed and pickled condition. Petitioners note that the most important physical characteristic identified by the Department in this case is grade. Petitioners assert that every grade of SSSS can be either HRAP or CR, and that there is a substantial overlap in their gauges. Petitioners further note that gauge is a critical physical characteristic and that it separates stainless steel plate in coils from SSSS. Petitioners comment that physical characteristics selected by the Department in its matching hierarchy also overlap between HRAP and CR, such as coating, width, edge, and annealed and pickled condition. The petitioners also note that the ITC confirmed the importance of the overlap in physical characteristics, gauge, and width. While Avesta argues that HTS headings and AISI product codes segregate HRAP and CR products, petitioners maintain that the Department's scope specifically notes HTS headings are not dispositive and that using Avesta's logic would lead to 60 classes or kinds as there are 60 HTS subheadings included in the scope.

Regarding end uses, petitioners argue that, while it is true that the vast majority of HRAP steel is used to produce CR SSSS, this supports a finding of a single class or kind. Petitioners assert that Avesta's only argument for differing end-uses is that manufacturers of welded pipe and specialized equipment relied on HRAP SSSS; however, petitioners note, the ITC found that such end-uses accounted for less than four percent of all SSSS sales. Petitioners assert that the ITC concluded that there is a limited market for HRAP SSSS and the vast majority of HRAP SSSS is produced and captively consumed for CR SSSS production, which supports a single like product (or class or kind) determination. Petitioners contend that Avesta failed to note that the limited number of end uses for HRAP also use CR in the same applications. According to petitioners Avesta's argument is misleading because it does not focus on end uses. Petitioners note that Avesta focuses on intermediate uses for HRAP but on end uses for HR. Finally, petitioners note that the end uses for the vast majority of SSSS are identical because the vast majority of SSSS is CR.

Regarding interchangeability, petitioners assert that while Avesta relies on surface conditions and dimensional tolerance, which are physical characteristics, that argument ignores the 94 percent of the market where HRAP is dedicated to producing CR SSSS. Petitioners argue that Avesta highlights the limited applications where HRAP is less substitutable for CR, while ignoring that CR is always substitutable for HRAP.

Regarding channels of distributions, petitioners note that Avesta acknowledges that distributors often handle sales of both products and that the same purchaser will purchase both HRAP and CR products. While petitioners agree with Avesta that weakness in one criteria is not dispositive, petitioners note that Avesta's weakness in several criteria here is dispositive.

Regarding production process, petitioners argue that while Avesta cited U.S. Customs Service rulings and NAFTA Rules of Origin, these rulings are not applicable nor controlling in the Department's class or kind inquiries. Petitioners contend that the Department considers the six factors noted with an eye to enforcement of the antidumping and countervailing duty law. Petitioners further assert that Avesta fails to acknowledge the Department's previous class or kind rulings for stainless steel flat products have uniformly concluded HRAP and CR SSSS are a single class or kind. Petitioners argue that it is important to realize that a significant portion of the production process for HRAP and CR are identical, such as melting, refining, casting, hot-rolling, annealing, and pickling. Petitioners maintain that CR SSSS is simply a further processed HRAP product and even then both are followed by similar processes, such as annealing, pickling, recoiling, etc. Petitioners also note that while Avesta states CR is performed in separate mills, this is a consequence of Avesta's operation and not a requirement as some producers make HRAP and CR in the same facility and as companies that produce HRAP also produce CR SSSS.

Regarding price, petitioners argue that while Avesta submitted a comparison of HR and CR prices, this comparison can be misleading and should not be relied on. Petitioners contend that Avesta's pricing analysis is by grade only, ignoring other critical physical characteristics, especially gauge. Also, petitioners note that, Avesta compared prices net of discounts, rebates, billing, and freight. Petitioners contend that, since Avesta claimed and the Department agreed in the Preliminary Determination that some of the HR merchandise is of Swedish origin, inclusion of non-subject merchandise in pricing comparisons is improper, and much of the pricing differences in Avesta's analysis may be caused by freight costs related to shipping merchandise between the United Kingdom and Sweden. Petitioners note that the ITC examined the issue of cost in its like product determinations, and concluded that, on average, cold-rolling represents 38 percent of the cost of finished, cold-rolled SSSS. Petitioners go on to state that the ITC acknowledged that the cost of cold-rolling can vary, depending on the finished product, and noted that a wide range of products with differing specifications are produced. Petitioners further assert that the ITC acknowledged that prices within CR types can vary significantly, yet Avesta has not argued for different classes for different CR products. Finally, petitioners note that while CR clearly adds value which is sometimes significant, the majority of value is added to products through the HRAP stage.

Department's Position: We agree with petitioners. In making class or kind determinations, we analyze the following criteria enunciated in the Diversified Products and Kyowa Gas cases: (1) The general physical characteristics; (2) the end use; (3) the expectations of ultimate customers; (4) the channels of trade; and (5) the manner in which the product is advertised or displayed. Of the criteria mentioned by Avesta, production process, interchangeability of products, and price are not part of this analysis. Indeed, while price is a criterion considered by the ITC in making a like product determination, it is not a factor evaluated by the Department in making its class or kind decisions.

When examining the general physical characteristics of products, the Department does not rely on mere physical differences. There must be a clear dividing line between different product types in order for the Department to find different classes or kinds. See Sulfur Dyes, Including Sulfur Vat Dyes from the United Kingdom: Final Determination of Sales at Less Than Fair Value, 58 FR 7537 (February 8, 1993). Avesta is correct that the cold-rolling will provide SSSS with a product that has closer dimensional tolerances and increased uniformity of surface. In addition, these products have different HTSUS and AISI codes. However, the respondent's focus on the relevance of dimensional tolerances and surface uniformity is misplaced. The most important characteristics of SSSS revolve around the grade of the product, the dimensional characteristics that it possesses, and its resistance to corrosion. These characteristics will dictate the relevant applications of the material. Regarding HRAP and CR SSSS, both products: (1) Are produced in the same stainless steel grades (*i.e.*, specific chemistries such AISI 304 or 316); (2) meet the dimensional characteristics outlined in the scope of this investigation, in many instances overlapping in thicknesses and widths; and (3) provide the same resistance to corrosion if produced to the same grade. The recognition of surface uniformity, close dimensional tolerance, and different classification headings in the HTSUS and AISI alone do not substantiate differences in physical characteristics that merit a separate class or kind. If the Department were to adopt Avesta's logic, there would be multiple classes or kinds of CR SSSS as different products have different levels of surface uniformity, dimensional tolerance, and result in different classification headings in the HTSUS. In addition, numerous other stainless steel orders include cold-finished and hot-finished products within the same class or kind (*e.g.,* stainless steel bar) despite the cold-finished product possessing many of the characteristics Avesta noted for CR SSSS. We did not recognize these products as a separate class or kind precisely for the reasons noted.

Regarding end use, Avesta focuses on the differences between HRAP and CR SSSS on specific applications such as HRAP SSSS being used for welded pipe applications. It also states that CR SSSS uses will be dictated by a demand for improved surface characteristics, finish, and/or dimensional tolerances. Again, Avesta fails to recognize that the relevant uses of SSSS are driven by the need for steel possessing specific dimensional characteristics and providing specific levels of resistance to corrosion. Since both HRAP and CR SSSS are produced in the same grades and overlap in dimensional characteristics, there is overlap in specific uses. Again, if the Department were to determine class or kind distinctions based on products possessing different surface characteristics, finish, or dimensional tolerances, it would be in the untenable position of recognizing hundreds of different grades of CR SSSS as different classes or kinds of merchandise because of the myriad of products produced, each intended for a unique, specific use.

Regarding expectations of customers, both HRAP and CR SSSS will satisfy the same basic requirements/needs of customers. Both products are primarily being sought because they possess the same specific chemical analysis that promote their resistance to the effects of environmental corrosion, and because they can possess overlapping dimensional characteristics.

Regarding channels of trade, both parties acknowledge that HRAP and CR SSSS are marketed through the same channels of distribution.

Regarding manner in which advertised, neither party addressed this issue in the context of the Diversified Products criteria, and there is insufficient information presented on the record that differentiates the manner in which HRAP and CR SSSS are advertised.

For the reasons stated above, we are continuing to treat HRAP SSSS and CR SSSS as one class or kind.

Comment 15: Flat Wire

Avesta argues that the Department should amend the definition of excluded flat wire to reflect the industry standard. Avesta notes that, in the Notice of Initiation (see Stainless Steel Sheet and Strip in Coils from France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom, 63 FR 37521, 37522 (July 13, 1998)), the Department invited comments on product coverage in these investigations. Avesta notes that in responding to this invitation on July 20, 1998, it commented that while ''flat wire'' was excluded from the scope, no definition was provided. Avesta states that it proposed that the Department adopt the industry standard for flat wire, as defined in the AISI Steel Products Manual, which notes a cold-rolled product, with a prepared edge, rectangular in shape, ½ inch or less in width, under ¼ inch in thickness. Avesta asserts that on July 29, 1998, petitioners stated that, with respect to an appropriate definition of the excluded flat wire, they agree with the comments on page 6 of Avesta's July 20 letter.

Avesta complains that despite petitioners' apparent endorsement of the AISI definition of flat wire, the Department rejected that definition in its Preliminary Determination. Avesta argues that, without any apparent discussion or explanation of its decision to adopt a different definition of flat wire than the one used by the industry, the Department amended the language excluding flat wire. Avesta maintains that no evidence appears to exist on the record of these investigations that supports or justifies this departure from the standard industry definition of flat wire. Avesta alleges that, because the Department's alternative flat wire definition is at odds with the product the stainless steel industry normally considers flat wire, it creates the potential for confusion on the part of foreign producers/exporters as to what is properly excluded. To minimize this problem, Avesta urges the Department to modify its flat wire exclusionary language to conform with the industry standard, as set forth in the AISI Steel Products Manual.

Petitioners argue that the Department should not amend the definition of flat wire from the Preliminary Determination. Petitioners emphasize that their July 29, 1998, letter, referenced by Avesta, noted that they agreed with the comments on page 6 of Avesta's July 20 letter, noting in particular, the importance of including in the definition a requirement that the material have a ''prepared edge''. Petitioners, upon further discussion with the U.S. industry, have determined that the Department's scope language for flat wire outlined in the preliminary determination is accurate and should be retained for the final determination. Petitioners cite The Making, Shaping, and Treating of Steel, 10th Edition (page 1012) as containing a definition of flat wire. Petitioners note that this publication states that ''flat wire normally is best produced in sizes up to 9.53 mm (3/8 inch)''. Petitioners urge the Department not to amend the scope language used in the Preliminary Determination, namely, flat wire is cold-rolled sections with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm.

Department's Position: We agree with petitioners. The development of the flat wire exclusion language is reflective of the petitioners' intent with respect to the scope language and a recognized industry publication listing the dimensional characteristics of this product and other stainless steel products. In the original petition, petitioners make no mention of the dimensional or physical characteristics of their flat wire exclusion. The Department carefully reviewed various publications, including The Making, Shaping and Treating of Steel and Design Guidelines for the Selection and Use of Stainless Steel. The latter publication notes in a table on page 19 that the width classification of stainless steel wire, including flat wire, is ''under 3/8″ (9.53 mm).'' We established a maximum width for flat wire that is reflective of these publications' dimensional width limitation. Petitioners have not requested that the Department amend the width limitations of the flat wire exclusion. In fact, they have acknowledged the suitability of this dimensional definition of flat wire, and that this maximum width level of the flat wire exclusion is an accurate reflection of the product for which they are not seeking relief. Therefore, based on these publications, and since petitioners are seeking relief for products in the scope as written in the Preliminary Determination, we are not revising the scope language for flat wire.

Issues Relating to Cost of Production

Comment 16: Major Inputs

Petitioners argue that the Department should apply adverse facts available to Avesta's COP given Avesta's failure to properly respond to the Department's cost questionnaires concerning major inputs. Petitioners assert that respondents did not provide market price data for inputs obtained from affiliated parties.

According to petitioners, the Department must apply the major input rule in calculating the cost of Avesta's major inputs, in accordance with section 773(f)(3) of the Tariff Act, which provides that, where transactions between affiliated parties involve a major input, the Department may value the major input based on the COP if the cost is greater than the amount that would be determined under section 773(f)(2) (*i.e.*, the higher of transfer price or market price). Petitioners contend that the Department is required to review purchases from affiliated parties of major inputs in order to determine that they reasonably reflect a fair market value.

Petitioners assert that Avesta failed to properly respond to the Department's questions concerning its major inputs. According to petitioners, Avesta indicated that, as a consolidated entity, it need not comply with the Department's questionnaire. Instead, petitioners note, Avesta stated that all its production facilities involved in producing subject merchandise are either part of the same legal entity, part of legal entities that will be collapsed and assigned one dumping margin, or units in the same operating division within the Avesta Sheffield Group. According to petitioners, Avesta further stated that, because all of its production facilities are affiliated within the Avesta Sheffield Group (''the Group'') and their accounts are ultimately consolidated with the Group, Avesta reported the actual costs for all facilities involved in the production of the merchandise under investigation.

Petitioners argue that Avesta's contention that the production facilities affiliated with the Group are ''one from an operational standpoint'' is irrelevant because several of the affiliated entities are not engaged in the production of the subject merchandise, but rather, produce the inputs used to make subject merchandise. Petitioners also state that these production facilities are separate legal entities. Petitioners assert that, in Pasta from Italy, the Department determined that the operational reality of the close association between two entities does not outweigh the legal form of the entities.

Petitioners contend that, given the numerous deficiencies and Avesta's ''non-responsiveness'' to the Department's questionnaires and requests, the use of adverse facts available for COP and CV is warranted for the Department's final analysis. They argue that the use of adverse facts available is appropriate because of Avesta's repeated failure to report the necessary market value for the major inputs (a critical element needed to gauge whether home market sales were made in the ordinary course of trade) and its failure to report the COP and CV data in the requested format by the Department (i.e., costs separated for the major inputs). Petitioners recommend the application of the highest COP and CV reported for each control number as the appropriate basis for facts available. Alternatively, according to petitioners, should the Department determine that Avesta's COP and CV response is acceptable for the final margin analysis, at a minimum the Department should apply the higher of the transfer price or cost of production for each grade of the major inputs involved.

Avesta argues that petitioners' argument is factually and legally unsound, and therefore, it should be rejected. Avesta contends that, with respect to market values for the two major inputs, the Department made no inquiries to which it failed to respond. Avesta indicates that its supplemental questionnaire states that it did not purchase either of the major inputs from unaffiliated suppliers, and that the accuracy of this response was reviewed and confirmed by the Department at verification. Avesta asserts that, because it purchased neither input from unaffiliated suppliers, it had no information as to their market values to provide the Department, and that market values can only be considered when such values are available. Avesta claims that it fully complied with the Department's reporting requirements by providing only the COP and transfer prices for each of the major inputs. For these reasons, asserts Avesta, no adverse inferences reasonably can or should be drawn by the Department in its final determination.

Avesta argues that record evidence reflects that Avesta consulted with the Department on the proper format for submitting the COP/CV information, and the result of those discussions was the company's submission of a chart comparing the costs and transfer prices of the two major inputs as a substitute for the initially requested COP/CV format. Avesta notes that the Department requested no further information, and that the accuracy of the reported information was reviewed and confirmed at verification. Avesta contends that no adverse inferences reasonably can or should be drawn by the Department as to the data provided because Avesta responded to the best of its ability to the request for data in a particular format. Also, Avesta argues that petitioners' recommendation that the Department perform its major input analysis on a grade-specific basis should be rejected. Avesta contends that it reasonably applied one methodology for all grades, and petitioners have not provided any evidence that this methodology materially distorts the reported COPs/CVs.

Department's Position: We disagree with petitioners that we should apply adverse facts available to Avesta's COP information. We find that Avesta has provided all necessary information regarding major inputs. Moreover, given that market price information was not available for the inputs in question, in valuing the major inputs, we have relied on the higher of transfer price or the affiliate's cost of production, in accordance with sections 773(f)(2) and (3) of the Tariff Act.

Sections 773(f)(2) and (3) of the Tariff Act specify the treatment of transactions between affiliated parties for purposes of reporting cost data (used in determining both COP and CV) to the Department. Section 773(f)(2) states 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. Under these circumstances, the Department may rely on the market price to value inputs purchased from affiliated parties. Section 773(f)(3) states that if transactions between affiliated parties involve a major input and the cost of the major input is greater than the amount that would be determined under section 773(f)(2) (*i.e.*, the higher of the transfer or market price), the Department may value the major input on the basis of the information available regarding its COP. Additionally, 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 (see, *e.g.*, Stainless Steel Plate in Coils From South Africa: Notice of Final Determination of Sales at Less Than Fair Value, 64 FR 15459, 15474 (March 31, 1999); Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany: Final Results of Antidumping Duty Administrative Review, 63 FR 13217, 13218 (March 18, 1998), and Silicomanganese from Brazil; Final Results of Antidumping Duty Administrative Review, 62 FR 37869, 37871 (July 15, 1997). In addition,19 CFR 351.407(b) further instructs the Department to determine the value of a major input based on the higher of: (1) The price paid to the affiliated party (*i.e.*, transfer price), (2) the market price, or (3) the cost of the affiliated party to produce such input.

We find that Avesta provided to the Department all the necessary and requested information regarding major inputs. On December 18, 1998, we requested in a supplemental questionnaire that Avesta provide, among other items, COP and CV databases with separate fields for each of the major inputs. On January 4, 1999, Avesta responded that it would not be able to provide these databases by the deadline requested. We consented to this delay under the condition that Avesta answer related questions in the supplemental questionnaire, and include a chart comparing transfer price and cost, by grade, for each of the major inputs. In addition, we asked that Avesta provide an alternative proposal on how to apply any major input adjustments, which may be necessary to the submitted cost database, prior to the cost verification (see Memorandum from Charles Rast and Nancy Decker to The File, January 7, 1999). Avesta provided the requested chart and appropriately answered the related questions. Although the company did not provide the alternative proposal, we found, as a result of verification, that no major input adjustments are necessary, and therefore, the alternative proposal is not needed. See Cost Verification Report at 15–16 and Final Analysis Memorandum.

As noted in the Cost Verification Report at 15, Avesta did not purchase major inputs from unaffiliated companies during the POI. Therefore, in applying 19 CFR 351.407(b)(2), we find that there is no market price available. Accordingly, we have relied upon the higher of the affiliated party's cost of production of the major input or the transfer price of that major input. The Department made a similar decision in the Final Results of Antidumping Duty Administrative Reviews: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom 62 FR 2081, 2115 (January 15, 1997).

Given that Avesta complied with our request for information by providing necessary COP and transfer prices of major inputs, and based on our verification findings confirming the accuracy of this information, we have relied upon the higher of cost of production or transfer price for the final determination, in accordance with section 773(f) of the Tariff Act and section 351.407(b) of the Department's regulations. See Final Analysis Memorandum.

Comment 17: Estimated Versus Actual COPs

Petitioners maintain that Avesta reported estimated COP for several control numbers in the home market. They argue that the Department should apply the highest reported cost to those control numbers that were reported as estimated costs. Petitioners assert that because Avesta did not provide actual costs for all control numbers, as requested in the Department's questionnaire, adverse facts available should be applied. They state that Avesta should not be rewarded for providing an inaccurate cost response. Petitioners indicate that as facts available, the Department should add to the COM the revised interest expense and highest reported G&A expenses.

Avesta disagrees, contending that it did report actual costs for all control numbers in its questionnaire responses. According to Avesta, each control number represented a product as defined by the physical characteristics identified by the Department in its questionnaire. Avesta maintains that, in preparing for its costs responses, it relied upon its normal accounting system. In this system, Avesta claims, which was verified by the Department, the company does not track costs for products at the same level of detail associated with each and every one of the physical characteristics identified by the Department. (See Cost Verification Report at 22.) Avesta indicated that, in calculating actual costs for the purposes of the responses, it calculated actual costs for the products identified from the actual cost information contained in its accounting system. Avesta notes that these costs were not estimates, but were rather actual costs contained in its accounting system calculated to comply with the Department's reporting requirements. Thus, Avesta urges the Department to reject petitioners' argument and rely upon its reported costs for the final determination.

Department's Position: We agree with Avesta. At verification, we examined Avesta's books and records kept in the ordinary course of business. We confirmed that Avesta does not have standard costs for all products at the same level of detail associated with each physical characteristic identified by the Department. In cases where a control number did not have a standard cost because there were no products with identical physical characteristics, Avesta used the standard cost of the product with the closest possible match containing the most similar physical characteristics. (See Cost Verification Report, at 22–23.) This standard was then adjusted for variances and an actual cost of the control number for the POI was calculated. Based on our verification findings in this case, we find that Avesta's methodology for calculating actual costs of a control number that did not have a standard cost in the normal accounting system is reasonable. For the final determination we have thus relied upon Avesta's costs as reported.

Comment 18: Interest Expense

Both petitioners and Avesta comment in their case briefs and rebuttal briefs on whether it may be appropriate to use British Steel PLC's consolidated profit and loss statement for the calculation of interest expense, given that Avesta is a consolidated subsidiary of British Steel PLC. Petitioners argue that the Department should recalculate interest expense based on British Steel's consolidated profit and loss statement, rather than using Avesta Sheffield AB's (AS AB—ASL's parent company) consolidated profit and lost statement, because Avesta is a consolidated subsidiary of British Steel PLC. They state that it is the Department's normal methodology to calculate interest expense at the highest consolidated level. (See Stainless Steel Round Wire From Canada: Final Determination of Sales at Less Than Fair Value, 64 FR 17324, 17334 (April 9, 1999) (Stainless Steel Round Wire).)

Petitioners also argue that the Department should not adjust British Steel's interest expense for ''other interest receivables,'' as Avesta did not provide any supporting documentation demonstrating its position that these receivables were short-term in nature. Petitioners note that Avesta's treatment of these receivables is based on its assumption as to their short-term nature. Because AS AB is 51 percent owned by British Steel PLC, petitioners discount Avesta's position that AS AB did not have access to the confidential accounting records of British Steel PLC, and that the only information it had was that which was contained in published annual accounts. They state that there is no requirement in the law that a respondent must be able to verify public information issued by its parent company. Petitioners note that presumably British Steel's auditors have certified the accuracy of its financial statements.

Avesta contends that, because British Steel's interest rate is not relevant to Avesta, and because Avesta does not have access to the proprietary information necessary to verify the figures reported in British Steel's profit and loss statement, the Department should use AS AB's consolidated income statement as the basis for calculating the interest expense ratio in the final determination. Avesta states that the Department traced the cost of sales, interest expense, and interest income ratio used in this interest expense ratio to AS AB's consolidated income statement. Avesta notes that it recalculated net interest expense, however, based on British Steel PLC's consolidated profit and loss statement pursuant to the Department's supplemental questionnaire. Avesta observes that this recalculation showed a net interest expense of zero for the POI. Avesta reiterates that it has no access to the confidential records of British Steel PLC; therefore, it based its recalculation on the information contained in British Steel PLC's published annual accounts.

Avesta asserts that the use of British Steel PLC's data is incorrect because AS AB has its own borrowings and does not receive financing from British Steel. A second reason this approach is incorrect, according to Avesta, is because it has no means to confirm the accuracy or source of the data British Steel chose to make public. Avesta concludes that the Department's decision that Avesta should base its interest expense ratio on British Steel's data puts the company at a significant disadvantage.

Department's Position: We agree with petitioners that interest expense should be calculated using British Steel PLC's consolidated profit and loss statement. Both before and after the URAA amendments, the Department has consistently used the financing expenses incurred by a parent company on behalf of a consolidated group of companies to determine a particular company's net interest expense. For example, in Final Determination of Sales at Less Than Fair Value: Certain

Carbon Steel Butt-Weld Pipe Fittings From Thailand, 60 FR 10552 (February 27, 1995), the Department followed its long-standing practice and calculated the interest expense component of COP based upon the interest expense of the parent entity of a consolidated group of companies, rather than the individual company responsible for the production of the product at issue. In so ruling, the Department reasoned that capital was fungible and that the parent company's capital was used to fund all of the operations of the consolidated company and could not be segregated. See also Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands: Final Results of Antidumping Administrative Review, 62 FR 38059, 38060 (July 16, 1997). The CIT affirmed various aspects of this long-standing practice. *See E.I. Dupont de Nemours* v. *United States*, Court No. 96–11–02509, Slip Op. 98–7 at 6–8 (CIT January 28, 1998) (affirming the Department's use of the parent's consolidated statements, where evidence cited did not overcome the presumption of corporate control); *Gulf States Tube Div.* v. *United States*, Court No. 95–09–01125, Slip Op. 97–124 at 34–43 (CIT August 29, 1997) (the Department's calculation of interest expense derived from borrowing costs incurred by a consolidated group was reasonable where the parent company's majority ownership was *prima facie* evidence of control over the subsidiary); New Minivans from Japan, 57 FR 21946 (May 26, 1992) (Comment 18); Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review, 55 FR 3141, 31418, (August 2, 1990) (Comment 22). In calculating interest expense, therefore, we have used British Steel PLC's consolidated profit and loss statement.

It is the Department's practice to allow a respondent to offset (*i.e.*, reduce) financial expenses with short-term interest income earned from the general operations of the company. See *e.g.*, Timken v. United States, 852 F. Supp. 1040, 1048 (CIT 1994); see also Static Random Access Memory Semiconductors From Taiwan: Final Determination of Sales at Less Than Fair Value, 63 FR 8909, 8933 (February 23, 1998). In calculating a company's cost of financing, we recognize that, in order to maintain its operations and business activities, a company must maintain a working capital reserve to meet its daily cash requirements (*e.g.*, payroll, suppliers, etc.) The Department further recognizes that companies normally maintain this working capital reserve in interest-bearing accounts. The Department, therefore, allows a company to offset its financial expense with the short-term interest income earned on these working capital accounts. Since British Steel PLC's financial statements do not identify the nature of interest income on its profit and loss statement, we have compared, as facts available, British Steel PLC's liquid assets to its total assets and have assumed that the ratio of liquid assets to total assets represents the ratio of short-term interest income to total interest income because liquid assets by their very nature are short-term assets. Therefore, we have used this percentage of total interest income to offset interest expense. See Final Analysis Memorandum.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Tariff Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from the United Kingdom that are entered, or withdrawn from warehouse, for consumption on or after January 4, 1999 (the date of publication of the Preliminary Determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)
Avesta Sheffield	14.84
All Others	14.84

International Trade Commission Notification

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

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Tariff Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13675 Filed 6–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–825]

Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany

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

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Ranado, Stephanie Arthur, or Robert James at (202) 482–3518, (202) 482–6312, or (202) 482–5222, respectively, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (April 1, 1998).

Final Determination

We determine that stainless steel sheet and strip in coil (stainless sheet in coil) from Germany are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

We published in the **Federal Register** the preliminary determination in this investigation on January 4, 1999. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Germany, 64 FR 92 (Preliminary Determination). Since the December 18, 1998 disclosure of the Preliminary Determination the following events have occurred:

On December 28, 1998, KTN timely submitted an allegation of significant ministerial errors with respect to the preliminary determination. Petitioners (Allegheney Ludlum Corp., Armco, Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corp., United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization) also alleged a single significant ministerial error on December 29, 1998. Both interested parties requested that we correct the errors and publish a notice of amended preliminary determination in the **Federal Register**. See 19 CFR 351.224(e). After reviewing both parties' allegations we determined that the errors, considered collectively, were not significant, as defined at 19 CFR 351.224(g) of the Department's regulations. See Memorandum For the File; ''Antidumping Duty Investigation of Stainless Steel Sheet and Strip in Coils From Germany; Analysis of Ministerial Error Allegations,'' January 15, 1999 (Ministerial Errors Memorandum), on file in room B–099 of the main Commerce building. We have addressed the specific errors under ''Facts Available'' and Comment 31, below.

KTN submitted supplemental questionnaire responses on January 6, 1999 (sections B and C), January 15, 1999 (section E), January 22, 1999 (section E), and February 17, 1999 (section C).

The Department verified sections A (General Information), B (Home Market Sales) and C (U.S. Sales) of KTN's response January 18 through 22, 1999 at KTN's headquarters in Bochum, Germany. See Memorandum for the File; ''Home Market Sales Verification of Krupp Thyssen Nirosta, GmbH (KTN)'', March 1, 1999 (KTN Sales Verification Report). Between January 25 and January 29, 1999, we verified KTN's section D (Cost of Production) questionnaire response; see Memorandum to Neal Halper, Acting Director, Office of Accounting; ''Verification of the Cost of Production and Constructed Value Submissions of Krupp Thyssen Nirosta GmbH,'' March 15, 1999 (KTN Cost Verification Report). Public versions of these, and all other Departmental memoranda referred to herein, are on file in room B–099 of the main Commerce building.

We also conducted verification of KTN's Section C response at the offices of its wholly-owned U.S. affiliate, Krupp Hoesch Steel Products, Inc. (KHSP) in Atlanta, Georgia from February 8 through 11, 1999. See Memorandum to the File; ''U.S. Verification of Krupp Thyssen Nirosta (KTN),'' March 5, 1999 (KHSP Verification Report). Finally, we verified the Section C and Section E (Further Manufacturing) information submitted by KTN's affiliated U.S. processor and reseller. As the firm's identity and location have been afforded business proprietary status by the Department, we refer to this entity herein as ''U.S. Reseller.'' See Memorandum to the File; ''Verification of the Information Submitted by * * * (Reseller),'' March 15, 1999 (Reseller Sales Verification Report), and Memorandum to Neal Halper; ''Verification of the Cost of Further Manufacturing performed by [U.S. Reseller],'' March 18, 1999 (Reseller Cost Verification Report).

On March 23, 1999, the Department requested historical data on KTN's monthly shipments of subject stainless sheet in coil into the United States to assist in rendering our final determination of critical circumstances (see below). KTN submitted the requested information on April 2, 1999.

KTN and petitioners both requested a public hearing in this case (on January 22, 1999, and February 3, 1999, respectively). On March 23, 1999, petitioners and KTN filed their case briefs in this matter; both parties filed rebuttal briefs on March 30, 1999. The Department conducted a public hearing on April 9, 1999, a transcript of which is on file in the Central Records Unit.

Scope of the Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades.

See Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[5]

Period of Investigation

The period of investigation (POI) is April 1, 1997 through March 31, 1998.

Critical Circumstances

Section 733(e)(1) of the Tariff Act provides that if a petitioner alleges critical circumstances, the Department will determine, on the basis of the information available to it at the time, whether there is a reasonable basis to believe or suspect that (i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

less than its fair value and that there would be material injury by reason of such sales (see 733(e)(1)(A)(i) and (ii), and there have been massive imports of the subject merchandise over a relatively short period (733(e)(1)(B)).

In the Preliminary Determination we found that both criteria, i.e., knowledge of dumping and material injury and massive imports of subject merchandise, had been met by KTN and preliminarily found that critical circumstances exist. We have reconsidered our determination of critical circumstances as set forth in the Preliminary Determination, however. While we still find reasonable grounds to impute knowledge of less-than-fair-value sales to the importer, we have amended our calculation of massive imports from that applied for the Preliminary Determination. As explained in detail below, for purposes of this final determination we are no longer relying upon the publicly-available data on imports of subject merchandise from Germany as a whole supplied by the Census Bureau. Rather, we have relied upon the company-specific shipment data supplied by respondent KTN. Based on this information we find that there were not massive imports and, therefore, that critical circumstances do not exist. See our response to Comment 4, below.

Affiliation

As explained in the Preliminary Determination and immediately below, we find that for purposes of this investigation KTN is affiliated with Thyssen Stahl and Thyssen AG (Thyssen) and, through them, their affiliated sellers and steel service centers in Germany and the United States. The Tariff Act defines ''affiliated persons'' at section 771(33). Included within that definition are family members, any organization and its officers or directors, partners, and employer and employee. See section 771(33)(A) through (D). The statute also considers as affiliated persons—

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(G) Any person who controls any other person and such person.

Id.

''Control'' is defined as one person being ''legally or operationally in a position to exercise restraint or direction over the other person.'' The Statement of Administrative Action (SAA) which accompanied the Uruguay Round Agreements Act (see H. Doc. 316, Vol. 1, 103d Cong., 2d Sess. (1994)) explained that including control in an analysis of affiliated parties ''permit[s] a more sophisticated analysis which better reflects the realities of the market place.'' The SAA continues, ''[t]he traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm 'operationally in a position to exercise restraint or direction' over another even in the absence of an equity relationship.'' Id. at 838.

Finally, as the Department noted in its ''Explanation to the Final Rules'' (*i.e.*, its regulations), ''section 771(33), which refers to a person being 'in a position to exercise restraint or direction,' properly focuses the Department *on the ability to exercise 'control' rather than the actuality of control* over specific decisions.'' *Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27295, 27348* (May 19, 1997) *(Final Rule)* (emphasis added). Thus, the statute does not require that we find the actual exercise of control by one person over the other in order to find the parties affiliated; rather, the potential to exercise control is sufficient for such a finding.

In this final determination we continue to find that KTN is affiliated with Thyssen Stahl and Thyssen because Thyssen Stahl indirectly owns and controls, through Krupp Thyssen Stahl (KTS), forty percent of KTN's outstanding stock (the remaining sixty percent are controlled by Thyssen's joint-venture partner, Fried. Krupp. AG Krupp-Hoesch (Fried. Krupp)). Thyssen, which wholly owns Thyssen Stahl, likewise indirectly owns and controls forty percent of KTN. See Preliminary Determination, 64 FR at 95 and Memorandum to the File; ''Affiliated Party Sales,'' October 28, 1998 (Affiliation Memorandum).

In addition, we continue to find that KTN is affiliated with Thyssen's home market and U.S. sales affiliates because the nature and quality of corporate contact establish this affiliation by virtue of Thyssen's common control of its affiliates and of KTS. The record demonstrates that Thyssen, as the majority equity holder in, and ultimate parent of, its various affiliates, is in a position to exercise direction and restraint over the affiliates' production and pricing. As we stated in the Preliminary Determination, ''Thyssen's substantial equity ownership in KTN and Thyssen's other affiliates, in conjunction with the 'totality of other evidence of control' requires a finding that these companies are under the common control of Thyssen.'' Id. For a full discussion of KTN's affiliations see Comment 2, below, the Affiliation Memorandum, and Memorandum For the File; ''Antidumping Duty Investigation on Stainless Steel Sheet and Strip in Coils from Germany—Final Determination Analysis for Krupp Thyssen Nirosta, GmbH,'' May, 19, 1999 (Final Analysis Memorandum).

Facts Available

Section 776(a) of the Tariff Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), the facts otherwise available in reaching the applicable determination. See, e.g., Roller Chain, Other Than Bicycle Chain, From Japan, 63 FR 63671, 63673 (November 16, 1998). In this investigation the Department has determined, for the reasons stated in detail below, that KTN or its affiliates failed to provide necessary information and, in some instances, that the submitted information could not be verified. Therefore, pursuant to section 776(a) of the Tariff Act, we have determined that the use of the facts otherwise available is necessary in these instances.

However, the statute requires that certain conditions be met before the Department may resort properly to the facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Tariff Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by [the Department]'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

Finally, in selecting from among the facts otherwise available, section 776(b) of the Tariff Act permits the use of an adverse inference if the Department also finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' SAA at 870. Furthermore, ''an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' Final Rule, 62 FR at 27340. The statute continues by noting that in selecting from among the facts available the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record.

In accordance with section 776(a) of the Tariff Act, we have continued to use partial facts available in instances where KTN failed to provide the Department with requested sales information concerning certain affiliated resellers in the home market. See Preliminary Determination, 64 FR at 95 and 96. Further, pursuant to section 776(b) we find that KTN failed to cooperate to the best of its ability because it did not supply missing sales data, as demonstrated by its selective submission of Thyssen affiliates' data. Therefore, as adverse facts available for this final determination, as in the Preliminary Determination, we based normal value upon the highest reported gross unit price for each product sold to the affiliated parties, in lieu of the missing prices on downstream sales from the affiliated resellers to unaffiliated customers. We calculated the highest normal value (NV) reported by control number (CONNUM) in KTN's home market database and applied it to KTN's sales to its affiliates for which KTN did not report home market downstream sales. See Memorandum For the File; ''KTN Preliminary Analysis Memorandum,'' December 17, 1998 (Preliminary Analysis Memorandum).

With respect to sales in the United States, we have determined that in accordance with section 776(b) of the Tariff Act the use of adverse facts available is appropriate for five previously unreported U.S. sales KTN disclosed to the Department during the verification of KHSP (see Comment 10, below). As adverse facts available we assigned the highest non-aberrational margin (as explained immediately below) to these transactions.

In addition, as explained in response to Comments 19 and 20, we have determined that we must resort to the facts available with respect to the sales and further-manufacturing data submitted by U.S. Reseller. At verification we discovered numerous and systemic errors, some of which cannot be corrected, in the data used by U.S. Reseller to report its costs of further manufacturing of subject merchandise. These errors included, inter alia, the failure to match properly input coils and output finished products, the allocation of processing costs to sales which had undergone no further processing whatever, and cases where the quantities of output goods exceeded the inputs. The vast majority of the subject merchandise sold through U.S. Reseller was first further processed by this company; therefore, the deficiencies in its data affect a corresponding percentage of U.S. Reseller's submitted sales data. Furthermore, the mis-allocations not only affected U.S. Reseller's reported sales which had been subject to further processing, but through the allocation of processing costs to the non-further-processed sales tainted this portion of its database as well. In addition, U.S. Reseller failed to identify the producer of a significant portion of its sales in the United States, and failed to report physical criteria vital to our model matching for certain other transactions. As the breadth and depth of the discrepancies leave us with no confidence in the underlying further-processing data submitted by the U.S. Reseller, we have determined that these data cannot serve adequately as a basis for calculating KTN's overall weighted-average margin. Further, the information required to correct the flaws in U.S. Reseller's data is not on the record of this proceeding; therefore, the use of total facts available is necessary (see section 782(e)). Finally, the record indicates that U.S. Reseller could readily have discovered and corrected the majority of these errors prior to submitting its data to the Department and, at the latest, prior to verification.

Accordingly, as provided in section 776(b) of the Tariff Act, we find that U.S. Reseller has failed to cooperate by not acting to the best of its ability in responding to the Department's requests for information. Therefore, we have drawn an adverse inference for the entirety of the data submitted by U.S. Reseller. As adverse facts available we have assigned the highest non-aberrational margin calculated for this final determination, to the weighted-average unit value for sales reported by U.S. Reseller. To determine the highest non-aberrational margin we examined the frequency distribution of the margins calculated from KTN's reported data. We found that the margins for nearly 10 percent of KTN's transactions fell within a specific range of percentages (see the Final Analysis Memorandum for the exact figures); we selected the highest of these as reflecting the highest non-aberrational margin. We then multiplied the resulting unit margin by the total quantity of resales of subject merchandise by U.S. Reseller. See the Final Analysis Memorandum. This total quantity includes that material affirmatively verified as being of KTN origin, as well as a portion of the merchandise of unidentified origin allocated to KTN. To apportion the unidentified sales among the investigations of stainless sheet in coil from Germany, Italy and Mexico (see Comment 20, below) we have adjusted the quantity for each of the unidentified sales on a pro rata basis, using the verified percentages of U.S. Reseller's merchandise supplied by each of the three respondent mills. We then applied the facts-available margin to these unidentified sales transactions as explained above.

Finally, as we explained in our Ministerial Errors Memorandum, we inadvertently relied upon a home market sales data base which did not include the gross unit prices recalculated as facts available for sales to certain affiliated home market resellers. Thus, the decision to rely on facts available with respect to KTN's home market downstream sales had no effect in the Preliminary Determination. Therefore, we have corrected the programming language to include the gross unit prices adjusted for the application of facts available in our final calculations. See Ministerial Errors Memorandum at 3 and 4.

Fair Value Comparisons

To determine whether KTN's sales from Germany to the United States were made at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Tariff Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

Transactions Investigated

In the Preliminary Determination we relied upon KTN's invoice date as the date of sale in both markets, in keeping with the regulatory preference for using the invoice date as the date of sale and because there were no facts in this investigation that would warrant selection of a different date. See 19 CFR 351.401(i). As explained in response to Comment 1, below, for this final determination we have continued to rely upon KTN's invoice dates as the date of sale in both the home and U.S. markets.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, and as explained in the Preliminary Determination, we determine that one level of trade (LOT) exists in the home market for KTN's sales. We also have determined that KTN's U.S. sales take place at two LOTs, one comprising KTN's factory-direct EP sales, and the other KTN's three channels of distribution for its CEP sales (i.e., ''back-to-back'' sales through KHSP, consignment sales through KHSP, and sales of ''secondary quality'' merchandise, also through KHSP).

In addition, we continue to find that KTN's EP sales and its home market sales were at the same LOT, while KTN's CEP sales were at a different LOT. Because these CEP sales were at a different LOT than KTN's home market sales, we examined whether a LOT adjustment may be appropriate. However, as KTN sold to a single LOT in the home market, we have no basis upon which to determine whether there is a pattern of consistent price differences between levels of trade. Further, we do not have the information which would allow us to examine pricing patterns of KTN's sales of other similar products and there is no other record evidence upon which such an analysis could be based. Therefore, we have continued to allow a CEP offset, in accordance with section 773(a)(7)(B) of the Tariff Act. See Preliminary Determination, 64 FR at 97.

Export Price and Constructed Export Price

KTN reported as EP transactions certain sales of subject merchandise sold to unaffiliated U.S. customers prior to importation without the involvement of its affiliated company, KHSP. KTN reported as CEP transactions its sales of subject merchandise sold to KHSP for its own account. KHSP then resold the subject merchandise after importation to unaffiliated customers in the United States.

Also, because KTN was unable to demonstrate for the record that it was not in the position to collect downstream sales information from its U.S. affiliates, based on record evidence we requested that KTN report its downstream sales made in the United States (see Memorandum to Richard Weible, ''Limited Reporting of Home Market and United States Sales,'' November 13, 1998) (Limited Reporting Memorandum).

We calculated EP in accordance with section 772(a) of the Tariff Act for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and where CEP methodology was not otherwise warranted based on the facts of record. We based EP on the packed, delivered, tax and duty unpaid price to unaffiliated purchasers in the United States. We made deductions for billing adjustments and movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight and foreign inland insurance.

We calculated CEP, in accordance with subsections 772(b) of the Tariff Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on the packed, delivered, duty paid or delivered prices to unaffiliated purchasers in the United States. We made adjustments for price-billing errors, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, marine insurance, U.S. customs duties, U.S. inland freight, foreign brokerage and handling, international freight, foreign inland insurance, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs, warranty expenses and other direct selling expenses), inventory carrying costs (ICCs), and indirect selling expenses (ISEs). We offset credit expenses by the amount of interest revenue on sales. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Tariff Act.

Finally, we made the following changes in our calculation of EP and CEP in the Preliminary Determination based on information discovered at verification or after analysis of comments by the interested parties:

We recalculated marine insurance, foreign inland insurance, other transportation charges, and U.S. duty expenses to reflect corrections presented at the start of verification. See KTN Verification Report at 2 and KHSP Verification Report at 1 and 2. We also adjusted ocean transportation for shipments to specific points by an affiliated carrier to reflect arm's-length freight rates (see Comment 16, below). In addition, we made a number of changes to our calculation of U.S. credit expenses and inventory carrying costs to reflect the verified interest rates, to ensure use of the proper shipment date for certain CEP re-sales, and to correct the time in inventory to capture the time the merchandise was at sea (see Comments 12, 13, and 14). We adjusted indirect selling expenses (ISEs) for certain U.S. sales made through an affiliated reseller located in Germany (see Comment 11). We also adjusted ISEs for CEP sales through KHSP to reflect its correction at verification (see KHSP Verification Report at 2 and Exhibits 1 and 8). Finally, we reclassified specific observations from KTN's CEP and its ''non-U.S.'' sales listings, as appropriate, to include U.S. sales or exclude transshipments. Id.

With respect to subject merchandise to which value was added in the United States by U.S. Reseller prior to sale to unaffiliated customers, as explained above, we have applied the facts available in accordance with section 776(b) of the Tariff Act.

Affiliated-Party Transactions and Arm's-Length Test

We excluded from our analysis any sales to affiliated customers in the home market not made at arm's-length prices because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102. To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c). In instances where no price ratio could be calculated for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. See, e.g., Certain Cold-Rolled

Carbon Steel Flat Products from Argentina, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B)(i) of the Tariff Act. As KTN's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

We made a number of changes to our calculation of NV from the Preliminary Determination either based upon our findings at verification or in response to comments by the interested parties. At verification we found that KTN had understated its home market early payment discounts; we adjusted the discounts accordingly (see KTN Sales Verification Report at 1. KTN also indicated that it had inadvertently understated home market warranty expenses by a factor of 10 (see id.); we have recalculated these expenses to correct the error. We also corrected KTN's technical service expenses for sales of precision strip sales to apply the expense ratio calculated for precision strip products. In addition, we recalculated rebates for sales by NSC using the corrected percentage supplied at verification (id., see also Comment 9, below). NSC also overstated its average days in inventory in calculating ICCs; we adjusted this calculation appropriately. Furthermore, we corrected the reported sale dates for certain NSC transactions. See KTN Sales Verification Report at 1. Finally, we amended our model-match language to correct a ministerial error in reading KTN's reported finish and gauge codes (see Comment 31).

Cost of Production (COP) Analysis

Based on a cost allegation filed by the petitioners, the Department investigated whether KTN's sales of the foreign like product were made at prices which represent less than the cost of production. In accordance with section 773(b)(3) of the Tariff Act, we calculated the weighted-average COP based on the sum of KTN's cost of materials and fabrication for the foreign like product, plus amounts for selling and general and administrative (G&A) expenses and packing costs. In response to comments of the interested parties, we made the following changes to KTN's COP data:

We adjusted KTN's G&A expense rate by including the costs of international projects, year-end adjustments, and personnel costs of KTN's affiliated home market processor and reseller, Nirosta Service Center (NSC) (see Comment 23). In addition, we based our allocation of G&A expenses on KTN's total cost of manufacture (TCOM), rather than on processing costs alone, as reported by KTN (see Comment 24).

In calculating KTN's financial expenses we included exchange rate losses of Fried. Krupp, while excluding its exchange rate gains; we also included an offset to total interest expenses of Fried. Krupp's short-term interest income less the amount attributable to trade receivables (see Comment 25).

Where KTN's reported transfer prices for purchases of nickel from an affiliated party were not at arm's length, we increased these prices to represent prevailing market prices (see Comment 27).

Finally, we disallowed KTN's claim to treat NSC's processing costs as a direct selling expense, treating these instead as a component of KTN's fully-captured variable cost of manufacture (VCOM); accordingly, the processing costs reported for sales by NSC have been included in KTN's COP, rather than deducted from NV as selling expenses (see Comment 6).

Where possible, we used KTN's reported COP amounts, adjusted as discussed above, to compute weighted-average COPs during the POI. We compared the product-specific weighted-average COP figures to home market sales of the foreign like product, as required under section 773(b) of the Tariff Act, in order to determine whether these sales had been made at prices below COP. We compared the COP to the home market prices, less any applicable movement charges and discounts. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made (i) in substantial quantities over an extended period of time, and (ii) at prices which permitted the recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C)(i) of the Tariff Act, where less than twenty percent of KTN's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where twenty percent or more of its sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time, in accordance with sections 773(b)(2)(C)(i) and 773(b)(2)(B) of the Tariff Act. Because we used POI average costs, pursuant to section 773(b)(2)(D) of the Tariff Act, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product. When there were no home market sales of identical or similar merchandise in the home market available to match to U.S. sales, we compared the CEP to CV in accordance with section 773(a)(4) of the Tariff Act.

Our cost test for KTN revealed that less than twenty percent of KTN's home market sales of certain products were at prices below KTN's COP. Therefore, we retained all such sales in our analysis. For other products, more than twenty percent of KTN's sales were at below-cost prices. In such cases we disregarded the sales that failed the cost test, while retaining the above-cost sales for our analysis. See KTN Final Analysis Memorandum.

Constructed Value

In accordance with section 773(e)(1) of the Tariff Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, interest expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A and profit on the amounts incurred and realized by KTN in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. We used the CV data KTN supplied in its section D supplemental questionnaire response, except for the adjustments made for COP, described above.

Price-to-Price Comparisons

We calculated NV based on FOB or delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length prices. We made adjustments for price billing errors, where appropriate. We made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B) of the Tariff Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Tariff Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Tariff Act.

To the extent practicable, we based NV on sales at the same level of trade as the EP or CEP transactions. Finally, because KTN's sales to its home market affiliates represented more than five percent of its total home market sales, for certain of its home market affiliates we requested that KTN report its affiliates' downstream sales (i.e., sales made by the affiliate). See Limited Reporting Memorandum.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. Where we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Tariff Act based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Analysis of Interested Party Comments

Comment 1: Date of Sale

In the Preliminary Determination the Department relied upon KTN's invoice date as the date of sale in both the home and U.S. markets, in keeping with the Department's regulatory preference for using the invoice date as the sale date absent evidence ''that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' 19 CFR 351.401(i). Petitioners and KTN both presented direct arguments in their respective case briefs concerning the proper date of sale for this final determination.

KTN urges the Department to continue using the invoice date as the date of sale. Such a position, KTN submits, would be consistent with the Department's clear policy to rely upon the invoice date, a policy articulated in several cases including Carbon Steel Pipes and Tubes From Thailand, 63 FR 55578, 55587 (October 16, 1998) (Pipes From Thailand). KTN insists that it has provided compelling data in support of using the invoice date as date of sale. According to KTN, these data include precise figures on the frequency of changes to the essential terms of sale (including price and quantity) following the order confirmation date. KTN insists further that it provided supporting documentation of these claims during the Department's home market and U.S. verifications, and asserts that the Department reviewed this documentation at verification noting no discrepancies. ''In contrast,'' KTN concludes, ''[p]etitioners have failed to provide any evidence to support their argument that order confirmation date would be a more appropriate date to use for the date of sale.'' KTN's Case Brief at 40.

Petitioners assert that the proper date of sale is the order confirmation or, if available, the change order date. Petitioners insist that KTN has not established that the invoice date should serve as the date of sale in this proceeding, relying instead upon an ''over-simplification'' of the Department's regulations on this issue. Petitioners Case Brief at 3. Citing Pipes From Thailand and Circular Welded Non-Alloy Steel Pipe From the Republic of Korea, 63 FR 32833 (June 16, 1998) (Korean Steel Pipe), petitioners note that the Department is afforded great latitude in selecting a sale date other than the invoice date if ''the record evidence demonstrates that the material terms of sale, i.e., price and quantity, are established on a different date.'' Id., quoting Pipes From Thailand. In an industry where merchandise is produced to order, petitioners argue, and where significant lag times separate the order date and the subsequent invoice date, the Department's date-of-sale determination can have a critical impact upon the dumping calculations. The vast majority of KTN's sales, petitioners note, were produced to order.

Petitioners dismiss KTN's documentation supporting the use of invoice date as either unsubstantiated or indefensible. Id. at 5. For example, petitioners dismiss as unsupported by record evidence KTN's claims concerning changes in quantity between the original order date and the invoice date. As a preliminary matter, petitioners accuse KTN of concealing its practices with respect to ''delivery tolerances'' (i.e., pre-determined levels by which the weight of a shipment may fall above or below the ordered quantity and still satisfy the contractual terms of sale) in order to exaggerate the frequency of changes in quantity between the original order date and invoice date. According to petitioners, KTN first denied its use of delivery tolerances altogether, only to acknowledge at the Department's various sales verifications that, in fact, it relies upon an ''industry standard'' delivery tolerance of plus or minus ten percent of the ordered mass. Petitioners' Case Brief at 7. More to the point, petitioners aver, a standard ten percent tolerance cannot serve as a meaningful benchmark for measuring changes in quantity because common practice in the steel industry allows for negotiated tolerances in excess of the standard ten percent. Petitioners point to a statement by KTN's sister company Mexinox, a respondent in the companion investigation of stainless steel sheet and strip in coils from Mexico (investigation number A–201–822) that customers may agree to accept quantities above or below those called for under the nominal delivery tolerance. Id. at 8, citing Mexinox's October 29, 1998 supplemental questionnaire response at 17. Petitioners suggest that because KTN uses both standard and special negotiated delivery tolerances in its normal course of business, any claims concerning quantity changes which fail to account for the latter are without merit, as such changes were clearly anticipated in the original sales agreement. Petitioners' Case Brief at 10.

That issue aside, petitioners continue, KTN's purported analysis of data from its U.S. sales affiliate KHSP concerning changes in the essential terms of sale does not withstand scrutiny. Petitioners accuse KTN of building its case by means of data riven with a ''lack of proven representativeness, internal inconsistencies, citation to changes in items other than essential terms of sale, missing documentation, and a complete lack of discussion regarding the role of change orders.'' Petitioners' Case Brief at 10. First, petitioners aver, the Department did not select the January

1998 sales used by KTN for its analysis and did not select any other month for comparison. Therefore, the Department cannot accept KTN's sample as representative of the entire POI. Second, claim petitioners, the data include numerous internal discrepancies including conflicting or truncated order and invoice numbers that preclude tying the proffered order documentation to specific reported transactions. Third, petitioners contend, KTN's analysis included changes that, by definition, did not affect the essential terms of sale, i.e., price and quantity, including changes in payment terms. Further, petitioners maintain that other so-called changes included in KTN's analysis do not represent changes to an existing order but, rather, entirely new orders for completely different products. Petitioners Case Brief at 13. Fourth, petitioners suggest that many of KTN's claimed changes lack critical documentation, with conflicting order numbers and invoice numbers. Petitioners accuse KTN of mixing the orders and invoices between and among various sales to build its case that changes, in fact, took place. Id. at 14. More fundamentally, suggest petitioners, KTN's analysis of KHSP's January 1998 transactions inexplicably includes sales which are not included in KTN's CEP sales listing; other January 1998 transactions reported in KTN's CEP sales data are curiously absent from KTN's date-of-sale analysis. Petitioners accuse KTN of submitting an incomplete listing of its U.S. sales, further undermining the credibility of KTN's data. Id. at 15.

Citing a list of KTN's claimed changes in quantities, petitioners assert that the data indicate that these variances stemmed not from changes between order and invoice, as claimed by KTN but, rather, (i) previously-negotiated delivery tolerances in excess of the standard ten percent, (ii) partial shipments made whole by a subsequent shipment of the balance of the order, or (iii) unreported change orders which served to modify and, thus, supercede the original order. Petitioners point to the Department's KHSP Sales Verification Report as demonstrating that KTN often met customer orders by shipping a portion of the order under one invoice number and completing the original order with a subsequent shipment issued under a second invoice. Petitioners suggest that KTN has represented as changes in quantity what, in fact, were merely partial or multiple shipments of the originally-ordered quantity, ''a pervasive and industry-wide practice.'' Petitioners' Case Brief at 19.

Petitioners further insist that without any explanation or quantification of change orders, KTN's statistics concerning the frequency of changes between order and invoice dates are meaningless. Id. at 20, citing 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 Belgium, 58 FR 37083, 37090 (July 9, 1993) (Belgian Carbon Steel Flat Products). Despite KTN's efforts to gloss the role of change orders, petitioners continue, the record clearly indicates that KTN relies upon change orders in its normal course of business and that KTN failed to consider these in pressing its case that the invoice date represents the only date when the essential terms of sale are conclusively known. According to petitioners, the Department recently addressed the importance of change orders in Certain Corrosion-Resistant Carbon Steel Flat Products From Japan, 64 FR 12951, 12957 (March 16, 1999) (Flat Products From Japan). In that case, petitioners suggest, the Department relied upon the respondent's order confirmation date as the date of sale, noting that any changes in the essential terms of sale were memorialized through the subsequent issuance of a revised order confirmation.

Even if one accepts KTN's self-selected and incomplete data for January 1998, petitioners aver, for a majority of these transactions the essential terms were, in fact, set at the order date; thus, ''the order confirmation date, and not the shipment date, best reflects when material terms of sale usually are established.'' Id. at 25, quoting Flat Products From Japan, 64 FR at 12958. As in Korean Steel Pipe, petitioners contend, KTN produces merchandise to order in the vast majority of cases; subsequently, there are significant lags between the order date and the eventual invoice date. Reliance upon KTN's reported invoice date, assert petitioners, would result in the Department's ''comparing home market sales in any given month to U.S. sales whose material terms were set months earlier—an inappropriate comparison for purposes of measuring price discrimination in a market with less than very inelastic demand.'' Id., quoting Korean Steel Pipe.

Petitioners point to other perceived problems with KTN's reported sales, accusing KTN of including in its home market sales data transactions with ''impossibly old'' order dates, some of which preceded the POI by many years. Petitioners insist that such transactions arose from long-term or ''periodic requirements'' contracts. However, as the record does not include any detail concerning KTN's contractual obligations, petitioners argue, the Department ''should resolve the confusion caused by KTN by concluding that order date, not invoice date, should serve as the date of sale * * *''. Petitioners blame KTN for sowing this confusion by reporting improperly the date of the original order as its order date, rather than the final order confirmation issued by KTN. Id. at 32 and 33.

Further distorting the Department's sales analysis, petitioners contend, is KTN's basing order dates on disparate events in the home and U.S. markets, relying upon the date of the customer's original purchase order for home market transactions, while using the later confirmation date for purposes of reporting U.S. order dates. This has the effect of further exaggerating the alleged lag between home market order date and confirmation date.

Once aberrant transactions, partial shipments, and changes involving non-essential terms of sale are disregarded, petitioners argue, KTN's own data indicate that changes occur in far fewer transactions than originally claimed by KTN. Given the gaps in the record, petitioners insist, the Department cannot accept KTN's proffered data as bona fide evidence that the invoice date should serve as date of sale. Petitioners' Case Brief at 26. Petitioners list the perceived failures in KTN's date-of-sale arguments, contending that the lack of credibility inherent in KTN's reporting requires the use of total adverse facts available. In the alternative, petitioners suggest, KTN's order confirmation date in both the home and U.S. markets should serve per se as the date of sale for this final determination. Id. at 37 through 40.

In rebuttal, KTN accuses petitioners of relying upon ''fabricated theories'' and mischaracterizations of KTN's business practices in their effort to undermine the integrity of the data provided by KTN to substantiate the use of invoice date as the date of sale. See ''Rebuttal Brief of Krupp Thyssen Nirosta GmbH, Krupp Hoesch Steel Products Inc.'' (KTN Rebuttal Brief), March 30, 1999, at 7. According to KTN, petitioners' arguments do not hold up in light of the record evidence; even if they did, KTN avers, the record would still support the use of invoice date as the date of sale. KTN insists that it has provided reliable and compelling evidence that the material terms of sale change frequently prior to the issuance of the invoice.

While stating that the burden of proof on this issue rests with petitioners, KTN nevertheless maintains that its sales data demonstrate that either price or quantity changed in a significant percentage of the U.S. sales included in its analysis of January 1998 transactions. The Department, KTN notes, reviewed these data at the verification of KHSP and noted no discrepancies. In their efforts to attack the credibility of the January 1998 analysis, KTN contends, petitioners cited examples of discrepancies without providing any context and have stretched these ''piecemeal arguments'' to substantiate spurious conclusions. KTN Rebuttal Brief at 10. As a preliminary matter, KTN insists that throughout this investigation it has not relied upon changes in alloy surcharges or quantities falling within the industry standard plus-or-minus 10 percent in its arguments for using the invoice date, thus rendering petitioners' comments both inaccurate and irrelevant. KTN also defends its use of KHSP's January 1998 sales data as especially suitable, claiming that it provided the largest sample for any month of the POI and because it fell late in the POI, thus allowing analysis of transactions where both the invoice and the order confirmation fell within the POI.

Furthermore, KTN continues, many of the perceived inconsistencies in KHSP's information stem from the latter's installation of a new computer system which became operational on January 1, 1998. Thus, all sales prior to January 1 reflect a customer invoice number identical to the invoice number issued by KTN's German affiliate Krupp Nirosta Export, GmbH (KNE) to KHSP, whereas order confirmation numbers reflected certain product codes. KTN's Rebuttal Brief at 15. Once KHSP's new SAP software was in place, KTN submits, all invoices bore a sequential number unique to KHSP; order confirmations numbers issued prior to January 1, but invoiced after January 1, would have the old numbering protocol overwritten by the new sequential SAP numbering system. KTN argues that ''[t]he numbering mechanisms, while different, are internally consistent and permit the tracing of sales transactions.'' Id. at 16 and 17.

KTN also rejects petitioners' charge that it included partial shipments against a single order in its reporting of changes in quantity. According to KTN, while the weights for individual coils posited by petitioners approximate the weight of coils shipped by KHSP to customers, the input master coil produced by KTN in Germany is twice as heavy. Thus, if available material to fill an order was short by as much as 10,000 pounds, KTN suggests, KHSP would negotiate with the customer to consider the order filled, rather than forcing KTN to roll an entire master coil to make up such a small difference. KTN Rebuttal Brief at 18 and 19.

With respect to KHSP's use of change orders, KTN contends that it has provided a copy of each existing change order applicable to any sale traced at verification or included in the January 1998 transactions (see KHSP Verification Exhibit 23). More importantly, claims KTN, not every change in the material terms of sale is memorialized through issuance of a new order confirmation. In some cases, changes in the terms of sale made after the order confirmation date are simply reflected in the invoice without the issuance of a change order. KTN Rebuttal Brief at 21. According to KTN, the sole case cited by petitioners as addressing the importance of change orders, Belgian Carbon Steel Flat Products, involved a fact pattern that was the polar opposite of KHSP's, where the Department only discovered at verification that where the essential terms of sale were altered after the initial confirmation, the respondent routinely issued change orders firmly establishing the terms of sales. Id. In contrast, argues KTN, at its U.S. verification the Department reviewed KHSP's ''compelling evidence'' concerning quantity and price changes and noted no discrepancies. Id.

Assuming that each of petitioners' contentions has merit, KTN continues, the remaining percentage of sales exhibiting changes in the material terms of sale would still be more than sufficient to warrant relying on the invoice date as date of sale. In Certain Internal Combustion Industrial Forklift Trucks From Japan, 62 FR 5592, 5611 (February 6, 1997), KTN suggests, the Department found that the invoice date best approximated the point at which material terms of sale were set in light of evidence of changes in only 4.3 to 7.5 percent of the respondent's transactions. KTN argues that even given petitioners' adverse assumptions the essential terms of KTN's sales changed with far greater frequency in the instant investigation. Furthermore, continues KTN, the Department cited the mere potential for changes as militating for the use of the invoice date. Therefore, KTN maintains, even if each of petitioners' arguments are on point, the Department's precedent favors continued reliance on the invoice date.

With respect to home market date of sale, KTN dismisses the allegedly aberrational lag times found in its home market sales listing, noting that for a significant majority of KTN's home market sales less than six months passed between the customer's order and the invoice date. KTN asserts that in a business where a customer places an order for shipments to be made at different times during the year, such lag times should be expected. KTN's Rebuttal Brief at 25.

In addition to its factual arguments, KTN contends that case precedent similarly supports the use of invoice date. For example, continues KTN, in Korean Steel Pipe, a case cited by petitioners, the Department noted the markedly different sales processes for U.S. and home market sales as supporting the use of the contract date over invoice date. KTN suggests that the instant case is easily distinguishable from Korean Steel Pipe; unlike the latter case, KTN's sales practices in both markets are essentially the same, with most transactions in both markets involving made-to-order merchandise. KTN's Rebuttal Brief at 27. KTN claims that other case precedent similarly supports use of invoice date. In Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada, 64 FR 2173 (January 13, 1999) (Flat Products From Canada), the Department opted for invoice date in light of quantity changes for a number of sales. The Department reached the same conclusion in Pipes From Thailand, KTN notes, owing once again to quantity changes between order and invoice dates. These precedents, KTN concludes, support the use of KTN's reported invoice date as the date of sale.

Department's Position: After a thorough review of the record we conclude that while petitioners raise a number of cogent arguments for using the order confirmation date as the date of sale, the weight of the record evidence supports using KTN's reported date of invoice as the date of sale for purposes of this final determination. The Department's regulations state that the invoice date will serve as the date of sale unless record evidence demonstrates ''that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' 19 CFR 351.401(i). ''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.'' Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea, 63 FR 13170, 13194 (March 18, 1998)

(Flat Products From Korea II). Furthermore, as the Department has noted, ''price and quantity are often subject to continued negotiation between the buyer and the seller until a sale is invoiced. * * * [a]s a practical matter, customers frequently change their minds and sellers are responsive to those changes.'' Final Rule, 62 FR at 27348. The Department further recognized that the buyer and seller themselves will often disagree as to when, precisely, the terms of sale were set: ''this theoretical date usually has little, if any, relevance. From their perspective, the relevant issue is that the terms be fixed when the seller demands payment (i.e., when the sale is invoiced).'' Id. at 27349.

Petitioners note correctly that the respondent is a mill which largely produces the merchandise under investigation to fill specific orders. Therefore, as petitioners see it, once the mill has scheduled the casting of stainless slab for rolling to a given stainless coil, little room remains for altering the essential terms of sale. Furthermore, as detailed below, petitioners point to lacunae in the evidence KTN has introduced to support the use of invoice date.

KTN, in turn, has provided evidence that the material terms of sale are subject to change at any time between the order confirmation and invoice dates and has indicated that not all such changes would be reflected in KTN's order confirmation. This is especially true of home market sales, where KTN's computerized production control system allows for entry of corrections to orders without generating new order confirmations. In addition, KTN has submitted for the record evidence of actual changes in the essential terms of sale between its written order confirmation and the subsequent invoice date.

We conclude that the record evidence in the instant proceeding supports use of the invoice date. First, it is clear that KTN's records and financial statements kept in its normal course of business do not recognize a sale until the invoice is issued and payment is demanded. See, e.g., the quantity and value sections of the KTN Sales Verification Report and KHSP Verification Report. Further, and perhaps more to the point, KTN presented numerous examples during the POI where either quantity or price or both changed after the order confirmation had been issued, but prior to the invoice date. See Home Market Verification Report at 32 and Exhibit 6–IV–A, and KHSP Verification Report at 17 and Exhibit 23. Thus, as we concluded in Flat Products From Korea II, ''there is no record evidence indicating that a date other than the invoice date is the date after which the essential terms of sale could not be changed.'' Id., 63 FR at 13195 (emphasis added).

Although petitioners have raised various concerns about KTN's date-of-sale data (see immediately below), we find, however, that even after considering these issues the totality of record evidence still suggests that KTN's invoice date is the appropriate date of sale, as it best represents the point at which the essential terms of sale ''are firmly established and no longer within the control of the parties to alter without penalty.'' Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany, 61 FR 38166, 38182 (July 23, 1996).

Turning now to the parties' specific comments, we do not subscribe to petitioners' views concerning the alleged ''unrepresentativeness'' of respondent's data. In our October 9, 1998 section A supplemental questionnaire we asked that KTN ''indicate the frequency of price, quantity, material specification, delivery terms and alloy surcharge changes between confirmation and final invoice.'' [6] When KTN responded it elected to rely upon a sampling of its home market and U.S. sales, describing its sampling methodology in detail. See KTN's October 23, 1998 section A supplemental response at 14. Sampling was necessary, KTN explained, given the burden of tracking each line item of each incoming order to its corresponding final invoice. To this end KTN selected the first quarter of 1998 for both home market and U.S. sales, and presented a further detailed analysis of each specific change involving its U.S. sales during the sample month of January 1998. We reviewed the documentation for both the U.S. and home market sales samples at verification and noted no discrepancies. See, e.g., KHSP Verification Report at 17.

Having raised no objections to the methodology adopted by KTN to address this issue, and having accepted and verified the proffered samples, it would be inappropriate for the Department at this point to reject these data and make assumptions adverse to KTN's interests because the Department failed to request that KTN provide an analysis of a different universe of transactions. Furthermore, and more importantly, we have no reason in this case to suspect that an analysis of a full quarter's sales in the home and U.S. markets, coupled with the line-item-by-line-item analysis of one month's sales in the U.S. market would not capture accurately KTN's experience throughout the POI. There are no factors such as, for example, a period of hyper-inflation during the POI, or an analysis of an industry subject to sharp seasonal fluctuations in sales, which would call into question the representativeness of the samples.

Petitioners assail the reliability of KTN's evidence of claimed quantity changes. In response to our direct question concerning the use of delivery tolerances KTN responded unequivocally that ''KTN's sales orders in the United States and KHSP's sales orders in the United States do not include pre-determined weight tolerances.'' KTN's October 23, 1998 section A supplemental response at 15 (emphasis added). However, record evidence indicates that KTN does, in fact, rely upon specific delivery tolerances which are subject to negotiation. KTN has consistently affirmed, and the Department has verified, that it did not include any quantity deviations falling within the standard plus-or-minus 10 percent range as constituting a change in quantity for purposes of its date-of-sale analysis. Nevertheless, the significance of that fact is attenuated if the negotiated tolerances for KTN's sales exceeded the 10 percent mark.

That said, however, because the record also does not indicate whether any sales analyzed for changes in quantity did involve negotiated tolerances in excess of the 10 percent standard, we have no evidentiary basis to disregard KTN's verified data or to assume that the claimed quantity changes arose, in whole or in part, from specially-negotiated quantity tolerances exceeding the standard plus-or-minus 10 percent threshold.

Petitioners' argument that at least some of the claimed changes in quantity arose from partial shipments against an order, rather than a change in quantity, has merit. KTN's rebuttal brief fails to address this charge head on. KTN points to a specific order-invoice combination drawn from its U.S. sales during the POI and suggests that the customer would agree to accept less than one half of the ordered quantity as fully satisfying the contractual terms of the original sales agreement. However, KTN does not claim that this is what happened with the specific transaction. Rather, KTN concludes that ''[t]his is precisely the

[6] Although the Department customarily equates ''essential terms of sale'' with price and quantity, it should be noted that this questionnaire included within the meaning of ''essential terms of sale,'' *inter alia,* delivery and payment terms.

type of situation where KTN would agree with the customer to view the order as filled.'' KTN's Rebuttal Brief at 19 (emphasis added). KTN has presented no evidence of any transaction where a customer actually released KTN from its obligation to supply the contractually agreed-upon quantity of merchandise, as stipulated in the original sales agreement. KTN's assertion that a customer would order a large quantity of merchandise, presumably in anticipation of its needs, and then accept less than half that amount as fully satisfying the original sales contract, is unsupported by record evidence. Furthermore, KTN's comments with respect to master coils *versus* slit coils are entirely inapposite with respect to the question of partial shipments by KHSP. The sales subject to our analysis involve the smaller coils cited by petitioners in their case brief, i.e., ''the coils that are sent to customers,'' not the much larger master coils produced by KTN in Germany. See KTN's Rebuttal Brief at 18. Thus, KTN's assertion that KTN in Germany would not roll a new master coil to fill an under-shipment of as much as 8,000 or 10,000 pounds sheds no light at all on whether or not KHSP would make good the shortfall by means of a second shipment of the outstanding quantity. This distinction is critical to KTN's rebuttal argument that the evidence supplied at Exhibit 23 did not include instances wherein KHSP filled an order by means of two or more shipments issued under separate invoices.

With respect to the role of change orders, however, we find petitioners' assertions are not borne out by the record evidence in this case. Petitioners' reliance upon Flat Products From Japan as supporting the use of order confirmation dates is misplaced. In Flat Products From Japan, the petitioners, in supporting the Department's use of respondent NSC's order confirmation date, noted that ''the record clearly shows that to the extent NSC and its customer made a significant revision to any material term of sales, there is an established mechanism for accomplishing the revision; specifically, * * * NSC issues a new or revised order confirmation.'' The Department agreed: ''[v]erification results indicate that the material terms of sale were established on the date of the order confirmation. Additionally, among the sales examined, we found no material changes to the order confirmation terms.'' Flat Products From Japan, 64 FR at 12958.

In contrast, in the instant investigation the Department confirmed at verification that many changes to the terms of KTN's sales, including changes involving price and quantity, are not memorialized through the generation of a new order confirmation or change order; KTN ''will not generate a second order confirmation unless (i) the customer requests it, or (ii) the change was ''substantial'.'' KTN Sales Verification Report at 32. Given the fluid nature of KTN's ordering system, which often allows changes to simply over-write the original terms, the record of this investigation does not suggest any discrete event, be it the original order confirmation or some other event prior to invoice date, where the essential terms of sale are conclusively known. Rather, the record indicates that the essential terms of sale can and do change subsequent to KTN's issuance of the original order confirmation, and that KTN employs no systematic means of capturing and documenting changes to its customers' orders. Contrast Belgian Carbon Steel Flat Products, 58 FR at 37090 (''[f]or only two of the 20 selected sales was there no order confirmation, thus calling into question Sidmar's claim that order confirmation records are not maintained''). As the Department has noted, ''the negotiation of a sale can be a complex process in which the details often are not committed to writing. In such situations, the Department lacks a firm date on which the terms became final.'' Final Rule, 62 FR at 27349. A similar situation obtains here where terms of sale are subject to changes which are not necessarily documented through issuance of an amended confirmation order.

Finally, even accepting petitioners' assertions and disregarding all claimed quantity changes as unsupported by the record evidence, the record evidence still supports the use of invoice date as the date of sale. KTN has presented evidence—impeached neither by petitioners nor by the Department's verifications—that price changes can and did occur with some regularity between the order confirmation date and the invoice date. Thus, while we agree with petitioners that not each instance cited by KTN as representing a change in the essential terms of sale is borne out by the record evidence, the Department did verify a significant number of instances of changes in price or quantity between the order confirmation and the invoice date. As we concluded in Flat Products From Korea II ''[t]he Department has no basis to conclude that essential terms of sale were set and not subject to change at the initial contract date.'' Id., 64 FR at 12956. Thus, the totality of the evidence in this case militates against petitioners' suggestion that we abandon the presumptive date of sale identified in the Department's regulations in favor of using KTN's order acceptance date. Rather, the record indicates that the essential terms of sale can and do change subsequent to KTN's issuance of its original order confirmation, and that KTN employs no systematic means of capturing and documenting these changes. For this reason, and because KTN's internal records kept in its normal course of business do not recognize a sale until the invoice is issued, we have continued to rely upon KTN's reported invoice dates in both markets as the dates of sale for this final determination. In the event this investigation should result in the publication of an antidumping duty order we intend to re-examine this issue thoroughly in any subsequent review involving KTN, especially with respect to quantity tolerances and change orders.

Comment 2: Affiliation

KTN contends that the Department incorrectly concluded that it was affiliated with Thyssen and its U.S. and home market affiliates pursuant to section 771(33)(F) of the Tariff Act based on the conclusion that Thyssen is in the position to exercise direction and restraint over both KTN and Thyssen's own affiliates. KTN argues that in order for KTS to be affiliated with Thyssen and its subsidiaries within the meaning of 771(33), both parties must have either a direct relationship with each other (as described in paragraphs 771(33)(A) though (E) and (G)), or an indirect relationship ''through which one party, though not directly related, is nevertheless in the position to control the other (as described in paragraph (F)).'' KTN's Case Brief at 7.

Under the terms of the statute, asserts KTN, Thyssen's subsidiaries and the KTS companies cannot be deemed affiliated on the basis of a direct relationship for they share no family relationships, board members or officers, partnership relations, or hold equity positions in one another. See section 771(33)(A) through (E). KTN also argues that Thyssen's subsidiaries and the KTS companies are not affiliated under 771(33)(G), for Thyssen's subsidiaries are not in the direct bilateral control relationship envisioned in this section. Citing Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 62 FR 18404 (April 15, 1997) (Flat Products From Korea I), KTN contends that POSCO, a respondent in the review, participated with DSM in a joint-venture firm, POCOS. DSM, in turn, wholly-owned a subsidiary company, Union (also a respondent in the review). KTN notes that in Flat Products From Korea I the Department concluded that POSCO and Union were not affiliated under section 771(33)(G) because the two companies were separate operational entities with no overlapping stock ownership and that nothing in the record indicated that either Union or POSCO was legally or operationally in a position to control the other party. As in Flat Products From Korea I, KTN maintains, Thyssen's subsidiaries and the KTS companies have neither overlapping stock ownership nor operational or legal control over each other. KTN's Case Brief at 9.

In addition, KTN claims that Thyssen's subsidiaries and the KTS companies are not under the common control of Thyssen, and therefore are not indirectly affiliated pursuant to section 771(33)(F) of the Tariff Act. KTN argues that under section 771(33)(F), a determination of control ''calls for a comprehensive and multi-factored analysis of the particular facts of each case in the context of the industry at issue, including the history of the parties, and the course of their dealings with one another.'' KTN's Case Brief at 10. Further, KTN points out that in accordance with 19 CFR 351.102, in order to find affiliation the Department must first determine that one party is in a position to exercise control over the ''production, pricing, or cost of the subject merchandise or foreign like product'' of the other party. Id., quoting 19 CFR 351.102. KTN contends that the Thyssen subsidiaries, and KTS or the KTS companies, are not in a position to exercise such control over each other.

According to KTN, the reality of the KTS shareholders' agreement is that Thyssen does not control KTS or the KTS companies. The shareholders' agreement, KTN insists, was structured ab initio to place the ability to influence KTS's operational decisions solely with Fried. Krupp, with the intention of consolidating Fried. Krupp's stainless steel operations. KTN asserts that Fried. Krupp's operational control over KTS is further reflected by the provision in the shareholders' agreement for Fried. Krupp to buy out Thyssen's interests in the firm in the event Fried. Krupp's and Thyssen's interests diverge. Therefore, KTN claims, KTS's production, pricing, and cost decisions are controlled by Fried. Krupp, not Thyssen. KTN's Case Brief at 12.

Further, KTN contends that petitioners have cited incorrectly *Mitsubishi Heavy Industries, Ltd.* v. *United States*, 15 F. Supp. 2d 807 (CIT 1998) (Mitsubishi) as supporting the proposition that ''when two companies participate in a joint venture, it is 'impossible' that the respective subsidiaries of those two companies are not affiliated.'' Id., citing petitioners' September 25, 1998 submission on affiliation (KTN's emphasis). Even if petitioners' interpretation of this case is accurate, KTN argues, Mitsubishi does not reach the facts before the Department in this investigation. KTN asserts that in Mitsubishi the Court of International Trade (the Court) did not address whether subsidiaries of companies that participate in a joint venture were in turn affiliated but, rather, held that the two parent companies were affiliated under section 771(33)(F) by virtue of their joint-venture ownership of a third party. KTN notes that the issue in this proceeding is not whether the ultimate parent companies, Fried. Krupp and Thyssen, are affiliated, but whether various Thyssen affiliates in Germany and the United States are affiliated with the KTS companies. ''Contrary to petitioners' assertion,'' contends KTN, ''the Department has clearly stated that affiliation between parent companies by virtue of a joint venture is not a 'vehicle' through which the Department will find affiliation between other companies that are controlled by those parent companies.'' Id. Any affiliation between Fried. Krupp and Thyssen, asserts KTN, would not reach the companies' respective subsidiaries. Id. citing Flat Products From Korea I, 62 FR at 18418. Therefore, KTN concludes that Thyssen's subsidiaries cannot be considers affiliated with the KTS companies controlled by Fried. Krupp merely by virtue of the joint venture between Fried. Krupp and Thyssen.

Petitioners maintain that the Department properly determined that KTN is affiliated with Thyssen and Thyssen Stahl AG, one of KTN's two joint-venture parents, and with the member companies of the Thyssen Corporate Group. In addition, petitioners support the Department's decision to use adverse facts available in those instances where the respondent failed to cooperate fully in providing the sales data requested of these various affiliates by the Department.

Petitioners note that section 351.102(b) of the Department's regulations provides that in finding affiliation based on control, the Department will consider (i) corporate or family groupings, (ii) franchise or joint venture agreements, (iii) debt financing, and (iv) close supplier relationships, among other factors. Petitioners note further that under this same regulatory provision control will not be found to exist using these factors unless ''the relationship has the potential to have an impact on decisions concerning production, pricing, or cost of the subject merchandise or foreign like product.'' Petitioners' Rebuttal Brief at 6 and 7, citing 19 CFR 351.102(b).

Applying each of these factors in turn to this case, petitioners contend that a general pattern of corporate groupings between Fried. Krupp and Thyssen suggest that these persons are affiliates within the meaning of section 771(33). Petitioners assert that the ''massive cooperation'' between Fried. Krupp and Thyssen is recognized in the parent's respective annual reports. For example, petitioners argue, Thyssen's September 1997 annual report at note 23 states that ''[i]n the year under review, the income/loss from associated affiliates is mainly due to the transfer of only a one-digit million DM prorated profit from Krupp Thyssen Stainless.'' Thus, petitioners contend that Thyssen and its affiliates recognize that the group's consolidated stainless steel flat products activities are centered in KTS and its manufacturing company, KTN. According to petitioners, the establishment of KTS and Thyssen Krupp Stahl (TKS) represents an arrangement whereby the two corporate groups have intertwined their steel production and marketing activities well in advance of the pending merger between Fried. Krupp and Thyssen. Id. at 9.

Petitioners also argue that KTN's advertising and marketing strategies also recognize the interconnections between Fried. Krupp and Thyssen. Petitioners maintain that KTN was conceived with the express intent of both Fried. Krupp and Thyssen to establish one unified speciality steel producer that customers worldwide would perceive as being both a Krupp and Thyssen company. Further, petitioners assert that Thyssen and Krupp opened their respective channels of distribution to KTN's stainless steel products, a fact recognized in the marketplace. Petitioners' Rebuttal Brief at 9.

Second, petitioners allege that KTN, as a joint venture owned by the Krupp and Thyssen groups is both a party controlled by two other parties pursuant to 771(33)(F) and a joint venture per se as defined at 19 CFR 351.102(b). Citing Certain Cut-to-Length Carbon Steel Plate from Brazil, 63 FR 18486, 18490 (April 15, 1997) (Carbon Steel Plate From Brazil), petitioners assert that Thyssen's 40 percent ownership in KTS is more than sufficient to place it in a position of control over KTN. As in that case, petitioners contend, ''[e]ven a minority shareholder interest, examined within the totality of other evidence of control, can be a factor that we [the Department] consider in determining whether one party is in the position to control another.'' Petitioners' Rebuttal Brief at 11, quoting Carbon Steel Plate From Brazil. Additionally, petitioners argue that contrary to KTN's arguments, evidence of actual control is not required under the statute in order to make a finding of control. Rather, control is defined as merely the ability to control, i.e., the power to restrain or direct a company's activities. Id.

According to petitioners, KTN's reliance upon Flat Products From Korea I is misplaced. Petitioners assert that KTN's argument that the Department found that POSCO and Union were not affiliated in the absence of direct equity ownership or a finding of control, in essence, negates section 771(33)(F), which defines as affiliated persons two or more persons directly or indirectly controlling any person. Petitioners contend that the issue is not whether two parties who control a third party are affiliated to each other, but whether a person jointly controlled by two parties is affiliated with the parent companies' subsidiaries. Instead, petitioners argue that the pattern of affiliations in this case mirrors that found in Stainless Steel Plate in Coils From Belgium, 64 FR 15476 (March 31, 1999) (Belgian Stainless Plate in Coils) in which the Department determined that because ALZ and TrefilARBED were two persons established to be directly or indirectly controlled by ARBED, ALZ's sales through TrefilARBED were treated as affiliated-party sales. Thus, pursuant to 771(33)(F), petitioners claim that where KTS is under common control by Krupp, and Thyssen Stahl and Thyssen, KTS is affiliated with both Krupp and Thyssen. Also, pursuant to 771(33)(G), petitioners argue that because KTS controls KTN, KTN is affiliated to Thyssen through KTS and that because Thyssen controls its affiliates, then KTN is affiliated to those affiliates through Thyssen. Therefore, petitioners contend that KTS and KTN and the Thyssen subsidiaries are two or more persons directly or indirectly controlled by Thyssen, and so, are affiliated.

Further, petitioners argue that as recognized by the Department in its December 16, 1998 Affiliation Memorandum, the shareholders' agreement between the Krupp and Thyssen groups indicates that Thyssen, through Thyssen Stahl, has the indirect ability to control the activities of KTN through KTS. Petitioners assert that by means of the shareholders' agreement Fried, Krupp, and Thyssen (i) committed their respective families of companies to having all stainless activities reside in KTS and KTN, (ii) set forth the parties' power to amend or supplement the Industrial Concept governing KTS's operations, (iii) recognized the sales and distribution functions of the Thyssen affiliates, (iv) afforded Thyssen the ability to direct KTS through the operation of the Supervisory Board, (v) provided for Thyssen's participation in the activities of KTS and KTN through membership in the KTS Management Board, (vi) afforded Thyssen an additional avenue of direction or restraint of KTS (and thus KTN) through the Shareholder Committee, (vii) established a ''super-majority'' requirement for votes involving certain business transactions, including appointments to KTS's managerial board, giving Thyssen effective veto power over critical KTS activities, and (viii) established an arbitration committee to mediate any disputes between Fried. Krupp and Thyssen over KTS's activities. Petitioners' Rebuttal Brief at pages 17 through 22. Therefore, petitioners assert, the shareholders' agreement clearly articulates Thyssen's ability to exercise indirect control over KTN via KTS.

Third, petitioners contend that the legal framework established by the shareholders' agreement provides both de jure and *de facto* bases for a close supplier relationship between KTN and a certain Thyssen affiliate. In fact, according to petitioners, KTN is entirely dependant upon this Thyssen entity for the hot-rolling of the stainless steel cast in KTN's melt shop. Similarly, petitioners note, this entity ''does not provide stainless steel hot-rolling services to any entity other than KTN.'' Petitioners' Rebuttal Brief at 24, quoting KTN's December 17, 1998 section D supplemental response at D–3. Petitioners argue that this level of mutual dependency clearly qualifies as a ''close supplier relationship'' within the meaning of both 19 CFR 351.102(b) and the SAA at 838 which refers to a ''close supplier relationship in which the supplier or buyer becomes reliant upon the other.'' Id.

Therefore, petitioners conclude, these facts leave ''no reasonable room for any doubt that KTN is affiliated with Thyssen within the meaning of [section 771(33) of the Tariff Act].'' Id. Thus, as Thyssen is affiliated with its subsidiaries and has the ability to control those subsidiaries, KTN is affiliated with the Thyssen subsidiaries as well under the combined provisions of sections 771(33)(F) and (G).

Department's Position: We disagree with KTN. As we stated at length in our *Preliminary Determination* and the accompanying Affiliation Memorandum, we have determined that KTN is affiliated with Thyssen Stahl and Thyssen. Section 771(33)(E) provides that the Department shall consider companies to be affiliated where one company owns, controls, or holds with the power to vote, five percent or more of the outstanding shares of voting stock of the other company. Where the Department has determined that a company directly or indirectly holds a five percent or more equity interest in another company, the Department has deemed these companies to be affiliated.

We examined the record evidence to evaluate the nature of KTN's relationship with Thyssen Stahl and Thyssen and have determined that KTN is affiliated with Thyssen and Thyssen Stahl. Thyssen Stahl indirectly owns and controls, through KTS, forty percent of KTN's outstanding stock and Thyssen, which wholly owns Thyssen Stahl, likewise indirectly owns and controls a forty percent interest in KTN. KTN's section A questionnaire response acknowledges that KTN is a wholly-owned subsidiary of KTS. KTS formed KTN in 1997 to handle its stainless steel production and sales. The supporting exhibits to this submission further confirm Thyssen Stahl's interest in KTS and KTS's 100-percent interest in KTN. In a submission dated October 20, 1998, petitioners placed on the record publicly available data that confirmed both the foregoing shareholding interests and that Thyssen Stahl is a wholly-owned subsidiary of Thyssen. Consequently, KTN, as the wholly-owned subsidiary of KTS, is affiliated with the joint venture partner Thyssen Stahl and its parent company Thyssen pursuant to section 771(33)(E) of the Tariff Act. See Stainless Steel Wire Rod From Sweden, 63 FR 40449, 40453 (July 29, 1998).

In addition, we have determined that KTN is affiliated with Thyssen and its U.S. and home market affiliates. Section 771(33)(F) provides that the Department shall consider companies to be affiliated where two or more companies are under the common control of a third company. The statute defines control as being in a position legally or operationally to exercise restraint or direction over the other entity. Actual exercise of control is not required by the statute. In this investigation, the nature and quality of corporate contact necessitate a finding of affiliation by virtue of Thyssen's common control of its affiliates and of KTS. See Preliminary Determination, 64 FR at 95 and the Affiliation Memorandum. Such a finding is consistent with the Department's determinations in Carbon Steel Plate From Brazil, 62 FR at 18490 and Stainless Steel Wire Rod From Sweden, 63 FR at 40452.

We also agree with petitioners that record evidence demonstrates that Thyssen, as the majority equity holder and ultimate parent company of its various affiliates, is in a position to exercise direction and restraint over these affiliates' production and pricing. Thyssen also holds indirectly a substantial equity interest in KTN, plays a significant role in KTS's operations and management and, thus, enjoys several avenues for exercising direction or restraint over KTN's production, pricing and other business activities (see the Affiliation Memorandum). In sum, Thyssen's substantial equity ownership in KTN and Thyssen's other affiliates, in conjunction with the ''totality of other evidence of control'' requires a finding that these companies are under the common control of Thyssen. Accordingly, for this final determination we continue to find KTN is affiliated with Thyssen, Thyssen Stahl, and Thyssen's U.S. and home market affiliates.

Comment 3: Facts Available for Unreported Downstream Sales

If the Department persists in finding affiliation between the two, KTN avers, the use of adverse facts available is, nevertheless, inappropriate, as was the Department's method of applying adverse facts available for sales involving Thyssen's subsidiaries in the home market. The Department, notes KTN, used the highest normal value reported by control number in KTN's home market database. KTN claims that under section 776(b) prior to relying upon adverse facts available, the Department ''must produce substantial evidence that respondents refused to cooperate or significantly impeded its review.'' KTN's Case Brief at 15, quoting *Queen's Flowers de Columbia* v. *United States*, 981 F. Supp. 617,629 (CIT 1997). KTN contends that it cooperated with the Department to the best of its ability and substantially responded to the Department's request for information, and that any failure to supply data arose not from an unwillingness to cooperate, as suggested in the Preliminary Determination, but from KTN's inability to secure the requested data from the Thyssen affiliates. KTN cites, *inter alia, Usinor Sacilor* v. *United States*, 872 F. Supp. 1000 (CIT 1994) (Usinor), in which the Court remanded the Department's final determination applying adverse facts available to certain unreported downstream sales, stating that:

> [i]f Commerce finds that Usinor did not have operational control, Commerce is directed to select the weighted average calculated margin as BIA. If Commerce finds Usinor maintained operational control, Commerce may reapply the highest non-aberrant margin as BIA in a manner consistent with the court's decision in *National Steel Corp.* v. *United States.*

KTN's Case Brief at 17 (original citation omitted).

KTN argues that, as Usinor suggests, KTN's failure to provide information regarding its downstream resellers was not the result of deliberate recalcitrance but, rather, KTN's lack of operational control over those affiliates and its inability to obtain the information. KTN points out that it was able to gain the complete cooperation of three Thyssen affiliates located in the United States despite the absence of any operational control over these companies. KTN submits that while the Department's preliminary determination that KTN was affiliated with Thyssen's resellers because of Thyssen's potential control over both KTN and its own affiliates may be sufficient as a legal standard, it does not support the obverse conclusion that KTN had the ability to control the activities of Thyssen's affiliates and could demand their proprietary sales data. According to KTN, it had to ''rely on persuasion, not control, to access the information requested by the Department.'' KTN's Case Brief at 19.

In addition, KTN objects to the Department's characterization in the Preliminary Determination of KTN's cooperation with the Department during October and early November 1998. KTN claims that the Department's November 17, 1998 request for the reseller sales information ''mischaracterizes, and in some cases misstates, the dialog between the Department and KTN.'' Id. at 20. KTN asserts that the Department acknowledged as much by the significant deletion of the reference to the Department's ''three official requests'' for the information included in the November 17, 1998 letter's original language as this letter was paraphrased in the Preliminary Determination. KTN complains that the November 17 letter, which included a warning that adverse facts available might be used, preceded the Department's November 18 memorandum which set forth the Department's reporting requirements for downstream sales by Thyssen affiliates. Therefore, KTN argues, while ultimately KTN was unable to provide all of the requested downstream sales data, the Preliminary Determination fails to consider the overall cooperation shown by KTN throughout this proceeding, including its numerous timely responses to questionnaires, and participation in two home market and three U.S. verifications. Accordingly, KTN submits, should the Department determine that Thyssen's affiliates are affiliates of KTN, the Department must use non-adverse facts available for the two Thyssen resellers, rather than adverse facts available, as in the Preliminary Determination. KTN's Case Brief at 21 and 22.

Assuming that the Department proceeds with its use of facts available, KTN recommends that the Department apply facts available for sales to the home market resellers by adjusting these prices upward to reflect arm's length prices. KTN claims that in determining NV the Department's practice is to accept a respondent's home market sales to its affiliates, rather than sales by its affiliates, where the Department determines that the affiliated-party sales were made at arm's-length prices. KTN's Case Brief at 22, citing Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, et al. (AFBs), 63 FR 33320, 33341 (June 18, 1998). If KTN's prices to its two German resellers had passed the arm's length test, the Department might have accepted those sales in lieu of sales by the affiliates to unaffiliated customers. Id. Therefore, KTN claims that rather than calculating an ''arbitrary price,'' the Department could apply facts available for the missing sales by simply adjusting KTN's prices to its affiliates upward to a level which would satisfy the Department's arm's-length test.

That failing, KTN continues, the Department may not use facts available that are excessively punitive or aberrant and ''demonstrably less probative of current conditions.'' KTN's Case Brief at 23, quoting *National Steel Corp.* v. *United States*, 913 F. Supp. 593, 596 (CIT 1996) (National Steel). While KTN concedes that the Department has not established a bright-line test for identifying and selecting non-aberrant data, KTN insists the Department articulated two guidelines in response to National Steel:

> (1) the data should be sufficiently adverse so as to effectuate the statutory purposes of inducing respondents to provide the Department with complete and accurate information in a timely manner;
>
> (2) the data should be indicative of the respondent's customary selling practices and rationally related to the transactions to which the adverse facts available are being applied.

See National Steel at 913 F. Supp. 596.

KTN believes that in its Preliminary Determination the Department applied aberrant facts available to KTN's sales to the two home market resellers by replacing KTN's prices to these two customers with prices that are not remotely related to a vast majority of these transactions. KTN cites where, in KTN's view, the Department's methodology causes aberrant results by, for example, applying prices that are double the average price and, in some cases, exceed the average price by 500 percent. KTN's Case Brief at 25 through 27. Therefore, KTN argues, if the Department chooses to apply adverse facts available it must alter its approach to exclude the use of aberrant data.

First, KTN proposes adjusting an arm's-length price factor upward by 2.65 percent to account for the potential additional profit earned by the two Thyssen resellers. KTN's Case Brief at 28, basing the profit calculation on Thyssen's 1997–1998 Annual Report. In the alternative, KTN argues, the Department may rely on its own calculation of KTN's profit on home market sales of the foreign like product. By using the CEP profit rate calculated for the Preliminary Determination, KTN claims that the Department can incorporate an additional adverse element into its application of adverse facts available. KTN maintains that either of these two methods is adverse while remaining indicative of profit levels in the German steel industry. If the Department determines that neither of these profit calculations is sufficiently ''punitive,'' the Department could rely upon the profit level calculated in the Preliminary Determination for calculating constructed profit (based on KTN's sales made in the normal course of trade). KTN's Case Brief at 31.

If the Department insists on finding KTN affiliated with the Thyssen affiliates as it did in the Preliminary Determination, KTN argues, it must apply facts available for the missing home market downstream sales by selecting prices for each CONNUM which exclude aberrant prices. KTN believes that this would have the dual effect of employing data that is adverse to KTN while at the same time avoid using aberrant data. According to KTN, this methodology would employ a ''well-accepted statistical principle'' that for a normal distribution, more than 95 percent of all observations will fall within two standard deviations of the mean. KTN's Case Brief at 32. This ''95 percent confidence interval,'' KTN suggests, would serve to cap the permissible highest price applicable to each CONNUM, thereby foreclosing the application of outlier prices.

Additionally, KTN argues that the Department should not apply adverse facts available to sales by KTN's wholly-owned home market subsidiary, Nirosta Service Center (NSC), to one of Thyssen's resellers (Reseller 2) because those sales pass the arm's-length test. Based on the Department's own results from the preliminary determination arm's-length computer program, KTN maintains that the weighted-average prices for sales from NSC to Reseller 2 was 105.276 percent of the weighted-average prices to unaffiliated customers. KTN asserts that this ratio is well above the Department's threshold of 99.5 percent for finding sales at arm's length; therefore, the Department should use these arm's-length prices rather than facts available. Finally, KTN alleges that the Department calculated adverse facts available prices for certain sales to the two German resellers that were ordered but not invoiced during the POI; assuming the Department uses KTN's reported invoice dates as the date of sale, it should therefore remove these transactions from its margin analysis.

Petitioners agree with the Department's application of adverse facts available for those home market downstream sales unreported by KTN. KTN's suggestion that its participation in this proceeding thus far demonstrates that it cooperated to the best of its ability is not, petitioners insist, persuasive. Petitioners point to KTN's ability to report the its U.S. resellers' downstream sales as evidence that it should and could have reported its home market resellers' downstream sales as well. Petitioners' Rebuttal Brief at 25.

KTN's ''second line of defense,'' continue petitioners, is similarly unavailing. Accepting KTN's suggestion that it should not be subject to facts available because it could not secure requested information from an affiliate, petitioners caution, ''is not an axiom that should be embraced by the Department.'' Petitioners' Rebuttal Brief at 27. Petitioners point to, *inter alia, Helmerich & Payne, Inc.* v. *United States*, in which, petitioners suggest, the Court sustained the Department's application of adverse facts available where requested information was controlled by an uncooperative unrelated company. Furthermore, petitioners suggest that KTN's argument is misplaced, for the question at hand is not KTN's direct control over Thyssen's affiliates but Thyssen's role as a parent company over both its own affiliates and KTN. According to petitioners, KTN's submission of the U.S. resellers' downstream sales is, at the least, evidence of Thyssen's control of these affiliates; otherwise, this represents *prima facie* evidence of KTN's control of these parties. Petitioners suggest that it is obvious that Thyssen chose to direct compliance only of its U.S. affiliates in an attempt to distort the dumping analysis. By capturing U.S. transactions further along the distribution chain, but withholding this same information regarding home market sales, ''Thyssen managed to cap normal value while incorporating U.S. transactions that, by their very nature, should incorporate price-markups that increase U.S. price.'' Petitioners' Rebuttal Brief at 28.

Petitioners also disagree with KTN's suggestion that the Department could effectively apply facts available to the unreported downstream sales by adjusting the prices of KTN's sales to the affiliated resellers upward to prices which would pass the arm's length test. Petitioners contend that this approach might have some merit if the Department were using non-adverse facts available. Rather, petitioners believe that the Department has correctly determined that KTN's failure to report home market downstream sales warrants an adverse assumption; ''KTN's suggestion would be a *de facto* concession to its incorrect premise that the arm's-length test makes unnecessary the collection of downstream home-market data.'' Petitioners Rebuttal Brief at 29. Petitioners argue that KTN's failure to report the downstream sales by two of Thyssen's home market affiliates in response to the Department's repeated requests calls for the application of adverse facts available. These requests, petitioners note, were based on the statutory and regulatory provisions governing the collection of sales data. Id. at 31.

After detailing the history and regulatory backing for the Department's various decisions both to excuse KTN from reporting certain home market sales and to require certain home market and U.S. downstream sales data, petitioners then turn to KTN's comments concerning the application of adverse facts available. Petitioners dismiss KTN's complaint that the preliminary application of adverse facts available used data that are excessively punitive and aberrant as specious. Rather, insist petitioners, the chosen facts available reflect data that are both sufficiently adverse to encourage future cooperation from the respondent, and indicative of that respondent's customary selling practices.

First, petitioners maintain that KTN confuses the necessary level of adverse inference imputed to missing data.

Citing Certain Helical Spring Lock Washers from the People's Republic of China, 58 FR 48833, 48839 (September 20, 1993) (Lock Washers), petitioners note that where a respondent cooperated generally but inadvertently failed to provide a relatively insignificant amount of data, the Department often assigns the highest non-aberrational margin calculated for a single sale to the missing data. However, petitioners insist, in the instant case the failure by KTN was one of cooperation, not an inadvertent failure, and that the data requested were critical due to the magnitude of missing downstream sales data and the importance of comparing U.S. downstream sales to a complete and accurate set of home market downstream sales. Petitioners' Rebuttal Brief at 43.′

Second, petitioners allege that KTN's argument fails to consider that adverse facts available in the instant case is not a corrective measure among sales within KTN's and NSC's home market databases, but a surrogate for entirely missing downstream sales. Petitioners concede that KTN's elimination of so-called ''outliers'' among the reported sales could, potentially, be applicable if the task were simply to correct for missing data within a given universe of sales. However, petitioners contend, KTN fails to recognize that, once appropriate distinctions are made, the general conclusions in National Steel support the Department's current approach in this investigation. According to petitioners, in National Steel the Court addressed the appropriateness of determining ''the highest non-aberrational margin'' calculated. This ruling, petitioners insist, did not challenge the Department's criteria, nor even its selection of adverse data per se. Rather, the decision questioned the Department's failure to provide reasoned explanation as to how and why the particular adverse data were used. Petitioners' Rebuttal Brief at 44, citing *National Steel* 913 F. Supp. at 596.

Here, petitioners claim, the Department is not using the highest margin calculated to correct for a missing segment of the first-level sales by KTN and NSC but, rather, the highest NVs as surrogates, with appropriate adverse inferences, for the entirely missing downstream sales. Petitioners suggest that it is reasonable to expect that the pricing patterns for these missing transactions would be significantly higher in contrast to the affiliated-party transfer prices between KTN and NSC and the respective affiliated resellers. KTN's failure to report the relevant downstream sales has deprived the Department of the means of testing precisely how much greater the downstream sales prices would be, petitioners continue. Thus, petitioners argue KTN's benchmarks for finding ''outliers'' pertain to the wrong universe of sales, and the correct set of sales from which potential benchmarks could be determined are missing due to KTN's lack of cooperation in the first place. Petitioners' Rebuttal Brief at 45.

One available alternative benchmark the Department could use, suggest petitioners, is the measurable percentage difference between the transfer prices and downstream prices reported for KTN's downstream U.S. sales. While those sales are in the United States, rather than the comparison market, argue petitioners, they become the best information reasonably available to suggest what the difference should be in the home market, in light of KTN's failure to provide repeatedly requested downstream sales information. Petitioners claim that, based on KTN's own information, KTN exaggerates the magnitude of the markups from average to highest home market prices; KTN's actual experience in the United States indicates the difference would be significantly less. If anything, petitioners continue, the divergence between transfer and downstream prices in the home market would be even higher than in the United States, given Fried, Krupp's and Thyssen's ascendency as the only primary steel manufacturers in Germany and given the history of anticompetitive practices in the domestic stainless steel markets by Fried, Krupp and Thyssen. Petitioners' Rebuttal Brief at 46.

Petitioners also dismiss KTN's claim that so-called aberrational prices arise from sales of relatively smaller quantities. Petitioners note that the nature of downstream sales is such that larger quantities sold to an affiliate typically result in smaller discrete sales made from that reseller to its downstream customers. As evidence of this phenomenon, petitioners point to the transformation of a relatively small set of sales to U.S. resellers that evolved into a much larger set of resales through U.S. resellers to unaffiliated customers. Id.

Finally, petitioners take issue with KTN's contention that transfer prices from NSC to Reseller 2 are at arm's-length and that the Department should therefore not apply adverse facts available to sales made through that reseller. Irrespective of whether a particular subset of sales may or may not be at arm's-length, petitioners aver, KTN's failure to provide requested resale data through affiliated parties caused the Department to apply adverse facts available for the missing downstream sales. Therefore, petitioners insist that the Department acted appropriately in the Preliminary Determination, and that no changes are necessary for the final determination.

Department's Position: We agree with petitioners that our use of adverse facts available was appropriate in the instant case. In accordance with section 776 of the Tariff Act, we have used partial adverse facts available where KTN failed to provide us with certain sales information concerning two of KTN's resellers sales in the home market. In contrast to KTN's attempts to portray itself as a cooperative respondent which was never adequately apprised of the Department's requirements, we offer the following narrative history of this proceeding:

On August 3, 1998, the Department issued to KTN its antidumping questionnaire, which instructed KTN to report affiliates' resales to unaffiliated customers in both the home and U.S. markets. We also directed KTN to contact the agency official in charge if sales to affiliated parties represented a ''relatively small part'' of its total sales, or if KTN was unable to collect the necessary information. Our October 9, 1998 section A supplemental questionnaire reiterated this instruction (see question 1.c) and further directed KTN to report the sales of subject merchandise in the home and U.S. market by the specific subsidiaries of Thyssen identified in KTN's section A questionnaire response. Finally, on October 27, 1998, Department personnel contacted KTN's counsel and once again requested a detailed explanation of KTN's reporting of sales to affiliated and unaffiliated customers. During that conversation we instructed KTN to report the downstream sales of certain affiliates and, if it was unable to do so, to provide the Department with a detailed explanation as to why it was unable to report such sales (see Memorandum to the File, ''Affiliated Party Sales,'' October 28, 1998).

On October 28, and November 4, 1998, KTN submitted comments and additional information regarding its downstream sales. KTN indicated in both of these submissions that, in accordance with the Department's instructions, it intended to report downstream sales information by certain home market affiliates and U.S. affiliated resellers, but for assorted other reasons, it did not intend to report its remaining affiliates' resales.

After a thorough review of the record the Department notified KTN that it was still required to report downstream and reseller sales by additional home market and U.S. affiliates (see Memorandum to the File, ''Downstream Sales,'' November 6, 1998). In addition, the Department granted in full KTN's request for an extension of time to submit the required data.

KTN's November 16, 1998, section B and C supplemental responses failed to include the requested reseller sales information requested by the Department. On November 17, 1998, we issued a letter to KTN stating the Department would apply adverse facts available to the missing sales information if we did not receive it by November 23, 1998. On that date, KTN submitted additional affiliated reseller sales information, but again failed to provide the Department with a majority of the requested downstream and reseller sales information.

Therefore, as explained in detail in the ''Affiliation'' portion of the Preliminary Determination, we also agree with petitioners that it is appropriate to make inferences adverse to KTN's interests pursuant to section 776(b) of the Tariff Act because KTN did not cooperate by responding fully to the Department's repeated requests for specific sales information. We have examined whether KTN acted to the best of its ability in responding to our requests for information. As the chronology presented above and the Preliminary Determination suggest, KTN was instructed in the original questionnaire to contact the official in charge immediately if it had downstream sales to affiliated parties. Therefore, KTN's failure to comply with the Department's instructions led it to report one home market database which included sales to NSC instead of sales by NSC. Based on the facts presented above we determine that KTN had sufficient time to prepare the requested information. Both our original August antidumping questionnaire and our subsequent supplemental questionnaires explicitly directed KTN to report its downstream sales by named affiliates in the home market. While we did eventually conclude that KTN was not required to report certain resales by certain affiliates, from the time of our initial questionnaire, KTN was required to gather all affiliated reseller information.

In addition, KTN posits erroneously the standard that because KTN was unable to convince Thyssen's home market resellers to comply with the Department's request for information it is somehow exempt from the application of facts available. However, based on the fact that we have found KTN to be affiliated with Thyssen (as stated above), it is unreasonable to assume that Thyssen was unable to compel its own resellers to provide the Department with the specific information requested. In addition, we note, as do petitioners in their case brief, that Thyssen encountered no apparent difficulty in persuading its U.S. affiliates to comply with these same requests for reseller information. It is reasonable to assume that Thyssen could have prevailed upon its home market resellers to comply in like fashion with the Department's requests for downstream sales information. Thus, KTN's contention that it acted to the best of its ability and, thus, should not be subject to adverse facts available is unconvincing.

Further, we disagree with KTN's proposed alternatives to the Department's application of adverse facts available. We find misplaced KTN's reliance on National Steel to support its claim that the Department's use of adverse facts available in the Preliminary Determination produced aberrant results. Rather, we agree with petitioners that in citing *National Steel* KTN confuses the necessary level of adverse inference imputed to missing data and fails to consider that adverse facts available in the instant case are not applied as a corrective measure among sales within KTN's and NSC's properly-reported home market databases, but represent an adverse surrogate for downstream sales data that are missing in their entirety owing solely to KTN's failure to respond.

In *National Steel* the Department applied adverse facts available to certain sales unreported by the respondent in the case, Hoogovens. The Court sustained the criteria used by the Department in selecting among the facts available, i.e., that the margin be sufficiently adverse to induce future cooperation yet also be indicative of current conditions, but reversed the Department's application of these criteria to Hoogovens absent a more reasoned explanation. While the instant case bears superficial resemblance to *National Steel*, the fact patterns for the two cases are quite different. In *National Steel* Hoogovens failed to report a small number of sales while in the instant case KTN failed to report entire databases for two of its home market affiliates, thereby sharply limiting the record information from which to select among adverse facts available. KTN's failure to report fully the requested downstream sales data serves to undercut whatever merit its argument might carry precisely because this failure precluded an independent analysis which would allow the Department to establish current conditions for either of the resellers in question. The missing data in this case are of greater significance to our analysis than was the case in *National Steel* for they represent a large volume of KTN's home market sales and would allow us to compare home market downstream sales with U.S. reseller sales. Therefore, by failing to report such sales, the respondent has limited the information available to the Department for review in applying adverse facts available. Thus, as articulated in *National Steel*, because KTN should not be rewarded for providing inaccurate or incomplete data when it is to its advantage to do so, we have selected the only reasonable means available in our application of adverse facts available. As in the Preliminary Determination, we have selected the highest NVs per control number located in either the KTN or NSC databases, and have applied these model-specific NVs to the appropriate sales to the two resellers in question. While KTN contends that our application of adverse facts available produces aberrant results, by failing to report the downstream sales requested KTN has precluded the Department's testing the missing downstream sales prices and, possibly, selecting a different benchmark. As petitioners note, given the market realities of advancing through a chain of affiliated resellers, the prices for downstream sales from the affiliates to the first unaffiliated customer would be higher than the reported transfer prices from KTN or NSC to the affiliated parties. Thus, KTN's arguments that our application of adverse facts available produced aberrant results are based on conjecture, given the absence of the requested and relevant downstream sales data. Therefore, for these final results we have continued to apply adverse facts available in the same manner as our Preliminary Determination.

In addition, we also disagree with KTN's assertion that the transfer prices from NSC to Reseller 2 are at arm's length and that the Department should therefore not apply adverse facts available to sales made through that reseller. Our Limited Reporting Memorandum indicated that we would require the requested downstream sales data for the resellers in question since we had determined that they were not at arm's length. We based this decision on our analysis of KTN's home market database which included KTN's sales to

NSC. It was not until KTN's November 16, 1998 supplemental response that it first reported NSC's downstream sales information and, thus, NSC's sales to Reseller 2. However, the question is not whether a specific subset of KTN's sales to NSC are or are not at arm's length; rather, it is KTN's failure to provide requested data on downstream sales through affiliated parties which caused us to apply adverse facts available. Therefore, because our original decision was based on available record evidence and because we do not conduct our arm's-length test on subsets of sales to any specific customer, we have continued to apply adverse facts available for sales by NSC to Reseller 2.

We agree with KTN, however, that as we have determined that the invoice date is the appropriate date of sale for this final determination (see Comment 1), we incorrectly calculated adverse facts available prices for certain sales to two resellers in the home market which were ordered during the POI, but invoiced after the POI. Thus, we have removed from our calculations all sales with invoice dates falling outside the POI.

For this final determination we have continued to calculate the highest NV reported by control number in KTN's and NSC's home market database and have applied these to KTN's and NSC's sales to its affiliates for which KTN did not report home market downstream sales.

Comment 4: Critical Circumstances

According to KTN, the Department erred in concluding in the Preliminary Determination that critical circumstances exist. KTN claims that the Department (i) examined an inappropriate period in finding ''massive imports,'' (ii) based the pre- and post-petition periods on the incorrect months, (iii) relied upon data drawn from an incomplete list of HTS item numbers, thus inappropriately excluding certain imports of subject stainless sheet in coil, and (iv) did not review import trends over a sufficient period of time.

KTN notes that in making its critical circumstance decision the Department compared the volume of imports during the pre-petition period of April through June 1998 to the post-petition period of July through September 1998. KTN contends that, as in Certain Steel Concrete Reinforcing Bars from Turkey 62 FR 9737, 9746 (March 4, 1997) (Re-Bar From Turkey), the date on which the petition is filed determines whether the month of filing will be included in the pre- or post-petition period, and that where the petition is filed during the first half of a month, the month of filing is treated as part of the post-petition period. KTN's Case Brief at 42, citing the Department's Antidumping Manual, Chapter 10 at 4. KTN argues that since the petition was filed on June 10, 1998 (i.e., the first half of the month), June should be included in the post-petition period.

Furthermore, in making a final determination as to whether an increase in imports since the filing of the petition is massive, KTN argues, the Department must utilize all of the data reasonably available. KTN asserts that it is the Department's well-established practice to base its analysis on the longest period for which information is available, beginning at the date the petition was filed and ending with the effective date of the preliminary determination. KTN's Case Brief at 43, citing, e.g., Re-Bar From Turkey, 62 FR at 9746 and Brake Drums and Brake Rotors From the People's Republic of China, 62 FR 9160, 9165 (February 28, 1997) (Brake Drums II), both of which used comparison periods of seven months. Thus, KTN avers, while the Department's regulations state only that the period of comparison must be at least three months in duration, the Department has frequently utilized a comparison period of up to seven months. Therefore, KTN maintains that the Department must utilize a seven-month comparison period of June through December 1998 (based on the publication of the preliminary determination on January 4, 1999). Using this comparison period, KTN claims that imports of subject merchandise from Germany increased by only 7.85 percent during the post-petition period over a similar seven-month pre-petition period of November 1997 through May 1998. KTN's Case Brief at 44 and Exhibit 6, citing data drawn from the Census Bureau's ''Trade Information On-Line Service.''

In addition, KTN asserts that in determining whether critical circumstances exist, the Department must examine trends over a period of time to determine whether import volumes are subject to seasonal fluctuations which could taint the results. KTN acknowledges that while there may not be a direct correlation between the volume of stainless steel imports and the season, historical data clearly indicate that the level of imports fluctuates greatly from one month to the next. Therefore, KTN maintains, the Department's findings are likely to be significantly skewed if it considers a brief post-petition period of just three months.

Finally, KTN argues in a footnote to its case brief that the Department failed to review the full range of HTS numbers which include subject merchandise. KTN takes issue with the Department's characterization of this methodological choice as producing conservative estimates, because the so-called clean HTS numbers (those restricted by definition to subject stainless sheet in coil) do not capture all imports of subject merchandise. That the HTS numbers used ''are under-inclusive,'' KTN notes, ''provides no indication as to the direction in which the flaw will skew the critical circumstances estimate.'' KTN's Case Brief at 41, n. 43.

Petitioners argue that in its Preliminary Determination the Department justifiably concluded that there was a reasonable basis to believe or suspect that (i) the importer knew or should have known that the exporter was selling subject merchandise at less than fair value and (ii) there had been massive imports over a relatively short period, thus satisfying both the second and third criteria of section 733(e)(1) of the Tariff Act. Accordingly, petitioners maintain, the Department appropriately made an affirmative preliminary determination of critical circumstances as to KTN.

In analyzing whether imports of subject merchandise had been massive over a relatively short period of time, petitioners aver, the Department correctly calculated that subject imports had increased by 67.74 percent during the post-petition period scrutinized at the time of the Preliminary Determination. Further, and contrary to KTN's assertions, petitioners contend that the Department correctly excluded certain HTS items which might cover some quantity of in-scope merchandise from its calculations of massive imports, and properly included the month of June 1998 in the pre-petition period. Petitioners argue that the Department made a conservative estimate in calculating whether imports were massive by scrutinizing imports falling under HTS categories that only include sheet and strip in coil form, and by excluding those HTS basket categories which do not indicate whether or not the sheet and strip are in coils. In so doing, petitioners claim, the Department acted properly to exclude potentially out-of-scope merchandise, such as cut-to-length stainless sheet and strip, from its analysis. Moreover, petitioners contend that the excluded HTS categories account, on average, for less than 20 percent of total imports in 1998 of all in-scope merchandise. By including the HTS categories in question, argue petitioners, the critical circumstances analysis would be skewed, and would lead to imprecise results. Petitioners' Rebuttal Brief at 66 and 67.

Petitioners also insist that the Department properly included the month of June in the pre-petition period. Petitioners maintain that June should be included in the pre-petition period since entries of subject merchandise from Germany during June were almost certainly exported from Germany prior to the petition's filing on June 10. Therefore, suggest petitioners, since the entries in June were the result of KTN's commercial behavior before the petition was filed, June should be included as part of the pre-petition period. Petitioners aver that 19 CFR 351.206(h)(2)(i) allows for such an adjustment of the base and comparison periods where the data are available and the commercial realities of the marketplace so dictate. Petitioners' Rebuttal Brief at 68 and n. 5, citing Uranium From Ukraine and Tajikistan, 58 FR 36640, 36645 (July 8, 1993).

Further, petitioners disagree with KTN's assertion that the Department must use data through December 1998 in making its final critical circumstances determination, arguing that each case must be decided according to its own facts, as suggested by the Department's regulations at section 351.206(h)(2) and (i). However, petitioners maintain, if Census Bureau data again serve as the basis for the final determination, consideration of the months through December 1998 as well as the inclusion of June 1998 in the post-petition period, still indicates that imports of subject merchandise during the relevant periods were massive (i.e., an increase of 21.46 percent). Petitioners' Rebuttal Brief at 69. Therefore, petitioners conclude, irrespective of the periods analyzed, the Department must continue to find that critical circumstances exist with respect to KTN.

Department's Position: We agree in part with KTN and find, pursuant to section 735(a)(3) of the Tariff Act, that critical circumstances do not exist with respect to KTN. While we do find that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales (see Preliminary Determination 64 FR at 99), we have determined that imports for KTN have not been massive. Consequently, the second of the two criteria required for a finding of critical circumstances has not been met.

On March 23, 1999, we requested that KTN provide the Department with monthly shipment data for 1996 through 1998. In response KTN submitted monthly shipment data for October 1995 through December 1998. Because it is the Department's practice to use company-specific information where available (see, e.g., Re-bar From Turkey, and Certain Cased Pencils From the People's Republic of China, 59 FR 55625 (November 8, 1994)), we have based our final determination on KTN's monthly shipment data, rather than the Census Bureau data used for the Preliminary Determination.

We also agree with KTN that we incorrectly included June in the pre-petition period. As stated in Re-bar From Turkey, where the petition is filed during the first half of a month, the month of filing is treated as part of the post-petition period. Since the petition in this case was filed on June 10, 1998, we have concluded that June should be included in the post-petition period. Further, we agree with respondent that it is our normal practice to include in our analysis data concerning the respondent's imports of subject merchandise up to the date of the preliminary determination, where such data are available. See, e.g., Aramid Fiber of Poly-Phenylene Terephthalamide From the Netherlands, 59 FR 23684 (May 6, 1994). In the instant investigation the most reliable data available concern KTN's shipments of subject merchandise, rather than imports into the United States, because the former are limited to the respondent KTN and, unlike the Census data, are limited to merchandise subject to this investigation.

However, we disagree with KTN that it would be appropriate to broaden our analysis to include data through December 1998. Although the ''effective date'' of the Preliminary Determination fell on January 4, 1999, the date of its publication in the **Federal Register**, the actual date of this determination is December 17, 1998. Because the Preliminary Determination fell in the middle of the month of December, we believe it would be inappropriate to include data for the full month of December in our analysis, as this would mean including data on imports after the Preliminary Determination in our analysis of ''massive imports.'' Accordingly, we have determined that for the purpose of our critical circumstances determination it is appropriate to compare KTN's shipment data for a six-month pre-petition period of December 1997 through May 1998 to a six-month post-petition period of June 1998 through November 1998. Based on this comparison we have concluded that imports of subject merchandise decreased by 2.5 percent. Clearly, then, there was no increase in KTN's imports of subject merchandise during the post-petition period.

With respect to all other exporters who were not subject to this investigation, it is the Department's normal practice to conduct its analysis based on the experience of the investigated companies. See, e.g., Re-bar From Turkey. In Re-bar From Turkey the Department found critical circumstances for the ''All Others'' category because it found critical circumstances for three of the four companies investigated. However, as we recently determined in Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan, 64 FR 24329 (May 6, 1999) (Hot-Rolled Steel From Japan), we are concerned that a literal application of this approach could produce anomalous results given certain circumstances. Therefore, we believe it is appropriate in this case to apply the traditional critical circumstances criteria to the ''All Others'' category. First, in determining knowledge of dumping, we look to the ''All Others'' rate, which is based on the weighted-average margins of all investigated companies. In this case such a weighted-average rate must, of needs, be based on the individual rate of KTN, the sole respondent in this investigation. KTN's rate applied to ''All Others'' is 25.84 percent. In addition, the Department normally considers a preliminary International Trade Commission (Commission) determination of material injury sufficient to impute knowledge of likelihood of resultant material injury. The Commission preliminarily found material injury to the domestic industry due to imports of stainless sheet in coil from Germany and, on this basis, the Department may impute knowledge of likelihood of injury to all other exporters. See Preliminary Determination of the Commission of Certain Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan, and the United Kingdom, 63 FR 41864 (August 5, 1998). However, while we have sufficient evidence to impute knowledge of dumping and material injury to the ''All Others'' category, we also must also evaluate the second criterion required by the statute in making a critical circumstances determination: whether there have been ''massive imports'' for the ''All Others'' category. In making this determination we examined the company-specific shipment data provided by KTN, which, as noted, indicate a decrease of 2.5 percent during the post-petition period.

We found, accordingly, that KTN's data provide no evidence of massive imports. Based on that finding we likewise determine that imports from uninvestigated exporters were also not massive during the relevant comparison periods. We also examined U.S. Customs data in an attempt to analyze overall imports from Germany of the subject merchandise. Contrary to our approach in the Preliminary Determination, we examined entries classified under the full range of HTS items which are listed in the ''Scope of the Investigation'' section, above. These data indicate that imports of subject stainless sheet in coil for Germany as a whole increased by 8.9 percent, still well below the 15 percent threshold for an affirmative finding of ''massive imports.'' However, since the full range of HTS items includes both subject and non-subject merchandise, we believe it is inappropriate to base our critical circumstances finding on these data which are overly broad. We are relying, therefore, upon the scope-specific data supplied by KTN. We find, therefore, that imports from all other exporters were not massive during the relevant period. Based on these factors the Department determines that there are no critical circumstances with regard to imports of subject merchandise from all other exporters in Germany.

Adjustments to Normal Value

Comment 5: Proper Application of Facts Available

Petitioners suggest that the series of customer codes the Department used in its preliminary margin program to identify sales through Thyssen and Krupp affiliates is not complete. With respect to sales through NSC, petitioners identify several customer codes used by NSC which, petitioners assert, the Department did not include in its preliminary margin program. In addition, petitioners argue, certain of KTN's customer codes are reported as Thyssen and Krupp affiliates which were not identified by the Department in its preliminary margin program.

KTN counters that petitioners have cited erroneously to the model-match program whereas the customers are coded correctly in the separate arm's-length test program. According to KTN, the program language cited by petitioners applies only to the application of adverse facts available to unreported downstream sales. KTN concludes that, aside from what KTN terms the inadvertent inclusion of affiliated-party sales that passed the arm's-length test, the model match program is correct and need not be changed.

Department's Position: We disagree with petitioners. To apply adverse facts available with respect to two home market resellers for which KTN failed to provide downstream sales data (see Comments 2 and 3), we included language in our model match program that aggregated all customer codes used by KTN or NSC for sales to these two resellers in their respective sales databases. Although petitioners argue that our list is not exhaustive based on an analysis of customer codes identified in the home market sales files as pertaining to ''Thyssen'' affiliates (i.e., where CUSRELH equals 3), we determined that no additional codes need to be added to the program, as the additional codes cited by petitioners identify Thyssen affiliates for whom we did not request downstream sales information. Thus, no modification is necessary to this programming language for the final determination. See Limited Reporting Memorandum for further information.

Comment 6: Adjusting for NSC's Processing Costs

Petitioners point out that in the KTN Sales Verification Report the Department indicated that it ''[was] unable to trace any expenses related to slitting for FY 1997 because NSC stated that it did not produce cost center reports during this period'' and that ''NSC was unable to provide any supporting documentation for either the slitting cost or total slitting tonnage.'' Petitioners' Case Brief at 77, quoting the KTN Sales Verification Report at 56 and 57. Petitioners assert that the Department should accordingly deny KTN's claimed direct adjustments for NSC's slitting costs.

KTN responds that the Department should accept as direct selling expenses NSC's reported slitting costs for 1998 for slitting master coils to customers' orders, and adjust home market prices accordingly. According to KTN, the Department was able successfully to verify these expenses.

Department's Position: We disagree with petitioners and KTN. With respect to NSC's slitting operations, we have determined that the claimed expenses represent direct processing costs which are accurately treated as components of KTN's variable cost of manufacture and COP for the finished products sold to the first unaffiliated customers. Accordingly, for this final determination we have increased COP by NSC's 1998 slitting costs as described in our Final Results Analysis Memorandum and have denied KTN's claim that these costs are direct selling expenses. Because we were unable to verify NSC's fiscal 1997 slitting costs, we have used the verified figures for fiscal 1998 for all relevant slitting costs during the POI.

Comment 7: Early Payment Discounts

Petitioners argue that many of KTN's home market sales appear not to have warranted early payment discounts based on the reported terms of sale. According to petitioners, the time between invoicing and payment for many transactions seemingly precludes such discounts. Petitioners suggest that this fact pattern is contrary to the discussion of early payment discounts in the Department's KTN Sales Verification Report, wherein the Department observed that ''KTN stated that as a policy it does not allow customers to take early payment discounts where they fail to meet stated terms, but that on rare occasions, early payment discounts will be granted even though a customer pays late.'' Petitioners' Case Brief at 78, quoting the KTN Sales Verification Report at 33 (petitioners' emphasis). Petitioners assert that the Department should disallow all home market early payment discounts as adverse facts available or, at a minimum, disallow those early payment discounts where reported dates of invoicing and payment did not qualify KTN's customer for such a discount.

KTN responds that the Department successfully verified its calculation of early payment discounts and argues that the application of facts available is not warranted. KTN argues that in each case in which KTN reported early payment discounts in its sales file, the sales documentation confirmed that the customer had in fact taken the discount. KTN asserts that while the customer may not have qualified for the discount for three of the five sales traces which indicated a discount was given, the actual terms of payment were verified in each case. KTN argues that, as verified by the Department, the date of payment was the date that KTN booked the payment into its accounts receivable system. Therefore, argues KTN, it is possible that a customer sent a payment within the time allowed for qualifying for an early payment discount, but that the payment was not booked into KTN's accounting system for several days.

Department's Position: We agree with respondent. During our home market verification of KTN we conducted thorough sales traces which included ensuring the accuracy of KTN's reported payment and invoice dates. We found no discrepancies in any of KTN's reported payment or invoice dates.

Furthermore, while the time lag between the verified invoice and payment dates might not have appeared to warrant an early payment discount for these transactions, we were satisfied that for those transactions reviewed which included early payment discounts, the customer in fact claimed these discounts and KTN granted them. See, e.g., KTN Sales Verification Report at 59. Therefore, we have continued to allow an adjustment to NV for KTN's reported early payment discounts.

Comment 8: Advertising Expenses

In its opening-day correction letter presented at the KTN sales verification KTN noted that it had incorrectly double-counted expenses attributable to advertising by including them in its ISEs and also reporting them as direct expenses. KTN suggested removing advertising expenses from its ISEs to correct this error. Petitioners claim, however, that information on the record establishes that the remedy suggested by KTN is unacceptable. Petitioners point to the discussion of advertising activities in the KTN Sales Verification Report, specifically the description of these expenses:

> [f]or advertising expenses, KTN explained that Informationsstelle Edelstahl Rostfrei (ISER) is the industry association which conducts a variety of activities to study and promote the uses of stainless steel. KTN presented a list of the association's activities in 1997 and 1998, including brochures and publications, seminars, fairs * * *

Petitioners' Case Brief at 80, quoting the KTN Sales Verification Report at 45.

Petitioners argue that ISER's activities are directed at KTN's current and prospective customers of stainless steel products, not at the customer's customers. Accordingly, claim petitioners, any expenses incurred by KTN related to its membership in ISER (i.e., the association dues) are correctly accounted for as part of ISEs, both for the home market and the United States. Petitioners further assert that if the Department instead decides to take the approach suggested by KTN (i.e., to reduce ISEs by the amount of ISER dues), these expenses should also be reported as direct expenses in the United States.

KTN counters that the Department should continue to treat KTN's reported home market advertising expenses as direct selling expenses. ISER, KTN asserts, undertook promotional and advertising campaigns directed at KTN's customers' customers in the German market. KTN argues that, accordingly, home market advertising expenses qualify as direct selling expenses.

Department's Position: We agree with petitioners that KTN's home market advertising expenses are properly classified as ISEs. The Department has articulated its views with respect to the proper treatment of advertising expenses in, e.g., Gray Portland Cement and Clinker from Mexico, 64 FR 13148, 13169 (March 17, 1999) and Fresh Atlantic Salmon from Chile, 63 FR 31411, 31424 (June 9, 1998). The Department normally considers as direct selling expenses those expenses that result from, and bear a direct relationship to, the particular sales in question. In the case of advertising expenses, to qualify as a direct adjustment, these expenses must also be assumed on behalf of a customer and must be associated specifically with sales of subject merchandise. ISER's activities, however, are aimed at promoting the use of stainless steel in general but not subject merchandise specifically. The expenses incurred for KTN's membership in ISER are not directly related to particular sales by KTN of subject merchandise. As indicated in our KTN Sales Verification Report at 45, ISER conducted activities to study and promote the use of stainless steel generally (i.e., the activities were not limited to stainless steel sheet and strip which is the subject of this investigation). Furthermore, there is no record evidence supporting KTN's claim that ISER's activities give rise to expenses assumed by KTN on behalf of its customers. Therefore, for this final determination, we consider KTN's home market advertising expenses to be indirect in nature. We have denied KTN's claim that these are direct selling expenses, but we have included these expenses in KTN's home market ISEs.

Comment 9: Rebates

As indicated in the KTN Sales Verification Report, NSC's rebates to a particular customer were granted at a given percentage even though NSC had initially reported a different figure in its response. Petitioners urge the Department to apply the corrected rebate percentage for 1998 sales (NSC noted that the rebates at issue applied only to sales in 1998) and to allow no rebates for the items invoiced to this customer during 1997.

Department's Position: For this final determination we have applied the corrected rebate percentage to NSC's eligible 1998 sales, as suggested by petitioners.

Adjustments to United States Price

Comment 10: Unreported U.S. Sales

Petitioners urge the Department to apply partial adverse facts available to five previously unreported U.S. sales discovered by the Department during the verification of KHSP. Petitioners argue that KHSP never included these sales in its list of corrections, nor did it provide the total quantity and value of these missing transactions in its opening-day corrections letter. The unreported U.S. sales, petitioners maintain, do not constitute minor corrections but instead new information that should be rejected by the Department and removed from the record of this investigation.

As stated in Lock Washers (58 FR at 48835), aver petitioners, the Department's policy concerning unreported sales discovered at verification is to accept for the record only that information necessary to establish the magnitude of any omissions. In Lock Washers, petitioners point out, the Department returned sales documentation concerning the unreported sales identified at verification. Petitioners also point to the investigation on Belgian Stainless Plate in Coils, in which the Department refused to take or even review complete sales data (other than the invoice) for a single unreported sale.

Petitioners assert that it is the Department's established practice to apply total facts available to missing sales information if the missing data constitute five percent or more of a sales database, or partial facts available when the missing or unreported data make up less than five percent of a given sales database. Petitioners suggest that the Department, in a manner consistent with Lock Washers (in which it resorted to partial facts available for the respondent's unreported sales data), should apply as partial adverse facts available the highest margin from the petition or, at a minimum, the highest margin calculated for a single sale based on the correctly reported CEP transactions. Petitioners contend that judicial precedent further supports the application of facts available with respect to the KHSP sales at issue. Petitioners emphasize that in *Persicio Pizzamiglio, S.A.* v. *United States*, 18 CIT 299 (1994), the Court upheld the Department's use of facts available based on unreported home market and U.S. sales.

KTN responds that the Department's acceptance at verification of the previously unreported U.S. sales was appropriate. KTN argues that petitioners' reliance on Lock Washers is misplaced. The facts in that case, KTN argues, are not remotely comparable to the facts of this case. Citing a June 7, 1993 letter to respondent's counsel in the Lock Washers proceeding, KTN notes that the Department rejected the sales documentation at issue because it reflected ''entirely new contracts covering a significant portion of total U.S. sales quantity and value.'' KTN's Rebuttal Brief at 29. However, KTN argues, the new KHSP sales identified at verification were neither significant nor entirely new. KTN asserts that KHSP had simply misclassified four of the five previously unreported sales as non-subject merchandise and that only one was entirely new and previously unidentified. Furthermore, argues KTN, the sales at issue can hardly be considered significant given the number of U.S. transactions. KTN also disputes petitioners' claimed parallels between this case and Belgian Stainless Plate in Coils, claiming the Department has yet to issue a final determination; thus, KTN insists, there is no ''precedential authority contained in a verification report in a different investigation with different facts.'' KTN's Rebuttal Brief at 30.[7]

KTN further claims that petitioners have mischaracterized the Department's normal practice with respect to the reporting of new sales at verification. The Department's Antidumping Manual, argues KTN, clearly establishes that the decision whether or not to accept new sales at verification is to be made on a case-by-case basis. KTN cites as an example of this case-specific approach Disposable Pocket Lighters from the People's Republic of China, 60 FR 22539, 22365 (May 5, 1995) (Pocket Lighters from the PRC), where the Department discovered three previously unreported invoices at verification. In that determination, KTN points out, the Department concluded that the omissions ''were inadvertent and the corrected information was verified.'' KTN's Rebuttal Brief at 31, quoting Pocket Lighters from the PRC. The Department further indicated in its determination that ''the new sales represent a small percentage of total sales during the POI and, at verification, were not hidden or misrepresented.'' Id. KTN argues that, as in Pocket Lighters from the PRC, the Department should accept the new sales presented at verification, as they represent a small percentage of total sales and were neither hidden nor misrepresented.

[7] The Department's final determination in Belgian Stainless Plate in Coils was published in the **Federal Register** one day after the filing of KTN's rebuttal brief.

Finally, KTN argues that in the event the Department agrees with petitioners that it cannot accept the new sales, it should still use the documentation provided by KHSP on the record as facts available. KTN suggest this approach would be consistent with Porcelain-on-Steel Cooking Ware from the People's Republic of China, 62 FR 32757 (June 17, 1997) (Porcelain-on-Steel Cookware), in which the Department determined that no adverse inference was warranted with respect to three new invoices discovered at verification. KTN's Rebuttal Brief at 32.

Department's Position: We agree in part with petitioners. In Certain Cut-to-Length Carbon Steel Plate From South Africa, 61 FR 61731 (November 19, 1997) (Steel Plate from South Africa), the Department applied the highest non-aberrational margin to three of respondent Highveld's unreported U.S. sales which were discovered at verification. The Department rejected Highveld's arguments that there was no significant failure to report the U.S. sales and that the effect of these omissions was minor. In fact, in that case the unreported U.S. sales represented an even smaller percentage of total sales than do KHSP's newly-identified transactions. Similarly, in the earlier Lock Washers case the Department took this same approach and applied the highest non-aberrational margin calculated for a single sale. It is also important to note that, as in this case, the respondent in Lock Washers identified the sales at issue at the outset of verification. Accordingly, we are not convinced by KTN's suggestions that disclosure of such sales at verification somehow warrants their acceptance for calculating KTN's weighted-average margin. In addition, by the time the Department conducted its U.S. verification, KHSP submitted three U.S. sales databases (on September 29, 1998, November 16, 1998, and January 6, 1999) reflecting various revisions. Thus, KTN had ample opportunity to review KHSP's submitted data for completeness.

With respect to KTN's reliance on Porcelain-on-Steel Cookware, we note that the facts in that case are distinguishable from those in this investigation. In that case the three unidentified invoices discovered at verification were relevant to the calculation of factors of production for steel inputs and did not constitute unreported sales intended for inclusion in the Department's price-to-price margin calculations.

We do not accept, however, petitioners' characterization of KHSP's omissions as ''more egregious'' than those in Lock Washers. Although KHSP did not provide the aggregate volume and value of these sales in the opening-day correction letter submitted for the record, Exhibit 1 to the KHSP Verification Report makes clear that KHSP identified these missing sales at the outset of verification. See KHSP Verification Report, Exhibit 1 at 3 and 10 through 16. Furthermore, KHSP provided a complete packet containing copies of each of the relevant invoices which the Department included on the record as a verification exhibit. Nevertheless, for the reasons stated above, we find that KHSP had three opportunities spread over four months to provide the Department with a complete listing of its U.S. sales. In response to its failure to do so, as adverse facts available, we are applying the highest non-aberrational margin calculated based on KTN's correctly reported CEP transactions to the unreported sales and have included these transactions in our calculation of the overall weighted-average margin.

Comment 11: Facts Available for Reseller's Indirect Selling Expenses

KTN contends that the Department should no longer apply facts available for ISEs for each U.S. sale made by one of Thyssen's affiliated resellers based in Germany because after the Preliminary Determination KTN provided this reseller's ISEs which were verified without discrepancy.

Department's Position: We agree with KTN. At the time of our preliminary determination KTN had not submitted information regarding the ISEs incurred by the reseller at issue. However, as part of its January 6, 1999 supplemental response, KTN reported the ISEs for this reseller. During our U.S. sales verification we specifically reviewed the ISEs for the reseller in question and noted no discrepancies. Therefore, for these final results we have used the verified ISEs as reported for this reseller.

Comment 12: U.S. Credit Expenses

KTN maintains that in its Preliminary Determination the Department erroneously rejected KTN's reported credit expense for CEP sales and recalculated the expense using the credit period beginning with the date that KNE shipped the product from the European port (reported as SHIPDAT3U) rather than the date of shipment to the customer from the U.S. port (reported separately as SHIPDAT1U). KTN claims that using the earlier date of shipment from Germany overstates U.S. credit expenses by double-counting the time that merchandise is in transit between the European and U.S. ports; KTN claims it has included this time in its ICC. KTN argues that upon shipment to KHSP from the European port KNE bills KHSP for the merchandise; at that time KHSP recognizes the products as inventory on its books and records its value in its accounts payable. Similarly, KNE books the item as a sale to KHSP and includes the total in its accounts receivable due from KHSP. Thus, the time between SHIPDAT3U and SHIPDAT1U represents a period of credit being extended by KNE to KHSP, not by KHSP to the unaffiliated customer. KTN asserts that it has properly recognized this period by including the average time at sea as part of its ICCs in Germany. Therefore, under the Department's own practice, KTN contends, the correct date of shipment to use in the calculation of U.S. credit for CEP sales is the date of shipment to the final U.S. customer from the U.S. port. KTN's Case Brief at 56, citing Brake Drums and Brake Rotors From the Peoples Republic of China, 61 FR 53190, 53195 (October 10, 1996) (Brake Drums I).

Petitioners take issue with KTN's attempt to describe these sales as if they were made from KHSP's inventory in the United States. The sales in question, petitioners note, are not of merchandise that enters KHSP's inventory and is then later sold to the unaffiliated customer, but instead are sales that have been ordered by the final U.S. customer with the terms of sale set well before entry into the United States. Petitioners' Rebuttal Brief at 55. Dismissing KTN's references to KHSP's ''accounting inventory'' as a ''clever semantic cover,'' petitioners point to KTN's own statements for the record that it does not maintain inventory in the United States, but rather, makes direct shipments from Germany to the first unaffiliated customer in the United States through the CEP agent KHSP. Id. at 56. Petitioners accuse KTN of seeking to lower its margin by shifting the ex-factory-to-U.S. port expenses from its U.S. credit (a direct expense) to its foreign ICC (an indirect expense). Thus, petitioners continue, a Deutsche-mark interest rate would apply and the amount would not be deducted from the CEP starting price. However, petitioners maintain that the valuation of merchandise during this period is in U.S. dollars, as demonstrated by the documentation of transactions from KTN through KNE to KHSP. Therefore, petitioners submit, U.S. credit expenses should be calculated based on the time from KNE's shipment from the European port (SHIPDAT3U) using a dollar-denominated interest rate.

Department's Position: We agree in part with petitioners. In response to our section A supplemental questionnaire, KTN reported that ''[i]t typically is not KHSP's practice to maintain an inventory of the subject merchandise for its customers. During the POI, KHSP did maintain a small inventory of subject merchandise, but did not sell this merchandise.'' KTN's October 23, 1998 supplemental response at 6. KTN reiterated this point in a December 1, 1998 submission on critical circumstances: ''[a]s stated in prior submissions, KTN does not maintain inventory in the United States.'' Therefore, we conclude that during the POI KHSP did not have any sales of subject merchandise made out of inventory. This being true, all of KTN's sales during the POI were made-to-order sales that were drop-shipped from KNE in Germany (i.e., direct shipments). Therefore, we disagree with KTN's characterization of these transactions as KHSP's ''inventory sales.''

Further, we disagree with KTN's conclusion that Brake Drums I articulated a practice of using the date of shipment from the U.S. port to the U.S. customer as the correct date of shipment in calculating the credit period for CEP sales. In fact, in Brake Drums I the Department stated that:

> [i]n CEP cases where the merchandise received is shipped to the U.S. customer from inventory of a U.S. affiliate, the credit period begins from the point of shipment from U.S. inventory. However, in the case of [respondent] Laizhou/Shenyang merchandise is shipped to the U.S. customer directly from the foreign port. Therefore, we have relied on a credit period beginning with the date of the bill of lading at the foreign port.

Brake Drums I, 61 FR at 53195.

Therefore, we have recalculated KTN's credit expense based on the date of shipment from the German port (SHIPDAT3U) rather than shipment from the U.S. port, which is fully consistent with Brake Drums I.

However, we agree with KTN's assertion that it recognized this time period by including the average days at sea as part of its ICCs in Germany. Therefore, in order to avoid double-counting the time in transit by including this period in both KTN's U.S. credit and its foreign ICCs, we have adjusted the latter figure to account for time at sea, as reported in KTN's section C supplemental response.

Comment 13: Proper Shipping Date for U.S. Resales

Assuming, arguendo, that the Department will again recalculate credit expenses for either KTN or KHSP sales and continues to use SHIPDT3U, KTN insists that the Department must ensure that the shipment date field used to calculate the payment days for individual transactions contains a date. KTN claims that a subset of the U.S. sales reported by KHSP represent transactions where the merchandise was directed to a different customer after the product's arrival in the United States (e.g., in the case of a canceled sale), or resales of merchandise initially rejected by the original U.S. customer after delivery. Thus, irrespective of the larger issue of KTN's proper credit period, the appropriate date of shipment for these resales is the date of shipment within the United States (SHIPDT1U). Therefore, KTN argues that should the Department continue to use the date of shipment from the European port for KHSP's other U.S. sales, the Department must still use SHIPDT1U for this subset of sales.

Department's Position: As stated in response to Comment 12, we have continued to use SHIPDT3U in our calculation of U.S. credit expenses. However, we agree with KTN that in those instances where merchandise was resold by KHSP after arrival in the United States, the date of shipment to use in our calculation of imputed credit expenses should be the date KHSP shipped the merchandise to the final U.S. customer (SHIPDT1U), and not the date of the original shipment from KNE in Germany. Therefore, we have revised our program to account for such resales in the United States. See Ministerial Errors Memorandum.

Comment 14: Short-Term Interest Rates

KTN states that as part of its Preliminary Determination the Department applied an interest rate of 9.5 percent, the prime rate plus one percent, to calculate U.S. credit expenses because KTN did not report Fried. Krupp's short-term interest rate, and because the reported U.S. short-term borrowing rate did not represent an arm's-length rate. However, KTN claims that because, as part of the post-preliminary home market and U.S. verifications, both KTN and KHSP provided information on their respective short-term borrowing rates that correct these deficiencies, these verified rates should be used for the final determination.

Petitioners raise a number of issues relevant to both KTN's home market and U.S. interest rates. First, petitioners urge the Department to reject as untimely information the figures KTN provided at verification regarding its home market interest rate. Petitioners suggest that the

Department instead either allow no adjustment whatever for home market credit as adverse facts available, or rely upon a second rate reviewed at the home market verification as non-adverse facts available.

Regarding the U.S. interest rate, petitioners assert that, despite numerous requests, KTN never supplied the necessary supporting data for the interest rates available to Krupp USA Financial Services, Inc. (KFSI). Even accepting the specific reported rate, petitioners claim, the information KHSP did present at verification regarding KFSI demonstrates that the interest rate is not at arm's length. Furthermore, petitioners contend that neither the Krupp nor the KHSP interest rate can be applied to U.S. sales since neither is based on U.S. dollar-denominated lending.

Petitioners suggest as facts available the use of the interest rate KHSP charges its U.S. customers for late payments. Petitioners argue that this rate (i) is not skewed by intra-company affiliated transactions, (ii) accurately reflects the value on receivables based on KHSP's actual commercial practice, (iii) ensures arm's length treatment, (iv) is based on dollar-denominated lending and thus is in keeping with the Department's policy of matching the denomination of the interest rate to that of the transactions to which it applies, and (v) ensures parity with the calculated net interest expenses for U.S. sales.

Petitioners also object to KTN's failure to weight-average the interest rates by the outstanding loan amounts, and chides KTN for failing to even list the amounts of these loans in the relevant exhibit to its supplemental response. For the final determination, petitioners urge the Department to continue to base KTN's U.S. interest rate on the prime rate plus one percent, or 9.5 percent. Petitioners' Case Brief at 57.

In rebuttal, KTN disagrees with petitioners assertions concerning home market interest rates, arguing that they have overlooked the fact that the Department's verification outline explicitly requested that KTN provide Fried. Krupp's short-term interest rate. In response to this request, claims KTN, it included with its opening-day correction letter the short-term interest rate for Fried. Krupp which was subsequently verified by the Department. Furthermore, KTN argues, the Department has the option of accepting new information at verification provided it serves to corroborate, support, or clarify information already on the record.

Further clarifying its position, KTN argues that, contrary to petitioners' assertions, KHSP never claimed that its short-term borrowings were from Fried. Krupp. Rather, KTN contends, KHSP's short-term borrowings were made through a Krupp central cash management system administered by KFSI. KTN argues that it has never claimed that the Fried. Krupp short-term Deutsche-mark-denominated interest rate should be applied to its U.S. sales. KTN asserts that the short-term interest rate that should be examined is KHSP's borrowing rate from the cash management system run by KFSI, which is an entirely separate cash management system from that run by Fried. Krupp. KTN's Rebuttal Brief at 46.

Regarding petitioners' concerns about the arm's-length nature of KHSP's interest rate, KTN argues that the Department examined this information during verification and found no discrepancies. Furthermore, contends KTN, petitioners assume that since KHSP is borrowing from an affiliated party, the interest rate charged by KFSI cannot be at arm's length. However, KTN argues that a given percentage of Krupp USA's capital comes from banks at market rates and the remainder comes from the central Krupp (not Fried. Krupp) cash management system. KTN also cites in support of its argument a passage from the KFSI cash management agreement.

KTN also takes issue with petitioners' questioning the methodology of deriving a rate as a simple average of daily rates during the POI. KTN contends that whether the rates were based on a simple average or a weighted average, the short-term interest rate would be almost identical. KTN's Rebuttal Brief at 47.

Finally, KTN urges the Department to use the Federal Reserve rate at the time of the transaction if KHSP's reported short-term interest rate is not used, and not the rate assessed by KHSP as late-payment interest. KTN suggests that this approach would be consistent with the Department's practice, in the absence of borrowings in the proper currency, to rely upon publicly-available information to establish a short-term interest rate. Id., at 48, citing Flat Products From Canada, 64 FR at 2176.

Department's Position: We agree with KTN. Regarding KTN's home market interest rate, as stated in the KTN Preliminary Analysis Memorandum at 12, KTN failed to provide specific information requested in its November 16, 1998 Section B supplemental response regarding the average short-term interest rate for Fried. Krupp, one of KTN's parent companies. Rather, KTN reported the rate at which it borrowed funds from Fried. Krupp. As a result, in the Preliminary Determination we used this rate as non-adverse facts available on the basis that the average rate of borrowing between KTN and Fried. Krupp would reasonably be lower than the average lending rate between Fried. Krupp and an unaffiliated lender. However, as part of our January 7, 1999 home market verification agenda, we specifically requested this information again. During verification KTN presented the Department with information pertaining to Fried. Krupp's short-term cost of borrowing which was verified without discrepancy. While petitioners note that KTN failed to report this information when originally requested, it did comply with our later requests. Therefore, for these final results we have used the average short-term interest rate between Fried. Krupp and its unaffiliated lender.

In addition, KTN's Section C supplemental response indicated that KHSP's U.S. short-term borrowing rate for loans from Krupp's central cash management system were not at arm's length when compared with publicly-available information placed on the record by KTN. See KTN's September 28, 1998 Section C supplemental response. Because, as indicated above, KTN did not provide the requested information on the specific short-term rates at which Fried. Krupp borrowed, and because the submitted rates were not at arm's length, we preliminarily recalculated KTN's credit expense using the publicly-available prime lending rate of 8.5 percent reported by KTN, increased by one percent to approximate a commercially-available lending rate. However, as part of its January 6, 1999 submission, KTN provided the short-term borrowing rate from the Krupp central cash management system run by KFSI. In addition, our U.S. verification agenda again requested that KTN provide information pertaining to the short-term borrowing rate of Fried. Krupp. See U.S. Verification Agenda, January 23, 1999 at 14. As part of KTN's U.S. verification we examined KHSP's annual cost of borrowing, comparing the short-term borrowing rates between KHSP's affiliated and unaffiliated lenders, and noted no discrepancies. See KHSP Verification Report at 21. Based on this comparison, we have determined that KHSP's affiliated-party lending rate was at arm's length. Therefore, based on information submitted on the record subsequent to our Preliminary Determination, for these final results we have used KHSP's short-term lending rate from Krupp USA Financial Services.

Comment 15: U.S. Indirect Selling Expenses

To derive its U.S. ISE ratio, KHSP first isolated those expenses it could attribute specifically to its Wayne, New Jersey sales division which handled only sales of subject merchandise. KHSP then allocated a portion of the remaining ''unidentifiable'' selling expenses (i.e., those attributable to KHSP's selling activities generally) to sales of subject merchandise on the basis of sales value. Finally, KHSP divided the sum of the Wayne office expenses and the allocated general selling expenses by the total value of sales through the Wayne office. Petitioners argue, however, that the use of an ISE ratio applicable to the operations of KHSP as a whole (i.e., total KHSP ISEs divided by total KHSP sales value) is preferable. Petitioners' Case Brief at 45.

Furthermore, petitioners argue that the Department should deny KHSP's proposal to reduce the total ISEs by amounts for foreign exchange gains and losses and interest expenses, as they are applicable specifically to KHSP's CEP sales operations. With respect to interest expenses, petitioners argue, KHSP has failed to provide any evidence demonstrating that the amount of ISEs should be reduced by interest expenses. Petitioners cite Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea, 64 FR 12927 (March 16, 1999) (Flat Products from Korea III), wherein the Department stated that:

> The Department disagrees with respondents' assertions that the Department's policy is to exclude interest expenses of U.S. sales affiliates from U.S. indirect selling expenses because imputed credit and inventory carrying cost expenses are already deducted from the starting price. . . . [I]nterest expenses incurred by sales affiliates may relate to activity other than the financing of inventory or accounts receivable, and still be associated with sales of subject merchandise.

Petitioners' Case Brief at 46, quoting Flat Products From Korea III, 64 FR at 12931.

Regarding its allocation of U.S. ISEs, KTN argues that the petitioners' suggested methodology for allocating these expenses is at odds with section 772(d) of the Tariff Act, which authorizes the Department to deduct from the CEP starting price only those expenses incurred in selling subject merchandise. Petitioners' methodology, asserts KTN, would serve to overstate ISEs because it would include those expenses incurred by KHSP's Atlanta office which deals primarily with non-subject merchandise. In contrast, argues KTN, its methodology results in a more accurate calculation and is in accordance with section 772(d) of the Tariff Act in that it isolates expenses related to the sale of subject merchandise. KTN's Rebuttal Brief at 33. KTN clarifies that only where it was unable to identify which sales office incurred a given expense did it allocate the expense on the basis of overall sales value. KTN argues that the Department should accept its reported ISE ratio for U.S. sales in light of the Department's successful verification of these expenses.

With respect to the second argument raised by petitioners, KTN responds that it appropriately deducted foreign exchange gains and losses and interest expenses from its total ISEs. As noted, because section 772(d) of the Tariff Act authorizes the Department to deduct from the CEP starting price only those ISEs incurred in the sale of subject merchandise, and because the record indicates that KHSP clearly incurred no foreign exchange gains or losses on the sale or purchase of subject merchandise during the POI, a downward adjustment to exclude these amounts is justified. KTN's Rebuttal Brief at 35.

Similarly, argues KTN, an adjustment for net interest expenses is warranted. KTN disputes petitioners' suggestion that these expenses should be included in both its financial expenses and its ISEs. In fact, KTN claims, in Flat Products from Korea III the Department stated that it would exclude ''some portion or all of a U.S. sales affiliate's interest expenses in its calculation of indirect selling expenses. * * * To the extent that a U.S. affiliate's interest expenses are associated with non-subject merchandise, the Department does not deduct them from the CEP starting price.'' Accordingly, the Department ''excluded interest expenses associated with non-subject merchandise'' and then ''reduced the remaining amount for interest expense for an amount attributable to financing of accounts receivable and inventory, leaving nothing left to include in the calculation of indirect selling expenses.'' KTN's Rebuttal Brief at 36, quoting Flat Products From Korea III, 64 FR at 12931. KTN argues that the Department, in a manner consistent with Flat Products from Korea III and section 772(d) of the Tariff Act, should allow a downward adjustment to KHSP's reported ISEs for interest expenses, as ''there is no portion of KHSP's interest expense remaining to include in the calculation of indirect selling expenses after (1) excluding interest expenses associated with non-subject merchandise, and (2) reducing the remaining interest expense to account for amounts already reported as imputed expenses.'' *Id.*

Department's Position: We agree in part with petitioners. With regard to the manner in which KHSP allocated its U.S. selling expenses, as noted above, KHSP was able to identify certain ISEs associated with its Wayne, New Jersey sales office. Those expenses which could not be attributed specifically to the Atlanta or Wayne offices were allocated to Wayne on the basis of sales value. KHSP then summed the total expenses attributable to the Wayne operations and those expenses allocated to sales from Wayne and divided by the Wayne sales value to derive its ISE ratio. See KHSP Verification Report at 23 through 26 and Exhibit 8. While petitioners argue for a company-wide approach, we find no evidence that KHSP's allocation methodology is distortive or inaccurate. With respect to the first step in KHSP's allocation of its ISEs (i.e., the isolation of the Wayne office's expenses), we verified fully that the Wayne office dealt in subject merchandise exclusively as well as the manner in which KHSP determined which expenses to include. Regarding the second step in the allocation process (*i.e.*, the allocation of ''unidentifiable'' expenses on the basis of Wayne office's sales value), we have no reason to believe this approach results in distortions or somehow understates U.S. ISEs.

In a recent administrative review involving Japanese tapered roller bearings the Department employed an approach to recalculate respondent NTN's ISEs similar to the second step in KHSP's allocation. We first summed NTN's total U.S. ISEs, multiplied this amount by the ratio of covered merchandise to total sales and, finally, divided the resulting figure by sales of covered merchandise to derive an ISE ratio. See, e.g., 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, 63 FR 63860, 63867 (November 17, 1998). For this final determination we have concluded that the manner in which KHSP allocated its U.S. ISEs is neither distortive nor inaccurate and, in fact, reflects accurately KHSP's experience with respect to sales of subject merchandise during the POI. We have, accordingly, accepted KHSP's methodology.

However, we agree with petitioners concerning KHSP's claimed downward adjustments to U.S. ISEs for exchange rate gains and losses and interest expenses. In Belgian Stainless Plate in Coils the Department, over the respondent's objections, included interest expenses in the calculation of ISEs because the record did not demonstrate that these expenses arose from the financing of inventory or accounts receivable and were not associated solely with non-subject merchandise. To the extent that interest expenses are shown to relate to the financing of accounts receivable and inventory, we normally will not include them in the calculation of ISEs. In Belgian Stainless Plate in Coils, however, we concluded that

> * * * the Department has included U.S. affiliate interest expenses in the calculation of U.S. ISEs independent of our calculation of imputed credit expenses, even if the interest expenses in question constituted part of the basis for determining the interest rate used to calculate the imputed credit expenses. * * * [W]e note that the record evidence is not clear these interest expenses reflected short-term debt. More importantly, the short-term or long-term nature of the debt is irrelevant in this context, given that either type may relate to subject merchandise and involve activities other than financing of inventory or receivables.

Id., 64 FR at 15488.

As in Belgian Stainless Plate in Coils, we are unable to determine from the record whether or not KHSP's claimed interest offset to ISEs relates to the financing of inventory or accounts receivable. The only information on the record relating to KHSP's interest expenses is a worksheet prepared for verification identifying the amount of interest expenses recorded under certain account codes. See KHSP Verification Report at Exhibit 8. This itemization does not allow us to determine the nature of the loans for which these interest expenses were incurred, nor has KHSP provided any narrative explanation regarding such expenses. Accordingly, for this final determination we have denied KTN's claimed offset to ISEs for interest expenses. KTN has likewise provided no convincing evidence to support its claimed downward adjustment to U.S. ISEs to account for exchange rate gains and losses. The most we are able to determine from the record is the aggregate amount of POI exchange rate gains and losses reflected in a worksheet which accompanies Exhibit 8 of the KHSP Verification Report. Absent information regarding the circumstances under which these gains and losses were incurred, we have no basis for excluding them from KHSP's ISEs; accordingly, we have denied KHSP's offset to its selling expenses for exchange rate gains and losses.

Comment 16: Charges by Affiliated Freight Carrier

Petitioners argue that, as articulated in a Departmental memorandum in Large Newspaper Printing Presses from Japan, the Department requires evidence from a respondent that charges for goods or services provided by affiliated parties were made at arm's length. However, petitioners claim, KTN has provided no such evidence with respect to charges it incurred for international freight services provided by an affiliated carrier. In fact, maintain petitioners, an analysis which it conducted using KTN's sales data demonstrates that the international freight charges for a substantial portion of those transactions involving KTN's affiliated carrier were not at arm's length. As non-adverse facts available, petitioners argue that the Department should replace those reported international freight expenses charged by an affiliated carrier deemed not to reflect arm's-length prices with port-specific, weighted-average, arm's-length ocean freight charges derived from unaffiliated CEP freight transactions.

KTN responds that freight charges for those U.S. sales shipped by an affiliated carrier, when evaluated in total, were at arm's-length prices and, as such, do not warrant an adjustment. Using the same arm's-length methodology employed by petitioners in their October 15, 1998 deficiency comments, KTN claims to have performed an analysis of the revised data submitted with its January 6, 1999 supplemental response. The results of its analysis, argues KTN, clearly demonstrate that the transactions between KNE and the affiliated carrier were at arm's length for two of the three U.S. ports to which the carrier shipped merchandise. KTN's Rebuttal Brief at 37 and 38.

If the Department determines that an adjustment is necessary, avers KTN, it should disregard petitioners' argument for an adjustment factor which is based on prices to different final destinations. Instead, argues KTN, the Department should conduct an analysis of the correct arm's-length adjustment which uses as its final point of comparison the relative prices for all transactions at issue rather than the prices by port of destination.

Finally, KTN argues, if the Department determines that a port-specific adjustment is appropriate, it should only apply an adjustment factor to those transactions shipped to the specific port for which ocean freight charges were deemed not to be at arm's length.

Department's Position: We agree with petitioners that, for those transactions shipped by KTN's affiliated carrier, the claimed expenses were not at arm's length. After reviewing the data from KTN's January 6, 1999 submission, we have determined that for two of the three ports to which the affiliated carrier shipped merchandise, the affiliated carriers' prices were not at arm's length when compared to non-affiliated carriers' prices to the same port. The results of our analysis are more fully described in the Final Analysis Memorandum. We have not adopted KTN's suggestion to base our arm's-length analysis on the relative prices for all transactions. This approach would compare prices charged by unaffiliated and affiliated carriers shipping to different destinations for which ocean freight charges would presumably vary widely. For this final determination we have applied a port-specific adjustment factor as described in our Final Analysis Memorandum to those sales transactions shipped by KTN's affiliated carrier for which ocean freight charges were deemed not to be at arm's length.

Comment 17: Warranty Expenses

In the home market KTN reported expenses associated with warranty claims on both a transaction-specific and an allocated basis. However, KTN reported only allocated warranty expenses for its U.S. CEP sales. Petitioners argue that KTN was uncooperative by refusing to provide transaction-specific U.S. warranty expenses incurred by KHSP for CEP sales. Given that KTN was able to report transaction-specific warranty claims in the home market, petitioners see no reason why KTN would have been unable to do the same with respect to U.S. CEP sales. Petitioners offer as evidence of KTN's ability to report these expenses on a transaction-specific basis KTN's statement in its September 29, 1998 questionnaire response that ''respondents maintain a log of credit and debit memos that includes warranty claims for the subject merchandise.'' Petitioners' Case Brief at 51, quoting KTN's September 29, 1998 section C response at C–49.

Petitioners suggest that KTN's attempt in its supplemental questionnaire response to justify an allocation in preference to transaction-specific reporting is not adequate. In fact, petitioners contend, the fact patterns regarding U.S. warranty claims bear a similarity to those of the home market for which KTN reported sale-specific warranty expenses. Petitioners further argue that while the Department found only minor discrepancies in its verification of KTN's home market transaction-specific warranty expenses, such was not the case for its allocated warranty expenses. KTN officials admitted, petitioners claim, that the warranty expense total was calculated incorrectly due to the erroneous inclusion of a billing adjustment category among warranty claims when compiling the response. Petitioners' Case Brief at 52. In light of these alleged discrepancies, petitioners urge the Department to apply the highest single absolute value for reported CEP warranty expenses to all CEP sales of prime merchandise and to use zero for home market warranty expenses. Id. at 53.

As an additional matter, petitioners maintain that the respondent's reliance throughout the course of this investigation on AFBs, 62 FR 2081 (January 15, 1997) is misplaced. Petitioners claim that AFBs did not, as KTN suggests, advance the proposition that average allocated warranty expenses are preferable to transaction-specific expenses. Rather, contend petitioners, the Department stated in AFBs that it would accept allocated warranty expenses provided it was not feasible for the respondent to report the expense on a more specific basis.

Petitioners' argument, KTN asserts, is a misinterpretation of both the law and the facts in this case. KTN argues that while the Department's regulations express a preference for transaction-specific reporting as a whole, the Department has for many years explicitly recognized that warranty expenses may be reported on an allocated basis. KTN argues that the reason for this practice is twofold. First, KTN asserts, warranty obligations arise from the universe of all transactions for which the warranty is offered whereas warranty expenses arise only on the few transactions for which the warranty is invoked. KTN argues that it is wrong to attribute the cost of a general obligation only to those transactions for which a specific expense was incurred. KTN's Rebuttal Brief at 40. Second, claims KTN, the Department has noted in AFBs that ''it is not possible to tie [POI] warranty expenses to [POI] sales, since the warranty expenses can be incurred on pre-[POI] sales. Likewise, [the respondent] may not incur warranty expenses on [POI] sales until a future time period.'' Id., quoting AFBs 62 FR at 2098 (KTN's redactions).

KTN argues that, like the respondent in AFBs, KTN and KHSP have reported warranty expenses in the most feasible manner given each company's circumstances and that its chosen methodology is neither distortive nor inaccurate. KTN asserts that it attempted to assign home market warranty expenses to specific product groups, but discovered that, due to limitations arising from claims where information regarding product type was not recorded or not available, it was not possible to do so. In those instances, KTN notes, its computer system assigned these unattributable expenses to a single product group. As a result, KTN argues, the attempted product group allocations did not properly reflect claims within the group. KTN points out that as soon as it discovered this shortcoming, it prepared a revised worksheet that allocated warranty expenses across all subject merchandise, differentiating them only by market. KTN further asserts that, contrary to petitioners' contention, the Department did in fact verify and accept KTN's allocated warranty expenses during the home market verification. Id. at 41.

With respect to the manner in which KHSP reported warranty expenses, KTN notes that KHSP tabulated the warranty expenses associated with specific transactions and reported those expenses on an allocated basis. KTN asserts that the Department was able to verify that KHSP accurately captured all expenses associated with warranty claims. Moreover, argues KTN, its methodology does not lead to inaccuracies or distortions because in both the home market and the United States warranty expenses incurred on stainless steel merchandise were allocated across sales of stainless steel merchandise on the basis of value. Id. at 42.

Furthermore, KTN argues, even if the Department should reject KTN's argument for allocating warranty expenses, the use of adverse facts available is not appropriate. KTN disagrees with petitioners' characterizations that KTN was ''uncooperative'' and ''steadfastly refused to report invoice-specific warranty expenses'' for U.S. sales. In fact, KTN claims, it fully complied with the Department's requests for information regarding warranty expenses and has provided the Department with verified information which would allow it to apply warranty expenses to U.S. sales on a transaction-specific basis, thereby rendering the application of adverse facts available especially unnecessary.

Department's Position: As the Department verified, KTN and KHSP are generally able to tie warranty claims to specific sales even though they initially reported warranty expenses on an allocated basis. With respect to its home market sales, for its January 6, 1999 supplemental response KTN searched its database through September 1998, or six months after the close of the POI, for warranty claims associated with subject merchandise and, where possible, linked these to POI sales in order to report these expenses on a transaction-specific basis. Regarding U.S. warranty expenses incurred by KHSP, we noted during our verification that its debit and credit memos bore references to the original invoices which would have allowed it to track such claims on a sale-specific basis, even though KHSP had reported these expenses using an allocation in its original submissions. As indicated in the KHSP Verification Report, we verified KHSP's allocated warranty expenses and examined the manner in which the company tracked warranty claims.

However, notwithstanding KTN's and KHSP's ability to track these expenses on a transaction-specific basis, we have long recognized that the nature of warranty expenses (*i.e.*, that claims made for specific sales are often made long after the close of a given period of investigation or review) often renders necessary the use of an allocation. While KHSP maintains a log containing, *inter alia,* credit memos relating to claims, there is no guarantee that a review of this log six months after the completion of the POI will accurately capture all warranty expenses relating to POI sales, as the potential remains for claims against POI sales to be presented at yet a later date. This same potential for inaccuracy also affects home market sales because there are likely to have been claims made on subject POI transactions which were processed after the date through which KTN searched its database (i.e., September 1998). As we noted in AFBs, it is not always possible to tie POI warranty expenses to POI sales, since the warranty expenses can be incurred during the POI on sales before the POI; likewise, a respondent may not incur warranty expenses on POI sales until well after it is required to submit those sales to the Department.

Therefore, we agree with KTN and have used the verified information on its allocated warranty expenses for home market and U.S. sales. With respect to home market sales, however, because the Department found minor discrepancies between the reported and verified allocated warranty expenses, in accordance with section 776(a)(D) of the Tariff Act, we have based the warranty adjustment on the facts available. We calculated the lowest reported ratio of warranty expenses using the transaction-specific warranty expense and applied this ratio to all home market sales. This calculation is further detailed in our Final Analysis Memorandum; see also KTN Sales Verification Report at pages 47 and 48.

Comment 18: Other Corrections at Verification

Petitioners highlight three items from the U.S. and home market verification reports which were specified in the opening-day correction letters. First, in light of KHSP's admission at verification that there were certain sales for which it did not apply the expense ratio calculated for certain brokerage and handling charges, petitioners request that the Department correct the reported CEP sales listing to ensure that all transactions reflect this charge. In addition, petitioners urge the Department to revise KHSP's reported U.S. duty expenses for resales to reflect the corrected ratio KHSP calculated prior to verification. Finally, petitioners request that the Department apply to EP sales marine insurance charges which KTN initially did not report.

KTN does not dispute petitioners' comments with respect to these issues and points out that it brought these items to the attention of the Department during the first day of the home market and U.S. verifications.

Department's Position: For this final determination we have made revisions to our computer programs to correct for these errors.

U.S. Reseller Issues

Comment 19: Facts Available for U.S. Reseller

Petitioners present a number of grounds for disregarding the questionnaire response of KTN's affiliated processor and reseller in toto and basing the margin for this body of U.S. sales transactions on adverse facts available. Petitioners accuse U.S. Reseller of (i) failing to provide requested sales documentation at verification, (ii) misclassifying a significant portion of its sales as being of unknown origin by refusing to trace the original suppliers, (iii) failing to report physical characteristics of its merchandise essential to the Department's sales matching, (iv) classifying sales of prime material as secondary, or non-prime, (v) neglecting to report early payment discounts granted on its sales, and (vi) mis-reporting further-manufacturing costs. Petitioners' Case Brief at 82.

In addition to the alleged shortcomings in U.S. Reseller's sales response, petitioners point to a number of problems with U.S. Reseller's further-manufacturing COP response, as well. For example, petitioners note that U.S. Reseller allocated further-processing costs to products which did not undergo further processing. In certain cases reviewed at the cost verification, continue petitioners, the output weight of the finished goods exceeded the input weight of the original master coil, which is, petitioners note, a physical impossibility. Furthermore, petitioners assert, U.S. Reseller reported incorrectly quantity extras (surcharges for further processing performed on small orders), and failed to account for the costs of finishing operations performed on the underside of sheet products and ''re-spinning'' single coils into several smaller coils. These failings, petitioners aver, are ''systemic in nature and thus universally applicable'' as they arise from the underlying computer program used to identify the characteristics of specific products and to assign costs based on these identified characteristics. Id. at 99. Petitioners maintain that the Department cannot be left the task of reconstructing an accurate response; therefore, the only appropriate solution is the application of total adverse facts available to the U.S. Reseller portion of KTN's response. In the alternative, petitioners urge the Department to apply partial adverse facts available for all missing or miscalculated cost data and sales adjustments.

KTN takes issue with petitioners' attempt to portray isolated errors discovered at verification as impeaching the entirety of U.S. Reseller's sales data. For example, the inability to produce the requested surprise sales documentation, KTN avers, stemmed from U.S. Reseller's inability to retrieve the relevant sales documentation from its archives and represented the only instance in which U.S. Reseller was unable to provide documents requested by the Department. KTN suggests that given U.S. Reseller's ''questionable'' involvement in this investigation through the Department's finding of affiliation, U.S. Reseller cannot be held to the same standard as a respondent in an ongoing administrative review process.

KTN also dismisses the significance of any noted reporting errors, and attributes these to the computer program developed by U.S. Reseller solely to comply with the Department's detailed reporting requirements. As a steel service center, KTN maintains, U.S. Reseller has no need to track each input stainless steel coil to the finished products as re-sold to the ultimate end user. As a result, avers KTN, U.S. Reseller never developed the computer programming necessary to tie each transaction to its input stainless steel. KTN explains that U.S. Reseller attempted to accomplish this first by merging data maintained separately by U.S. Reseller's different warehouses to develop a list of each item sold. U.S. Reseller then had to merge this item list with its invoice history file which, KTN continues, would provide links to the original customer orders. Aside from errors arising from bad data, e.g., data entry errors when originally posting the items, KTN suggests, this merger of data was successful in ''the overwhelming majority of transactions * * *''. KTN claims that for those invoices sourced from multiple input coils, U.S. Reseller developed a computer algorithm to match input coil and output sheet and strip on the basis of product characteristics and weights consumed versus weights shipped to customers. KTN dismisses the subset of erroneous results as ''very small and fully identified,'' with potential mismatches of input and output material occurring in no more than 4.25 percent of the reported transactions. Id. at 70 and 72 (original emphases). Even this subset is overstated, KTN claims, by the inadvertent inclusion of sales of non-subject merchandise. KTN further claims that it identified each of the ''problematic'' transactions for the cost verification team, discounting assertions in the U.S. Reseller Cost Verification Report that time constraints precluded any examination of this list.

KTN ''freely concedes'' that its linking program did not execute perfectly. However, KTN insists, any resulting errors were (i) identified to the Department, (ii) fully explained, and (iii) only affected slightly more than four percent of U.S. Reseller's reported sales. Therefore, KTN concludes, ''[t]he accuracy of the remaining 95.95 percent of transactions is simply not at issue.'' KTN Case Brief at 74.

As for early payment discounts, KTN suggests that the number of transactions affected by this error was minuscule. Exhibit 11 of the U.S. Reseller Sales Verification Report, KTN notes, included the overall value of early payment discounts and their significance expressed as percentages of both total sales value and subject merchandise sales value. Even were the Department to assume that all early payment discounts applied to sales of subject merchandise, submits KTN, these discounts are insignificant.

KTN also disputes the significance of the Department's conclusion in the U.S. Reseller Cost Verification Report that U.S. Reseller failed to allocate finishing costs for products sold with a ''prebuffed'' bottom finish. U.S. Reseller ''conceded at verification that this was a programming error that was simply overlooked,'' KTN asserts. Contrary to the U.S. Reseller Cost Verification Report, KTN maintains, it fully identified each transaction affected by this error; in any event, avers KTN, the quantity of such transactions is trivial, involving just 26 items. KTN Case Brief at 75.

With respect to re-spinning costs, KTN contends that these are common to virtually all products sold by U.S. Reseller; as such, argues KTN, re-spinning costs are not separately identifiable in U.S. Reseller's normal records. KTN claims that as a result U.S. Reseller appropriately included re-spinning costs in its calculation of fully-absorbed factory overhead.

As for the allocation of costs for processing performed by outside vendors, KTN urges the Department to place this matter in perspective by considering that processors of both aluminum and stainless steel accounted for a minority of the total processing charges incurred by U.S. Reseller from outside vendors. U.S. Reseller had no means to identify directly the portion of the processing expenses properly allocable to stainless versus other products, KTN avers; U.S. Reseller acted reasonably, therefore, in allocating these expenses using the proportion of stainless to non-stainless processing based on its own historical experience. For the Department to assume otherwise, KTN objects, is rank speculation. KTN Case Brief at 78. KTN also disputes the significance of any discrepancies between processing costs as recorded in U.S. Reseller's management reports and the actual amounts observed in spot checks conducted by the Department at verification, and challenges the fairness of the methods employed in uncovering these discrepancies. Prior to January 1998, KTN asserts, computer records allowing vendor-specific calculations of outside processing costs were not available. U.S. Reseller, therefore, relied upon its management reports, ''the only consistent source of information on processor-specific outside processing costs covering the entire POI.'' KTN Case Brief at 79. Furthermore, KTN insists, U.S. Reseller fully explained these discrepancies as arising from credit notes or unpaid invoices issued after U.S. Reseller's books for a given month had been closed. Claiming that there is no evidence that the discrepancies introduce bias in any particular direction, KTN suggests that the Department has no grounds for concluding that the charges of outside processors has been either over- or under-stated.

KTN further argues that there is no mystery about the difference between the verified quantity of processed goods used in calculating yield losses and the higher figure included in KTN's section E further-manufacturing response: for its first response U.S. Reseller had assumed erroneously that all of its merchandise had been subject to further processing. KTN insists that U.S. Reseller identified and corrected this error in its January 6, 1999 supplemental section E response. The Department was able to trace the corrected actual amount without discrepancy during the U.S. Reseller cost verification. KTN's Case Brief at 80.

Department's Position: We agree with petitioners that, pursuant to section 776(a) of the Tariff Act, total facts available are warranted with regard to sales through KTN's affiliated further manufacturer. In the instant case the use of total facts available for the U.S. Reseller portion of KTN's section C response is warranted because the methodology and computer programming used by U.S. Reseller to identify its products' physical characteristics and to match each of these products with its associated costs were found at verification to be accomplishing neither end consistently or accurately. Moreover, both the frequency of the errors and the absence on the record of information necessary to correct certain of these errors serve to undermine the overall credibility of the further-manufacturing response as a whole, thus compelling the Department to rely upon total facts available for U.S. Reseller's database. Reliance upon total facts available is required for all further manufactured sales because the submitted data do not permit calculation of the adjustments required under section 772(d)(2) of the Tariff Act for ''the cost of any further manufacture or assembly (including additional material and labor) * * *''.

We also find, as explained below, that the use of an adverse inference is appropriate in this case because the record established that U.S. Reseller did not cooperate with the Department by acting to the best of its ability in responding to our requests for information. The manifest and manifold errors in U.S. Reseller's response evidence a failure to conduct even rudimentary checks for the accuracy of the reported further-processing data. Indeed, a reasonable check by company officials could have shown that (i) products that underwent no further processing were being assigned further-processing costs, (ii) further-processed products were not being assigned their appropriate processing costs, (iii) coils passing through certain processes were not being allocated any cost for the process, and (iv) the output width of slit coils generated by a given master coil exceeded the original width of that input coil.

The Department may correct reported costs or adjust incorrect data in response to its findings at verification. See, e.g., Extruded Rubber Thread From Malaysia, 64 FR 12967, 12976 (March 16, 1999). In this case, however, correction of the specific flawed data is not a viable option because of the high percentage of errors found through our testing (nearly 40 percent of the items tested were found to be in error). In addition, some of these errors cannot be corrected using information on the record. More importantly, the fundamental nature of these errors raises concerns as to the validity not only of the data subjected to direct testing, but of the remainder of the response as well.

The Department's August 3, 1998 antidumping questionnaire put interested parties on notice that all information submitted in this investigation would be subject to verification, as required by section 782(i) of the Tariff Act, and, further, that pursuant to section 776 the Department may proceed on the basis of the facts otherwise available if all or any portion of the submitted information cannot be verified. In addition, in letters dated February 17 and 23, 1999, the Department provided U.S. Reseller with the sales and cost verification agendas it intended to follow, both of which repeated the warning that any failure to verify information could result in the application of facts available. The cost verification agenda identified nine transactions that the Department intended to test. U.S. Reseller had a full week to gather supporting documentation for these nine transactions and to test for itself the accuracy of the further manufacturing data. Clearly, U.S. Reseller did not avail itself of these opportunities, since our testing at verification revealed that costs for three of the nine selected transactions contained fundamental and significant errors. See U.S. Reseller Cost Verification Report at 14 through 17. When the Department then selected nine additional transactions for review, four of these were also found to reflect significant errors. These included allocating processing costs to non-processed material (id. at 15), mis-allocating quantity surcharges (id.), and, more troubling, reporting finished weights which exceeded the weight of the input material (''[t]his is impossible and for this reason we could not verify the amount of processing for this observation.'' Id.).

The first step identified in the Department's verification agendas calls for the respondent, at the outset of verification, to present any errors or corrections found during its preparation for the verification. As we stated above, none of the errors discussed here were presented by U.S. Reseller at the outset of verification; yet many of them were manifestly apparent and U.S. Reseller was obligated to notify the Department prior to the start of verification of these problems.

We disagree with KTN's assertion that the numerous errors identified by the Department affect only a small number of products out of the possible universe of transactions and that the effect of the errors is minuscule. As mentioned above, U.S. Reseller created a computer program to respond to the Department's questionnaire which sought to match an input coil to each output coil sold and to assign a cost for each processing step through which the finished coil supposedly passed. When we tested this computer program at verification to assess its accuracy and reliability, we found that seven of eighteen tested transactions contained errors in either the allocation of processing costs or in the matching of input coils to output coils. In two of these cases U.S. Reseller had assigned processing costs to products which had, in fact, undergone no processing. We note that this discrepancy arose from the input coils and output coils identified by U.S. Reseller's own computer program. In another transaction the combined widths of the finished products were greater than the original width of the input coil as identified by the system, an obvious physical impossibility that should have been identified by U.S. Reseller as an error. The nature of these errors raises serious doubts as to the accuracy of the overall program used to match input master coils to output slit coils as sold. It also serves to undercut KTN's assertions that KTN acted to the best of its ability in compiling this portion of its section C response. Further, several of these errors served to understate the costs of further processing by shifting portions of these costs to non-further-processed merchandise. Since these errors affect the entire population of products sold (i.e., both processed and unprocessed products), it is not possible for the Department to isolate the problems and adjust for the errors accordingly.

The program also failed to assign properly certain finishing costs. Certain coils with a pre-buff finish applied to the underside by the reseller had no finishing costs reported for the additional processing. Finally, other transactions contained errors in the application of surcharges for processing small quantity orders. In the samples tested U.S. Reseller had reported quantity extra charges in excess of what should have been reported. This error led to an understating of the variance between the costs as allocated for purposes of the response and the costs as maintained in the U.S. Reseller's financial accounting system. Once again, both errors reduced the costs allocated to further processed products, thus creating further doubts as to the accuracy of the underlying reporting methodology.

We also find unpersuasive KTN's suggestion that because U.S. Reseller had to develop the computer program as a result of the Department's highly detailed questionnaire it should therefore be held blameless for any errors arising from its implementation of its chosen computer logic. We must stress that every respondent in every antidumping investigation is faced with the question of how best to sort and retrieve the sales and cost data as maintained in its normal course of business to respond to our questionnaire. This necessarily entails the winnowing of its larger universe of sales to capture only that merchandise subject to our investigation, and the further creation of unique data fields to reflect the specific model-match criteria and the applicable expense adjustments set forth in the questionnaire. Finally, the resulting database must be refined to present the transaction-specific information on sales and adjustments in the precise formats required by the Department. That U.S. Reseller, like virtually all respondents in antidumping proceedings, chose to rely upon a computer program as the easiest means to accomplish this end is entirely unremarkable and in no way mitigates the failings found in this case. We note further that KTN and a number of its home market and U.S. affiliates largely succeeded in supplying data relating to sales, expenses, and COP in responding to the same antidumping questionnaire with equally detailed reporting requirements. The surfeit of errors in U.S. Reseller's data was not the result of any unduly burdensome reporting requirements imposed by the Department; rather, these shortcomings resulted in their entirety from U.S. Reseller's reliance on faulty computer programming and data which U.S. Reseller apparently failed to review prior to verification.

In addition, we disagree with KTN's assertion that it was able to quantify the extent of the cost errors on the final day of verification. First, we note that U.S. Reseller made no attempt to explain or quantify two of the errors discovered by the Department, the allocation of processing costs to unprocessed material and the misreporting of the small-quantity surcharge. More to the point, due to the volume of information that must be verified in a limited amount of time, the Department does not look at every transaction, but rather samples and tests the information provided by respondents. See, e.g., *Bomont Industries* v. *United States*, 733 F. Supp. 1507, 1508 (CIT 1990) ([v]erification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness) and *Monsanto Company* v. *United States*, 698 F. Supp. 275, 281 (CIT 1988) (''[v]erification is a spot check and is not intended to be an exhaustive examination of a respondent's business''). It has been the Department's long standing practice that if no errors are identified in the sampled transactions, the untested data are deemed reliable. Conversely, if errors are identified in the sample transactions, the untested data are presumed to be similarly tainted absent satisfactory explanation and quantification on the part of the respondent. See, e.g., *Tatung Company* v. *United States*, 18 CIT 1137 (December 14, 1994). This is especially so if, as here, the errors prove to be systemic in nature. The fact remains unchallenged that for two days of a scheduled three-day verification we tested a number of further-manufactured transactions to assess the reliability of U.S. Reseller's methodology for reporting costs and discovered numerous errors. U.S. Reseller claimed on the last day of verification that it had reviewed its further-manufacturing data and isolated the magnitude of these errors. KTN's assertion in its case brief that U.S. Reseller succeeded in identifying all of the errors is an unsubstantiated ipse dixit which could not be verified in the time remaining. The only way to test this eleventh-hour claim would have been to re-verify the entire further-manufacturing database to ensure that all erroneous transactions had, in fact, been captured. Moreover, as indicated in the verification outlines presented to KTN and U.S. Reseller, the proper time for U.S. Reseller to check the accuracy of its reported data was before these data were submitted, or, at the latest, prior to the start of the verification. We presented KTN and its U.S. Reseller with the cost verification agenda one week in advance precisely to allow them to prepare properly for verification. Had U.S. Reseller reviewed the accuracy of the computer program used to report its further manufacturing costs prior to verification, it could have identified the errors and presented them to the Department on the first day of verification. We consider it inappropriate for respondents to expect the Department to retest the entire further manufacturing database on the last day of verification after the Department uncovers numerous errors as a result of its routine testing. Furthermore, the requirements of section 782(d) that the Department provide a respondent the opportunity to remedy such errors is inapplicable. Rather, as we stated in Certain Cut-to-Length Carbon Steel Plate from Sweden,

> [w]e believe [respondent] SSAB has misconstrued the notice provisions of section 782(d) of the [Tariff] Act. Specifically, we find SSAB's arguments that the Department was required to notify it and provide an opportunity to remedy its verification failure are unsupported. The provisions of section 782(d) apply to instances where ''a response to a request for information'' does not comply with the request. Thus, after reviewing a questionnaire response, the Department will provide a respondent with notices of deficiencies in that response. However, after the Department's verifiers find that a response cannot be verified, the statute does not require, nor even suggest, that the Department provide the respondent with an opportunity to submit another response.

Certain Cut-to-Length Carbon Steel Plate from Sweden, 62 FR 18396, 18401 (April 15, 1997).

Finally, we reject KTN's arguments with respect to the propriety of drawing an adverse inference with respect to a respondent ''whose involvement in the proceeding was questionable in the first place.'' KTN goes to great pains to assert that it never had control over the data submitted by U.S. Reseller; therefore, any lack of cooperation evinced by U.S. Reseller cannot be imputed to KTN. See, e.g., KTN's Rebuttal Brief at 73 and Public Hearing transcript at 46 and 47. KTN presents the issue as one in which KTN was at the mercy of recalcitrant parties, only some of whom could be persuaded to participate in the investigation: ''U.S. Reseller's sales and cost data found its way into the record of this investigation only after its release was negotiated and it was confidentially transmitted to KTN's counsel.'' Id. However, KTN's protestations that its officials in Bochum, Germany did not have the opportunity to review U.S. Reseller's submitted data for accuracy beg the point. The Department has never suggested that KTN was in a position to compel a reluctant U.S. Reseller to provide its sales and cost data to KTN; rather, the thrust of our affiliation determination has consistently been that Thyssen, not KTN, was in a position to direct its German and U.S. affiliates to provide complete and timely responses to the Department. We suggest here that where it was in KTN's interests to do so, Thyssen did precisely that, by instructing selected affiliates to cooperate with the Department's investigation. For reasons beyond the Department's ken, U.S. Reseller chose to submit responses under the guise of a cooperative respondent while withholding crucial information to make its responses usable for purposes of establishing statutory U.S. price.

We note that throughout this investigation KTN has been represented by legal counsel who certified each of KTN's (and U.S. Reseller's) submissions of fact in this case, claiming the counsel had read the submission and had ''no reason to believe [it] contains any material misrepresentation or omission of fact.'' See 19 CFR 351.303(g). Similarly, on January 13, 1999, U.S. Reseller certified that the responsible company official had read its submission and that the information therein was, to the best of the official's knowledge, complete and accurate. See, e.g., KTN's January 15, 1999 section E supplemental response. Finally, throughout the preparation for the U.S. Reseller verifications and the verifications themselves, counsel were present at all times in the conference room. U.S. Reseller was also assisted by economic consultants retained by KTN specifically for purposes of preparing responses in this antidumping investigation. The fact remains that despite its disagreement with the Department's decision on affiliation, Thyssen succeeded in persuading U.S. Reseller to submit a response; from that moment forward, it was incumbent upon U.S. Reseller to submit complete and accurate responses to our questionnaires. It was the further responsibility of KTN's legal representatives, acting throughout this proceeding on KTN's behalf, to ensure that the data it helped prepare were reliable. Finally, the record does not reflect that once KTN was directed to submit U.S. Reseller's sales and cost information it was having trouble securing U.S. Reseller's cooperation (aside from KTN's stated objections for the Department's legal reasoning). Had this been the case of KTN painfully and laboriously extracting each datum from a recalcitrant unaffiliated party, one would expect the record to reflect this in, for example, written pleas of an inability to submit the requested data, or appeals for modifications to reporting requirements in response to limited available data. Instead, there is silence on this point. KTN proceeded throughout the investigation as though U.S. Reseller's full cooperation was a given, once the Department had notified KTN that the further-processed sales would be required for our analysis.

Therefore, the Department concludes that KTN had the resources to secure the necessary level of cooperation from U.S. Reseller. In addition, the Department finds that, for the reasons discussed above, U.S. Reseller failed to cooperate by acting to the best of its ability in compiling its further-manufacturing response. Moreover, because the U.S. Reseller's information is essential to the dumping determination, the use of adverse facts available is appropriate irrespective of KTN's involvement in providing the information. See, e.g., Hot-Rolled Steel From Japan, 64 FR at 24367. Therefore, consistent with section 776(b) of the Tariff Act, we have drawn an adverse inference in selecting among the facts available for use in lieu of U.S. Reseller's unverifiable data. As adverse facts available we have assigned the highest non-aberrational margin calculated on KTN's properly reported U.S. sales.

Comment 20: U.S. Sales of Unidentified Origin

Petitioners accuse KTN of belatedly submitting such vast revisions to U.S. Reseller's sales listings as to constitute an entirely new response. Petitioners note that on January 6, 1999, KTN reported for the first time a significant body of U.S. Reseller's sales transactions. These sales data were not only submitted late, petitioners aver, but also in many cases were missing essential information identifying the manufacturer and the products' physical characteristics.

With respect to unidentified suppliers, petitioners deem unpersuasive KTN's evolving explanations for these discrepancies. The stainless industry requires strict quality control, petitioners insist, including warranty provisions and the routine transmission of quality certifications from the producing mill. Out of necessity, U.S. Reseller would be able to track merchandise back to its suppliers. Petitioners also dismiss as irrelevant KTN's claims that its computer system did not permit a full linking of U.S. Reseller's sales transactions to the supplying mills. Even if true, petitioners argue, KTN's assertions do not obviate its responsibility to take the steps necessary to supply the Department with complete data including, if necessary, the manual search of paper records. Petitioners aver that had KTN raised this issue, i.e., its difficulty in reporting accurately all sales, when it received the questionnaire in August 1998, ''the Department and petitioners could have addressed how best to proceed in a deliberate fashion with KTN.'' Petitioners' Case Brief at 86. Petitioners accuse KTN of deliberately withholding this information until after the Preliminary Determination so it could present the Department with a *fait accompli* on the eve of the Department's verification.

Petitioners further argue that the Department's verification debunked KTN's claims with respect to U.S. Reseller's ability to report the supplying mill; of a random sampling of seven invoices involving unidentified suppliers, in three cases U.S. Reseller was able readily to identify the manufacturer. Petitioners note that three months elapsed between U.S. Reseller's initial sales listing of November 16, 1998 and its final database submitted on February 17, 1999; U.S. Reseller's failure to use this time to identify its supplying mills demonstrates that it failed to cooperate to the best of its ability. The Department's response, petitioners argue, should be recourse to adverse facts available.

Furthermore, petitioners maintain, much of U.S. Reseller's sales data includes significant discrepancies such as missing gauge or finish information that render the data useless for the Department's analysis. As with the missing supplier information, petitioners argue, even if U.S. Reseller's computer records did not readily permit collation and reporting of this information, a review of U.S. Reseller's sales records would have yielded the required product characteristics. Petitioners point to the Department's finding at verification that the omissions arose from errors such as the inclusion of non-subject merchandise (e.g., stainless steel angles) in U.S. Reseller's sales listings, data entry errors, or missing values generated by the computer program used to merge the various source files used in compiling U.S. Reseller's response. U.S. Reseller had ample time, petitioners suggest, to conduct a manual review of sales documents to remove non-subject merchandise from its response and to supply the missing characteristics for the remaining sales of subject merchandise.

Continuing in their rebuttal brief, petitioners dismiss KTN's request for the Department to make extensive corrections to its reported data and insist upon the use of adverse facts available. Petitioners' Rebuttal Brief at 57. In fact, petitioners suggest, some of the proposed corrections are beyond the Department's capacity. For example, sales of stainless steel angles which U.S. Reseller inadvertently included in its sales listing are not readily discernible from the submitted computer sales file. These corrections, petitioners maintain, should not be the Department's burden; rather, the Department should rely upon adverse facts available for the U.S. Reseller portion of KTN's response.

KTN argues in rebuttal that there is no longer any question that the U.S. Reseller could not trace the origin of these sales. KTN's Rebuttal Brief at 68. According to KTN, the Department's cost and sales verification reports both noted that once U.S. Reseller transfers inventory between its locations, its computerized inventory system issues a new stock number, thereby erasing the original link with the supplying mill. KTN quotes approvingly the Department's conclusion that ''* * * the Company is unable to identify [the products'] original source through the system.'' Id., quoting the Reseller Cost Verification Report at 5.

Rejecting as absurd petitioners' argument that U.S. Reseller could have tracked the source manually, KTN claims that, while physically possible such a trace would require an inordinate amount of effort and would cause extended disruption to U.S. Reseller's business operations. The Department, maintains KTN, ''cannot impose such unreasonable burdens on respondents * * *''. Id. at 69.

KTN characterizes petitioners' comments as betraying a fundamental misunderstanding of the nature of the additional sales reported on January 6, 1999, and why KTN chose to include them. KTN reiterates its view that the only transactions which properly should be included in the Department's final determination are those which can be established affirmatively as having originated at KTN. Consistent with this view, KTN argues, its initial U.S. Reseller response included only those items sold which could be linked directly through the inventory database to a master coil produced by KTN; any transactions which lacked this direct link were omitted. KTN justifies this approach by suggesting that more likely than not, the unidentified material came from a supplier other than KTN, given the relative proportion of stainless flat products positively identified as having been supplied by KTN.

KTN insists that the purpose of its later decision to report transaction-specific data on the unidentified merchandise was to assist with the Department's verification and not to concede that these sales should properly be subject to our margin calculations. As to the proper treatment of these transactions for the final determination, KTN urges the Department to disregard them entirely. In the alternative, KTN suggests allocating the unidentified transactions across the three concurrent investigations involving stainless sheet in coil (i.e., from Germany, Mexico and Italy) based on the verified share of the identified sales supplied by each of the respondents in these investigations (respectively, KTN, Mexinox, and Acciai Speciali Terni, S.p.A.). For this investigation this could be accomplished by multiplying the weight of each unidentified transaction by the percentage of U.S. Reseller's merchandise purchased from KTN, as reflected in the sales sourced from identified suppliers.

Department's Position: We agree, in part, with petitioners and with KTN. In its January 6, 1999 supplemental response KTN reported a large quantity of sales by U.S. Reseller which lacked any information identifying the supplying manufacturer. As noted, KTN claimed that it had no immediate computer link to trace the origin of coils which had been transferred between U.S. Reseller's different warehouses. Thus, it had included this unidentified mass of sales in each of the sales databases filed on the records of the investigations of stainless sheet in coils from Germany, Mexico, and Italy.

As explained in response to Comment 19, we have determined that the errors affecting U.S. Reseller's reported sales and cost data, including its failure to identify properly the supplier of a major portion of its sales, render this portion of KTN's section C response unreliable in its entirety for purposes of our margin calculations. However, this conclusion does not dispose of the issue of the proper treatment of the unidentified transactions. For a significant portion of U.S. Reseller's U.S. transactions during the POI the manufacturer is simply unknown. The absence of the supplying mill for this body of sales affects not only this investigation, but also those involving stainless steel sheet in coils from Mexico and Italy. Furthermore, the absence of this elementary and critical information forecloses any attempt by the Department to apportion these sales accurately between merchandise which is subject to one of the three ongoing investigations and that which is properly considered non-subject merchandise because it was obtained from either a domestic or other foreign mill. Thus, this gap in the record is one of overarching importance, impinging upon our ability to calculate accurately the margins in three separate antidumping duty investigations.

We cannot accede to KTN's suggestion that we exclude the unidentified transactions entirely from our calculations. While we are not able to state with precision which of these transactions represent subject stainless sheet in coils from Germany, KTN has conceded that some are properly subject to this investigation (as, indeed, some are subject to the concurrent investigations involving Mexico and Italy). The Tariff Act and the implementing regulation do envision a number of scenarios where the Department may disregard transactions in its analysis (sample transactions or sales of obsolete merchandise, for example, or when sampling transactions pursuant to section 777A of the Tariff Act). However, these exceptions all involve an independent analysis by the Department of the facts surrounding the proposed exclusions and its reasoned explanation on the basis of the record that the transactions at issue are either unnecessary or inappropriate for inclusion in our calculations. There are no provisions allowing the Department simply to ignore a significant portion of U.S. sales based on a reseller's putative inability to identify the affiliated respondent manufacturer.

As for this claimed inability, KTN attempts to present as the Department's own conclusions what were, in fact, its reporting of KTN's claims at verification. Thus, the Reseller Sales Verification Report noted that ''Reseller explained that if material from its warehouse is sold to another location * * * the [receiving] warehouse subsequently will enter the merchandise into its own inventory by recording itself as the supplier.'' U.S. Reseller Sales Verification Report at 6. However, the report also states on the previous page that ''Reseller clarified that the original supplier's identification is traceable, but is not vital to its own needs.'' Id. at 5. Further, we found at verification that, notwithstanding U.S. Reseller's assertions, in many cases it was possible through a rudimentary search of U.S. Reseller's existing computerized records to identify the supplier. As petitioners note, of seven ''unidentified supplier'' transactions sampled at verification, we were able to trace immediately the outside supplier for three of these using nothing more than a personal computer in U.S. Reseller's offices. See U.S. Reseller Sales Verification Report at 10.

As noted above, we have determined that the use of adverse facts available is appropriate for the sales and further-manufacturing data submitted by U.S. Reseller. As for the unidentified body of sales, the Department also finds that the available computer records would allow U.S. Reseller to trace with facility the supplier for nearly half of the sample transactions selected at verification. Had U.S. Reseller made full use of its readily-available computer data, the effort required to identify the manufacturer for the remaining transactions would have been substantially less, thus largely attenuating the ''enormous amount of work'' involved in ''manual tracing'' * * * through several layers of internal paper transactions, inventory records, and sales records.'' KTN's Rebuttal Brief at 68. Accordingly, we find that U.S. Reseller failed to cooperate by acting to the best of its ability in compiling information essential to our analysis, such as the identity of the supplying mill, and will make an adverse inference in apportioning the unidentified transactions.

In selecting facts available we find that there is no record support for KTN's proposal that we allocate the unknown universe of U.S. Reseller's transactions based on the observable percentages in the known universe; this approach would still result in the Department's disregarding over half of the unidentified U.S. transactions without any justification in the record. First, since by KTN's own admission some portion of the unidentified sales were supplied by KTN, the resulting percentage of merchandise identified as being of German origin is understated. In addition, we have no means of conducting an independent evaluation of this large body of sales to determine whether the patterns found for the identified universe of transactions would hold true for merchandise which, obviously, moved in different channels of distribution (e.g., through its transfer between or among U.S. Reseller's locations). Thus, for purposes of this final determination we have adopted a variant of KTN's proposal. As an adverse inference we are treating all of the unidentified merchandise as having originated with one of the three respondent firms in the concurrent investigations. To apportion the unidentified sales among the three investigations we have adjusted the quantity for each of the unidentified sales on a pro rata basis, using the verified percentages of U.S. Reseller's merchandise supplied by each respondent mill. We have then applied a facts-available margin to these transactions, as explained above in response to Comment 19.

Comment 21: Merchandise Imported in Cut-to-Length Form

KTN notes that at the verification of the U.S. Reseller it identified certain transactions involving non-subject merchandise which had inadvertently been included in U.S. Reseller's sales files. These sales involved merchandise originally imported from Germany in cut-to-length form and, thus, not subject to the instant investigation. In addition, U.S. Reseller reported a number of transactions involving stainless steel angles, shaped products likewise not subject to this investigation. KTN suggests that the Department use its reported data, coupled with a list of non-subject transactions provided at the U.S. Reseller verification, to delete these sales from its reported data base.

Petitioners dismiss as without merit KTN's request that the Department correct U.S. Reseller's sales data, noting that not all of the non-subject sales can be identified using the reported data. The burden of compiling an accurate sales listing, petitioners aver, should not rest with the Department.

Department's Position: While KTN claims that it identified the quantity of cut-to-length merchandise at the outset of the U.S. Reseller verification, we compared these figures to the sales data submitted on January 6, 1999. We found the total quantity of stainless sheet which was acquired by U.S. Reseller in cut-to-length form as reflected in U.S. Reseller's sales listing greatly exceeded the quantities for cut-to-length products presented in Exhibit 6. Because we cannot reconcile the various figures we have no evidentiary basis for making the quantity adjustment claimed by KTN. See Final Analysis Memorandum. As a result we have applied the adverse facts available margin to the entire quantity of stainless sheet products included in U.S. Reseller's submitted data.

Comment 22: Other U.S. Reseller Issues

Petitioners and KTN each presented a number of other arguments pertaining to the sales by U.S. Reseller, many addressing points raised in the U.S. Reseller Sales Verification Report. As mentioned in passing under Comment 20, above, petitioners and KTN commented on additional problems discovered at the U.S. reseller verification, including (i) U.S. Reseller's inability to provide documents for the ''surprise'' sales trace requested at verification, (ii) the discovery by the

Department of unreported early payment discounts on U.S. sales, and (iii) the alleged mis-classification of prime merchandise as non-prime.

Petitioners also faulted KTN on the manner in which U.S. Reseller calculated its ISEs for further-manufactured merchandise, including its omission of its net financial expenses from the ISE calculation. In addition, petitioners suggested that the Department recalculate U.S. Reseller's SG&A to correct ''serious discrepancies'' discovered by Thyssen, Inc.'s independent auditors. Furthermore, petitioners accused U.S. Reseller of mis-allocating its stainless steel scrap yield ratio by using a numerator and a denominator derived from different universes of transactions. KTN objected in turn to each of petitioners' comments on these issues. For its part, KTN protested the timing of the release of the U.S. Reseller verification reports and the subsequent schedule for filing case and rebuttal briefs; petitioners dismissed KTN's objections as baseless.

Department's Position: Because we have determined to use adverse facts available for U.S. Reseller's sales data, these additional comments are moot and are not addressed further here.

KTN's Cost of Production

Comment 23: General and Administrative Expenses

Petitioners assert that the Department should include expenses relating to KTN's international projects, year-end adjustments, and personnel costs in KTN's revised G&A. Petitioners also argue that revenue from rebate claims, provisions and internal freight do not warrant treatment as offsets to KTN's G&A expenses, suggesting that the Department does not adjust a respondent's COP for offsets unrelated to its production activities.

In petitioners' view the costs associated with KTN's international projects, comprising joint ventures such as Shanghai Krupp (SKS) in the People's Republic of China, ''directly affect[ ] the allocation of the entire Nirosta world-wide manufacturing scheme.'' Petitioners' Case Brief at 64. In addition, petitioners contend that KTS's experiences in building and launching new facilities, such as the joint-venture plant in Shanghai, will benefit the entire Nirosta group. Thus, petitioners argue, international projects expenses should be included in KTN's G&A calculation.

Furthermore, petitioners argue that KTN's year-end adjustments pertain to pension and legal liabilities; as such, petitioners maintain, these adjustments are properly considered part of KTN's general operations and should be included in KTN's total COP. Finally, petitioners argue that adjustments KTN makes in its normal course of business relating to NSC's executive compensation should be included in KTN's G&A total because (i) there is no evidence these expenses pertain solely to NSC's operations and (ii) KTN has not reported these expenses separately under NSC's G&A expenses.

In addition, petitioners argue, expenses arising from the acquisition by KTN's parent KTS of Mexinox, the Mexican re-roller of stainless steel hot bands purchased from KTN, should be included in KTN's G&A expenses because Mexinox is an integral part of KTN's operations. Therefore, petitioners aver, the ''extremely interwoven nature'' of the Nirosta group shows that the Mexinox acquisition costs are in fact related to the core business of KTN and should be included in KTN's total COP. Petitioners' Case Brief at 63 and 64.

However, petitioners claim that revenues from rebate claims, provisions and internal freight do not warrant treatment as offsets to KTN's G&A expenses, suggesting that the Department does not adjust a respondent's COP for non-production-related offsets. Petitioners Case Brief at 63, citing *U.S. Steel Group* v. *United States,* 998 F. Supp. 1151 (CIT 1998), and Certain Pasta From Italy, 63 FR 42368, 42371 (August 7, 1998).

KTN counters that costs associated with the international projects center are unrelated to the production of subject stainless sheet in coils in Germany, as they are associated with the foreign operations of KTS. Likewise, accruals for severance payments do not represent G&A expenses incurred during the POI. KTN maintains that the downsizing for which the expenses were accrued never took place; thus, no severance payments were actually made. KTN expresses no objection, however, to including the personnel costs associated with NSC's operations in its G&A calculation.

KTN also rejects petitioners' assertion that the costs incurred in the Mexinox acquisition should be included in KTN's G&A. According to KTN, these costs incurred by KTN's parent company, KTS, bear no relationship to costs ''pertaining to production and sales of the foreign like product by the exporter in question''—the statutory test for including SG&A expenses for purposes of COP. KTN insists that because these expenses were incurred by KTS, rather than the respondent KTN, and because they are not associated with production and sale of the foreign like product by KTN, they are properly excluded. KTN dismisses as unfounded petitioners' assertion that Mexinox represents an integral part of KTN's operations, noting that the black band supplied by KTN to Mexinox represents a raw material cost to Mexinox which has been captured fully in Mexinox's verified COP.

With respect to rebates, claims, provisions, and internal freight, KTN suggests that petitioners' objections are based upon the incorrect assumption that the adjustments involve revenue received by KTN, an assumption fueled by the Department's Preliminary Cost Calculation Memorandum and KTN's Case Brief, which repeated this erroneous characterization. KTN's Rebuttal Brief at 50. In fact, KTN insists, these items are not revenues but adjustments to revenue, i.e., expenses, which have been reported properly within KTN's sales listing. Treating these items as adjustments to KTN's G&A, argues KTN, would result in double-counting. Petitioners' reliance on U.S. Steel is misplaced, KTN concludes, because that case addressed the proper classification of expenses within a cost response as either G&A or a cost of manufacture (COM), not whether the disputed items should be included in both the cost and the sales files.

Department's Position: We agree with petitioners that the costs associated with international projects as well as those arising from year-end adjustments should be included in KTN's G&A expenses. The costs of international projects are properly included in G&A because they relate primarily to general expenses of the group as a whole. These projects had not developed into stand-alone commercial entities. Thus, as petitioners note, their costs affect directly the allocation of the entire Nirosta world-wide manufacturing scheme.

As for the year-end adjustments, throughout the investigation KTN provided conflicting information as to the true nature of these adjustments. At verification we determined that the majority of these were for severance accruals. *See* KTN Cost Verification Report at 19 and 20. We consider severance costs to be expenses that relate to the general operation of a company as a whole. In setting up a severance accrual, KTN was reasonably certain that it would need to make severance payments for its workers currently employed by the company at some point in the near future. KNT recognized these severance costs during the current year and they directly relate to the company's current employees. Accordingly, we consider it appropriate to include these year-end adjustments in the respondent's G&A calculation. Finally, as both petitioners and KTN agree, we have included NSC's personnel costs in the G&A expense ratio calculation.

Regarding the Mexinox acquisition costs, we agree with KTN that these expenses should not be included in KTN's G&A expenses. While we agree with petitioners' characterization of Mexinox as an integral part of Fried. Krupp's operations, we do not consider it appropriate to include inter-company finance charges in our calculation of G&A expenses. Financing expenses related to Fried. Krupp's purchase of Mexinox will be captured in Fried. Krupp's consolidated financial statements.

We also agree with KTN regarding the treatment of rebate claims, provisions and internal freight. As noted in Exhibit 23 of the KTN Cost Verification Report, the expenses included in this account are predominantly for commissions and freight which the Department treats as selling expenses. Appropriately, KTN has reported these expenses in its sales listing. Therefore, we have excluded them from the G&A expense calculation.

Comment 24: Allocation of G&A Expenses

KTN takes issue with the Department's suggestion in the KTN Cost Verification Report that G&A expenses should be allocated based on total cost of manufacture (TCOM). Rather, KTN insists, its methodology, which allocates aggregate G&A expenses to products based on processing costs alone, achieves a more accurate result, as it is not skewed by wide variations in material costs. Material costs vary sharply, KTN explains, not only as a result of the differing alloy content of different grades of stainless steel, but also because of fluctuations in alloy prices. Therefore, according to KTN, while G&A activities do not vary according to grades of steel, material costs do vary depending upon the nickel content of the specific steel grade. As a result, KTN avers, inclusion of material costs will result in products which require the same G&A activities having sharply divergent per-ton allocated G&A expenses. KTN's Case Brief at 50. While it is reasonable, KTN suggests, to assign a higher G&A cost to a product which requires more processing activities, as the processing requires active management, it is inherently unreasonable to assign higher G&A costs to a product whose sole distinction is a higher cost for its constituent materials. Therefore, KTN believes that the Department should accept KTN's reported activity-based G&A expenses and not recalculate G&A based on its TCOM.

Petitioners oppose KTN's request for the allocation of its G&A expense ratio based on processing costs alone, calling KTN's suggested approach ''a results-oriented attempt to distort fully absorbed costs.'' Petitioners' Rebuttal Brief at 52. Such an approach, contend petitioners, results in a grade-neutral ratio which assigns the same absolute G&A expense to both low-cost and high-cost products. Petitioners insist that, contrary to KTN's methodology, the proper allocation of G&A over COM always includes the cost of materials. The rationale for a value-based allocation, petitioners argue, is that higher-value products absorb the same proportional amount, but a greater absolute amount, than lower-value products. *Id.* at 53. Petitioners argue that this approach for the allocation of SG&A expenses has been used consistently by the Department in such cases as Pure Magnesium from the People's Republic of China, 63 FR 3085 (January 21, 1998). Petitioners draw further support from Belgian Stainless Plate in Coils where the Department rejected the respondent's ''improvements'' in attempting to use a quantity-based methodology in allocating its selling expenses. As a result, petitioners note, the Department allocated the respondent's SG&A expenses solely on the basis of value.

Department's Position: We agree with petitioners that G&A expenses should be allocated as a percentage of the total cost of manufacturing the merchandise, as opposed to KTN's assertion that they be allocated as a percentage of processing costs. As set forth in Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan, 61 FR 38139, 38149 (July 23, 1996) and Certain Carbon and Alloy Steel Wire Rod From Canada, 59 FR 18791, 18795 (April 20, 1994), our normal methodology for allocating G&A expenses is to apply these types of costs as a percentage of total manufacturing cost. This approach recognizes that the category termed ''G&A expense'' comprises a wide range of costs, some of which bear such an indirect relationship to the immediate production process that any allocation based on a single factor, i.e., processing costs, would be purely speculative. The Department's normal method for allocating G&A costs based on total manufacturing cost takes into account all production factors (i.e., materials, labor, and overhead) rather than a single factor chosen arbitrarily. By allocating G&A consistently over total manufacturing costs the Department attempts to minimize discriminatory cost allocations. In addition, G&A expenses represent period costs, not product costs, and as such they should be spread proportionately over all merchandise produced in the period. By computing G&A based on a percentage of total manufacturing costs, each product absorbs the same proportional amount of G&A expenses relative to its total cost, even if the absolute amount might vary. This approach avoids distortions to the price or cost analysis caused by apportioning a higher percentage of processing costs to lower-cost products.

We also disagree with KTN's assertion that activity-based costing and standard accounting practices support the allocation of period costs based on processing costs. As the name suggests, activity-based costing provides that a cost element should be allocated based on the activity which gave rise to that cost element. G&A expenses, however, do not arise from individual processing costs or activities. We also disagree with KTN's unsupported argument that the more processing a product undergoes, the greater the amount of general and administrative activities properly associated with the product. By definition, G&A expenses relate to the general operations of the company as a whole and, as noted, to a period of time, not to specific products or processes. Absent evidence that our normal G&A allocation method unreasonably states G&A costs, we allocate such costs based on the total manufacturing cost. Therefore we have calculated KTN's G&A expenses as a percentage of the total manufacturing cost, including material costs.

Comment 25: Exchange Rate Gains and Losses

Petitioners maintain that because KTN was unable to reconcile its reported schedule of exchange gains and losses to the financial statements of Fried. Krupp, the Department should adopt the methodology suggested in the KTN Cost Verification Report by including foreign exchange rate losses, but excluding foreign exchange rate gains, in calculating consolidated financial expenses.

KTN disagrees, asserting that the Department should rely upon the exchange rate gains and losses realized by KTN proper, rather than the overall exchange rate experience of Fried. Krupp as a whole. To the extent the Department does rely upon the exchange rate gains and losses indicated in Fried. Krupp's financial statements, KTN argues, any losses should be offset by the gains. KTN further avers that the Department found sufficient evidence at verification to distinguish between the short-term and long-term interest reflected in Fried. Krupp's consolidated 1997 financial statements; interest income from long-term investments is shown separately from other interest and similar income drawn from short-term resources.

Department's Position: As a general matter we disagree with KTN that for computing interest expenses the Department should use KTN's company-specific foreign exchange and interest income figures rather than the consolidated figures reflected in Fried. Krupp's financial statements. The Department has a longstanding practice of calculating the respondent's net interest expense rate based on the financing expenses incurred on behalf of the consolidated entity. This practice recognizes the fungible nature of invested capital resources (i.e., debt and equity) within a consolidated group of companies. The Court sustained this approach in *Camargo Correa Meais, S.A.* v. *United States,* 17 C.I.T. 897, 902 (August 13, 1993), where the Court quoted approvingly Certain Small Business Telephone Systems and Subassemblies Thereof From Korea, 54 FR 53141, 53149 (December 27, 1989):

> The Department recognizes the fungible nature of a corporation's invested capital resources including both debt and equity, and does not allocate corporate finances to individual divisions of a corporation * * * Instead, [Commerce] allocates the interest expense related to the debt portion of the capitalization of the corporation, as appropriate, to the total operations of the consolidated corporation.

Accordingly, we will continue to use the consolidated financial statements of Fried. Krupp in the calculation of KTN's financial expense ratio.

As for the foreign exchange gains and losses, the Department requested in two questionnaires and again at verification that KTN provide information to support the inclusion of Fried. Krupp's foreign exchange gains and exclusion of its foreign exchange losses from the interest expense computation. However, KTN, which has the sole ability and responsibility to support the requested adjustments, failed to provide any supporting information. Thus, we agree with petitioners that since KTN failed to provide evidence to support the inclusion of gains and the exclusion of losses from the financial expense ratio calculation, we have included Fried. Krupp's foreign exchange rate losses while excluding its foreign exchange rate gains from the financial expense ratio calculation.

We agree with KTN, however, that based on our findings at verification, the interest income used as an offset to financial expenses is appropriately classified as short-term. Fried. Krupp's 1997 consolidated financial statements distinguish between interest earned from long-term and short-term financial assets. Accordingly, we included the interest income earned from short-term assets, less the amounts relating to trade receivables, as an offset to financial expenses.

Comment 26: Deep-Drawing by Affiliated Processor

Petitioners accuse KTN of failing to report that an affiliated party, Thyssen Umformtechnik, performed deep drawing operations on stainless flat products produced by KTN. The Department, petitioners contend, must apply adverse facts available in accounting for this critical element in KTN's COP.

KTN suggests that petitioners have misunderstood the role of these deep drawing operations. KTN maintains that rather than representing a cost associated with producing the foreign like product, deep drawing actually involves the consumption of the foreign like product in the manufacture of non-subject products ranging from vacuum bottles to automotive parts.

Department's Position: We agree with KTN with respect to the alleged role of deep drawing operations in the production of the foreign like product. The deep drawing at issue, as KTN claims, involves the consumption of the merchandise in the production of non-subject products and is not, as petitioners contend, a ''critical element'' of KTN's reported COP. As such, we made no adjustment for the deep drawing processes performed by Thyssen Umformtechnik.

Comment 27: Failure To Report Affiliated Supplier

Petitioners note that KTN purchased small quantities of titanium[8] from a company owned by Acciai Speciali Terni S.p.A. (AST), a sister company of KTN. According to petitioners, KTN failed to disclose prior to the Department's cost verification that the titanium was in fact purchased from an affiliated party. KTN's failure to disclose its affiliation with the supplier warrants use of adverse facts available, petitioners insist, because while titanium may represent a small portion of KTN's total raw material purchases, it comprises a major portion of the material costs for those grades of stainless steel which are alloyed with titanium.

KTN rejects as pure conjecture petitioners' arguments concerning purchases of titanium from its affiliate. Petitioners, KTN avers, have provided no information or analysis which could lead the Department to suspect the nature of the transactions between the affiliate and KTN. Furthermore, argues KTN, titanium purchases from the affiliate involved only small quantities of this input.

Department's Position: We disagree with petitioners. KTN disclosed at the outset of verification that it purchased small quantities of titanium from an affiliated company's subsidiary. We discussed the affiliation and these purchases with KTN officials, and noted that KTN's product brochures list titanium as a trace element (i.e., less than one percent) in certain grades of stainless steel. Given the relative insignificance of this input, we deferred further testing of the purchases and instead focused our testing on KTN's purchases of more significant inputs. Thus, contrary to petitioners' assertions, KTN identified the nature of these purchases; at verification the Department exercised its discretion in electing to concentrate on inputs which have a greater affect on KTN's reported COP.

Comment 28: Major Inputs From Affiliated Suppliers

Petitioners insist that KTN did not provide its affiliates' acquisition costs for certain raw materials used in the production of subject stainless steel sheet and strip. Petitioners argue that, as major inputs, the raw materials purchased from affiliates should be valued at the higher of transfer prices, market value, or the affiliates' COP, in accordance with section 773(f)(2) and (3) of the Tariff Act. However, in the instant case, petitioners aver, the transfer prices paid by KTN to its affiliated suppliers for inputs such as nickel and chromium were, on average, below market value. Petitioners' Case Brief at 68, citing Exhibit 23 of the KTN Cost Verification Report. Petitioners disagree with the Department's opinion, voiced in this report, that KTN's transfer prices were greater than both market value and the affiliates' COP (i.e., the affiliates' acquisition costs). Furthermore, evidence of the affiliates' overall profitability does not address whether or not the transfer prices at issue were above the cost of acquisition for these raw materials.

[8] The specific input and the supplier's identity were afforded treatment as business proprietary information, and were so treated in petitioners' case brief. However, KTN identifies the input publicly in its rebuttal brief.

Petitioners suggest increasing the value of KTN's nickel, chromium, and scrap inputs by the difference between KTN's highest unit costs for purchases from unaffiliated suppliers and the average transfer price, using the data in KTN Cost Verification Exhibit 23. If the Department persists in conducting the major inputs test in spite of KTN's refusal to provide its affiliated suppliers' acquisition costs, petitioners continue, the Department as a ''corrective measure'' should increase the value of these inputs by the difference between the average transfer price and the average market price.

KTN asserts that the Department verified that the transfer prices for raw materials supplied by affiliated parties were greater than both market prices and the affiliates' cost of production; accordingly, KTN argues, the Department should use the transfer prices in calculating COP and CV.

Department's Position: We disagree with petitioners. Section 773(f)(2) allows the Department to test whether transactions between affiliated parties involving any element of value required to be considered in calculating COP (i.e., major or minor inputs) are at prices that ''fairly reflect * * * the market under consideration.'' Section 773(f)(3) allows the Department to further test whether transactions between affiliated parties involving a major input are at prices above the affiliated supplier's cost of production. In other words, if an understatement of the value of a major input would have a significant impact on the reported cost of the subject merchandise, the statute allows the Department to insure that the transfer price or market price is above the affiliated supplier's COP.

The determination as to whether an input is considered major is made on a case-by-case basis. See Final Rule, 62 FR at 27362. In determining whether an input is considered major, among other factors, the Department looks at the percentage of the input obtained from affiliated suppliers (versus un-affiliated suppliers) and the percentage the individual element represents of the product's COM (i.e., whether the value of inputs obtained from an affiliated supplier comprises a substantial portion of the total cost of production for subject merchandise. Id. In the instant case we examined both the percentage of the input obtained from affiliated versus unaffiliated suppliers and the percentage of the product's COM represented by the specific elements of value, here, nickel, chromium, and alloyed scrap. The limited amounts of the inputs obtained from affiliated suppliers, combined with the relatively small percentage the individual elements represent of the product's COM, mitigates the effect purchases of these inputs from affiliates would have on KTN's total COP. Accordingly, we determine that in this investigation section 773(f)(3) of the Tariff Act does not apply to the nickel, chromium, and alloyed scrap purchased from affiliated parties. However, we did find that the prices paid to affiliated parties for nickel were below market price; therefore, as provided by section 773(f)(2) of the Tariff Act, we have increased the COM accordingly.

Comment 29: Hot Rolling Costs

Petitioners charge KTN with supplying data on the costs of hot-rolling services provided by an affiliate that are both incomplete and inaccurate. As a result, petitioners maintain, the Department lacks the necessary data to conduct the major input test described at section 773(f)(3) of the Tariff Act. Because KTN failed to provide its affiliate's total actual manufacturing costs, as well as the supporting documentation to calculate the affiliate's SG&A and net financial expenses, argue petitioners, the Department must rely upon adverse facts available to establish the TCOM for all of KTN's products.

According to petitioners, KTN selectively applied variances (to adjust standard costs to actual costs) to only limited portions of its cost build-up. In doing so, petitioners contend, KTN failed to account fully for the affiliate's actual per-unit costs of the hot-rolling services. Petitioners claim that as a result, KTN's reported costs do not cover the actual COM of the affiliated hot-roller.

Petitioners contend KTN has further skewed its reporting of hot-rolling costs by failing to include amounts for the affiliate's variable operating costs and SG&A expenses. Petitioners insist that to capture fully the affiliate's COP, the reported costs must include the SG&A of the affiliate, as well as the interest expenses of its parent firm, Thyssen Stahl AG. Further, petitioners argue that KTN failed to submit for the record data on the affiliate's expenses, such as its financial statements, that would allow a calculation of these additions to COM. Absent the profit and loss statement of the affiliate or, at the least, its parent, petitioners contend, there is no way to establish either the SG&A or financial expense portions of fully-captured COP for this hot rolling.

In light of KTN's failure to report the actual TCOM and the additional data necessary to determine adjustments for SG&A and net financial expenses, petitioners aver, the Department must resort to the facts available to establish KTN's COP. Petitioners suggest as an adverse inference that the Department should apply the single highest TCOM to all of KTN's products. That failing, conclude petitioners, the Department should adjust the reported COM to reflect actual, not standard, costs, and to include surrogates for the missing SG&A and financial expense data for the affiliated hot roller.

KTN takes issue with a number of petitioners' assertions. First, KTN argues, petitioners have not even established that the hot-rolling services at issue constitute a major input for the purposes of section 773(f)(3). Hot-rolling services, submits KTN, account for a small fraction of KTN's costs and are not a major input. That petitioners fail to address a necessary predicate to their entire line of argument, KTN maintains, is grounds for rejecting that argument entirely. While acknowledging that the Department has no bright-line figure for establishing what constitutes a major input, KTN nevertheless suggests that hot rolling adds relatively little value to the foreign like product; stainless steel derives most of its value from metallurgy (*i.e.*, at the liquid steel stage) and through cold rolling, annealing, and other finishing processes. Hot rolling, KTN concludes, is not a major input.

Second, KTN maintains, petitioners' allegations betray a misunderstanding of KTN's reporting methodology; the Department, on the other hand, tested this methodology at verification and found it to be sound. KTN's Rebuttal Brief at 57. KTN claims that petitioners virtually ignored the agreement between KTN and its affiliate setting forth the terms for its purchase of these services, whereas the Department examined this document, tested its formulae, and concluded that the transfer price covered the affiliate's cost of providing hot rolling. Petitioners' assertion that certain of the affiliate's costs were omitted from the transfer price, KTN avers, is drawn from the incorrect document, which merely addresses end-of-year adjustments to these costs. Rather, KTN maintains, the hot-rolling services agreement provides an itemization of costs to be included in the transfer price that is so liberal that ''KTN is of the view that it is paying too much for the hot rolling services.'' KTN's Rebuttal Brief at 61.

KTN concludes that petitioners' objections to its reported hot-rolling costs are misinformed. KTN insists that it has provided all documentation requested by the Department, and these hot-rolling services were discussed at length at verification. Petitioners' arguments, therefore, should be dismissed.

Department's Position: We agree with KTN that the transfer prices paid to its affiliated hot roller were at arm's length and, therefore, no adjustment is necessary. As mentioned above, when determining whether an input or process is considered major, the Department considers, *inter alia,* the percentage of the input or process obtained from affiliated suppliers and the percentage the individual element represents of the product's COM. In this case because hot-rolling comprises a relatively small percentage of the foreign like product's COM the impact of any misstatement of these costs upon total COP is reduced. As a result, we have determined that the hot-rolling services supplied by the affiliate do not constitute a major input as defined by section 773(f)(3) of the Tariff Act. However, as the hot rolling represents an input supplied by an affiliate, the Department still tests whether or not the transfer prices were at arm's length. In the instant case no market prices for hot-rolling services were available. Therefore, at verification the Department confirmed that the transfer prices, after the year-end adjustments enumerated in the purchase contract, were above the affiliated supplier's cost of production. Further, the Department confirmed at verification that the contract between KTN and its affiliated hot roller establishes prices which cover all fixed and variable manufacturing costs and SG&A as well as a provision for profit to the affiliate. Finally, we verified that the actual prices paid by KTN to the affiliate reflected the terms of the contract.

Ministerial Errors and Miscellaneous Comments

Comment 30: Separate Weighting of Nickel Alloys for Model Matching

KTN argues that the Department should use separate product codes for its 304L low-nickel and 304L high-nickel alloys because there are significant differences in the physical characteristics between the two which have a direct bearing on their respective costs of manufacture. KTN points to the widely divergent nickel content of the low-and high-nickel variants of its 304L stainless steel.

Petitioners contend that the model-matching grade criteria should not undergo selective modification to redefine product bands in the results-oriented exercise suggested by KTN, citing *Ferrosilicon from Venezuela,* 57 FR 61879, 61880 (December 29, 1992) (preliminary determination), and 58 FR 27522 (May 10, 1993) (final determination).

Department's Position: We agree with petitioners. In order to understand the Department's position, it is first helpful to clarify our methodology for assigning weight factors. We assigned individual weighting factors to those reported grades recognized by the AISI nomenclature. We also assigned unique factors to any reported proprietary grades or foreign grade specifications if the chemical content was sufficient to distinguish them from any existing AISI grade already assigned a ranking factor in our matching hierarchy (e.g., DIN specification 1.4462). Where a proprietary or foreign grade specification was similar in chemical composition to an AISI grade, we assigned it the same weight as the comparable AISI grade, rather than assigning a unique weighting factor to that particular grade. We also did not assign unique weights to certain ''sub-grades'' (e.g., 304DDQ) because the percentage ranges of chromium, carbon, nickel, and molybdenum do not differ from the broader AISI grade.

After deciding which grades to assign unique weighting factors, we established a linear weighting system designed to search for matches within the general classes of stainless steel (e.g., the chromium-nickel series, the straight chromium (hardenable) series, and the straight chromium (non-hardenable) series). In addition to ensuring matches within the general classes or families of stainless steel, our weighting system is designed to match grades in the same family based on chemical composition. For example, within the chromium-nickel series, where an identical match is not possible, our preference is to pair grades containing molybdenum (e.g., grades 316 and 317) with each other before searching for a grade with no molybdenum (e.g., grades 302 and 304).

KTN argues that the Department should use separate product codes for 304L low-nickel and 304L high-nickel alloys, stating that

> * * * DIN grade 4306 can be equated to AISI grade 304L. However, KTN sells different versions of DIN grade 4306—4306.00 and 4306.90. DIN grade 4306.00 has a nickel content of 10.0 through 10.2% while DIN grade 4306.90 has a nickel content of 8.05–9.12%. These differences in nickel content result in a large difference in costs and thus in price as well. Therefore, for sales of 4306.00, KTN has reported the information in GRADE2H as ''304L H'' with an H indicating high nickel content. For sales of 4306.90, KTN has reported the information in GRADE2H as ''304L L,'' with an L indicating low-nickel content.

KTN's September 29, 1998 section B questionnaire response at 9.

AISI grade 304L, to which we have assigned a unique weighting factor for purposes of our model match, contains between 8 and 10.5 percent nickel by weight. The nickel ranges specified by KTN for 4306.90 (304L L), 8.05 to 9.12 percent, and 4306.00 (304L H), 10 to 10.2 percent, fall entirely within the broader range specified for AISI grade 304L. Therefore, while the nickel content of the low- and high-nickel variants differs somewhat, both fall within the limits recognized as acceptable for grade 304L stainless steel. Accordingly, for this final determination we have not altered our model match program to distinguish between different variants of the same grade 304L stainless steel.

Comment 31: Errors in Model-Match Program

KTN claims that the programming language included in the Department's model-match program to consider gauge and finish did not execute properly due to a formatting discrepancy between the number of digits used in the Department's program and the number included in KTN's reported sales databases. As a result, KTN notes, two of the nine physical criteria intended for use in the model-match program were not considered, thus skewing the matching and the attendant adjustments for differences in merchandise (difmer).

Department's Position: We examined our model-match program and agree with KTN that the program inadvertently failed to consider the gauge and finish variables when matching home market and U.S. products. KTN reported gauge and finish in a different format than it did the other physical characteristics considered in the model-match program, inserting a leading zero for all values less than ten. As a result, for many models the program read the gauge and finish variables as equal to zero, and generated missing values for those records. Furthermore, in cases where sales of coil in the United States were matched to sales of similar merchandise in the home market (rather than sales of the identical coil) the model-match program did not calculate difmer adjustments as it should but, rather, set the value for these adjustments to zero. Therefore, for this final determination we have amended our program to account for the leading zeros inserted in KTN's reported gauge and finish. See also the Department's Ministerial Errors Memorandum.

Comment 32: Disclosure Under Administrative Protective Order

Petitioners argue that KTN has improperly double-bracketed the identities of its affiliated Thyssen distributors in the United States and Germany, refusing to release this information under administrative protective order (APO), even though this information has been in the public domain. According to petitioners, documentation they submitted on November 12, 1998 and January 11, 1999, clearly shows that the stainless steel distribution role of the various disputed Thyssen distributors ''is not only generally known, but in fact advertised, placed on the Internet, briefed in public company announcements, analyzed in the trade press, touted in public annual reports, outlined in Dun and Bradstreet company profiles, reported to the SEC, and highlighted in product brochures.'' Petitioners' Case Brief at 109. Therefore, petitioners assert that given these circumstances, KTN should not be allowed to succeed in pressing its claim for proprietary treatment for the affiliates' identities and should not only be required to release the names under APO, but should publicly identify these parties for the record.

Department's Position: We disagree with petitioners. From the outset of this investigation KTN has not released the names of its affiliates in the U.S. or home market under APO, instead choosing to double-bracket their names. On September 28, 1998, petitioners wrote the Department requesting that KTN be required to replace double-bracketed affiliated party names with single bracketing or, at a minimum, use a naming convention or coding of affiliates that would permit the consistent and reliable tracking of affiliations throughout the investigation. In a November 5, 1998 letter, KTN argued that in accordance with section 771(c)(1)(A) of the Tariff Act, it should not be required to disclose the names of KTN's customers to counsel for petitioners. Petitioners responded on November 12, 1998, by submitting documentation in support of its assertions that the affiliates' names which KTN was attempting to withhold from disclosure under APO were, in fact, in the public domain. After a thorough review of the record, on December 4, 1998, we notified KTN that ''we will permit the double bracketing of all customers in both the home market and U.S. market. We require however, that you code the affiliated customers in both markets.'' Letter from Ann Sebastian to Hogan & Hartson, December 4, 1998. On December 15, 1998, KTN submitted this coding, as instructed. On January 11, 1999, petitioners again placed information on the record attempting to bolster their original claim that these names deserved treatment as public information.

Section 777(c)(1)(A) of the Tariff Act states that ''[c]ustomer names obtained during any investigation which requires a determination under section 705(b) or 735(b) may not be disclosed by the administering authority under protective order until either an order is published under section 706(a) or 736(a) as a result of an investigation or the investigation is suspended or terminated.'' Further, the Department's regulations hold that ''[t]he Secretary will require that all business proprietary information presented to, or obtained or generated by, the Secretary during a segment of a proceeding be disclosed to authorized applicants, *except (i) customer names submitted in an investigation*.'' 19 CFR 351.304(a)(2) (emphasis added).

Based on the plain language of both the statute and the Department's regulations we have concluded that KTN was entitled to withhold the names of affiliates in the U.S. and home market from release under APO during this investigation. While petitioners provided voluminous documentation that KTN's affiliates' names were publicly available during the POI, we must defer to the statute's sensitivity regarding the improper disclosure of customer names during an antidumping duty investigation. Of all categories of business proprietary information routinely collected by the Department in antidumping duty proceedings, the Tariff Act specifically prohibits only the disclosing of customer names by ''the administering authority,'' i.e., the Department.[9] After thorough review we have determined that petitioners' documentation does not definitively indicate whether or not these parties were indeed customers of KTN. Thus, while these parties' names may be available through public means, the nature and extent of their dealings with one another are not. Requiring KTN to publicly release such information without conclusive public evidence of their roles has the potential for causing competitive harm to KTN. Further, it is important to note that the Department instituted one of the petitioners' proposed compromise solutions by requiring KTN to provide codes for its affiliates which were then released to petitioners. Therefore, for this final determination we will continue to allow KTN to withhold the identities of its affiliated customers in both the home and U.S. markets.

[9] Section 777(c)(1) also protects from disclosure privileged and classified information, which rarely factors into antidumping investigations, and ''information of a type for which there is a clear and compelling need to withhold from disclosure.''

Comment 33: Erroneous Subtraction of Home Market Billing Adjustments

KTN claims that the Department erred by adding, rather than subtracting, its reported billing adjustments when creating a variable to represent total discounts, rebates and billing adjustments. These billing adjustments, KTN asserts, should be added to the home market gross price, not deducted as in the Preliminary Determination.

Department's Position: We agree with KTN. We inadvertently deducted KTN's home market billing adjustments in our calculation of home market net price. Therefore, for these final results we have subtracted KTN's billing adjustment from our calculation of total discounts and rebates, which has the net effect of adding them to gross unit price, as appropriate.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Tariff Act, we are directing the Customs Service to continue to suspend liquidation of all imports of subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 4, 1999, the date of publication of the Preliminary Determination in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price or constructed export price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (in percent)
Krupp Thyssen Nirosta GmbH	25.72
All Others	25.72

International Trade Commission Notification

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

This determination is published pursuant to sections 735(d) and 777(i)(1) of the Tariff Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13682 Filed 6–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy

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

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Lesley Stagliano or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0190; (202) 482-3818 respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to the regulations at 19 CFR part 351 (April 1998).

Final Determination

We determine that stainless steel sheet and strip in coils (''SSSS'') from Italy are being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination, issued on December 17, 1998 (*see Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Italy* (''*Preliminary Determination*'') 64 FR 116 (January 4, 1999)), the following events have occurred:

On December 17, 1998, AST submitted its quantity and value reconciliation and computer programs for its affiliated U.S. reseller (''reseller 001''). On December 28, 1999, Acciai Speciali Terni, S.p.A. (''AST'') submitted its response to the Department's December 7, 1998 supplemental questionnaire. On January 8, 1999, the Department requested that AST provide additional information for reseller 001's downstream sales. On January 15, 1999, AST submitted its response to the Department's January 8, 1999 request. On February 16, 1999, we issued a supplemental questionnaire to AST regarding its December 11, 1998 reseller 001 submission. On February 23, 1999, we received AST's response to the Department's supplemental questionnaire.

On February 24, 1999, AST submitted information regarding additional U.S. sales that it had found in preparation of the home market verification. On March 5, 1999, the Department rejected AST's February 24, 1999 submission on the grounds that it was untimely. On March 8, 1999, at the onset of the verification of AST USA, AST submitted the additional U.S. sales. The Department rejected these sales as soon as they were presented to it. On March 10, 1999, petitioners submitted comments and information pertaining to the additional U.S. sales. On March 19, 1999, the Department rejected petitioners' March 10, 1999 submission because it contained untimely new information which was based on U.S. sales data that were previously rejected by the Department. On March 16, 1999, AST once again submitted information regarding the additional U.S. sales. On March 19, 1999, the Department rejected AST's March 16, 1999 submission because it contained untimely new factual information, and because it was submitted in response to petitioners' March 10, 1999 letter, which the Department rejected in its entirety. On March 22, 1999, AST submitted a letter stating that according to section 351.104(a)(2)(ii)(A) of the Department's regulations, the Department must retain a copy of AST's March 16, 1999 response on the official record. On March 30, 1999, the Department responded to AST's March 22, 1999 letter stating that pursuant to section 351.104(a)(2)(iii) of the Department's regulations we would not retain a copy of AST's response to petitioners' rejected March 10, 1999 letter, because it was an untimely submission.

During January, February and March 1999, we conducted sales and cost verifications of AST's and its affiliates' responses to the antidumping questionnaires in Italy and the United States. On March 15, 1999 and March 25, 1999, we issued our cost and sales verification reports for AST, AST USA, and reseller 001. Petitioners and respondents submitted case briefs on April 5, 1999, and April 6, 1999, and rebuttal briefs on April 9, 1999, and April 13, 1999. On April 19, 1999, petitioners and respondents withdrew their requests for a public hearing, dated January 13, 1999 and January 22, 1999, respectively.

On April 1, 1999, the Department requested that AST provide monthly shipment data for 1996, 1997, and 1998 by April 12, 1999. On April 12, 1999, AST submitted this information.

Scope of the Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III." [1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36." [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17." [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives). [4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''. [5]

Period of Investigation

The period of investigation (''POI'') is April 1, 1997 through March 31, 1998.

Critical Circumstances

On October 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of SSSS from Italy. In accordance with 19 CFR 351.206(c)(2)(i), we preliminarily determined that critical circumstances did not exist with respect to respondent AST, because the Department found that the estimated dumping margin was not 15 percent or greater, the threshold for the Department to impute knowledge on the part of the importer that dumping was occurring when the transactions are CEP sales. *See Preliminary Determination* and discussion below.

Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist if: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 735(a)(3)(A)(i) of the Act, the Department considers evidence of an existing antidumping order on SSSS from the country in question in the United States or elsewhere to be sufficient. We are not aware of any antidumping order in any country on SSSS from Italy.

In determining whether an importer knew or should have known that the exporter was selling SSSS at less than fair value and thereby causing material injury, the Department normally considers margins of 15 percent for CEP sales and 25 percent for EP sales sufficient to impute knowledge of dumping and of resultant material injury. *See Notice of Final Determination of Sales Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China,* 63 FR 61964, 61967 (November 20, 1997); *see also Notice of Final Determination of Sales Less Than Fair Value: Manganese Sulphate from People's Republic of China* 60 FR 52155, 52161 (October 5, 1995).

In this investigation, AST, which the Department has determined has CEP sales, does not have a margin over 15 percent. Based on these facts, we determine that the first criterion for ascertaining whether critical circumstances exist is not satisfied. Therefore, we determine that critical circumstances do not exist with respect to imports of SSSS from AST. Because the first criterion is not met, we did not analyze the respondent's shipment data to examine whether imports of SSSS have been massive over a relatively short period. *See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Collated Roofing Nails from Korea,* 63 FR 25895, 25898 (May 12, 1997).

Regarding all other exporters, an ''All Others'' rate has been determined (*see* ''The All Others Rate'', below); because this rate does not exceed 15 percent, we determine that critical circumstances do not exist for companies covered by the ''All Others'' rate.

Verification

As provided in section 782(i) of the Act, we verified the sales and cost information submitted by the respondent for use in our final determination. We used standard verification procedures, including examination of relevant sales, accounting, and production records and original source documents provided by respondent.

Affiliation

As explained in the *Preliminary Determination,* we find that, for purposes of this investigation, AST is affiliated with Thyssen AG (''Thyssen''). Record evidence established that AST is 75 percent owned by a joint venture company, Krupp Thyssen Stahl (''KTS''). KTS, in turn, is 40 percent owned by Thyssen Stahl AG (''Thyssen Stahl''), itself a wholly-owned subsidiary of Thyssen AG (the remaining sixty percent of KTS is controlled by Thyssen's joint-venture partner, Fried. Krupp. AG Krupp-Hoesch (Fried. Krupp)). Consequently, Thyssen AG, indirectly has a 33.75 percent equity holding in AST and, because this is greater than five percent, Thyssen AG is affiliated with AST within the meaning of section 771(33)(E) of the Act. *See Preliminary Determination* at 64 FR 118 and *Memorandum to the File; ''Affiliation of AST and Thyssen AG, and AST and A Thyssen Affiliate (company A),''* December 17, 1998 (*Affiliation Memorandum*).

In addition, we continue to find that AST is affiliated with Thyssen's home market and U.S. sales affiliates. Section 771(33)(F) of the Act authorizes the Department to find companies to be affiliated where two or more companies are under the common control of a third company. Section 771(33) of the statute defines ''control'' as one person being ''legally or operationally in a position to exercise restraint or direction over the other person.'' The actual exercise of control by one person over the other is not required in order to find the parties affiliated. In this investigation the nature and quality of corporate contact necessitate a finding of affiliation by virtue of Thyssen's common control of its affiliates and of AST. The record demonstrates that Thyssen, as the majority equity holder in, and ultimate parent of, its various affiliates, is in a position to exercise direction and restraint over the affiliates' production and pricing. As we stated in the *Preliminary Determination,* ''Thyssen retained the ability to control the production and pricing decisions of AST through the joint venture of KTS. Because both company A and AST are controlled by Thyssen AG within the meaning of section 771(33)(F), we have found that AST and company A are affiliated.'' *See* 64 FR 119. For a discussion of AST's affiliated parties,

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

see Comment 3 below, the Affiliated Party Memorandum, and *Memorandum For the File; ''Antidumping Duty Investigation on Stainless Steel Sheet and Strip in Coils from Italy—Final Determination Analysis for Acciai Speciali Terni SpA'' (Final Analysis Memorandum*) May 19, 1999.

Transactions Investigated

As in the preliminary determination, the Department has determined that for U.S. and home market sales the date of invoice is the appropriate date of sale because this is the date on which the material terms of sale are set. For further discussion see Comment 6.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent covered by the description in the ''Scope of the Investigation'' section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

As discussed in Comment 8, the Department has considered that sales of side-cuts and pup coils to be sales of prime merchandise for the purposes of this final determination. For matching purposes, we have matched AST's sale of prime merchandise in the home market to sales of prime merchandise in the U.S. market. We have also matched sales of non-prime merchandise in the home market to sales of non-prime merchandise in the U.S. market.

Fair Value Comparisons

To determine whether sales of SSSS from Italy to the United States were made at less than fair value, we compared the constructed export price (''CEP'') to the normal value (''NV''), as described in the ''constructed export price'' and ''normal value'' sections of this notice, below. In the preliminary determination, we calculated weighted-average EP for some of AST's U.S. sales. However, as discussed in Comment 5, the Department has found that all of AST's U.S. sales, which were made through AST USA, constitute CEP sales and we have therefore compared CEP to NV for those sales. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEPs for comparison to weighted-average NVs.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting price comparison sales in the home market or, when NV is based on constructed value (''CV''), that of the sales from which we derive selling, general and administrative expenses (''SG&A'') and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer in the comparison market. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Certain Cut-to-Length Carbon Steel Plate from South Africa: Notice of Final Determination of Sales at Less Than Fair Value,* 62 FR 61731 (November 19, 1997).

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between AST and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market levels of trade constituted more advanced stages of distribution than the CEP level of trade.

In this investigation, AST did not request a LOT adjustment. To ensure a LOT adjustment was not necessary and in accordance with principles discussed above, we examined information regarding the distribution systems in both the United States and Italian markets, including the selling functions, classes of customer and selling expenses for each respondent.

For its home market sales, AST reported: (1) three customer categories—industrial end-users, white goods manufacturers, and service centers/distributors; and (2) two channels of distribution'direct factory sales (sales of prime merchandise) and warehouse sales (the majority of which are sales of non-prime merchandise). AST claimed two levels of trade in the home market based solely on the quality of subject merchandise, *i.e.,* prime vs. non-prime.

In reviewing AST's LOT in the home market, we asked AST to identify the specific differences and similarities in selling functions and/or support services between all phases of marketing to customers in the home market and the United States. As mentioned above, AST identified two channels of distribution in the home market based entirely on whether the sale to the customer was of prime or non-prime merchandise. For sales of prime merchandise, AST sold to all three of the types of customers mentioned above, and provided the same selling functions to each of the customer types. Specifically, AST provided freight and delivery, credit, technical services, and warranties. For sales of mostly non-prime merchandise sold from AST's warehouse, AST performed the same selling functions (except for providing warranties) as for sales of its prime merchandise, but AST also engaged in the additional selling activities of advertising for its mostly non-prime merchandise and maintaining inventory of this merchandise at AST's warehouse. Because the selling activities engaged in by AST were identical for each customer when selling prime merchandise and were identical for each customer when selling mostly non-prime from inventory, and because the selling activities for both groups of sales were very similar, we continue to determine, as we did in the preliminary determination, that there exists one level of trade for AST's home market sales.

For its U.S. sales, AST reported that its affiliated importer, AST USA, made sales to two customer categories—industrial end-users and service centers, and through three channels of distribution—direct factory sales, warehouse sales, and consignment sales. AST claimed two levels of trade in the U.S. market based solely on the quality of subject merchandise: (1) non-prime; and (2) prime. We examined the claimed selling functions performed by AST and its U.S. affiliate, AST USA, for all U.S. sales. For back-to-back sales made directly to the unaffiliated U.S. customer, AST performed the following selling functions: it provided technical and warranty services; arranged for freight and delivery; and extended credit. For sales which AST reported as CEP sales, AST engaged in identical selling activities, providing technical and warranty services, freight and delivery and credit.

Based on a comparison of the selling activities performed in the U.S. market to the selling activities in the home market, we conclude that there is not a significant difference in the selling functions performed in both markets. The Department confirmed this information at the verification (*see Verification Of Sales of Acciai Speciali Terni S.p.A.*, dated March 25, 1999 (''*Verification Report of AST*'')). Therefore, for the final determination, we determine that there is one LOT in the U.S. and that sales to these customers constitute the same LOT in the comparison market and the United States. Therefore, a LOT adjustment for AST is not appropriate.

Additionally, as noted in Comment 5, we have classified all of AST's U.S. sales as CEP sales. Because we determine that there exists only one level of trade for all of AST's sales in both markets, we conclude that no CEP offset is warranted for the final determination.

Constructed Export Price

As discussed in Comment 5, we determine that all of AST's U.S. sales are CEP. We calculated CEP based on the packed, duty paid or delivered prices to unaffiliated purchasers in the United States. We made adjustments to the starting price for price-billing errors, where applicable. In addition, we made adjustments to the starting price by adding alloy surcharges, and skid charges where appropriate. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, freight equalization charges, foreign inland freight, marine insurance, U.S. customs duties, U.S. inland freight, foreign brokerage and handling, international freight, foreign inland insurance, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs and warranty expenses), inventory carrying costs, and other indirect selling expenses. We also added insurance revenue by allocating it across all U.S. sales of subject merchandise. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Affiliated-Party Transactions and Arm's-Length Test

To test whether sales to affiliated parties were made at arm's-length prices, we compared, on a model-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina* (*''Certain Cold-Rolled Carbon Steel Flat Products from Argentina''*), 58 FR 37062, 37077 (July 9, 1993); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Brazil*, 63 FR 59509 (November 8, 1998), citing to *Certain Cold-Rolled Carbon Steel Flat Products from Argentina.* Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparison'' sections of this notice.

1. Home Market Viability

As discussed in the preliminary determination, we determined that the home market was viable and no parties have contested that decision. For the final determination, we based NV on home market sales.

2. Cost of Production Analysis

As discussed in the preliminary determination, we conducted an investigation to determine whether AST made sales of the foreign like product in the home market during the POI at prices below its cost of production (''COP''). In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of AST's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A, interest expenses, and packing costs. We used the information from AST's December 2, 1998 supplemental questionnaire response to calculate COP. As noted in Comment 25, we have reduced AST's financial expenses by Fried. Krupp's short-term income from investments. Additionally, we recalculated AST's G&A rate, adding the ''other operating expense'' to G&A and removing the expenses that AST had reported in other fields. *See* Comment 26. Lastly, we used the corrected variance in the COP calculation for the final determination. *See* Comment 28.

3. Test of Home Market Prices

As in our preliminary determination, we compared the weighted-average COP for AST, adjusted where appropriate, to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, billing adjustments, alloy surcharges, skid charges, rebates, and direct and indirect selling expenses.

4. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'', pursuant to section 773(b)(2)(c)(i) of the Act, within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to weighted-average COPs for the POI, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, pursuant to section 773(b)(2)(D) of the

Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product. For those U.S. sales of SSSS for which there were no comparable home market sales in the ordinary course of trade, we compared the CEP to CV in accordance with section 773(a)(4) of the Act. *See Analysis Memorandum.*

Calculation of Constructed Value

As in our preliminary determination, we calculated CV based on the sum of AST's cost of materials, fabrication, selling, general, and administrative expenses (SG&A), interest expenses, profit, and packing. We calculated the COP included in the calculation of CV as noted above, in the ''Calculation of COP'' section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by AST in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Italy. For CV, we made the same adjustments described in the COP section above.

Price-to-Price Comparisons

As in our preliminary determination, for AST's home market sales of products that were above COP, we calculated NV based on FOB or delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length. We made adjustments for price billing errors, discounts, and rebates where appropriate. We made deductions, where appropriate, for foreign inland freight, warehousing, and foreign inland insurance expenses, pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments, where appropriate, for imputed credit, warranty expenses, and technical expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6) (A) and (B) of the Act.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of such or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to CEP, we deducted from CV the average home market direct selling expenses.

Currency Conversion

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

Facts Available

We determine that the use of partial facts available is appropriate for AST in accordance with section 776(a) of the Act, because it failed to report all of its U.S. sales made during the POI, and its U.S. affiliated reseller's (company A) downstream sales are unreliable. *See* Comments 1 and 2 below.

Where necessary information is missing from the record, the Department must use the facts otherwise available, in accordance with section 776 of the Act. Further, where that information is missing because a respondent has failed to cooperate to the best of its ability, section 776(b) of the Act authorizes the Department to use an inference adverse to the interests of that respondent when selecting from the facts available. An adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. For AST's unreported U.S. sales, we have chosen the highest non-aberrational margin from the rest of AST's U.S. sales as partial facts available. *See* Comment 1 below. For company A's downstream sales, we have also selected the highest non-aberrational margin from the rest of AST's U.S. sales. *See* Comment 2 below.

The All Others Rate

For this final determination, since AST was the only respondent, the all other's rate is simply the calculated rate for AST.

Interested Party Comments

Comment 1: Application of Facts Available to Additional U.S. Sales

Respondent argues that the Department should ignore additional U.S. sales that AST attempted to report prior to verification. Respondent maintains that, in preparing for verification, it discovered additional U.S. sales that it had previously failed to report to the Department.

Respondent argues that its first attempt to file this new information, on February 24, 1999, effectively allowed the Department eleven days to review the information prior to the beginning of the U.S. sales verification at AST U.S.A. Respondent notes that the verification team for the sales verification at AST U.S.A. was different than the team attending the verification of AST in Italy, and argues that this allowed adequate time to review the new information. Respondent also notes that the Department did not return the February 24, 1999 submission until nine days later. Respondent asserts that during this period of time the Department had the opportunity to review the new information.

Respondent further argues that petitioners would not have been prejudiced by the acceptance of this new information given the timing of the February 24, 1999 submission, the verification of AST U.S.A., and the deadlines for submission of case briefs.

Respondent maintains that the additional U.S. sales would not have materially affected AST's final margin. Respondent argues that the record, as supported through verification, shows that the additional U.S. sales constitute a relatively small percentage of AST's total U.S. sales during the POI. Respondent asserts that this relatively small percentage would have an even more negligible effect if the Department were to accept petitioners' argument that order date should be used to determine date of sale in the U.S. market.

Respondent continues that, under established Department precedent for investigations, the Department should ignore these additional U.S. sales. Respondent points out that the Department's margin calculation in an investigation will be used only to determine an estimated dumping margin for cash deposit purposes, and also notes that the statute requires the Department to use weighted-average U.S. prices rather than individual U.S. prices to determine dumping margins. Therefore, according to respondent, the Department need not consider every U.S. sale in calculating the final dumping margin. Respondent cites several cases in which, respondent argues, the Department has either accepted and verified similar data or has simply excluded additional sales from consideration in determining the margin (citing, *e.g., Final Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany (''Antifriction Bearings''),* 54 FR 18992, 19039 (May 3, 1989); *Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China (''Bicycles''),* 61 FR 19026 (April 30, 1996); and *Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Japan (''Gray Portland*

Cement and Clinker from Japan''), 56 FR 12156 (March 22, 1991)).

Respondent argues that if the Department decides not to ignore these additional sales and apply facts available, it would be inappropriate for the Department to apply adverse facts available in this case because respondent argues that it has cooperated fully throughout the proceeding. To support its argument, respondent cites to *Allied-Signal,* 996 F.2d at 1188, and *Final Results of Antidumping Administrative Review: Color Picture Tubes from Japan (''Color Picture Tubes''),* 62 FR 34201, 34209 (June 25, 1997), where the respondent ''substantially cooperated'' but simply failed to supply some of the information in a timely manner or in the form required.

Moreover, respondent argues that it did not withhold this information, but rather, disclosed this information to the Department as soon as it discovered these additional sales and sought repeatedly to submit this and more detailed information regarding these sales before, during, and after verification. Respondent cites *Notice of Final Determination of Sales at Not Less Than Fair Value: Stainless Steel Bar from Italy (''Stainless Steel Bar''),* 59 FR 66921, 66924 (December 28, 1994) as an analogous situation in which the Department in fact was not aware of additional U.S. sales until verification, but, nevertheless, the Department still verified that the gross unit prices for the unreported sales were comparable to those for reported sales of the same products. In that case, respondent notes that the Department determined that ''it is reasonable to fill this gap with a neutral surrogate'' and ''assigned (the respondent's) overall weighted-average calculated margin to these unreported sales.''

Petitioners contend that, contrary to respondent's assertions, substantial evidence on the record demonstrates that AST failed to cooperate to the best of its ability to provide information requested by the Department and the use of total facts available is therefore warranted. First, petitioners claim that respondent has relied primarily on ''old law'' cases to support its contention that the Department should not apply facts available with an adverse inference. However, under the current adverse facts available standard, petitioners argue that the Department ''shall'' apply facts available when necessary information is not on the record, or a respondent withholds information requested by the Department, fails to provide such information by the deadline for its submission, significantly impedes a proceeding, or provides information that cannot be verified. Petitioners maintain that the record demonstrates that respondent has withheld information that has been requested by the Department.

Petitioners argue that the critical question in this case is whether the reporting failures by respondent surpass the Department's standard for the use of an adverse inference in applying facts otherwise available. Petitioners contend that respondent's failure to provide complete sales information, while stating ''without detail'' that the reporting failure was ''inadvertent'', constitutes a failure on the part of respondent to act to the best of its ability to respond to the Department's request for information.

Petitioners assert that the data withheld by respondent is crucial to the Department's investigation. Petitioners cite to *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa (''CTL Steel Plate''),* 62 FR 61731, 61747 (November 19, 1997), *Florex* v. *United States,* 705 F. Supp. 582, 588 (CIT 1988), and *Tatung Co.* v. *United States,* 18 CIT 1137 (1994) in support of the proposition that the Department and the CIT have recognized that the failure to report U.S. sales data is one of the most serious errors, if not the most serious error, a respondent can commit.

Petitioners maintain that although AST attempted to submit new information on the record, the Department properly rejected the new information, citing several cases supporting the rejection of information not submitted within regulatory guidelines, including *NSK, Ltd.* v. *United States,* 798 F.Supp. 721 (CIT 1992). Petitioners take issue with respondent's interpretation of *Allied Signal.* Petitioners point out that, in that case, respondent was unable to provide the requested data. Petitioners note that AST does not argue that it was unable to provide the requested U.S. sales data.

In rebutting respondent's claim that the Department does not need to consider every U.S. sale in calculating the final dumping margin, petitioners argue that, given the Department's calculation methodology in investigations, in which weighted average prices by the U.S. and home market are compared on a control number-specific (''product-specific'') basis, there could indeed be a significant effect on the calculated margin for certain control numbers by excluding a ''significant'' quantity of U.S. sales.

Petitioners take issue with respondent's interpretation of certain cases in which the Department has not applied an adverse inference when information is not submitted. In *Antifriction Bearings* (54 FR 18992, 19039), petitioners note that the Department found that respondent had not reported sales of one tenth of one percent (by volume) of 33 percent of the U.S. sales it was required to report. Moreover, the Department found, in that case, that the unit prices of the unreported sales were nearly three times greater than the unit prices for the same products to other customers which were reported in the sales listing. According to petitioners, this fact pattern is not present in the instant proceeding.

In *Bicycles* (61 FR 19026, 19041), petitioners argue, the Department allowed the exclusion of a ''minor'' amount of U.S. sales in certain extenuating circumstances not present in this investigation. First, in *Bicycles,* respondent had believed the excluded sales to be of non-subject merchandise. Second, the record in that case permitted the Department to calculate a margin on those excluded sales. Third, the sales in question represented a minor amount of U.S. sales. Finally, the sales at issue in *Bicycles* were of a higher-priced model. Petitioners contend that none of these facts are present in this investigation.

Petitioners state that in *Gray Portland Cement and Clinker from Japan* (56 FR 12156, 12165), the Department determined that respondent's sales of bagged cement represented an insignificant portion of total U.S. sales. Again, according to petitioners, the same is not true in this proceeding.

In *Color Picture Tubes* (62 FR 34201), petitioners note that respondent Mitsubishi stated that a ''very small number of U.S. sales were made of models for which COM data was not available.'' Petitioners argue that this is not tantamount to a decision by the Department that it ignores unreported U.S. sales and does not resort to facts available when U.S. sales data are not reported. In addition, Mitsubishi was unable to provide the COM data because they were not available. Again, according to petitioners, AST has never claimed that this sales data was unavailable.

In *Stainless Steel Bar from Italy* (59 FR 66921), petitioners claim, the Department's decision not to apply adverse BIA turned ''entirely'' on the unique circumstances noted during verification. Moreover, in that case, the Department determined that the unreported sales were limited in number, and the gross unit prices of the unreported sales were comparable to those for reported sales of the same products. In contrast, petitioners argue that in this investigation the sales were not limited, and also note that the Department did not verify the gross unit prices of the unreported sales.

Petitioners maintain that the discrepancies in the company's U.S. sales volume found at verification and the company's inability to explain the exclusion of several U.S. sales from its response is sufficient evidence of AST's lack of cooperation. Petitioners argue that both the Department and the courts consider the omission of U.S. sales a serious error (citing *Tatung Co.* v. *United States,* 18 CIT 1137, 1141 (1994)), and that such an omission warrants the use of adverse facts available (citing *CTL Steel Plate,* 62 FR 61731, 61747 (November 19, 1997). Petitioners also cite to *Persico Pizzamiglio, S.A.* v. *United States,* 18 CIT 299, 304 (1998), noting that the Department used best information available, in large part due to respondent's failure to report U.S. sales accurately.

Department's Position: We agree with petitioners, in part, and have applied partial adverse facts available with respect to the additional U.S. sales that AST omitted from its response.

Although we repeatedly gave AST the opportunity to submit data pertaining to its sales database, AST did not submit its additional U.S. sales until three days prior to the start of the verification of AST in Terni, Italy, well after the deadlines for responding to our questionnaires. Therefore, contrary to respondent's assertion, there can be no reasonable argument that this information was timely submitted. Pursuant to section 351.301(c)(2)(ii) of the Department's regulations, failure to submit requested information in the requested form and manner by the date specified for questionnaire responses may result in the use of facts available under section 776 of the Act and section 351.308 of the Department's regulations.[6]

Nevertheless, respondent argues that we should have accepted the additional U.S. sales information, pursuant to section 782(e) of the Act, which provides that the Department shall not decline to consider such information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. However, section 782(e) is not applicable in this case, because this section only applies to information that is submitted by the established deadline. Indeed, timely submission by the established deadline is the first requirement for this section to apply. As discussed above, AST did not submit this information by the deadline for the questionnaire response, and therefore, section 782(e) is not applicable.

According to section 776(a)(2)(B), if an interested party fails to provide information in a timely manner or in the form or manner requested, the Department shall use facts otherwise available in reaching the applicable determination. As explained above, AST failed to provide the information for the additional U.S. sales in a timely manner. Therefore, pursuant to section 776(a), the Department must use facts otherwise available to assign margins to these additional U.S. sales.

Finally, AST argues that if we rely on facts otherwise available, an adverse inference is not appropriate. Section 776(b) of the Act provides that, if the administering authority ''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,'' then in selecting from the facts available it ''may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.'' We find, based on the evidence set out below, AST did not act to the best of its ability in complying with our request for sales data. Because AST submitted these sales only three days prior to verification, this information was not provided by the deadline set for AST's responses to Section C of the Department's questionnaire.

Failure to report significant amounts of import data, such as U.S. sales data, indicates a lack of best efforts, unless there are extenuating circumstances that explain the failure. There is no evidence of such circumstances in this case. As noted in the *Verification Report of AST USA,* AST stated at verification that it did not know the reasons why these sales were excluded. *See Verification Report of AST USA* at 2. Furthermore, we note that AST submitted its sale reconciliation package on November 12, 1998, the deadline for responding to the supplemental questionnaire. If AST had acted to the best of its ability, it is reasonable to assume that it would have discovered these additional U.S. sales when preparing the reconciliation package. Therefore, pursuant to section 776(b) of the Act, we have used an adverse inference in selecting a margin for the U.S. sales that AST omitted from the response because AST did not act to the best of its ability in providing U.S. sales information to the Department. As adverse facts available for these unreported U.S. sales, we have applied the highest non-aberrational margin calculated from the rest of the U.S. sales. *See* Comment 2 below, and *Analysis Memorandum.*

The cases cited by respondent where the Department either accepted and verified additional sales data or excluded it from consideration in determining the margin are distinguishable from this case. Unlike this investigation, the Department, in *Antifriction Antifriction Bearings, Bicycles* and *Gray Portland Cement and Clinker from Japan,* had sufficient time to analyze the additional data submitted by the respondent, and determined that the additional sales had no effect, or a negligible effect, on the calculated margin. As noted by petitioners, *Color Picture Tubes* concerned a situation where COM data was not available for some U.S. sales, not a situation of unreported U.S. sales. AST's reference to *Stainless Steel Bar* also does not apply to this case because it concerns a unique circumstance in which the Department noted at verification that the gross unit prices of the unreported sales were comparable to those for reported sales of the same products, and that the unreported sales were limited in number. Therefore, respondent's reliance on these cases is misplaced. Moreover, as noted in *CTL Steel Plate,* the Department believes that the failure to report U.S. sales data is one of the most serious errors a respondent can commit.

Comment 2: Application of Facts Available to Downstream Sales of Reseller 001

Petitioners note that at verification of reseller 001, and contrary to AST's claim, the Department found that a portion of its affiliated reseller's sales previously identified as having an untraceable supplier, were in fact traceable. In addition, petitioners note that the number of significant errors found at the reseller's verification, including its failure to report early-

[6] In initially rejecting AST's submission of additional U.S. sales, we erroneously cited section 351.301(b)(1) of the Department's regulations because AST submitted them later than seven days before the date on which the verification of any person is scheduled to begin. The relevant regulation is 351.301(c)(2). We subsequently rejected other attempts that AST made to submit this information, pursuant to section 351.302(d) of the Department's regulations, because it was untimely filed.

payment discounts and the improper application of prime and non-prime designations to its reported sales, warrant the use of adverse facts available. Finally, petitioners note that under section 782(e) of the Act, AST's reporting of the ''unidentified supplier'' sales by its affiliated reseller should be considered untimely, and that, under section 776(a), the Department should use facts otherwise available in reaching the applicable determination.

Petitioners argue that AST had the burden to create a complete and accurate record and failed to meet this burden, citing *Pistachio Group of the Ass'n of Food Indus.* v. *United States,* 11 CIT 668, 671 F.Supp. 31, 39–40 (1987). Petitioners also maintain that respondent in this case is not just AST: the investigation directly involves AST's affiliates, as well. Thus, contend petitioners, AST's efforts to ''absolve itself from any responsibility for its affiliates'' reporting efforts' should also be rejected.

Petitioners contend that AST has withheld requested information and failed to cooperate to the best of its ability, and that the Department should apply total adverse facts available. Petitioners argue that this is an investigation of AST and its affiliates as a collective entity selling to the United States, not just an investigation of AST's main plants. Petitioners cite *Koyo Seiko* v. *United States,* 905 F. Supp. 1112, where the CIT stated that, when parties are affiliated, as AST is with reseller 001, the burden of producing information sought by the Department rests with the manufacturer, even if the respondent alleges that the affiliate is unwilling to cooperate. Petitioners assert that AST's affiliate Thyssen, under whose common control AST and reseller 001 operate, was also affiliated with and controlled reseller 001 and could have added its influence to encourage reseller 001 to comply and provide the requested information to the best of its ability, which it did not do.

Respondent refutes petitioners' claim that AST and other parties have been uncooperative and have not fully participated during the investigation, and states that it made every effort to comply with the Department's numerous requests for additional information. Respondent argues that it does not have operational control over reseller 001, and thus, cannot compel, or participate in, the preparation and submission of the requested data over which it exercises no control. With regard to the unattributed sales, respondent claims that it had no direct involvement in the preparation of reseller 001's data and had no knowledge of their contents.

Respondent argues that despite the fact that some errors were identified at verification, reseller 001 did not fail verification because the errors were isolated and do not undermine the basic integrity of the data. Respondent states that the Department should consider that reseller 001 developed the cost allocation program specifically to respond to the Department's highly detailed reporting requirements. Respondent argues that as a service center distributor rather than a steel producer, reseller 001 has no need for, and therefore had never developed, a computer system linking each and every coil or sheet that it sells to a particular input metal product (coil or sheet) purchased from a supplier. Respondent asserts that at verification reseller 001 demonstrated that the programming problems that were encountered were not widespread, but instead were extremely isolated. Respondent notes that Exhibit 18 of reseller 001 Cost Verification Report, including the complete description of the programming errors and a list of the problematic transactions, was presented to the Department at the start of the third day of the cost verification. Respondent states that had the verifiers truly been interested in further testing this listing or learning more about how it was generated, they had adequate time to do so.

Respondent argues that even if, despite evidence to the contrary, the Department were to determine that AST had failed to comply with requests for information, the Court of International Trade's decision in *Ferro Union, Inc.* v. *United States,* Slip Op. 99–27 (CIT March 23, 1999) (''*Ferro Union*'') precludes the application of adverse facts available in this case. Respondent argues that under the standards set by *Ferro Union,* ''sufficiently impeding the review'' is not a sufficient ground to warrant an application of adverse facts available, but that the Department must also find that a party failed to ''comply to the best of its ability.'' Respondent asserts that if the Department determines that the data submitted by reseller 001 is not complete or verifiable, it was not due to AST's deliberate recalcitrance. Respondent argues that the Department should not use adverse facts available because AST simply lacks the ability to respond any more completely than it already has.

Department's Position: We agree with petitioners and find that adverse facts available is warranted with regard to sales through AST's affiliated U.S. reseller. Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), facts otherwise available in reaching the applicable determination.

In the instant case the use of facts available is warranted for the sales in question. The computer programming used by reseller 001 to identify its products' physical characteristics and to match each of these products with its associated costs were found at verification to be accomplishing neither end consistently or accurately. Moreover, both the frequency of the errors and the absence on the record of information necessary to correct certain of these errors serve to undermine the overall credibility of the further-manufacturing response as a whole, thus compelling the Department to rely upon total facts available for further-manufactured sales by reseller 001. Reliance upon facts available is required for these further manufactured sales because the submitted data do not permit calculation of the adjustments required under section 782(d)(2) of the Act for ''the cost of any further manufacture or assembly (including additional material and labor) * * *''.

Although the Department will correct some errors in reported costs or will adjust incorrect data with facts otherwise available when the errors are relatively minor and easily corrected based on verified data on the record (*see e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Taiwan,* 64 FR 17336, 17337 (April 9, 1999), correction of the database is not a viable option in this case because of the high percentage of errors found through our testing at verification (nearly 40 percent of the items tested were found to be in error). In addition, some of these errors cannot be corrected using information on the record. More importantly, the fundamental and pervasive nature of these errors raises concerns as to the validity not only of the data subjected to direct testing, but of the remainder of the response as well.

The Department's antidumping questionnaire put interested parties on notice that all information submitted in this investigation would be subject to verification, as required by section 783(i) of the Act, and, further, that pursuant to section 776 the Department may use the facts otherwise available if all or any portion of the submitted information could not be verified. In addition, in letters dated February 17 and 23, 1999, the Department provided reseller 001 with the sales and cost verification agendas it intended to follow, both of which repeated the warning that any failure to verify information could result in the application of facts available. The cost verification agenda identified nine transactions that the Department intended to test. Reseller 001 had a full week to gather supporting documentation for these nine transactions and to test for itself the accuracy of the further manufacturing data. Clearly, reseller 001 did not avail itself of these opportunities, since our testing at verification revealed that costs for three of the nine selected transactions were in error. When the Department then selected nine additional transactions for review, four of these were found to contain errors. The first step identified in the Department's verification agenda calls for the respondent, at the outset of verification, to present any errors or corrections found during its preparation for the verification. None of the errors discussed here were presented by reseller 001 at the outset of verification.

We disagree with AST's assertion that the numerous errors identified by the Department affect only a small number of products out of the possible universe of transactions and that the effect of the errors is minuscule. As mentioned above, reseller 001 created a computer program to respond to the Department's questionnaire which sought to match an input coil to each output coil sold and to assign a cost for each processing step through which the finished coil supposedly passed. As noted, at verification we tested this computer program to assess its accuracy and reliability and found that seven of eighteen transactions tested contained errors in either the allocation of processing costs or in the matching of input coils to output coils. In two of these cases reseller 001 had assigned processing costs to products which had, in fact, undergone no processing whatever. We note that this discrepancy arose from the input coils and output coils identified by reseller 001's own computer program. In another transaction the combined widths of the finished products were greater than the original width of the input coil as identified by the system, an obvious physical impossibility that should have been identified by reseller 001 as an error. The nature of these errors raises serious doubts as to the accuracy of the overall program used to match input master coils to output slit coils as sold. Further, several of these errors served to understate the costs of further processing by shifting portions of these costs to non-further-processed merchandise. Since these errors affect the entire population of products sold (i.e., both processed and unprocessed products), it is not possible for the Department to isolate the problems and adjust for the errors accordingly.

The program also failed to assign properly certain finishing costs. Certain coils with a pre-buff finish applied to the underside had no finishing costs reported for the additional processing. Finally, other transactions contained errors in the application of surcharges for processing small quantity orders. In the samples tested reseller 001 had reported quantity extra charges in excess of what should have been reported. This error led to an understating of the variance between the costs as allocated for purposes of the response and the costs as maintained in the reseller 001's financial accounting system. Once again, both errors reduced the costs allocated to further processed products, thus creating further doubts as to the accuracy of the underlying reporting methodology.

We also find unpersuasive AST's suggestion that because reseller 001 had to develop the computer program as a result of the Department's highly detailed questionnaire it should therefore be held blameless for any errors arising from its implementation of its chosen computer logic. The surfeit of errors in reseller 001's data was not the result of any unduly burdensome reporting requirements imposed by the Department; rather, these shortcomings resulted in their entirety from reseller 001's reliance on faulty computer programming and data which reseller 001 apparently failed to review prior to verification.

Finally, we disagree with AST's assertion that reseller 001 was able to quantify the extent of the cost errors on the final day of verification. First, we note that reseller 001 made no attempt to explain or quantify two of the errors discovered by the Department, the allocation of processing costs to unprocessed material and the misreporting of the small-quantity surcharge. More importantly, due to the volume of information that must be verified in a limited amount of time, the Department does not look at every transaction, but rather samples and tests the information provided by respondents. See, e.g., *Bomont Industries* v. *United States,* 733 F. Supp. 1507, 1508 (CIT 1990) ([v]erification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness.'') and *Monsanto Company* v. *United States,* 698 F. Supp. 275, 281 (''[v]erification is a spot check and is not intended to be an exhaustive examination of a respondent's business.''). It has been the Department's long-standing practice that if no errors are identified in the sampled transactions, the untested data are deemed reliable. However, if errors are identified in the sample transactions, the untested data are presumed to be similarly tainted. This is especially so if, as here, the errors prove to be systemic in nature. The fact remains unchallenged that for two days of a scheduled three-day verification we tested a number of further-manufactured transactions to assess the reliability of reseller 001's methodology for reporting costs and discovered numerous errors. Reseller 001 claimed on the last day of verification that it had reviewed its further-manufacturing data and isolated the magnitude of these errors. AST's assertion that reseller 001 succeeded in identifying all of the errors is unsubstantiated, and could not be verified in the time remaining. The only way to test this eleventh-hour claim would have been to re-verify the entire further-manufacturing database. Moreover, the proper time for reseller 001 to check the accuracy of its reported data was before these data were submitted, or, at the latest, prior to the start of the verification. We presented reseller 001 with the cost verification agenda one week in advance precisely to allow it to prepare properly for verification. Had reseller 001 reviewed the accuracy of the computer program used to report its further manufacturing costs prior to verification, it could have identified the errors and presented them to the Department on the first day of verification. We consider it inappropriate for respondents to expect the Department to retest the entire further manufacturing database on the last day of verification after the Department uncovers numerous errors as a result of its routine testing. Furthermore, the requirements of section 782(d) that the Department provide a respondent the opportunity to remedy such errors is inapplicable. Rather, as we stated in *Certain Cut-to-Length Carbon Steel Plate from Sweden,*

> [w]e believe [respondent] SSAB has misconstrued the notice provisions of section 782(d) of the [Tariff] Act. Specifically, we find SSAB's arguments that the Department was required to notify it and provide an opportunity to remedy its verification failure are unsupported. The provisions of section 782(d) apply to instances where ''a response

to a request for information'' does not comply with the request. Thus, after reviewing a questionnaire response, the Department will provide a respondent with notices of deficiencies in that response. However, after the Department's verifiers find that a response cannot be verified, the statute does not require, nor even suggest, that the Department provide the respondent with an opportunity to submit another response.

Certain Cut-to-Length Carbon Steel Plate from Sweden, 62 FR 18396, 18401, April 15, 1997.

In this case a partial correction is not a viable option, because of both the high percentage of errors found through our sample testing and the fact that some of the errors cannot be corrected with information on the record. Therefore, pursuant to section 776(a) of the Act, facts otherwise available are applicable to the downstream sales of reseller 001.

Respondent, in citing *Ferro Union,* argues that if the data submitted by reseller 001 is not complete or verifiable, it was not due to AST's deliberate recalcitrance, and therefore, adverse facts available are not applicable because AST complied to the best of its ability and could not respond any more completely than it already had. However, not only do such fundamental errors as found at verification raise concerns as to the validity of the data not directly tested, but they also demonstrate that the respondent failed to act to the best of its ability to report such information. Indeed, a reasonable check by company officials could have shown that (1) products that underwent no further processing were being assigned further-processing costs, (2) further-processed products were not being assigned further-processing costs, (3) coils passing through certain processes were not being allocated any cost for the process, and (4) the output width of slit coils generated by a given master coil exceeded the original width of that input coil.

Where CEP transactions (in this case, the downstream sales) are involved, respondents are required, in accordance with section 772 of the Act, to report sales data for the sales to the first unaffiliated purchaser. As discussed above, we find that AST, as the respondent, did not cooperate by failing to comply to the best of its ability to provide the CEP sales information requested by the Department. Therefore, pursuant to section 776(b) of the Act, we have used an adverse inference in calculating the margin for reseller 001's downstream sales (*see* below).

With respect to the unattributed downstream sales reported by reseller 001, we determine, pursuant to section 776(a) of the Act, that it is appropriate to apply facts otherwise available to these sales, because these sales were unverifiable. In addition, pursuant to section 776(b) of the Act, where an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, the Department may use an inference that is adverse in selecting from among the facts otherwise available. At verification, we found that reseller 001 could have supplied the Department with the supplier names for these unattributed sales. As discussed above, where CEP transactions, (in this case, the unattributed downstream sales) are involved, respondents are required, in accordance with section 772 of the Act, to report sales data for the sales to the first unaffiliated purchaser. Therefore, we determine that pursuant to section 776(b), the use of adverse facts available is appropriate for the entirety of the data submitted by reseller 001. As adverse facts available, we have assigned the highest non-aberrational margin calculated for this final determination to the weighted-average unit value for sales reported by reseller 001. To determine the highest non-aberrational margin we examined the frequency distribution of the margins calculated from AST's reported data. We found that roughly 28 percent of AST's transactions fell within a reasonably narrow range of 20 to 29 percent; we selected the highest of these as reflecting the highest non-aberrational margin. Further detail on our selection of the facts-available margin is contained in the *Analysis Memorandum*. We then multiplied the resulting unit margin by the total quantity of resales of subject merchandise by reseller 001. This total quantity includes that material affirmatively verified as being of AST origin, as well as a portion of the merchandise of unidentified origin allocated to AST. *See Analysis Memorandum*. Since we are relying on verified data for use as adverse facts available for these unattributed sales, corroboration under 776(c) is not necessary.

Comment 3: Affiliation Between AST and Reseller 001

Respondent argues that the Department should not consider AST to be affiliated with a certain U.S. reseller (''reseller 001'') which is indirectly wholly-owned by Thyssen AG, and therefore, reseller 001's downstream sales should not be included in the margin calculation for the purposes of the final determination. Respondent argues that, for the purposes of assessing whether the requisite direct relationship exists, the appropriate inquiry in this case is whether AST and reseller 001 (and not AST and Thyssen) are affiliated under the statute, because during the POI AST did not sell subject merchandise or the foreign like product to Thyssen or any Thyssen affiliate other than reseller 001. In this regard, respondent maintains that neither AST nor reseller 001 directly or indirectly owns, controls, or holds the power to vote 5% or more of the other company's outstanding voting shares, and the two companies do not share a direct bilateral control relationship that allows one company to control the other company. Respondent asserts that the Department did not find affiliation under 19 USC 1677(33)(G) (section 771(33)(G) of the Act) in a case involving what respondent believes to be similar relationships (*see Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews (''Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products from Korea'')*, 62 FR 18404–01 (April 15, 1997).

Respondent asserts that AST and reseller 001 cannot be deemed to be affiliated unless they directly or indirectly control, are controlled by, or are under common control with another party. Respondent argues that the Department improperly concluded, in the preliminary determination, that Thyssen has the ability to control AST. Respondent argues that, in this case, it is Krupp, not Thyssen, which controls the operations of KTS and AST. Thus, according to respondent, Thyssen does not have the potential to impact AST's production, pricing, and cost decisions. Respondent asserts that record evidence supports this ''market reality.'' Specifically, respondent notes that, by its terms, the KTS Shareholders Agreement ensures that Thyssen does not have the ability to control KTS' operational decisions, and that the ability to make such decisions rests solely with Krupp. Moreover, respondent argues that Krupp's industrial control over KTS is also reflected in the financial structure of the company.

Respondent maintains that, similarly, Krupp controls AST, and Thyssen does not have the ability to control AST. Respondent points to the composition of AST's Board of Directors during the POI in support of this argument.

Respondent asserts that the Department, in its affiliation memorandum of December 15, 1998, erred in relying upon the ''now-repealed 'related parties' provision'' in the pre-URAA statute to posit that ''arguably a minority equity interest of over 20 percent would be tantamount to control under the statute.'' Respondent argues that 19 U.S.C. 1677(33)(F) (section 771(33)(F) of the Act) replaces the 'related parties'' provision with the ''affiliated persons'' provision. According to respondent, the fact that Congress might have intended the Department to consider a broader range of relationships under the relevant portion of the new statute does not *ipso facto* mean that Congress intended for the Department to apply the ''repealed 'related parties' '' provision standards in resolving affiliation issues.

Respondent also asserts that the Department erred in relying on *Queen's Flowers and Asociacion Colombiana de Exportadores de Flores* v. *United States*, because neither of these cases addressed whether two companies' respective subsidiaries were affiliated by virtue of their parent companies' participation in a joint venture.

With regard to the KTS Shareholders Agreement between Krupp and Thyssen Stahl, respondent argues that, in its affiliation memorandum, the Department ignored the provisions in the KTS Shareholders Agreement which, according to the respondent, establish Krupp's control over KTS. For example, AST asserts that there is nothing in the preamble, in which the purpose of the KTS joint venture is defined, to suggest that Thyssen Stahl has the actual or potential ability to control KTS. Respondent also argues that the Department draws an erroneous inference by equating the ability to affect a party with the ability to control that party. Respondent objects to the Department's statement that Thyssen Stahl retains the authority to control KTS operations based on Paragraph 2 of the Shareholders Agreement. In addition, respondent argues that the Department incorrectly focused on the corporate structure of KTS, as opposed to the operational structure, in concluding that ''Thyssen Stahl's 40 percent holding in KTS is critical'' to certain appointments at KTS. Finally, respondent asserts that the Department fails to note that Paragraph 5 of the Shareholders Agreement allows only for minority representation of Thyssen.

Respondent argues that the KTS joint venture's existence does not, in and of itself, establish affiliation between the joint venture partners' respective subsidiaries. Respondent asserts that petitioners have incorrectly argued that *Mitsubishi Heavy Industries, Ltd.* v. *United States* (15 F. Supp. 2d 807, 831 (CIT 1998)) stands for the proposition that it is ''impossible'' for the respective subsidiaries of two companies participating in a joint venture not to be affiliated. In fact, respondent maintains that the court did not address the issue presented in this case: namely, whether the two companies' respective subsidiaries were affiliated by virtue of their parent companies' participation in a joint venture. In the instant proceeding, respondent argues that even if Krupp and Thyssen were deemed to be affiliated with each other, such affiliation would not necessarily flow through to the companies' respective subsidiaries ''merely'' by virtue of the KTS joint venture.

Petitioners argue that the Department has correctly evaluated AST's affiliations in this investigation. First, petitioners assert that because Thyssen owns 100 percent of reseller 001, the Department should find that reseller 001 is essentially an operating arm of Thyssen and that the reseller 001 is affiliated with AST just as Thyssen is affiliated with AST. Therefore, petitioners conclude that, because reseller 001 is an ''operating arm'' of the Thyssen ''family'' including Krupp Thyssen Stainless GmbH (''KTS''), which indirectly owns more than 5 percent of AST, AST and reseller 001 are affiliated pursuant to 19 U.S.C. 1677(33)(E) (section 771(33)(E) of the Act).

Second, petitioners contend that respondent has confused the discussion by misusing the terms ''direct'' and ''indirect'' ownership. Petitioners argue that the direct relationship referred to by respondent in fact clearly may be achieved through the indirect ownership of 5 percent of another company. Moreover, petitioners argue that the indirect relationship referred to by respondent analogously may involve direct control.

Third, petitioner argues that the fact that AST did not sell stainless steel sheet or strip to Thyssen or any other Thyssen affiliate other than reseller 001 is irrelevant in considering the affiliation relationships at issue here.

Petitioners believe that Thyssen's large ownership share in AST, as well as other factors, demonstrate its potential to impact business decisions. Petitioners assert that the Department properly recognized that Thyssen need not be a majority shareholder in a company for the Department to determine that control exists. Petitioners cite to the *Final Determination of Certain Cut-to-Length Carbon Steel Plate from Brazil*, 62 FR 18486, 18490 (April 15, 1997) as support for the Department's position that ''even a minority shareholder interest, examined within the totality of other evidence of control, can be a factor that (the Department) consider(s) in determining whether one party is in a position to control another.''

Petitioners also claim that evidence of actual control is not required under the statute: instead, the ability to control is sufficient, where the company has ''the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product'' (citing 19 CFR 351.102(b)). In this regard, petitioners point to other indicators of Thyssen's control over AST, beyond the ''substantial'' shareholdings in AST through KTS by Thyssen Stahl AG and Thyssen AG. According to petitioners, another indicator is that AST is publicly described and well-known as a member of both the Krupp and Thyssen ''groups.'' Furthermore, petitioners claim that the record demonstrates that the two industrial groups have had a high and increasing degree of cooperation and coordination.

Petitioners claim that the agreement's nominal structure to give Krupp ''operational and industrial control over KTS'' is not dispositive. Petitioners argue that the preamble to the regulations makes clear that the proper inquiry is whether one firm is ''in a position to exercise restraint or direction,'' regardless of whether such control is actually exercised. In this regard, petitioners argue that the very nature of a joint venture agreement is to operate a business for mutual benefit, and with a large degree of consensus. It would be unreasonable, according to petitioners, for Thyssen to enter into such a joint venture if it did not expect that venture to be responsive to Thyssen's own commercial interests to some extent. Furthermore, petitioners conclude that it would also be reasonable to expect that Thyssen would be able to insist that KTS would undertake its own operations in a manner consistent with Thyssen's interests. Also, petitioners contend that the recent merger of Krupp and Thyssen confirms the closely allied interests of the two firms.

Petitioners argue that respondent's reliance on *Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products from Korea* is misplaced. Petitioners assert that the situation in the Korean case shows only that Krupp is not necessarily affiliated with reseller 001.

Department's Position: We disagree with AST. As we discussed in our *Preliminary Determination* and the accompanying Affiliation Memorandum, we have determined that

AST is affiliated with Thyssen Stahl and Thyssen. Section 771(33)(E) of the Act provides that the Department shall consider companies to be affiliated where one company owns, controls, or holds, with the power to vote, five percent or more of the outstanding shares of voting stock of the other company. Where the Department has determined that a company directly or indirectly holds a five percent or more equity interest in another company, the Department has deemed these companies to be affiliated. Respondent's reference to *Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products from Korea* is not applicable in this case because in that case, the Department found no record evidence indicating that either POSCO (supplier) or Union (respondent), directly or indirectly, own or control five percent or more of any of the other party's securities, and are not under the common control of any party.

We examined the record evidence to evaluate the nature of AST's relationship with Thyssen Stahl and Thyssen and have determined that AST is affiliated with Thyssen and Thyssen Stahl. Evidence establishes that AST is 75 percent owned by a joint venture company, Krupp Thyssen Stahl (''KTS''). KTS, in turn, is forty percent owned by Thyssen Stahl AG (''Thyssen Stahl''), itself a wholly-owned subsidiary of Thyssen AG (the remaining sixty percent of KTS is controlled by Thyssen's joint-venture partner, Fried. Krupp. AG Krupp-Hoesch (Fried. Krupp)). Consequently, Thyssen AG has a 33.75 percent equity holding in AST. On December 17, 1998 we placed publicly available data on the record for this investigation that confirmed both the foregoing shareholding interests and that Thyssen Stahl is a wholly-owned subsidiary of Thyssen. This information was submitted on October 20, 1998 by petitioners in the concurrent stainless steel sheet and strip case from Germany. Consequently, AST, as the 75 percent owned subsidiary of KTS, is affiliated Thyssen Stahl and its parent company Thyssen pursuant to section 771(33)(E). *See Stainless Steel Wire Rod From Sweden,* 63 FR 40449, 40453 (July 29, 1998).

In addition, we have determined that AST is affiliated with reseller 001. Contrary to respondent's claim that the Department relied upon the ''now-repealed ''related parties'' provision,'' we have found that AST is affiliated with reseller 001 under section 771(33)(F) of the Act. *See Affiliation Memorandum.* Section 771(33)(F) of the Act provides that the Department shall consider companies to be affiliated where two or more companies are under the common control of a third company. The statute defines control as being in a position legally or operationally to exercise restraint or direction over the other entity. *See* 771(33) of the Act. Actual exercise of control is not required by the statute. See *ADD, CVD; Final Rule,* 62 FR 27295, 27348 (May 19, 1997). In this investigation, the nature and quality of the relationship between corporations require a finding of affiliation by virtue of Thyssen's common control of reseller 001 and of KTS. Such a finding is consistent with the Department's determinations in *Carbon Steel Plate From Brazil,* 62 FR at 18490, and *Stainless Steel Wire Rod From Sweden,* 63 FR at 40452.

We also agree with petitioners that record evidence demonstrates that Thyssen, as the majority equity holder and ultimate parent company of reseller 001, is in a position to exercise direction and restraint over this affiliate. Thyssen also holds indirectly a substantial equity interest in AST, plays a significant role in AST's operations and management and, thus, enjoys several avenues for exercising direction or restraint over AST's business activities (*see* the *Affiliation Memorandum*).

In sum, Thyssen's substantial equity ownership in AST and reseller 001, along with other reasons based on information which is proprietary (*see Affiliation Memorandum*), supports a finding that AST and reseller 001 are under the common control of Thyssen.

Comment 4: Home Market Selling Expenses

Petitioners argue that if the Department does not resort to facts available for AST's unreported home market downstream sales in the final determination, the Department should not allow the selling expenses that AST has claimed for these sales. Petitioners maintain that AST claimed expenses relating to the downstream sales notwithstanding the fact that AST did not report the prices for those downstream sales. For example, petitioners contend that the technical service expense claimed by AST on it sales to affiliated resellers was most likely incurred as a result of services provided to the reseller's customers rather than the reseller.

Respondent argues that the Department should reject petitioners' request to disallow AST's reported selling expenses for sales to affiliated resellers in the home market. Respondent asserts that this claim is unsupported by fact or law because it implies that the Department should disregard the conclusions drawn from the Department's arm's-length test.

Department's Position: We disagree with petitioners. The Department continues to find that it is appropriate to calculate normal value based on AST's sales to the affiliated resellers rather than the affiliates' resales as long as AST's sales to the home market resellers pass the Department's arm's length test. Section 351.403(d) of the Department's regulations states that, ''the Secretary normally will not calculate normal value based on the sale by an affiliated party if sales of the foreign like product by an exporter or producer to affiliated parties account for less than five percent of the total value (or quantity) of the exporter's or producer's sales of the foreign like product in the market in question or if sales to the affiliated party are comparable.'' Since AST's sales through all of its affiliated resellers except one are made at arm's length (*i.e.,* are ''comparable''), and since the circumstances surrounding this lone exception are such that the Department determines it is most appropriate to simply exclude these sales from our margin calculation (*see Final Analysis Memorandum*), we determine that it is appropriate to calculate normal value based on AST's sales to its affiliates. As part of this calculation, the Department reviewed AST's claimed direct selling expenses for its home market sales to the affiliated resellers during the home market verification (*i.e.,* credit, warranty, and technical service expenses) and found that the expenses were properly reported (that is, the expenses ''result from, and bear a direct relationship to, the particular sale in question'' (section 351.410(c) of the Department's regulations (emphasis added)). *See Verification Report of AST* at pg. 28. Regardless of petitioners' assertion (unsupported by record evidence) that AST's reported technical service expenses were likely incurred as a result of services provided to the resellers' customers, the fact remains that these technical service expenses were directly related to the sales in question. Therefore, based on the Department's verification findings and the fact that petitioners have not cited to any tangible evidence to support their assertion, we have continued to make a circumstance of sale adjustment for AST's claimed direct selling expenses for it sales to home market affiliated resellers.

Comment 5: CEP/EP

Petitioners assert that the Department should determine that all of AST's U.S. sales were constructed export price transactions. Petitioners state that AST's description of its sales procedures indicates that AST USA is involved in every aspect of the sales process for AST's direct U.S. sales: AST USA is contacted by the U.S. customer; AST USA negotiates orders with the U.S. customers; AST USA negotiates with AST concerning the purchase order and the order confirmation; AST USA negotiates with AST concerning the purchase order and the order confirmation; AST USA issues the order confirmations to the U.S. customers; AST USA invoices the U.S. customers; and AST USA provides technical and warranty services to the U.S. customers.

Petitioners argue it is the Department's policy that, if the U.S. affiliate had more than an incidental involvement in making sales or performed other selling functions, the sales should be treated as CEP sales. In support of this, petitioners cite *Certain Cold-Rolled and Corrosion Resistant Steel from Korea: Final Results of Antidumping Duty Administrative Review* 63 FR 13170, 13172 (March 18, 1998) (''*Carbon Steel Products from Korea*''), where the Department determined that the respondent's sales were CEP sales because the U.S. affiliate was first contacted by interested customers and because the U.S. affiliate signed the sales contracts and engaged in other sales support functions. Petitioners assert that similar to this case, in *Carbon Steel Products from Korea,* the respondent claimed that the U.S. sales were EP sales because the respondent, not the U.S. affiliate, approved all sales prices. Petitioners point out that the Department determined that this approval process does not make the U.S. affiliate's role in the sales process incidental or ancillary. In addition, petitioners cite *Extruded Rubber Thread from Malaysia: Final Results of Antidumping Duty Administrative Review,* 63 FR 12752 (March 16, 1998); *Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany: Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 47446, 47448 (September 9, 1997); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Brake Drums and Brake Rotors from the People's Republic of China,* 61 FR 53190, 53194 (October 10, 1996); *Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Duty Administrative Review,* 62 FR 18390, 18392 (April 15, 1997); and *Oil Country Tubular Goods from Mexico: Final Results of Antidumping Duty Administrative Review,* 64 FR 13962, 13966 (March 23, 1999); and *Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 62 FR 10530, 10532 (March 7, 1997), in which, petitioners claim, the Department reclassified respondents' U.S. sales as CEP transactions because significant selling functions were performed in the United States.

Petitioners argue that information obtained by the Department during verification showed that AST USA, rather than AST, is contacted by the U.S. customers, negotiates the terms of sales to the U.S. customers, sets the prices to these customers, and performs support activities related to the U.S. sales. Additionally, petitioners state that the verification report explains that there is no interaction between AST and the U.S. customers regarding specific sales transactions, and that AST's activities with U.S. customers is limited to participation in a biannual golf outing that is arranged by AST USA.

Respondent claims that petitioners ignore the Department's final determination in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Italy,* 63 FR 40422 (July 29, 1998), where the respondent (Cogne Acciai Speciali S.r.L, ''CAS'') produced and sold subject merchandise in the U.S. market through a channel of distribution similar to that of AST's back-to-back (EP) sales. Respondent argues that in this case, the Department determined that CAS's sales through AST USA were EP sales because the sales process for these sales was nearly identical to that of CAS's sales through CAS USA.

Respondent asserts that the determination of classifying sales as EP or CEP depends on more than a U.S. affiliate's involvement in the transactions, and that it additionally depends on the following three criteria: whether (1) the merchandise is shipped directly to the unaffiliated buyer without entering the affiliate's inventory; (2) this procedure is the customary sales channel between the parties; and (3) the affiliate in the United States acts only as a processor of documentation and a communications link between the foreign producer and the unaffiliated buyer. Respondent maintains that AST's back-to-back sales meet all of these criteria, and should therefore be classified as EP sales. Moreover, respondent argues that the Court of International Trade has affirmed the Department's finding of EP (formerly purchase price ''PP'') classification where the U.S. affiliate engaged in activities that were at least equal to, if not greater than, those undertaken by AST USA in the following cases: *Outokumpu Copper Rolled Products* v. *United States; E.I. DuPont de Nemours & Co.* v. *United States; Zenith Electronics Corp.* v. *United States;* and *Independent Radionic Workers* v. *United States.*

Respondent asserts that, as mentioned in the AST USA verification report, AST gives the final approval of a sale which is outside of the pricing guidelines that AST has approved is done by AST. Citing *Preliminary Results of Antidumping Duty Administrative Review: Small Diameter Circular Seamless Carbon and Alloy Steel Standard Line and Pressure Pipe from Germany,* 62 FR 47446, 47448 (September 9, 1997), respondent contends that knowledge of and influence over final price terms for U.S. sales has played an important and decisive role in determining whether such U.S. sales are properly treated as EP or CEP sales.

Respondent concludes by stating that the Department should reject petitioners' argument to change AST's EP sales to CEP sales because it would go against the Department's three-part test, mentioned above, and it is not consistent with the distinction between EP and CEP sales set forth in the statute.

Department's Position: We agree with petitioners. Section 772(b) of the Act defines CEP as ''the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by 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.'' Based on the Department's practice, when an affiliate in the United States is involved in the sales process, as is the case here, the Department presumes the sales to be CEP unless the following three criteria are met: (1) the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) this was the customary commercial channel between the parties involved; and (3) the function of the U.S. selling agent was limited to that of a ''processor of sales-related documentation'' and a ''communications link'' with the unaffiliated U.S. buyer. Where all three criteria are met, indicating that the activities of the U.S. selling agent are ancillary to the sale, the Department has determined the sales to be EP sales. Where one or more of these conditions are not met, indicating that the U.S. sales agent is substantially involved in the U.S. sales process, the Department has classified the sales in question as CEP sales (*see, e.g., Viscose Rayon Staple Fiber from Finland: Final Results of Antidumping Duty Administrative Review,* 63 FR 32820, 32821 (June 16 1998); *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 13170 (March 18, 1998)). In this case, the crucial distinction lies in the last factor, *i.e.*, whether the entity in the United States acted only as a processor of documentation and a communication link. This factor entails a fact-based analysis to determine whether the entity in the United States is actually engaged in significant selling activities, in which case CEP applies, or is merely performing ancillary functions for a foreign seller, in which case EP is appropriate.

Our analysis of the facts indicates that, while AST's U.S. sales meet the first two conditions, they fail to meet the third one. AST USA is substantially involved in the process of selling AST merchandise in the United States. The Department looks at the totality of the evidence to determine whether an agent's role in the sales process is beyond an ancillary role. *See e.g. Final Determination at Less Than Fair Value: Extruded Rubber Thread from Malaysia,* 64 FR 12967–01 (March 16, 1999), and *Final Determination at Less Than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea,* 64 FR 15444–01, (March 31, 1999). At verification, we found that AST USA is contacted by the U.S. customer; AST USA negotiates the order with the U.S. customers; AST USA negotiates with AST concerning the purchase order and the order confirmation; AST USA issues the order confirmations to the U.S. customers; AST USA invoices the U.S. customers; and AST USA provides technical and warranty services to the U.S. customers. Additionally, although CEP treatment may still be appropriate even if AST has final approval authority, we note that AST was unable to provide any evidence at verification that it did anything other than accept purchase orders (without altering the essential terms of sales). *See Verification Report of AST* at 13. Additionally, at verification, we found that there was substantial AST USA involvement in developing clients, for example, through its lead role in organizing the golf tournaments. *See Verification Report of AST* at 14. Therefore, even if the agent's role is not autonomous with respect to the final sales terms as respondent claims, this does not mean that its role in the process is ancillary. (*See Carbon Steel Products from Korea,* 63 FR 13170 (March 18, 1998); and *Final Results of Administrative Review: Industrial Nitrocellulose from the United Kingdom,* 64 FR 6609, 6612, (February 10, 1999).) Because the selling activities of AST USA were more than ancillary to the sales process in the U.S., *i.e.*, the function of AST USA is not limited to that of a ''processor of sales-related documentation'' and a ''communications link'' with the unaffiliated U.S. buyer, we determine that in accordance with section 772(b) of the Act, CEP methodology is required.

Comment 6: Order Date/Invoice Date

Petitioners claim that the Department should use the order date as the date of sale for all of AST's U.S. sales. Petitioners state that the facts of this case parallel *Final Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,* 63 FR 32833, 32835 (June 16, 1998) (''*Circular WNASP from Korea*'') a case in which the Department determined the order date to be the proper date of sale. Petitioners claim that information contained in AST's questionnaire response and from AST's verification reports supports the proposition that the material terms of sale (*i.e.*, price and quantity) are set on the order date for both AST's warehouse sales and back-to-back sales that are made to order and, therefore, that the order date is the proper date of sale for those U.S. sales. Petitioners assert that even if the Department determines that the date of sale for simple CEP sales out of inventory can be determined by invoice date, consistent with the Department's practice, the nature of further-manufactured sales orders and the additional time lag engendered by the sales process requires that the date of sale be determined as the date of the confirmation or change order.

Respondent argues that for the final determination, the Department should use the invoice date for all home market sales and for CEP sales, and the shipment date for EP sales, as it did in the Preliminary Determination. Respondent cites section 351.401(i) of the *Department's Final Antidumping Regulations,* (1998), noting that the Department's stated practice is to ''use invoice date as the date of sale unless the record evidence demonstrates that the material terms of sale, *i.e.*, price and quantity, are established on a different date.'' Respondents argue that if a date other than the invoice date is to be used for the final determination, petitioners bear the burden of demonstrating that another date is more appropriate.

Respondent claims that AST demonstrated that in a large percentage of its home market sales (based on quantity) during the POI, the price and/or quantity changed between order and invoice date. Respondent argues that petitioners have offered no evidence to support their assertions that ''an allowance of plus or minus ten percent of the quantity order is common in the industry for sales of stainless steel sheet and strip'' and that ''adjusting the agreed upon price by an alloy surcharge formula is generally accepted as part of the sales process for sales of stainless steel products.'' Respondent adds that petitioners have not demonstrated that AST's sales adhere to these industry-wide practices. Respondent contends that at verification, AST demonstrated that large-volume customers will not accept a quantity that is ten percent higher or lower than the ordered quantity. Respondent also argues that AST demonstrated that, irrespective of alloy surcharges, the negotiated price may change between order confirmation date and invoice date.

Respondent argues that petitioners offer no legal authority supporting their position that the Department should ignore post-order confirmation changes because such changes are common in the industry. Respondent argues that the existence of an industry practice to accept changes in price and/or quantity up until the date of invoice establishes that invoice date is the appropriate date of sale. Additionally, respondents contend that at verification, the Department verified that for a certain percentage of its reported POI home market sales (based on quantity), the price changed between order confirmation date and invoice date for reasons unrelated to the alloy surcharge.

Respondent asserts that AST's inability to perform an analysis of the frequency of price and quantity changes between order and invoice date for the U.S. market does not indicate that order date or confirmation date is the appropriate date of sale for AST's U.S. sales. Respondent points out that in all of the U.S. sales that the Department verified, either the quantity invoiced was different from the quantity set forth in both the order and order confirmation, the price changed between order confirmation date and invoice date for reasons unrelated to the alloy surcharge, or both.

Department's Position: We agree with respondent. We found no evidence on the record to indicate that order date is the appropriate date of sale. As noted by respondent, under the Department's regulations, we normally use date of invoice as the date of sale unless record evidence shows that the material terms of sale are established prior to that date. *See* 19 CFR 351.401(i). However, we may use another date, such as date of order confirmation, if that date better reflects the date on which the material terms of the sale were established. In adopting this regulation, we explained that the purpose was, whenever possible, to establish a uniform event which could be used as the date of sale. Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27348–49 (May 19, 1997). We further explained that we do not automatically treat an initial agreement as establishing the material terms of sale between the buyer and seller when changes to such an agreement are common, even if, for a particular sale, the terms did not actually change. *See Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils (''SSPC'') from the Republic of Korea,* 64 FR 15450 (March 31, 1999). Consequently, our analysis focuses on whether changes are sufficiently common to allow us to conclude that initial agreements should not be considered to finally establish the material terms of sale. At verification of AST USA, we found that the price and/ or quantity (excluding price changes resulting from changes in the alloy surcharge) changed from the order date to the invoice date for all of the sales traces, thus supporting AST's contention that certain material terms of sale (*e.g.*, price and quantity) are subject to change until the invoice date. *See Verification Report of AST USA,* Exhibits 7–10.

Petitioners' reference to *Circular WNASP from Korea* is misplaced, because in that case, evidence showed that the material terms of sale in the United States were set on the contract date, and subsequent changes rarely occurred. In this case, based on the Department's findings at verification and the record evidence indicating that the material terms of sale often change up to invoice date, the Department is satisfied that the date of invoice is the most appropriate measure of when AST establishes the material terms of sale. Accordingly, we have continued to use invoice date as the date of sale for AST's CEP sales for the final determination. As stated above, the Department has determined that all of AST's U.S. sales are CEP. Therefore, we have used the invoice date for all of AST's home market and U.S. sales (unless invoice date is after shipment date, in which case the Department will use shipment date). *See* section 351.401(i) of the Department's regulations.

Comment 7: CEP Offset

Respondent argues that AST's final margin calculation should include a CEP offset, based on respondent's assertion that the Department failed to consider that AST's sales to its affiliated U.S. distributor, AST USA, are at a less advanced level of trade than the level of trade (LOT) of AST's home market sales.

First, respondent argues that its home market sales are made at a more remote level of trade than its CEP sales. Respondent claims that most home market sales are direct factory sales which AST manufactures to order. Respondent argues that in the home market, AST is responsible for the entire chain of distribution for the foreign like product, from production in the plant through delivery to the local distributor, end-user, or service center. Respondent notes that in this regard, AST S.p.A. has established a large, complex distribution system.

Respondent argues that, by contrast, AST's CEP sales are warehouse sales. Respondent asserts that the LOT for these sales is properly based on the transaction between AST and AST USA, not AST USA and the first unrelated U.S. customer. Respondent continues by asserting that, in order to identify different levels of trade, the Department compares starting prices in the U.S. and home markets. Respondent asserts that, in this case, the requisite comparison reveals that the starting prices in Italy and the United States are vastly different. In support of its argument, respondent notes that AST's U.S. and home market sales to the first unaffiliated customer are at the same level or trade because: (1) AST S.p.A's home market sales and AST USA's CEP sales are at the same point in the chain of distribution; (2) AST S.p.A's Italian customer and AST USA's U.S. customers are in the same customer categories; and (3) AST S.p.A and AST USA provide the same selling services for CEP sales. Respondent argues that the CEP adjustments made under 19 USC 1677a(d) (section 772(d) of the Act) remove all of AST USA's marketing, sales and distribution expenses, thereby altering the LOT of its CEP sales to a less remote link in the chain of distribution.

Finally, respondent argues that, in applying the CEP offset, the Department should deduct AST's indirect selling expenses and technical services expenses from normal value, since available data do not indicate whether the purported difference in LOT affect price comparability.

Petitioners maintain that the Department should reject respondent's request that the Department apply a CEP offset to respondent's final margin calculation, based on the fact that the Department preliminarily concluded that there was no difference in LOT between AST's sales in the U.S. and home markets.

Petitioners argue that respondent did not request a LOT adjustment or a CEP offset prior to the preliminary determination, and that respondent's request for a CEP offset is not supported by substantial evidence, including evidence of differences in selling functions. Petitioners argue that the burden was on respondent to prove its entitlement to a LOT adjustment or CEP offset, and to have provided the Department new evidence to demonstrate the appropriateness of such an adjustment, citing section 773(f)(1)(A) and the *Statement of Administrative Action* accompanying H.R. 5110 (H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994), at 829 (''SAA'')); *Final Rule,* 62 FR 27370; and *Mitsubishi Heavy Industries, Ltd.* v. *United States,* Slip Op. 98–82 (CIT 1998). Petitioners maintain that AST did not provide such new evidence.

Petitioners argue that the Department examined the LOT that existed following the adjustments specified under 19 U.S.C. 677a(d) (section 772(d) of the Act), and properly determined that those adjustments to the price at which AST USA sold subject merchandise did not alter the channels of trade or selling functions upon which a determination regarding level of trade difference is based in this investigation. Petitioners also argue that the Department's verifications confirmed that essentially the same selling functions were offered by AST for both its home market and U.S. sales.

Petitioners continue that the Department clearly stated in its preliminary determination that it made the adjustments called for by 19 U.S.C. section 1677a(d) prior to examining LOT. Finally, because a difference in LOT must exist prior to granting a CEP offset, petitioners assert that no CEP offset may be granted in this investigation.

Department's Position: We disagree with respondent. For the preliminary determination, the Department thoroughly reviewed the channels of distribution and selling functions performed for sales in the home and U.S. market and determined that all sales were made at one level of trade (including its analysis whether NV was established at a different LOT than CEP sales). *See Preliminary Determination* (64 FR 120–121), and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Korea,* 64 FR 17342, 17344 (April 9, 1999), specifically, AST provided freight and delivery, credit, technical services, and warranties for its home market sales of prime merchandise. Also, for sales of mostly non-prime merchandise sold from its warehouse, AST performed essentially the same selling functions. While it did not provide warranties for non-prime merchandise, it did perform other selling functions for those sales (advertising and maintaining inventory of this merchandise at AST's warehouse), which were not performed for sales of prime merchandise. For the preliminary determination (and as upheld in this final determination, see discussion in ''Level of Trade'' section above), the Department found that there was one LOT for AST's home market sales because the selling activities for both groups of sales were very similar. *See Preliminary Determination* (64 FR 120). For all of its U.S. sales, AST engaged in identical selling activities, providing technical and warranty services, freight and delivery and credit. As explained above, the Department compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market levels of trade constituted more advanced stages of distribution than the CEP level of trade. Based on our analysis of the chains of distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we continue to find that both are made at the same stage in the marketing process and involve substantially similar selling functions.

Absent significant differences in selling functions, we do not determine that there are different LOTs, and therefore, we do not even reach the issue of a LOT adjustment or CEP offset. Furthermore, AST has not provided any substantial evidence which would counter the Department's preliminary determination, but rather only stated that the starting prices between home market sales, which are direct factory sales, and AST's CEP sales, which are warehouse sales, are notably different. Because the Department has found there to be just one LOT, the difference in prices is irrelevant to our LOT analysis.

Moreover, in the original questionnaire, the Department requested that respondent ''explain why you believe a level of trade adjustment is appropriate and provide worksheets demonstrating the calculation of the adjustment as attachments to your response.'' *See Questionnaire* at pg. B–23, dated August 3, 1998. AST did not claim any LOT adjustment or CEP offset in its questionnaire response, nor provide any explanation for such a claim.

Comment 8: Side Cuts/Pup Coils

Respondent asserts that side cuts and pup coils are non-prime merchandise, and therefore sales of this merchandise should not be compared with sales of prime merchandise. First, respondent argues that it has submitted record evidence demonstrating that the U.S. steel industry, including petitioners, markets and sells side cuts and pup coils as non-prime merchandise. Therefore, respondent argues that the burden is with petitioners to demonstrate that such products are not legitimately classified as non-prime merchandise.

Second, respondent argues that side cuts and pup coils suffer defects during the production process and at other times prior to delivery to the customer.

Third, respondent states that side cuts and pup coils are not produced to order and do not otherwise meet customers' specifications, such as finish, width and/or weight specifications.

Fourth, respondent argues that side cuts and pup coils are used in applications for which knowledge of certain of the product's characteristics is unimportant. These applications would include such non-prime applications as strappings, bands, brackets and washers for side cuts, and hog feeders, pig pens, fertilizers, spreaders and roofing and siding for pup coils.

Fifth, respondent asserts that the sales process for side cuts and pup coils differs significantly from sales of prime merchandise. For example, respondent notes that its side cut and pup coil sales are all done from inventory (as opposed to its direct factory sales that were produced for a specific customer to that customer's specifications).

Finally, respondent maintains that side cuts and pup coils are sold at a discount, with no warranties.

Petitioners respond that AST has not provided any information to support its claim that all of its sales of pup coils and side cuts were sales of non-prime merchandise. Petitioners argue that the only difference between pup coils and a regular coil is the size of the coil, not the quality of the product. Similarly, petitioners argue that making a coil narrower does not convert that merchandise into secondary material simply because it was separated from the mother coil.

Petitioners argue that respondent did not identify any physical defect in pup coils and side cuts in AST's record description of non-prime merchandise, and furthermore, that the submitted description distinguished pup coils and side cuts from ''second quality merchandise.''

Petitioners further submit that the Department's investigation of respondent's classification of secondary merchandise at verification does not support a finding that side cuts and pup coils are of secondary quality.

Petitioners also take issue with respondent's claim that pup coils and side cuts are second quality material because they were not produced to order, but instead were inventory sales from the warehouse, given the percentage of respondent's U.S. sales which were warehouse sales. Petitioners also argue that the limited applications of pup coils and side cuts cannot define these products as secondary, given that prime merchandise is also produced within certain weight and size tolerances and therefore is also ''limited to certain uses.''

Petitioners further argue that the absence of a warranty does not mean that the product is defective. Likewise, petitioners believe that the fact that these sales were made at a discount does not demonstrate that these sales are of secondary merchandise, especially given the fact that, according to petitioners, one would expect discounts on merchandise for which there is no warranty.

Department's Position: We agree with petitioners that AST's sales of pup coils and side-cuts should be considered sales of prime merchandise. As noted in the Department's April 19, 1995 *Memorandum from Roland L. MacDonald to Joseph A. Spetrini,* the Department defines non-prime (or secondary merchandise) as ''steel which has suffered some defect during the production process, or at any time before delivery to the customer.'' In its submissions to the Department, AST identified side-cuts and pup coils as secondary merchandise, but did not identify the physical defect or damage associated with each sale of pup coils and side-cuts, as specifically requested by the Department. *See Supplemental Questionnaires* dated October 23, 1998 and December 7, 1998, in which we requested that AST create a separate computer field that would identify the specific reason why each sale was designated non-prime merchandise. AST submitted its offering list of secondary merchandise (*see* Exhibit 18, November 12, 1998 response); however, the defects of the merchandise were not identified for many of the coils on this list. At verification, we examined AST USA's invoices to its unaffiliated U.S. customers for sales of pup coils and side-cuts, and noted that there was no indication that the merchandise listed on the invoice was damaged or defective. *See Verification Report of AST USA,* Exhibit 20.

With respect to respondent's argument that side cuts and pup coils are not produced to order and do not otherwise meet customers' specifications, such as finish, width and/or weight specifications, we believe that respondent is confusing the issue. Specifically, as respondent has noted, side cuts and pup coils are not produced to order, and are sold from inventory. Therefore, the customers that respondent is referring to are, in fact, the purchasers of side cuts and pup coils from inventory. Record evidence taken from verification reveals that certain information such as the dimensions of the product, is provided to these customers for the merchandise sold from inventory. *See Verification Report of AST USA,* at pg. 7, and Exhibit 20. There is no evidence on the record which would support a finding that these specifications, *i.e.,* those provided in the inventory list, are inaccurate or otherwise do not meet the specifications of these customers.

Regarding respondent's assertion that it has submitted record evidence demonstrating that the U.S. steel industry, including petitioners, markets and sells side cuts and pup coils as non-prime merchandise, whether side cuts and pup coils are sold in the ''seconds market'' is in no way dispositive with regard to the Department's ultimate classification of this merchandise. We note that for example, the same exhibit offered by AST is in support of its claim that side cuts and pup coils are secondary merchandise, also shows that ''excess prime'' is sold by that particular company as a ''secondary product.'' *See* AST's November 12, 1998 submission, Exhibit 10. In this regard, the Department has clearly stated its position that excess prime also known as prime overruns is treated by the Department as prime merchandise. This is precisely because this merchandise contains no defects. (*See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products From Australia; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 14049–01 (March 29, 1996)). Therefore, we determine that side-cuts and pup coils be considered prime merchandise for the final determination.

Comment 9: Floor Plate

Respondent argues that floor plate should be excluded from the scope of this investigation. Respondent maintains that, to the best of its knowledge, the U.S. industry does not manufacture this product (and has not done so for at least two years), and furthermore, this product does not compete with any product manufactured in the United States.

Petitioners argue that the Department should reject respondent's request to exclude floor plate from the scope of this investigation. First, petitioners argue that respondent's ''apparent belief'' that the domestic industry must be currently producing a particular type of product in order for that product to remain within the scope of the case is wrong. Petitioners point out that one possible reason for opposing an exclusion request is that a domestic producer previously manufactured the product and may have ceased production due to the competitive impact of unfairly traded imports, or a domestic producer may be interested in producing the product but is unable to enter the market due to the low prices of the unfairly traded imports. Petitioners argue that one domestic producer was producing floor plate until recently, and assert that another is considering manufacturing floor plate in the future.

Department's Position: We uphold our preliminary determination to include floor plate as part of the scope of subject merchandise. Despite AST's arguments, the plain language of the petition's scope covers merchandise described as floor plate if it is less than 4.75 mm in thickness. The scope specifically describes the subject merchandise as a ''flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness.'' We also note that the Department's model match criteria place significant emphasis on both the rolling process (hot-versus cold-rolled) and surface finish (including ''patterns in relief,'' such as the diamond pattern characteristic of floor plate). *See* page 8 of the *Memorandum to Joseph A. Spetrini from Robert James regarding the Antidumping Duty Investigations on Stainless Steel Sheet and Strip in Coils from France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom; Scope Issues,* dated December 14, 1998.

In a similar case where a respondent requested an exclusion for a particular type of SSWR from the scope, the Department determined not exclude this merchandise because petitioners did not agree to the exclusion. *See Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Canada,* 63 FR 9182 (February 24, 1998). In the *Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan,* 63 FR 40434–01 (July 29, 1998), the respondent asserted that a particular grade of SSWR should be excluded from the scope because it had not been sold it in the United States during the POI or at any other time, and that this grade of SSWR allegedly was not, and could not be, manufactured in the United States. The Department determined that the fact that a specific grade of SSWR is not currently produced in the United States does not constitute grounds for exclusion from the scope of the investigation, and therefore did not exclude it from the scope. Therefore, consistent with the Department's current practice, we will continue to include floor plate in the scope of this investigation for purposes of the final determination.

Comment 10: REBATE2H

Petitioners state that the adjustments reported in field REBATE2H should be rejected because the expenses included in this field do not qualify as rebates. Petitioners assert that the verification results demonstrate that the Department should disallow AST's claim for REBATE2H for several reasons. First, petitioners state that respondent has used an inappropriate period for calculating REBATE2H, since the period begins two months after the start of the POI and finishes two months after the POI. Second, petitioners state that this field includes credit notes granted for sales of non-subject merchandise and for sales that were outside the POI. Third, petitioners argue that when AST stated that its claimed REBATE2H amounts included expenses for returns and for technical claims for defective merchandise, it did not explain whether these claims involved double counting of its claimed home market warranty expenses or home market technical service expenses as it should have. Fourth, petitioners contend that certain price adjustments, including alloy surcharges, were accounted for in AST's home market sales listing, and therefore, should not be accounted for as part of AST's rebates. Finally, petitioners argue that AST included all credit notes in its calculation of the REBATE2H amounts, and did not evaluate the credit notes to determine whether the credit notes applied to sales during the POI or to sales of SSSS. Therefore, petitioners claim that AST overstated the rebates that may have been provided for sales of SSSS during the POI instead of excluding credit notes that were not related to such sales. In conclusion, petitioners argue that the Department should, therefore, not allow AST's claimed REBATE2H for its final analysis.

Respondent argues that as explained in AST's Section B Response, the expenses reported in REBATE2H represent post-sale price adjustments other than claims reported in other fields. Although AST states that the expenses reported in REBATE2H may alternatively be classified as billing adjustments rather than rebates, the expenses are appropriately deducted from the home market price.

Citing *Final Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada (''Carbon Steel Flat Products and Carbon Steel Plate from Canada''),* 61 FR 13815, 13822, (March 28, 1996), respondent states that the Department recognizes that adjustments such as those included in REBATE2H are not always granted on an invoice-specific basis, and accepts such adjustments if they are tied to a specific group of invoices. AST claims that REBATE2H was calculated on a customer-specific basis, and as such, was calculated and reported on the specific group of invoices associated with AST's stainless steel sheet and strip customers. AST contends that therefore AST properly calculated REBATE2H in accordance with Departmental policy.

Respondent asserts that petitioners' argument that AST double counted technical and warranty claims is factually inaccurate because AST provided the Department with revised REBATE2H calculations at verification (*see Verification Report of AST* at 1–2) which eliminated any potential double counting. Respondent states that exhibit 16 of the verification report was an exhaustive list of different types of credit notes issued by AST, not the credit notes included in the calculation of REBATE2H; therefore, there is no basis for petitioners' argument that credit notes were double counted in the calculation of REBATE2H.

Respondent argues that the Department must reject petitioners' claim that the calculation of REBATE2H was based on an incorrect time period. Respondent maintains that, as explained to the Department at verification, there is a lag period of two months between shipments and the issuance of credit notes. Respondent contends that it was necessary to shift the period forward by two months to ensure that credit notes associated with sales during the POI were captured.

Respondent asserts that for all of the reasons mentioned above, the Department should reaffirm its preliminary determination with respect to REBATE2H and subtract this amount in the calculation of normal value.

Department's Position: We agree with respondents that REBATE2H is more properly considered as price adjustments rather than rebates, and that the expenses are appropriately deducted from the home market price. At verification, we reviewed substantial information to conclude that REBATE2H consisted of after-sale price adjustments. *See Verification Report of AST* pp. 1,2 & 24. Furthermore, we determine that AST's methodology for reporting credit notes for the period beginning two months after the start of the POI, and ending two months after the end of the POI is reasonable, as there is no evidence on the record which contradicts AST's claim regarding a two-month lag period, and there is no reason to believe that respondent's methodology is in any way distortive. The information gathered in Exhibit 39 of the *Verification Report of AST* confirmed the reasonableness of using the two-month period. Furthermore, we determine that AST's reporting methodology by customer groupings is also reasonable. While the Department prefers that discounts, rebates and other price adjustments be reported on a transaction-specific basis, the Department has long recognized that some price adjustments are not granted on that basis. This case is similar to situations in which the Department has permitted as direct adjustments, rebates granted on a customer-specific basis. *See Carbon Steel Flat Products and Carbon Steel Plate from Canada,* 61 FR 13815, 13822. We reviewed the revised calculations at verification and noted no discrepancies. *See Verification Report of AST* at 24. Therefore, for the final determination, we have deducted REBATE2H from the home market price.

Comment 11: Home Market Freight

Petitioners argue that the Department should make corrections for AST's overstatement of freight costs for its sales in Italy. Petitioners state that at verification, the Department compared the freight charges that AST reported in its questionnaire response to the freight charges in AST's freight contracts and discovered that the freight costs in the questionnaire response were higher than the freight rates shown in the freight contracts, and that AST claimed that the costs were higher because of the accruals that AST made at the end of the year. Petitioners maintain that because AST was given the opportunity to prove this claim at verification, and failed to do so, the Department should correct AST's overstatement of its freight costs by reducing the freight costs reported by AST for its home market sales by an amount verified by the Department at verification.

Respondent argues that petitioners' argument reflects a misunderstanding of this expense, and explains that in reporting its home market freight expense, AST first calculated the contract freight charge associated with deliveries to various destinations, then adjusted the contractual freight expense to reflect the difference between the contractual per-kilogram freight expense and the actual per-kilogram freight expense. AST states that for shipments less than 28 tons, it incurs the same fixed freight charge as it would for a shipment weighing 28 tons, and for shipments over 28 tons, it is charged the negotiated rate per-kilogram. AST argues that it adjusted AST's contractual freight expense to account for the incremental freight charge associated with shipment weights that are less than the minimum weight called for in the contract.

Department's Position: We agree with petitioners. At verification, we traced the freight expense reported in AST's response to AST's contractual agreements, and found that the two were different. *See Verification Report of AST* at 26. We do not accept AST's claim that it adjusts its contractual freight expense to account for the incremental freight charge associated with shipment weights that are less than the minimum contract weight called for in the contract, because when we gave AST the opportunity to provide the year-end reconciliation of actual and accrued freight expenses at verification, AST failed to do so. *See Verification Report of AST* at 26 and 28. Therefore, the Department considers these additional amounts unverified, and we have, for the final determination, reduced the freight costs reported by AST for its home market sales by an amount examined by the Department at verification (*see Final Analysis Memorandum*).

Comment 12: Technical Service Expenses

Respondent argues that the Department should not deduct technical service expenses incurred in Italy from CEP. Respondent argues that the technical service expenses reported in its response are indirect selling expenses associated with its Technical Services Department in Italy, and are therefore not an appropriate adjustment to CEP.

Petitioners argue that the Department should treat respondent's technical service expenses in the home market and in the U.S. market in the same manner (*i.e.*, either both as direct, or both as indirect selling expenses), because respondent calculated these expenses in the same manner. Furthermore, petitioners argue that the verification of AST USA shows that economic activity occurred in the U.S. with regard to technical service expenses, and therefore, the costs for the activities should be deducted from the price for respondent's CEP sales.

Department's Position: Contrary to AST's claim that all technical service expenses reported in its response are associated with its Technical Services Department in Italy, we found at the verification of AST USA that a portion of technical service expenses relate to economic activity in the United States and are, in fact, incurred in the United States by AST USA. Specifically, at verification we found that AST USA partially paid for the salary of an AST USA employee who was responsible for providing customers with technical advice. *See Verification Report of AST USA* at 23. However, there is insufficient data to allocate these additional technical expenses because AST failed to provide it. Therefore, for purposes of the final determination, we are continuing to deduct technical service expenses as reported in AST's December 28, 1998 response from AST's CEP sales.

We note that AST's technical service expenses, as reported for both markets, are more appropriately considered to be indirect selling expenses, because they are fixed expenses that are incurred whether or not a particular sale is made. *See* The Department's AD Manual, page 34, 35. For example, we note that a portion of these reported expenses are payroll expenses, which are typically an indirect selling expense. Therefore, for purposes of the final determination, we have allocated AST's technical service expenses over sales of subject merchandise in the home market as indirect selling expenses.

Comment 13: U.S. Warranty

Respondent argues that the Department, in its preliminary determination, incorrectly double-counted warranty expenses for U.S. sales. Respondent asserts that, by treating expenses reported in two separate fields (BILLADJU and WARRU) as direct selling expenses, the Department double-counted warranty by counting both the amount credited to the customer by AST USA and the amount credited to AST USA by AST.

Petitioners reply that information on the record shows that treatment of billing adjustments and warranty expenses as direct selling expenses does not involve double-counting of warranty expenses. Specifically, petitioners argue that respondent's November 12, 1998 submissions indicate that AST had separated its warranty expenses from the amounts reported in the billing adjustment field of its U.S. sales listing. Petitioners also argue that the verification reports do not substantiate respondent's claim that the Department verified that the expenses reported in the U.S. warranty expense field of its U.S. sales listing represent AST's payments to AST USA for claims made by U.S. customers.

Department's Position: We agree with respondent. As stated in AST's original response, U.S. warranties, if incurred, are included in the billing adjustment field (*see* pg. C–37 of AST's Section C Response, dated September 28, 1998). This is confirmed by the fact that, in comparing AST's original and supplemental U.S. sales databases, we note that the BILLADJU field remained the same after AST reported WARRU in the supplemental questionnaire. Therefore, it is clear that (1) AST reported warranty expenses in the BILLADJU field; and (2) AST did not transfer the expense included in BILLADJU for warranties to the WARRU field. At verification we examined the BILLADJU field for each sales trace and, with the exception of one clerical error, we found no discrepancies. *See Verification Report of AST USA*, Exhibits 7–10. Additionally, at verification, we confirmed that AST reimburses AST USA for the credit issued to AST USA's customers for warranties. Specifically, we examined documentation showing that AST USA issues a credit to its customer, and then deducts the claim amount credited to the customer from its payment to AST. *See* Exhibit 6A of the *Verification Report of AST USA*. Therefore, to ensure that we do not double count warranties, we have only deducted BILLADJU from the U.S. price for purposes of the final determination.

Comment 14: Insurance Revenue

Respondent argues that the Department incorrectly failed to add transaction-specific insurance revenue to U.S. price in its preliminary determination. First, respondent argues that the Department incorrectly characterized insurance claim sales as ''merchandise destined for sale as prime material.'' Respondent claims that, to the contrary, because the merchandise was damaged in transit, the sale reported to the Department was a sale of damaged second quality material. Second, respondent claims that the Department's statement that AST ''still incurred a loss on prime merchandise'' is incorrect, as respondent claims that any loss associated with these sales is a loss associated with sales of second quality merchandise, given that it was damaged in transit. Respondent adds that any question of whether a loss or profit was incurred is in any event irrelevant to the Department's determination of sales at less than normal value.

Respondent maintains that, conversely, transaction-specific insurance proceeds are directly relevant here. Respondent argues that the insurance proceeds reported in the response relate directly to the specific transactions identified as insurance claim sales. Respondent cites the Department's preliminary results of review in *Ferrosilicon from Brazil* (62 FR 54085, upheld in principle in the final) as a case in which the Department ''added the amount of marine insurance revenue which was collected by Minasligas with regard to one U.S. sale'' as support for its argument.

Petitioners assert that the Department correctly treated the costs associated with the damaged sales as indirect selling expenses. Petitioners argue that the expenses incurred for the damaged merchandise were associated with the shipment and sale of prime merchandise, as the Department preliminary determined.

Department's Position: We agree with respondent in part. For the claims that AST reported in its original response, we have added the transaction-specific insurance revenue to AST's U.S. sales' price. At verification, we reviewed the actual final settlement amount for an insurance claim that AST reported as ''pending'' in its responses to the Department. *See Verification Report of AST USA*, pp. 2–3. Since we confirmed this amount, and found no discrepancies, we have used the actual final settlement amount received for this insurance claim to calculate the total insurance revenue applied to these transactions.

Regarding the additional insurance revenue amount that AST presented the Department at the onset of verification, we do not agree with petitioners. We consider this additional insurance revenue to be directly applicable to all sales of subject merchandise, because in the absence of these sales, the claim would not have been made, and the revenue would not have been received. At verification, we examined the receipts of AST's claim reimbursements and found no discrepancies. We also examined an invoice of subject merchandise for which AST received part of this additional insurance revenue and found no discrepancies. *See Verification Report of AST USA* at 3. Therefore, petitioners' assertion that these insurance proceeds must relate to sales that occurred prior to the POI is unfounded, as there is no record evidence to support this assertion, and the record evidence which does exist supports a different finding. We note that unlike our treatment of insurance revenue as discussed above, we must treat this additional insurance revenue differently based on the verified fact that AST was unable to tie this insurance revenue to specific transactions. Therefore, since this additional claim was received during the POI, and was found to be satisfactory at verification, we determine that it is relevant to use for purposes of calculating total insurance revenue. For purposes of the final determination, we have allocated this additional insurance revenue over all sales of subject merchandise.

Comment 15: Revised Credit Calculations

Petitioners contend that the Department should use the revised shipment dates presented by AST at verification to calculate imputed credit expenses for some of AST's U.S. sales. *Citing Carbon Steel Products from Korea* at 63 FR 13173, petitioners argue that the Department's general practice is that the date of sale should not occur after the date the merchandise was shipped to the customer. Moreover, petitioners state that the Department generally calculates imputed credit expenses based on the period from the date of shipment to the date of payment. Therefore, petitioners maintain that the Department should calculate revised imputed credit expenses for the sales where respondent reported incorrect shipment dates. *See Verification Report of AST USA,* Exhibit 1.

Respondent did not comment on this issue.

Department's Position: As noted in Exhibit 1 of the *Verification Report of AST USA,* AST USA incorrectly reported, as the shipment date, the shipment date from AST USA to its customer, instead of the shipment date from AST to AST USA for certain sales. We reviewed the corrected information for these sales at verification and found it to be accurate. According to Departmental policy, we calculate imputed credit based on the period of date of shipment to the date of payment. *See Policy Bulletin No. 98.2: ''Imputed Credit Expenses and Interest Rate,''* dated February 23, 1998. Therefore, for the final determination, we will use the corrected information to calculate imputed credit for the sales where AST incorrectly reported incorrect shipment dates.

Comment 16: Mill Edge Discount

Petitioners argue that the Department should adjust AST's U.S. sales database to include the mill edge discount that was reviewed at the U.S. sales verification of AST USA.

Respondent did not comment on this issue.

Department's Position: We agree with petitioners, and have used the mill edge discount that was reviewed at the U.S. sales verification of AST USA for purposes of the final determination. *See Final Analysis Memorandum.*

Comment 17: U.S. Packing

Petitioners argue that the Department should make an adjustment for AST's failure to report packing costs on a transaction-specific for its U.S. sales. Noting that for its U.S. sales AST calculated a weighted-average packing cost for all U.S. sales, petitioners claim that the Department's verification findings indicate that AST could have reported the actual packing costs for its U.S. sales on a transaction-specific basis as the packing list and the packing code were listed on the confirmation for each U.S. sale. Petitioners state that in its antidumping questionnaire the Department requested that AST provide the unit cost of packing for each packing type and report this unit cost for each U.S. sale. Petitioners claim that because AST maintained this information but failed to report it, the Department should substitute the highest U.S. packing cost reported by AST during verification for the average packing cost reported by AST for its U.S. sales.

Respondent argues that it properly reported a weighted-average packing cost for its U.S. sales. Respondent maintains that the section of the AST U.S. sales verification report cited by petitioners in their case brief does not support petitioners' claim that AST could have reported actual packing costs for U.S. sales. Respondent notes that in its U.S. sales listing it reported the invoiced transaction between AST USA and the customer and that the order confirmation between AST USA and the customer does not contain a packing material code. Respondent contends that the fact that the order confirmation between AST and AST USA contains a transaction-specific packing material code does not *ipso facto* mean that it can track packing expenses related to U.S. sales on a transaction-specific basis. On the contrary, respondent asserts that it cannot track this information.

Respondent claims that U.S. sales made from warehouses may consist of either multiple or partial shipments from AST to AST USA and are not linked to specific order confirmations sent from AST when the material was originally imported. Similarly, respondent contends that its consignment sales in the United States consist of multiple shipments from AST, thereby reflecting multiple order confirmations, and that back-to-back sales in the United States may be dispatched to multiple customers, but are listed on a single confirmation sheet issued by AST to AST USA. Thus, respondent argues that the fact that packing type is specified on the order confirmation issued by AST to AST USA has no bearing on AST USA's ability to report a packing type on a transaction-specific basis. Respondent claims that upon loading the coils for shipments to the United States, coil types are often mixed, which limits its ability to relate individual shipments with the original order confirmation.

Respondent also maintains that the petitioners' argument ignores the fact that in an investigation the Department is required to base U.S. price on average rather than transaction-specific prices, which limits the need for transaction-specific adjustments. Finally, citing *Ferro Union* Slip Op. 99–27 (CIT March 23, 1999), respondent holds that the supplemental information relied upon as facts available must have probative value. In this case, respondent argues that the facts available adjustment proposed by petitioners fails to meet this standard as the proposed packing expense is based on a packing type used by less than three percent of export shipments and must therefore be rejected.

Department's Position: We agree with respondent. At verification, we reviewed AST's calculation methodology and found no discrepancies with what it reported to the Department. *See Verification Report of AST USA* at 3–4. Although we found that AST was able to identify the packing materials code on the confirmation that AST sent back to AST USA for each proposed sale, evidence we gathered at verification does not support a finding that the packing material code appears on the invoice from AST USA to the customer, or that

AST can reasonably track and report the information. Therefore, for purposes of the final determination, we accept AST's reported packing cost for its U.S. sales.

Comment 18: International Freight

Petitioners contend that the Department should use partial facts available for AST's failure to submit correct amounts for ocean freight charges on U.S. sales. Petitioners argue that AST submitted a table showing a range of shipment-by-shipment ocean freight charges, but only reported one international freight charge in its original U.S. sales listing. Petitioners state that AST attempted to justify its failure to submit the detailed portion-by-portion movement expenses requested in the Department's questionnaire (*i.e.*, an amount for factory to port costs, an amount for port charges, an amount for ocean freight, etc.), by stating that its freight broker charged AST a total movement expense that reflects the costs associated with moving the SSSS from the factory to the port, loading the SSSS onto the ship, shipping the merchandise, and insuring the merchandise. Petitioners contend that although AST stated that the broker charged AST a fixed percentage of the expense incurred as a service fee, AST did not identify the fixed percentage or provide an amount for this service fee. Petitioners argue that in its November 12, 1998 submission, AST stated that it revised its reported freight costs for U.S. sales to reflect transaction specific international freight expenses, however, AST reported only one amount to cover all of the international freight costs for its individual U.S. sales in Italian Lira per pound in the U.S. sales database. Additionally, petitioners argue that during verification, the Department discovered that the transaction-specific freight costs in AST's November 12, 1998 U.S. sales listing misstate the actual freight costs because AST failed to include freight costs for transport from the factory to the port, and AST's freight costs contained other errors.

Petitioners state that there are several problems with AST's attempt to resubmit the freight costs reported in AST's initial U.S. sales listing. (1) Because AST failed to provide the detailed freight cost information requested by the Department's antidumping questionnaire (*i.e.*, cost for shipment from factory to port, cost for port charges and handling fees, costs for ocean freight, etc.), it is unclear whether the freight costs reported in AST's September 28, 1998 questionnaire response include costs incurred to transport the SSSS from the factory to the port of export. (2) It is unclear how the cost that AST's freight broker charged AST to transport the SSSS from the factory to the port could have been omitted from its reported freight costs, because AST stated that its freight broker charged AST a total movement expense that reflected all of the movement charges (including freight from the factory to the port), and AST stated that it reported the actual amount charged by the broker to AST.

Citing *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Belgium* (''*SSPC from Belgium*''), 64 FR 15476, 15485 (March 31, 1999), where the Department assigned the highest reported freight costs as partial facts available to calculate international freight expenses for U.S. sales when the respondent failed to provide sufficient information to calculate movement charges for U.S. sales, petitioners claim that the Department should assign the highest non-aberrational freight charge reported by AST as partial facts available to calculate international freight expenses for U.S. sales.

Respondent argues that contrary to petitioners' claim that the Department ''discovered'' AST's international freight expense was underreported, AST advised the Department that the earlier-reported ocean freight expense had been inadvertently understated and provided a correct weighted-average ocean freight expense at the beginning of verification. Respondent states that AST originally reported a correct weighted-average ocean freight expense to the Department, however, in subsequent submissions, AST inadvertently used an incorrect key to calculate the ocean freight expense.

Respondent claims that petitioners' assertion that AST failed to provide sufficient detail regarding its reported ocean freight expense is unfounded because AST provided individual invoices from its freight forwarder relating to U.S. shipments during the POI, in a supplemental response. In addition, AST states that each bill of lading included in its supplemental response indicated the terms of delivery, which indicates that the prepaid freight expense includes insurance and loading charges associated with the shipped merchandise. AST states that these invoices were the basis for the international freight expenses, and reflect all costs charged by AST's freight forwarder. Therefore, respondent states that petitioners' claim that AST did not ''provide any information on the service fee that AST's freight broker charges AST for arranging shipments to the U.S.'' is meritless.

Department's Position: We agree with respondent. Petitioners' reliance on *SSPC from Belgium* is misplaced. In that case, ALZ (the respondent) withheld information concerning its affiliation with Transaf, a company in charge of various brokerage/handling and international freight services for ALZ's U.S. sales. In addition, ALZ did not provide, in a timely fashion, information regarding the extent of which Transaf handled the brokerage/handling and international freight services. In contrast, AST did not withhold information pertaining to its ocean freight expense. We note that AST originally reported a correct weighted-average ocean freight expense in a timely fashion. *See* Exhibit 5 of AST's Section C Response, dated September 28, 1998. At verification, AST explained that when preparing supplemental responses, it used the wrong key field ''chart number'' instead of ''file number'' to determine international freight incurred on sales of subject merchandise. By using this key, AST inappropriately included shipments destined for third countries as well as for the United States. *See Verification Report of AST* at 2. At verification, we verified the revised weighted-average freight expenses, and found no reason to question the accuracy of AST's revisions. Therefore, for purposes of the final determination, we have used the revised weighted-average freight expenses submitted at verification. *See Analysis Memorandum* for further discussion of this issue, as it contains proprietary information.

Comment 19: Verification Corrections

Respondent asserts that the Department's final determination should reflect corrections made at verification. Other than these items addressed in comments 25 and 27 below, these corrections are to: (1) AST's revised ''other movement'' expenses; and (2) price and quantity data for five U.S. sales. Additionally, respondent argues that the Department should use the actual final settlement amount for an insurance claim in calculating a transaction-specific adjustment for insurance revenue. Finally, respondent argues that the Department should account for an additional amount in insurance revenues associated with merchandise damaged in transit. Respondent suggests that the Department could either allocate these revenues over all other second quality sales reported by AST, or, alternatively, the Department could treat these proceeds as a reduction to AST's reported selling expenses.

Petitioners argue that the Department should use data examined during verification to calculate costs associated with the two shipments that were damaged in transit to the United States. Because petitioners' argument regarding which data to use involves proprietary data, please see the *Final Analysis Memorandum* for a more complete summary. Furthermore, petitioners argue that the Department should not accept the non-transaction specific insurance proceeds claim that AST presented at verification. Petitioners claim that respondent has claimed these insurance proceeds as non-transaction specific proceeds simply because they related to sales that occurred prior to the period of investigation. Petitioners argue that there is no basis for treating revenues associated with sales outside the POI as an offset to selling expenses incurred for sales during the POI. Furthermore, petitioners claim that respondent failed to submit certain cost information associated with a claim. Finally, petitioners claim that this information was significant new information and a new claim submitted at the beginning of verification. Petitioners argue that the purpose of verification is to confirm information rather than to accept new claims.

Department's Position: Regarding AST's revised other movement expenses, the Department has used the other movement expense factor that was reviewed at verification for the final determination. At verification, we confirmed that AST originally reported the other movement expense factor correctly in its responses to the Department; however, it did not correctly apply this factor to the calculation of the USOTHTRU field in its submissions to the Department. Therefore, we have applied the correct factor to calculate the USOTHTRU field for our final margin calculation.

Regarding the five U.S. sales for which AST presented the Department with revised price and quantity data at verification, the Department has used the corrected information in its calculation of the margin for the final determination.

We have used the actual final settlement amount for the insurance claim reviewed at verification to calculate the total insurance revenue amount. In addition, we have included the other insurance claims that AST presented to us at the onset of verification. Refer to Comment 14 for the discussion of the Department's application of insurance revenue.

Comment 20: Ministerial Error Corrections

Petitioners request that the Department correct the three ministerial errors made in calculating the preliminary dumping margins for AST that Petitioners identified in their December 28, 1998 letter to the Department.

Respondents did not comment on this issue.

Department's Position: As recommended in the *Ministerial Error Memorandum to Edward Yang from Lesley Stagliano,* dated January 6, 1999, the Department has corrected these three ministerial errors regarding general and administrative expenses and interest expenses, indirect selling expenses, and the cost of goods sold.

Cost of Production/Constructed Value

Comment 21: Below Cost Sales and Cost Recovery Test

AST argues that in the preliminary determination, the Department found certain of its home market sales were made below cost without considering whether such sales permitted the recovery of costs. As a result, AST alleges that the Department overstated the number of below-cost sales and inflated AST's preliminary determination margin. Before disregarding any of its home market sales as having been made below cost in the final determination, AST asserts that the Department must assess the degree to which AST was able to recover its costs on a product-specific basis.

AST argues that the Department should not disregard its below cost sales. AST states that the language of section 773(b)(2)(D) of the Act was intended to represent only an example of a situation in which below-cost sales would be considered as providing for the recovery of costs within a reasonable period of time. AST states further that Congress intended that below-cost sales be included in normal value in situations where other sales compensated for the losses incurred. AST asserts that the Department should only disregard below-cost sales in situations where the foreign producer incurs an overall loss. AST suggests that the Department compare average prices to average costs to determine, on a product-specific basis, whether costs of the below-cost sales were recovered.

Petitioners argue that the plain language of section 773(b)(2)(D) of the Act does not support AST's argument. Petitioners argue that, had Congress intended that the Department only disregard below-cost sales where the foreign producer experiences an overall loss, it would have implemented that policy in the language of the statute. Instead, petitioners assert that section 773(b)(2)(D) limits including sales below cost in normal value to situations where prices which were below the per-unit cost of production at the time of sale are above the weighted-average per-unit cost of production for the period of investigation. Petitioners argue that AST's position is in conflict with the language of section 773(b)(2)(D) of the Act.

Department's Position: We agree with petitioners. Section 773(b)(2)(D) is explicit in providing that prices shall be considered to provide for recovery of costs within a reasonable period of time if such prices which are below cost at the time of sale are above the weighted-average per-unit cost of production for the period of investigation. Accordingly, as we stated when we issued the proposed antidumping duty regulations to implement the provisions of the Uruguay Round Agreements Act, ''. . . the Department's cost recovery test must consist of an analysis involving individual prices for specific below-cost sales transactions.'' (*See Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments,* 61 FR 7308, 7337 (February 27, 1996).) The cost recovery test relied on in this case conforms with the statute and with the Department's regulations. For the reasons stated above, AST's proposed cost recovery test does not conform with section 773(b)(2)(D) of the Act.

Comment 22: Asset Depreciable Lives

AST asserts that, in the preliminary determination of the companion countervailing duty (''CVD'') investigation, the Department rejected AST's reported average asset useful life. In the preliminary antidumping determination, respondent notes that the Department made no such finding. AST argues that the failure to apply a consistent average useful life methodology in both the antidumping and the CVD investigations resulted in higher calculated duties for AST in both investigations.

Petitioners assert that the average useful life methodologies for dumping and subsidy analyses are different because they are used for different purposes. In an antidumping proceeding, the Department examines the average useful life of each asset reported by the foreign producer, confirms that the reported useful lives are those used in preparing the financial statements of the companies, and relies on those amounts in its COP calculations. In CVD, the Department's focus is the determination of the appropriate allocation period for subsidies. These different purposes are responsible for the Department's relying on different methodologies when analyzing average useful lives of assets in antidumping and CVD proceedings.

Department's Position: We agree with the petitioners. Section 773(f)(1)(A) and the SAA provide that if the records kept by an exporter or producer are in accordance with U.S. Generally Accepted Accounting Principles (''GAAP'') of the exporting (or producing) country and reasonably reflect costs, the Department will rely on them for calculating costs (SAA at 834). The SAA also provides that we will consider whether the producer historically used the methods reported to the Department prior to the investigation and in the normal course of its business operation (*Id.*, at 835).

AST's reported depreciation was from the records it used to prepare its financial statements, which were consistent with GAAP. Moreover, those records were consistently used in the course of AST's business and reasonably reflected the company's costs. Therefore, for purposes of the Department's antidumping analysis, relying on AST's records is in conformity with both the Act and the SAA.

Comment 23: Subsidies as a Reduction to Cost

AST argues that the Department should reduce AST's reported COP and CV by the amounts of its grants and subsidies. AST claims that by not reducing its reported costs by the countervailed grants and subsidies, the Department overstates the number of home market sales disregarded as below cost which, in turn, would overstate both the normal value and the dumping margin. AST cites *Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands*, 59 FR 23684, 23689–90 (May 6, 1994) (''*Aramid Fiber*''), as authority for the Department to offset the company's production costs by the amount of grants and other subsidies found to be countervailable.

Petitioners refute AST's reliance on the *Aramid Fiber* determination. That case did not concern companion antidumping and countervailing duty proceedings. The Department only stated that petitioners were free to submit a petition for a CVD investigation alleging that subsidies had been received. The Department stated that it would not self-initiate a CVD investigation.

Department's Position: AST first raised this issue in its case brief. During the course of the antidumping investigation, the company did not proffer any information concerning the subsidies it received or about how these subsidies were used. The record in this investigation does not support a conclusion that the grants and subsidies received by AST contains no details or facts surrounding the subsidies or grants received by AST, nor do we have quantifyable amounts relating to production activities. Accordingly, no offset to production costs for the claimed grants or subsidies is deemed appropriate.

Comment 24: Income Offset to Financial Expenses

AST notes that in calculating its financial expense rate for the preliminary determination, the Department disallowed AST's reported financial income offset on the grounds that AST failed to establish that the offset was generated from short-term sources. AST argues that the Department has since verified the accuracy of the amount reported as an offset to Fried. Krupp's financial expenses at the cost verification of KTN and that we should use this short-term interest income as an offset to AST's financial expenses.

Petitioners state that the public version of the cost verification report for KTN indicated that Fried. Krupp's short-term interest income offset was verified. Petitioners also note that the cost verification report stated that the Department encountered problems verifying the exchange gains which were claimed as offsets to interest expense. Petitioners urge the Department to use the financial expense ratio as recalculated in the cost verification report for the final determination.

Department's Position: We agree with AST and petitioners. Based on our verification findings, the interest income used as an offset to finance expenses was appropriately classified as short-term. Fried. Krupp's 1997 consolidated financial statements distinguished between interest earned from long-term sources and short-term sources. Accordingly, we included this interest income earned from short-term assets, less the amounts relating to trade-receivables, as an offset to financial expenses. Additionally, based on our verification findings, Fried. Krupp was unable to substantiate its offset to financial expenses for exchange gains. Therefore, we have not allowed the exchange gains as an offset to interest expense.

Comment 25: G&A Expenses

Petitioners note that the Department's cost verification report states that AST excluded from its reported G&A expenses, those expenses it had recorded as ''other operating expenses.'' Petitioners assert that the Department should revise AST's G&A expenses to include these amounts.

AST requests that the Department remove certain indirect expenses and certain technical expenses from its reported G&A because those expenses were reported in other computer fields, resulting in them being double-counted.

Department's Position: We recalculated AST's G&A rate, adding the ''other operating expenses'' to G&A and removing the expenses that AST had reported in the other fields.

Comment 26: Double Counting Packing Expenses

AST asserts that in calculating the dumping margin in its preliminary determination, the Department overstated the number of home market sales below cost by not excluding packing costs from the reported home market manufacturing costs while, simultaneously, subtracting packing costs from the home market price.

Petitioners argue that AST did not provide any information or cite to any information on the record that indicated that its reported manufacturing costs included packing costs.

Department's Position: We agree with AST that the standard costs include packing. At the cost verification, we reviewed the 1997 and 1998 standard costs used in the cost build-ups for three different product control numbers. In each case, the standard cost sheets show that the standard cost included packing. *See AST Cost Verification Report* Exhibit B7, B8 and B9. Thus, we did not include packing in our total cost of production figure for the sales below cost test in the final determination.

Comment 27: Variance

At the beginning of the cost verification, AST submitted a correction to its cost variance. AST also asserts that it had incorrectly applied the variance to factory overhead in its previous submissions to the Department.

Petitioners did not comment on this issue.

Department's Position: We agree with AST and used the revised variance in the COP calculation for the final determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Italy that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the preliminary determination in the Federal Register. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price as shown below. These instructions suspending liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)
AST	11.17
All Others	11.17

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation. This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated:May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13676 Filed 6–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–815]

Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From France

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

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Rosa Jeong, Marian Wells, or Annika O'Hara, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3853, 482–6309, or 482–3798, respectively.

Final Determination

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of stainless steel sheet and strip in coils from France. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

The Petitioners

The petition in this investigation was filed by the Allegheny Ludlum Corporation, Armco Inc., Washington Steel Division of Bethlehem Steel Corporation, United Steel Workers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. (collectively referred to hereinafter as ''the petitioners'').

Case History

Since the publication of the preliminary determination (*see Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Sheet and Strip in Coils from France,* 63 FR 63876 (November 17, 1998) (*Preliminary Determination*)), the following events have occurred:

We conducted verification in Belgium and France of the questionnaire responses submitted by the European Commission (EC), the Government of France (GOF), and Usinor (the only respondent company in this investigation) from November 11 through November 24, 1998. On November 24 and December 8, 1998, we received allegations of certain clerical errors in the *Preliminary Determination*. We corrected these errors in a January 20, 1999, memorandum to Laurie Parkhill, Acting Deputy Assistant Secretary (*see* ''Clerical Error Allegations in the Preliminary Determination of Stainless Steel Sheet and Strip in Coils from France'' (''Clerical Errors Memo'') which is on file in the Central Records Unit of the Department). On February 18, 1999, we postponed the final determination of this investigation until May 19, 1999 (*see Countervailing Duty Investigations of Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea: Notice of Extension of Time Limit for Final Determinations,* 64 FR 9476 (February 26, 1999)). The petitioners and Usinor/GOF filed case and rebuttal briefs on March 3 and March 10, 1999. A public hearing was held on March 12, 1999.

Scope of Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.,* cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at the following subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high-temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives). [4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent, and sulfur of

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''. [5]

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

Injury Test

Because France is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from France materially injure, or threaten material injury to, a U.S. industry. On August 9, 1998, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from France of the subject merchandise (*see Certain Stainless Steel Sheet and Strip From France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan, and the United Kingdom*, 63 FR 41864 (August 9, 1998)).

Period of Investigation

The period of investigation for which we are measuring subsidies (the POI) is calendar year 1997.

Corporate History

As stated in the *Preliminary Determination*, the GOF identified the Ugine Division of Usinor as the only producer of the subject merchandise that exported to the United States during the POI.

In the early 1980s, Ugine (then called Ugine Aciers) was one of several producers of stainless steel in France. In 1982, the French steel company Sacilor acquired a controlling interest in Ugine. In the following year, Sacilor bought a majority of the shares in another stainless steel producer, Forges de Gueugnon, which was merged with one part of Ugine and renamed Ugine-Gueugnon. During the same time, Usinor was a separate steel company with one division called Usinor Châtillon producing stainless steel. In 1987, the GOF placed Usinor and Sacilor in a holding company named Usinor Sacilor. At the same time, Ugine-Gueugnon and Usinor Châtillon were combined into one company called Ugine Aciers de Châtillon et Gueugnon (Ugine ACG).

In 1991, Ugine ACG merged with Sacilor and became Ugine S.A., a subsidiary of the Usinor Sacilor holding company. In 1994, Usinor Sacilor sold approximately 40 percent of its equity in Ugine S.A. to the general public. However, in 1995, Usinor Sacilor bought back the shares in Ugine S.A. and obtained total control of the company. In late 1995, Ugine S.A. was converted into a division of Usinor Sacilor and became ''the Ugine Division,'' producing stainless steel and alloys. Finally, in 1997, Usinor Sacilor was renamed Usinor.

The GOF was the majority owner of both Usinor and Sacilor until the mid-1980s. In 1986, the GOF emerged as the sole owner of both companies after a capital restructuring. In 1987, the GOF created the Usinor Sacilor holding company. In 1991, Credit Lyonnais, a government-owned bank, bought 20 percent of the equity in the company.

In July 1995, the privatization of Usinor Sacilor began. At the same time, Usinor Sacilor offered additional shares for sale in the form of a capital increase. All shares were sold through a public offering of shares which consisted of a French public offering, an international public offering, and an employee offering. In accordance with the French privatization law, a certain portion of the shares were also sold to a group of so-called ''stable shareholders,'' some of which were government-owned banks and other entities. The privatization continued throughout the years 1996 and 1997. At the end of the privatization, the stable shareholders held approximately 14 percent of Usinor's total shares, 10 percent of which were held by government-owned or controlled entities.

Usinor purchased shares from the GOF in 1995 to sell to employees on an extended payment plan in 1996. In addition, the GOF sold shares to employees at the time of the 1995 privatization. Monies for these shares were received by the GOF in 1995, 1996, and 1997. In December 1995, Usinor Sacilor repurchased shares of Ugine which had been previously sold to the public, approximately 41 percent of Ugine's shares.

In early 1997, the GOF transferred (without remuneration) a small part of its stake in Usinor to individual French shareholders and company employees who had held their shares for at least 18 months following the July 1995 privatization. In October 1997, the GOF sold most of its remaining shares on the market, leaving it with less than one percent of total Usinor shares. These shares were to be given away without remuneration (for ''free'') in August 1998.

As noted in the February 19, 1999, Usinor Verification Report (Usinor Report), because the French steel industry was not thriving in the mid-1990's, Usinor made an effort to streamline its holdings and maintain ownership of only steel-producing divisions. This streamlining included the sale of the Richemont power plant in 1994, as well as the sale of assets to FOS-OXY in 1993 and Entreprise Jean LeFebvre in 1994.

Change in Ownership

In the *General Issues Appendix (GIA)*, attached to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37226 (July 9, 1993), we explained our current methodology with respect to the treatment of subsidies received prior to the sale of the company (privatization) or the spinning-off of a productive unit.

Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We compute this by first dividing the privatized company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which non-recurring subsidies would be attributable to the POI (*i.e.*, in this case, 1984 for Usinor) and ending one year prior to the privatization. We then take the simple average of the ratios. The simple average of these ratios of subsidies to net worth serves as a reasonable surrogate for the percent that subsidies constitute of the overall value of the company. Next, we multiply the average ratio by the purchase price to derive the portion of the purchase price attributable to repayment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present

[5] 'GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

value of all remaining benefits at the time of privatization. For further discussion of our privatization methodology, see *Preliminary Determination*, 63 FR at 63878, and the Clerical Errors Memo.

With respect to spin-offs, consistent with our position regarding privatization, we analyze the spin-off of productive units to assess what portion of the sales price of the productive units can be attributable to payment for prior subsidies. To perform this calculation, we first determine the amount of the seller's subsidies that the spun-off productive unit could potentially take with it. To calculate this amount, we divide the value of the assets of the spun-off unit by the value of the assets of the company selling the unit. We then apply this ratio to the net present value of the seller's remaining subsidies. We next estimate the portion of the purchase price that can be viewed as payment for prior subsidies in accordance with the privatization methodology outlined above.

Usinor and the GOF have indicated their opposition to the Department's methodology in recalculating the amount of subsidies attributable to Usinor after the spin-off of the Richemont facility. (We did this recalculation to address a clerical error in the *Preliminary Determination*.) The GOF and Usinor do not agree that the subsidies attributable to Richemont should have been reallocated to Usinor as a result of the sale of Richemont. Instead, in their view, at least some of the subsidies originally attributable to Richemont's production should have been assigned to Richemont after its sale.

The petitioners support the corrections described in the Department's Clerical Errors Memo. They argue that, in making the changes, the Department has applied correctly the spin-off methodology upheld by the court in *British Steel plc* v. *United States*, 27 F. Supp. 2d 209 (CIT 1998). The petitioners maintain that there is not an extinguishment of subsidies in a spin-off, citing the Final Determination of Redetermination Pursuant to *Delverde SrL* v. *United States*, 989 F. Supp. 218 (CIT 1997).

We disagree with the GOF and Usinor, and we have continued to apply the methodology described in the Clerical Errors Memo regarding the sale of the Richemont facility. The revised calculation comports with the Department's methodology as described in the *GIA*, 58 FR at 37269. In this instance, application of our methodology leads to the conclusion that all subsidies potentially allocable to Richemont were, in fact, returned to the seller (Usinor) through the price paid for Richemont.

In addition, the petitioners have argued that, because the change in ownership of Ugine in 1994, as well as the privatization of Usinor in 1996 and 1997, did not result in changes in the control of these companies, the change-in-ownership methodology should not be applied. The petitioners cite to *Inland Steel Bar Co.* v. *United States*, 155 F.3d 1370, 1374 (Fed. Cir. 1998) (*Inland Steel*), in which the court stated that a purchaser's valuation of a company ''will depend not only on the intrinsic value of the unit, but also on whether the purchaser opts to discharge the liability at purchase time rather than continuing to pay countervailing duties until the obligation expires.''

According to the petitioners, the court's reasoning dictates that a purchaser must be able to value a company's assets and liabilities, assume the liabilities and opt to repay or reallocate the countervailing duty liability. In order to do this, the petitioners argue that a purchaser must take control of the company. The petitioners argue that where the purchasing company acquires only a minority share in the subsidized company, the liability remains with the current majority owners while the minority purchaser simply buys into the subsidized company.

In further support of their position, the petitioners cite to the *GIA*, 58 FR at 37273, where the Department stated that ''a change in ownership position, whereby a company's percentage of ownership fluctuates over time, is not a *bona fide* spin-off. Therefore, we did not perform the spin-off calculation with regard to change in ownership position.'' The petitioners warn that application of the change-in-ownership methodology to small-share transactions that do not affect the control of a company would create a loophole in the countervailing duty law whereby each share transaction on the open market would constitute a change-in-ownership. In effect, point out the petitioners, the privatization of a company via stock issuance would result in the extinguishment of subsidies as each trade would result in a reallocation of those subsidies. The petitioners also state that continued application of the change-in-ownership methodology involving minority transfers of ownership could also provide an incentive for majority owners to manipulate share transactions so as to eliminate countervailing duty liability.

The GOF and Usinor contend that the Department has never linked application of its change-in-ownership methodology to a change in control of the company. The GOF and Usinor insist that the methodology should continue to be applied to the sale of shares in Ugine.

We have not adopted the position urged by the petitioners. In the Department's recent decision in the *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy*, 64 FR 15508, 15510 (March 31, 1999) (*Italian Plate*), regarding the application of the change-in-ownership methodology, the Department stated:

> We were not persuaded by petitioners' argument that a transaction must involve a transfer of control in order for our methodology to be applicable. However, we are deeply concerned that application of our methodology to sales of private minority share interests such as these could lead us toward the application of our methodology to daily transactions on the open market for publicly traded companies—a clearly absurd result that must be prevented.

The specific facts presented in *Italian Plate* led the Department to conclude that it should not apply its methodology to certain changes in the ownership of a respondent, AST. However, the Department has applied its change-in-ownership methodology in other situations where there was no change in control. For example, the Department applied its change-in-ownership methodology to the partial privatizations of a respondent, SSAB, undertaken by the Government of Sweden. *See Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Sweden*, 58 FR 37385, 37386 (July 9, 1993) (*Certain Steel from Sweden*). Similarly, in *Industrial Phosphoric Acid from Israel; Final Results of Countervailing Duty Administrative Review*, 63 FR 13626, 13627 (March 20, 1998) (*IPA from Israel 1995 Review*), the Department applied the change-in-ownership methodology to the partial privatization of a respondent, ICL. In that case, 24.9 percent of ICL's shares were sold.

Moreover, the Department has applied its change-in-ownership methodology to transactions involving changing levels of ownership over time. In *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 63 FR 18367, 18368 (April 15, 1998) (*UK Lead Bar 1996 Review*), as well as *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty*

Administrative Review, 61 FR 58377, 58381 (November 14, 1996) (*UK Lead Bar 1994 Review*), the Department examined a situation where British Steel placed its special steel business into a joint venture, UES. In return, British Steel became partial owner of UES (and, consequently, partial owner of the business it formerly owned). The Department recognized this change and applied its change-in-ownership methodology to this ''spin-off.'' Later, when UES was repurchased (''spun-in'') by British Steel, the Department found that the subsidies that ''traveled'' with the UES should be ''rejoined'' with its parent company's pool of untied subsidies. Thus, the change-in-ownership methodology was also applied to this transaction. The UES spin-off demonstrates, that the Department does not require a change in control before it applies its change-in-ownership methodology. Moreover, where changes in the level of ownership occur over time, as was the case with British Steel and UES, we account for those changes through the change-in-ownership methodology.

There have also been situations where application of the change-in-ownership methodology was not appropriate. In *Italian Plate,* 64 FR at 15510, for example, the transactions at issue involved ''the sale of a relatively small amount of shares by minority owners of a holding company two levels removed from the production of the subject merchandise.'' Also, in *IPA from Israel 1995 Review,* 63 FR at 13627, the Department did not apply the change-in-ownership methodology to the sales by another party, Rotem, of less than 0.05 percent of ICL because the sale of shares had no impact on Rotem's overall net subsidy rate.

In light of these precedents and recognizing the flexibility afforded by the statute in recognizing changes in ownership, we have reexamined the circumstances surrounding the spin-off and spin-in of Ugine, as well as the 1996 and 1997 sales of Usinor's shares by the GOF for this final determination. We have continued to apply the change-in-ownership methodology to the spin-off of Ugine and the post-1995 sale of Usinor's shares by the GOF. Both sets of transactions involved sales by a government or government-owned company (Usinor) and a significant number of shares.

We have not, however, applied the change-in-ownership methodology to the spin-in of Ugine. The repurchase of shares consisted of numerous transactions between a predominately privately owned purchaser (Usinor) and individual minority shareholders. By contrast, when UES was reacquired by British Steel, the transaction involved only two parties, each holding fifty percent of the subsidized company. Reallocation of subsidies was appropriate in that case because the seller was a single company selling a significant interest. Application of the change-in-ownership methodology to the repurchase of Ugine shares in this case would essentially result in an allocation of Ugine's subsidies to individual investors who are trading Ugine shares on the market. As we indicated in *Italian Plate,* the change-in-ownership methodology was never intended to result in such an allocation. Therefore, the subsidies spun off in the 1994 sale of Ugine's shares were returned to Usinor in their entirety when Usinor repurchased Ugine in 1995.

Consequently, in this final determination, we have applied the change-in-ownership methodology to the following transactions: (1) the sale of Ugine shares in 1994; (2) the 1994 sale of Centrale Siderurgique de Richemont (CSR); (3) the privatization of Usinor which spans 1995, 1996, and 1997; (4) the spin-off of assets to Entreprise Jean LeFebvre in 1994; and (5) the spin-off of assets to FOS–OXY in 1993. *See also* our responses to Comment 2 concerning the spin-off of assets to FOS–OXY and Entreprise Jean LeFebvre, and Comment 3 concerning the privatization of Usinor during the years 1995, 1996, and 1997.

Subsidies Valuation Information

Benchmarks for Loans and Discount Rates: To calculate the countervailable benefit from loans and non-recurring grants received, we used Usinor's company-specific cost of long-term, fixed-rate loans where available. For years where a company-specific rate was not available, we used the rates for average yields on long-term private-sector bonds in France as published by the OECD. For years in which Usinor was determined to be uncreditworthy (*i.e.,* 1984 through 1988), we added a risk premium to the benchmark interest rate (*see* our response to Comment 10 below regarding the selection of this rate) in accordance with our practice described in § 355.44(b)(6)(iv) of *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comment,* 54 FR 23366, 23374 (May 31, 1989) (*1989 Proposed Regulations*). While the *1989 Proposed Regulations* are not controlling in this case, they do represent the Department's practice with respect to this investigation.

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service (IRS) for the industry-specific average useful life of assets in determining the allocation period for non-recurring subsidies. *See GIA.* In *British Steel plc* v. *United States,* 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) held that the IRS information did not necessarily reflect a reasonable period based on the actual commercial and competitive benefit of the subsidies to the recipients. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies for Usinor Sacilor based on the average useful life (AUL) of its non-renewable physical assets of 14 years. This remand determination was affirmed by the Court in *British Steel plc* v. *United States,* 929 F. Supp. 426 (CIT 1996) (*British Steel II*).

As discussed below, the current investigation includes untied, non-recurring subsidies that were found to be countervailable in *Final Affirmative Countervailing Duty Determination: Certain Steel Products from France,* 58 FR 37304 (July 9, 1993) (*Certain Steel from France*), *i.e.,* PACS, FIS, and Shareholders' Advances. Because we have already assigned a company-specific allocation period of 14 years to those previously investigated subsidies, we determine that it is appropriate to continue to allocate those subsidies over 14 years. *See* our response to Comment 1, below.

This investigation includes no other non-recurring subsidies that have been determined to provide countervailable benefits that should be allocated over time. Accordingly, we have not calculated a new company-specific allocation period for subsidies not previously investigated.

Based upon our analysis of the petition, the responses to our questionnaires, and the results of verification, we determine the following:

I. Programs Determined To Be Countervailable GOF Programs

A. Loans With Special Characteristics (PACS)

The steel restructuring plan of 1978 created a steel amortization fund, called the Caisse d'Amortissement pour l'Acier (CAPA), for the purpose of ensuring repayment of funds borrowed by these companies prior to June 1, 1978. According to the 1978 plan, bonds issued previously on behalf of the steel companies and pre-1978 loans from Crédit National and Fonds de Développement Économique et Social (FDES) were converted into ''loans with special characteristics'' or PACS. As a result of this process, the steel companies were no longer liable for the loans and bonds, but they did take on PACS obligations.

In 1978, Usinor and Sacilor converted 21.1 billion French francs (FF) of debt into PACS. From 1980 to 1981, Usinor and Sacilor issued FF 8.1 billion of new PACS. PACS in the amount of FF 13.8 billion, FF 12.6 billion, and FF 2.8 billion were converted into common stock in 1981, 1986, and 1991, respectively.

In *Certain Steel from France* and *Final Affirmative Countervailing Duty Determinations: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France*, 58 FR 6221 (January 27, 1993) (*Lead Bar from France*), the Department determined that the conversion of PACS to common stock in 1981 and 1986 constituted equity infusions on terms inconsistent with commercial considerations because Usinor Sacilor was found to be unequityworthy during those years. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we continue to find that these equity infusions constitute countervailable subsidies within the meaning of section 771(5) of the Act. Using the allocation period of 14 years, the 1986 conversion of PACS continues to yield a countervailable benefit during the POI of this investigation.

Consistent with our practice in *Certain Steel from France,* we have treated the equity infusion as a non-recurring grant received in 1986. Because Usinor was uncreditworthy in the year of receipt, we used a discount rate that includes a risk premium to allocate the benefits over time. Additionally, we followed the methodology described in the ''Change in Ownership'' section above to determine the amount of each equity infusion appropriately allocated to Usinor during the POI. We divided this amount by Usinor's total sales during the POI. Accordingly, we determine the countervailable subsidy to be 1.22 percent *ad valorem*.

B. Shareholders' Advances

The GOF provided Usinor and Sacilor grants in the form of shareholders' advances during the period 1982 through 1986. The purpose of these advances was to finance the revenue-shortfall needs of Usinor and Sacilor while the GOF planned for the next major restructuring of the French steel industry. These shareholders' advances carried no interest and there was no precondition for receipt of these funds. These advances were converted to common stock in 1986.

In *Certain Steel from France* and *Lead Bar from France,* the Department determined that the shareholders' advances constituted countervailable grants at the time the advances were received because no shares were exchanged for them. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we continue to find that these grants constitute countervailable subsidies within the meaning of section 771(5) of the Act. Using the allocation period of 14 years, subsidies dating back to 1984 continue to provide countervailable benefits during the POI of this case.

Consistent with our practice in *Certain Steel from France,* we have treated these advances as non-recurring grants. Because Usinor was uncreditworthy in the years of receipt, we used a discount rate that includes a risk premium to allocate the benefits over time. Additionally, we followed the methodology described in the ''Change in Ownership'' section above to determine the amount of each grant appropriately allocated to Usinor during the POI. We divided this amount by Usinor's total sales during the POI. Accordingly, we determine the countervailable subsidy to be 0.97 percent *ad valorem*.

C. Steel Intervention Fund (FIS)

The 1981 Corrected Finance Law granted Usinor and Sacilor the authority to issue convertible bonds. In 1983, the Fonds d'Intervention Sid°rurgique (FIS), or steel intervention fund, was created to implement that authority. In 1983, 1984, and 1985, Usinor and Sacilor issued convertible bonds to the FIS which, in turn, with the GOF's guarantee, floated the bonds to the public and to institutional investors. These bonds were converted to common stock in 1986 and 1988.

In *Certain Steel from France* and *Lead Bar from France,* the Department determined that the conversions of FIS bonds to common stock in 1986 and 1988 constituted equity infusions on terms inconsistent with commercial considerations because Usinor Sacilor was found to be unequityworthy during those years. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we continue to find that these equity infusions constitute countervailable subsidies within the meaning of section 771(5) of the Act. Using the allocation period of 14 years, the 1986 and 1988 conversions of FIS bonds yield a benefit during our POI.

We have treated the equity infusions as non-recurring grants given in 1986 and 1988. Because Usinor was uncreditworthy in the years of receipt, we used discount rates that include a risk premium to allocate the benefits over time. Additionally, we followed the methodology described in the ''Change in Ownership'' section above to determine the amount of each equity infusion appropriately allocated to Usinor during the POI. Dividing this amount by Usinor's total sales during the POI, we determine the countervailable subsidy to be 3.09 percent *ad valorem*.

D. Investment and Operating Subsidies

During the period 1987 through 1997, Usinor received a variety of small investment and operating subsidies from various GOF agencies as well as from the European Coal and Steel Community (ECSC). The subsidies were provided for research and development, projects to reduce work-related illnesses and accidents, projects to combat water pollution, etc. The subsidies are classified as investment, equipment, or operating subsidies in the company's accounts, depending on how the funds are used.

At verification, the GOF provided information about the water program subsidies which indicated that Usinor received only a small portion of the total amount of funding provided by the regional water boards (les agences de l'eau) to reduce industrial pollution. For reasons outlined in our response to Comment 8 below, we determine that the water board subsidies are not specific to Usinor.

However, the GOF did not provide any information regarding the distribution of funds under the other investment and operating subsidy programs, citing the ''extreme burden'' of providing such information and also because, in the GOF's view, the total amount of investment and operating subsidies received by Usinor was ''insignificant and would . . . be expensed.''

In accordance with section 776(a)(2) of the Act, we have, therefore, decided to use facts available because the GOF did not provide information that had been requested. Section 776(b) of the Act permits the Department to draw an inference that is adverse to the interests of an interested party if that party has ''failed to cooperate by not acting to the best of its ability to comply with a request for information.'' *See Industrial*

Phosphoric Acid from Israel: Final Results of Countervailing Duty Administrative Review, 64 FR 2879, 2885 (January 19, 1999) (*IPA from Israel 1996 Review*). Therefore, the Department determines it appropriate to use an adverse inference in concluding that the investment and operating subsidies (except those provided by the water boards) are specific within the meaning of section 771(5A)(D) of the Act.

We also determine that the investment and operating subsidies provide a financial contribution, as described in section 771(5)(D)(i) of the Act, in the form of a direct transfer of funds from the GOF and the ECSC to Usinor, providing a benefit in the amount of the grants.

Because the investment and operating subsidies received in the years prior to the POI were less than 0.5 percent of Usinor's sales during the respective years of receipt, we have expensed these grants in the years of receipt. To calculate the *ad valorem* rate of the subsidy, we divided the subsidies received in 1997 by Usinor's total sales during the POI. Accordingly, we determine the countervailable subsidy to be 0.10 percent *ad valorem*.

E. Myosotis Project

Since 1988, Usinor has been developing an innovative continuous thin-strip casting process called ''Myosotis'' in a joint venture with the German steelmaker Thyssen. The Myosotis project is intended to eliminate the separate hot-rolling stage of Usinor's steelmaking process by transforming liquid metal directly into a coil between two to five millimeters thick.

To assist this project, the GOF, through the Ministry of Industry and L'Agence pour la Matrise de L'nergie (AFME), entered into three agreements with Usinor Sacilor (in 1989) and Ugine (in 1991 and 1995). The first agreement, dated December 27, 1989, covered a three-year period and established schedules for the initial and subsequent payments to Usinor. These payments were contingent upon the submission of progress reports including a statement of investment outlays. The final payment was contingent upon the submission of a final program report and a statement of total expenses. The three installments were paid in 1989, 1991, and 1993. The 1991 Agreement between Ugine and AFME covered the cost of some equipment for the project. This agreement resulted in two disbursements to Ugine from AFME in 1991 and 1992. The 1995 agreement with Ugine provided interest-free reimbursable advances for the final two-year stage of the project, with the goal of casting molten steel from ladles to produce thin strips. The first reimbursable advance was made in 1997. Repayment of one-third of the reimbursable advance is due July 31, 1999. The remaining two-thirds are due for repayment on July 31, 2001.

The GOF has claimed that assistance for the Myosotis project was provided under the Grands Projets Innovants (GPI) program which is available to all industrial sectors in France. The GOF also asserts that the program is a non-countervailable (*i.e.,* ''green-light'') research subsidy within the meaning of section 771(5B)(B) of the Act. At verification, we confirmed that the reimbursable advances were provided under the GPI program. However, the information provided was not sufficient to establish that the grants provided by the Ministry of Industry and AFME were connected to the GPI program.

Accordingly, we determine that the grants constitute countervailable subsidies within the meaning of section 771(5) of the Act. The amounts transferred are financial contributions in the form of direct transfers of funds from the GOF to Usinor and/or Ugine pursuant to section 771(5)(D)(i) of the Act. The GOF did not provide any information indicating that the grants were provided to other companies in France. Therefore, we determine that the grants provided to the Myosotis project are specific within the meaning of section 771(5A)(D) of the Act because they were provided exclusively to Usinor.

We determine the subsidies provided between 1989 and 1993 to be non-recurring grants based on the analysis set forth in the Allocation section of the *GIA*. Because the amounts received during these years were less than 0.5 percent of Usinor or Ugine's sales during their respective year of receipt, we are expensing these grants in the years of receipt.

With respect to the reimbursable advance received in 1997, we are treating this advance as a long-term interest-free loan. Information provided at verification indicates that Usinor makes all payments of interest on its long-term loans on an annual basis. According to information provided by private banks of France, we found that such a payment schedule would not be considered atypical of general banking practices in France. Accordingly, we have assumed that a payment on a comparable commercial loan taken out by Usinor at the time of the Myosotis advance would not be due until 1998. Because there would be no effect on Usinor's cash flow during the POI (*i.e,* no payment would have been made on a benchmark loan during the POI), we determine that there is no benefit attributable to the POI. *See GIA,* 58 FR at 37228–29. Consequently, we have not addressed whether the reimbursable advance received under the GPI program in 1997 is countervailable. *See* our response to Comment 9 below.

F. Electric Arc Furnace

In 1996, the GOF agreed to provide assistance in the form of reimbursable advances to support Usinor's research and development efforts to improve and increase the efficiency of the melting process—the first stage in steel production. The first disbursement of funds occurred on July 17, 1998.

The Department deems benefits to have been received at the time that there is an effect on the recipient's cash flow. *See GIA,* 58 FR at 37228–29. Because Usinor did not receive any payments until 1998, there is no benefit during the POI of this investigation. Consequently, we have not addressed whether this program is countervailable.

G. GOF Conditional Advance

During our verification of Usinor, we learned that Usinor received an interest-free conditional advance from the GOF. This advance was provided through the Ministry of Industry in connection with a project aimed to develop a new type of steel used in the production of catalytic converters. Ugine, Sollac, and two unaffiliated companies participated in the project and each company received a portion of the total project funding provided by the GOF. Ugine received its first payment in 1992 and a second payment in 1995. According to the agreement between the GOF and the participating companies, repayment of the advance was contingent upon sales of the product resulting from this project exceeding a set amount. Because this condition has not been met, the entire amount of the advance received by Ugine remained outstanding during the POI.

We determine that this conditional advance constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. Because assistance was only provided to four companies, two of which are part of the Usinor group, the program is specific pursuant to section 771(5A)(D) of the Act. According to the Department's practice, as reflected in § 355.49(f) of the *1989 Proposed Regulations,* the Department normally treats an interest-free loan, for which the repayment obligation is contingent upon certain subsequent events, as an interest-free, short-term loan for the purpose of calculating the amount of benefit. *See also* § 351.505(d) of *Countervailing Duties; Final Rule*, 63 FR 65438, 65410 (November 25, 1998) (*Final CVD Regulations*). Accordingly, we have calculated the benefit from the advance by dividing the amount of interest that would be due using the benchmark rate by the value of Ugine's total sales. On this basis, we determine the countervailable subsidy from this program to be less than 0.005 percent *ad valorem*.

H. Related-Party Grants

Usinor's financial statements identify ''grants from related parties'' in the years 1992 through1995. Information provided by Usinor demonstrates that these grants do not constitute a separate program from the Myosotis project and investment and operating subsidies discussed above. Specifically, a yearly breakdown of these grants shows that the amount of each grant corresponds to the amounts provided under the Myosotis project or investment and operating subsidies. Therefore, we have not treated ''Related Party Grants'' as a separate program. *See* ''Myosotis Project'' and ''Investment and Operating Subsidies'' sections of this notice.

I. 1991 Grant to Ugine

Ugine's 1991 financial statements indicate that Ugine received FF 26,318 thousand in subsidies and also note that FF 16,295 thousand of ''share'' in subsidies were posted to income. Information provided by Usinor indicates that these amounts reflect the funds received under the Myosotis project as well as investment and operating subsidies. Specifically, a breakdown of these grants shows that the amount of each grant corresponds to the amounts provided under the Myosotis project or investment and operating subsidies. Because we investigated Myosotis and investment and operating subsidies separately in this proceeding, we have not treated the ''1991 Grant to Ugine'' as a separate program. *See* ''Myosotis Project'' and ''Investment and Operating Subsidies'' sections of this notice.

EC Program

European Social Fund. The European Social Fund (ESF), one of the Structural Funds operated by the EC, was established in 1957. The main purpose of the Fund is to improve workers' employment opportunities, raise their living standards, and increase their geographical and occupational mobility within the European Union (EU). It provides support for vocational training, employment, and self-employment.

The member states are responsible for identifying and implementing the individual projects that are selected to receive ESF financing. The member states must also contribute to the financing of the projects. In general, the maximum benefit provided by the ESF is 50 percent of the project's total cost for projects geared toward Objectives 2, 3, 4, and 5b (see below). For Objective 1 projects, the ESF contributes a maximum of 75 percent of the project's total cost.

Like the other Structural Funds, the ESF contributes to the attainment of the five different objectives identified in the EC's framework regulations for Structural Funds: Objective 1 is to promote development and structural adjustment in underdeveloped regions, Objective 2 addresses areas in industrial decline, Objective 3 relates to combating long-term unemployment and creating jobs for young people and people excluded from the labor market, Objective 4 focuses on the adaptation of workers to industrial changes and changes in production systems, and Objective 5 pertains to rural development. Recently, the EC added a sixth objective under which assistance is provided to sparsely populated areas in northern Europe.

Ugine S.A. received an ESF grant for worker readaptation training in 1995. In the same year, the company also received an approximately equivalent amount from the GOF as cofinancing for the project. In 1997, the Ugine Division of Usinor received an ESF grant for training workers in a new production process at its cold-rolling mill in Isbergues. At verification, we found that the Ugine Division had also received a small ESF grant for its plant in Gueugnon in 1997. No GOF cofinancing for the 1997 ESF grants was received during the POI. All the ESF grants were provided under Objective 4.

The Department considers worker-assistance programs to provide a countervailable benefit to a company when the company is relieved of a contractual or legal obligation it would otherwise have incurred. *See Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 30288, 30294 (June 14, 1996) (*Pasta From Italy*). While Usinor has stated that the ESF grants did not relieve it of any contractual or legal obligations, neither Usinor nor the GOF has provided any documentation to support this claim. Since companies normally incur the costs of training to enhance the job-related skills of their employees, we determine that the ESF grants relieved Usinor of an obligation it would have otherwise incurred.

Neither the EC nor the GOF has provided any documentation regarding the distribution of ESF grants in France. At verification GOF officials stated that, during the POI, Usinor did not receive a disproportionate amount of ESF assistance, but they did not provide any documentation in support of this statement.

In accordance with section 776(a)(2) of the Act, we have, therefore, decided to use facts available because the GOF did not provide information that we had requested. Section 776(b) of the Act permits the Department to draw an inference that is adverse to the interests of an interested party if that party has ''failed to cooperate by not acting to the best of its ability to comply with a request for information.'' *See IPA from Israel 1996 Review*. Therefore, the Department determines it appropriate to use an adverse inference in concluding that the ESF grants are specific within the meaning of section 771(5A)(D) of the Act.

We also determine that the ESF grants provide a financial contribution, as described in section 771(5)(D)(i) of the Act, in the form of a direct transfer of funds from the EC and the GOF to Usinor, providing a benefit in the amount of the grants.

Normally, the Department considers the benefits from worker-training programs to be recurring. *See GIA*, 58 FR at 37255. However, consistent with our past practice and our understanding that ESF grants relate to specific, individual projects which require separate government approvals, we have treated these as non-recurring grants. *See Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy*, 63 FR 40474, 40488 (July 29, 1998) (*Wire Rod from Italy*), and *Pasta from Italy*, 61 FR at 30295. Because the value of the ESF grants and the accompanying GOF contribution were less than 0.5 percent of Ugine's total sales in 1995 and 1997, respectively, we expensed these grants in the years of receipt. We calculated the benefit for the POI by dividing the amount of the ESF grant received in 1997 by Ugine's total sales in that year. In this way, we determine the countervailable subsidy to be less than 0.005 percent *ad valorem* for this program.

II. Programs Determined To Be Not Countervailable

A. Purchase of Power Plant

In 1994, Usinor sold the shares of CSR to Électricité de France (EDF), a government-owned entity. CSR was set up to convert gas generated by steel plants in the Lorraine region into electricity for sale to l'Union Sidérurgique de L'Énergie (USE). USE, in turn, sold the electricity to steel producers in the region. At the time of the transaction, both CSR and USE were owned by Usinor and Usinor factories purchased their electricity from USE.

In addition to the physical assets of CSR (*i.e.*, land, buildings, plant and equipment), the 1994 transaction also provided EDF the exclusive right to supply electricity to USE for a 15-year period. Prior to the transaction, Usinor and EDF conducted independent valuations of the transaction based on detailed projections of future costs and revenues associated with the operation of CSR and sales of electricity to USE. The projected revenues were calculated using detailed estimates of yearly outputs, consumption, and rates. Similarly, projected costs were based on estimated costs for purchasing gas and operating expenses, as well as costs for developing an electric power system. After negotiations, Usinor and EDF agreed on a purchase price of FF 1 billion, which represented a compromise between the independent valuations of the transaction by Usinor and EDF.

We examined whether Usinor received more than a reasonable market price from the EDF in this transaction. We determine that, while FF 1 billion represented a large gain over the book value of CSR's physical assets, the purchase price was based on independent valuation of the future sales of electricity by EDF to Usinor. These valuations were supported by reasonable estimates of projected costs and revenues. We found no evidence to indicate that the transaction was anything other than an arms-length transaction for full market value. Accordingly, we determine that this program does not constitute a countervailable subsidy within the meaning of section 771(5) of the Act.

B. Related-Party Loans

Usinor's 1992 and 1993 financial statements identify ''interest free loans to related parties'' in the amounts of FF 622 million in 1993 and FF 455 million in 1992. According to Usinor, these loans consist of interest-free advances *by* Usinor and other Usinor Group entities to non-consolidated entities within the Usinor Group. Information provided by Usinor indicates that the funds for these loans were provided out of Usinor's self-generated cash flow. Because there is no financial contribution as defined under section 771(5)(D) of the Act, we determine that these loans do not constitute a countervailable subsidy.

C. Work/Training Contracts

Employers who hire young people (16–25 years of age) through various government-administered work/training or apprenticeship contracts may receive grants and an exemption from social security contributions. The contracts also impose training requirements for those employees and establish minimum compensation set in proportion to the SMIC (the indexed minimum wage) according to the age of the young person and the duration of the contract. This program is administered by Délégation Générale à l'Emploi et à la Formation Professionnelle of the Ministére de l'Emploi et de la Solidarité at the national level and locally by the Directions Departementales du Travail, de l'Emploi et de la Formation Professionnelle (DDTEFP) (Departmental Labor, Employment and Professional Training Head Offices). The purpose of this program is to encourage the permanent employment of young people.

Usinor has entered into two types of such contracts: (1) apprenticeship contracts and (2) contracts of specific duration (including qualification agreements and adaptation agreements). Any employer can hire an apprentice and enter into an apprenticeship contract providing training for the apprentice. Qualification and adaptation agreements require approval by the DDTEFP. Approval is dependent upon (1) adoption of an agreement with an educational institution or training entity and (2) the company's approval of a standard agreement adopted by the GOF and an occupational organization. Usinor received lump-sum payments and exemptions from social security contributions as a result of these contracts.

We analyzed whether the benefits provided under this program are specific ''in law or fact'' within the meaning of section 771(5A) of the Act. We determine that the program is not *de jure* specific because the receipt of the benefits, in law, is not contingent on export performance or on the use of domestically-sourced goods over imported goods; nor are the benefits limited to an enterprise, industry or region.

Pursuant to section 771(5A)(D)(iii) of the Act, a subsidy is *de facto* specific if one or more of the following factors exists: (1) the number of enterprises, industries or groups thereof which use a subsidy is limited; (2) there is predominant use of a subsidy by an enterprise, industry, or group; (3) there is disproportionate use of a subsidy by an enterprise, industry, or group; or (4) the manner in which the authority providing a subsidy has exercised discretion indicates that an enterprise or industry is favored over others. As explained in the Statement of Administrative Action (SAA) (H.R. Doc. No. 103–316 at 931 (1994)), the fourth criterion normally serves to support the analysis of other *de facto* specificity criteria.

Assistance under this program was distributed to a wide variety of industries in the majority of the regions of France. Therefore, the program is not limited based on the number of users. The evidence also indicates that the steel industry did not receive a predominant or a disproportionate share of the total funding. Given our findings that the number of users is large and that there is no predominant or disproportionate use of the program by the steel industry, we do not reach the issue of whether administrators of the program exercised discretion in awarding benefits. Accordingly, we determine that this program is not specific and has not conferred countervailable subsidies within the meaning of section 771(5) of the Act.

III. Programs Determined To Be Not Used

Based on the information provided in the responses and the results of verification, we determine that Usinor did not apply for or receive benefits under the following programs during the POI:

GOF Programs

A. *Export Financing under Natexis Banque Programs*
B. *DATAR Regional Development Grants (PATs)*
C. *DATAR 50 Percent Taxing Scheme*
D. *DATAR Tax Exemption for Industrial Expansion*
E. *DATAR Tax Credit for Companies Located in Special Investment Zone*
F. *DATAR Tax Credits for Research*
G. *GOF Guarantees*
H. *Long-Term Loans from CFDI*

EC Programs

A. *Resider I and II Programs*
B. *Youthstart*
C. *ECSC Article 54 Loans*
D. *ECSC Article 56(2)(b) Redeployment/ Readaptation Aid*
E. *Grants from the European Regional Development Fund (ERDF)*

IV. Program Determined Not To Exist

Forgiveness of Shareholders' Loans

Usinor's 1994 and 1995 financial statements indicate that the balance in the account identified as ''loans granted by the shareholders'' or ''borrowings granted by the shareholders'' was reduced from FF 2.161 billion in 1993 to FF 1.92 billion in 1994 (*i.e.*, a reduction in the amount of FF 241 million). At the end of 1995, the balance in the same account was zero. The petitioners alleged that the reduction in the loan balance represented a debt forgiveness by the GOF in order to make the company more attractive to investors prior to its privatization.

Information provided by Usinor and the GOF indicates that there was no loan forgiveness. Rather, the decreases of the loan balances in the financial statements represent a combination of loan payments by the company and the elimination of the disclosure requirement in accordance with international accounting standards due to a reduction in shareholdings. Specifically, the 1995 reduction reflects the elimination of disclosure requirements applicable to loans from Credit Lyonnais as the result of the reduction in Credit Lyonnais' ownership interest in Usinor from 20 percent to less than 10 percent at the time of Usinor's privatization. There were no disclosed shareholder loans at the end of 1995 because there were no shareholders with an interest of 10 percent or greater. International accounting standards require disclosure of transactions between a business entity and owners of more than 10 percent of shares. For 1994, the reduction is accounted for by repayments of certain outstanding loans during that year. On this basis, we determine that this program does not exist.

Interested Party Comments

Comment 1: Allocation Period

Usinor and the GOF argue that, in the *Preliminary Determination,* the Department applied the 14-year AUL period found in *Certain Steel from France* improperly to allocate the benefits of certain non-recurring subsidies found countervailable in that case. Usinor and the GOF urge the Department to apply instead a company-specific allocation period based on information submitted in the instant investigation.

Usinor and the GOF argue that the Department's use of the allocation period derived from a different proceeding is inconsistent with the applicable court decision and the Department's past practice. The respondents point out that, in *British Steel I,* the court rejected the Department's previous allocation methodology based on the IRS tables because the methodology was not based on substantial evidence on the record. Consequently, the respondents note, the Department formally abandoned the use of IRS tables and instead adopted the practice of determining a company-specific AUL based on record evidence. Usinor and the GOF state that this practice is reflected in the Department's countervailing duty questionnaires, as well as in the *1997 Proposed Regulations,* which direct a firm to calculate its average AUL over a period of ten years. By deviating from that practice, Usinor and the GOF contend that the Department's approach in the *Preliminary Determination* violated its court-ordered mandate to allocate subsidies in a manner supported by evidence on the record of the instant proceeding. Usinor and the GOF add that the Department's practice is tantamount to penalizing the company simply because it happens to have been the subject of a prior investigation. Usinor and the GOF contend that, absent the earlier investigation, the programs at issue—PACS, FIS and Shareholders'' Advances—would have been deemed outside the scope of the present investigation.

Usinor and the GOF argue that the 14-year AUL from a different investigation—involving different producers, different subject merchandise, and a different time period—is not a proper measure of benefit for the current investigation. According to the respondents, the AUL merely represents a reasonable period for allocation of benefits in a particular investigation rather than the actual duration of the benefit. Usinor and the GOF state that any given company-specific AUL in an investigation is a snapshot that can vary from year to year because it is based on the company's asset values and depreciation charges that inevitably vary from year to year. Therefore, the respondents contend, a decision not to revisit the allocation period in a subsequent investigation undermines the integrity of the later investigation by failing to allocate all subsidies found in accordance with the record of that investigation. Usinor and the GOF assert, the methodology of focusing on the POI and the preceding nine years is reasonable because it is linked to the time period for which alleged subsidies were received.

Usinor and the GOF point out that, although the Department has applied the same allocation period in different segments of the same proceeding, it has never before applied a previously determined AUL in an entirely separate proceeding. Citing *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review,* 62 FR 16549,16550 (April 7, 1997) (*Carbon Steel from Sweden*), Usinor and the GOF recognize the Department's rationale that revising an allocation period in subsequent segments of the same proceeding would create an entirely new benefit stream, thereby resulting in under-countervailing or over-countervailing the benefits in the review period. According to the respondents, however, this rationale does not apply when dealing with an entirely separate proceeding because the allocation period that was determined in one proceeding has no effect on the benefit stream in a separate proceeding. Usinor and the GOF also distinguish the current situation from *UK Lead Bar 1996 Review,* where the Department applied an 18-year company-specific AUL period found in separate proceeding (*see Final Results of Redetermination Pursuant to Court Remand on General Issue of Allocation: British Steel plc* v. *United States,* Consol. Ct. No. 93–09–00550–CVD, Slip Op. 95–17 and Order (CIT Feb. 9, 1995) (*UK Certain Steel*)) instead of the 15-year IRS table-based AUL used in the earlier segment of the same proceeding. In that case, Usinor and the GOF argue, the rejected allocation period—*i.e.*, the IRS tables-based allocation period—was one that was overruled by the *British Steel I* decision.

The petitioners counter that the Department should affirm its decision in the *Preliminary Determination* and continue to apply Usinor's 14-year AUL to the company's previously investigated subsidies. The petitioners argue that the application of Usinor's company-specific AUL is consistent with the Department's established allocation methodology. According to the petitioners, the Department has concluded in past cases, such as *Pasta from Italy* and *Carbon Steel from Sweden,* that previously countervailed subsidies based on an allocation period established in an earlier segment of the proceeding should not be reallocated over a different period of time. The petitioners contend that the principle underlying the Department's decision to use the same AUL across different segments of a single proceeding applies equally in the current investigation. According to the petitioners, the Department followed this reasoning recently in *UK Lead Bar* where it applied a single company-specific AUL to the same subsidies across different proceedings involving the same company to avoid ''significant inconsistencies.''

Citing to the *GIA,* the petitioners state further that the Department's practice in the *Preliminary Determination* was consistent with the statutory requirement that the amount of the countervailable subsidy, including the allocated subsidy stream, is not to be reevaluated based upon subsequent events. The petitioners contend that, because the 14-year AUL and the benefit stream of the previously investigated subsidies are based on data from the period when those subsidies were received, they represent a more accurate measurement of the duration of the benefit to the company. The petitioners note that, for subsidies that have not been previously investigated, the Department's current approach of requesting data for a time period linked to the POI is a reasonable and administrable method for allocating those subsidies. For previously investigated and allocated subsidies, in contrast, the petitioners contend that the established benefit streams should be maintained consistently in future investigations. The petitioners argue that using the new 11-year AUL would result in effectively revaluing the subsidies that were allocated over a 14-year AUL, thereby ignoring the continuing benefit to the company.

The petitioners contend that the fact that a company's AUL is bound to change from year to year should not affect the Department's prior AUL finding because, at the time Usinor received the subsidies in question, the Department determined that those subsidies benefitted Usinor for 14 years from the point of receipt. The changing value of the company's assets after the appropriate allocation period, according to the petitioners, is a subsequent event which should be considered irrelevant to the allocated subsidy stream. The petitioners emphasize that, despite the respondent's claims to the contrary, the present investigation involves the same untied subsidies, the same producer, and the same product. Specifically, the petitioners point out that, in *Certain Steel from France,* the subsidies in question—FIS, PACS and Shareholders' Advances—were found to benefit *all* products produced by the entire Usinor group.

The petitioners state that the Department routinely applies a determination from one proceeding to a separate proceeding despite the absence of evidence on the record of the new proceeding. The petitioners note that, for example, absent new evidence of changed circumstances, the Department does not revisit its determinations regarding a company's equityworthiness. Consistent with this standard, the petitioners argue that the AUL determination based on the record evidence in the prior proceeding should only be revisited if new information regarding the validity of the previous determination is presented. Because the respondents have not provided any such information, the petitioners maintain that the Department should continue to apply Usinor's 14-year AUL to the previously investigated subsidies.

Department's Position: For this final determination, we have continued to apply Usinor's company-specific AUL of 14 years found in *Certain Steel from France* to allocate the benefits of certain non-recurring subsidies found countervailable in that case.

We disagree with the respondents that our use of the 14-year AUL is inconsistent with the court decision in *British Steel I* and our practice. In *British Steel I,* the court emphasized that by using the IRS table-based allocation methodology, the Department did not allocate the benefits of the non-recurring subsidies in a manner reflecting the actual "commercial and competitive benefits" of the subsidies. *See British Steel I,* 879 F. Supp. at 1298. Following the court's remand order in that case, the Department calculated a Usinor-specific AUL of 14 years based on its company-specific information. The court upheld this methodology in *British Steel II,* stating that "the AUL methodology using company-specific calculations is a reasonable method of allocating the commercial and competitive benefit of subsidy benefits." 929 F. Supp. at 438.

The most important factor in our decision is the fact that we are investigating the same respondent, Usinor, and the same untied subsidies. The AUL of 14 years, based on Usinor's company-specific information, was determined to be a reasonable reflection of the actual "commercial and competitive benefits" for the subsidies in question. As stated in *UK Lead Bar,* "[d]ifferent allocation periods for the same subsidies in two different proceedings involving the same company generate significant inconsistencies." 63 FR at 18369.

Further, we disagree that applying the 14-year AUL amounts to penalizing Usinor for being the subject of an earlier investigation. The respondents were afforded ample opportunity in the earlier proceeding (and in the subsequent remands) to submit any factual information and comments related to the AUL calculation. The calculation, as affirmed by the court, was based on the company-specific facts Usinor submitted. As noted by the petitioners, it is well within the Department's practice to apply a determination from one proceeding to a separate proceeding absent evidence of changed circumstances. In the instant investigation, for example, we have applied the determination of creditworthiness from *Certain Steel from France* for certain years. We also applied our finding in *Certain Steel from France* that certain long-term loans issued by FDES were not countervailable to exclude those loans from the instant investigation. *See Notice of Initiation of Countervailing Duty Investigations: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea,* 63 FR 37539, 37542 (July 13, 1998). A reconsideration of the Department's determination in one proceeding, regardless of the parties involved, would only be warranted if there is new evidence to indicate that the circumstances with respect to the initial decision have changed. Moreover, we find that the decision in *UK Lead Bar* to apply the allocation period determined in a separate proceeding is reflective of our current practice regarding the issue of allocation.

Comment 2: Information on Spin-Offs Presented at Verification

The GOF and Usinor contend that the Department should apply its change-in-ownership methodology as it relates to the spin-off of productive assets to the sale of its oxygen-generating unit to FOS–OXY, the sale of its lime-production division to Entreprise Jean LeFebvre, and its sale of J&L shares. The petitioners oppose the application of the Department's change-in-ownership methodology to these three transactions. Pointing out that the specific information regarding these transactions was provided to the Department at verification, the petitioners argue that verification was not an opportunity for Usinor to submit new information. According to the petitioners, the purpose of verification is to ensure that the information submitted by the respondent is complete and accurate. The petitioners cite *Tianjin Machinery Import and Export* v. *United States,* 806 F. Supp. 1008, 1015 (CIT 1992) (*Tianjin*), and *Heavy Forged Hand Tools, Finished or Unfinished, with or without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 63 FR 16758, 16761 (April 6, 1998) (*Hand Tools*). The petitioners argue that the Department has stated that it will not allow the submission of new information that constitutes substantive information and not simply a clerical error. The petitioners contend that, because Usinor did not submit this information within the time requirements imposed by the statute, this information should not be considered for the final determination.

The petitioners also state that under no circumstances should the Department apply its change-in-ownership methodology to the sale of shares in J&L, Ugine's U.S. subsidiary. The petitioners point out that, according to the *GIA,* 58 FR at 37236, the Department found that Usinor's subsidies were ''tied to domestic production and, accordingly, . . . allocated the benefits of those subsidies to sales of Usinor Sacilor's domestically produced merchandise and excluded sales of Usinor Sacilor's foreign-produced merchandise.'' Since Usinor has not shown that any of the subsidies investigated are attributable to merchandise produced by J&L, the petitioners claim that the Department should not attribute any of Usinor's subsidies to J&L after the sale of Usinor's shares in J&L.

Department's Position: Regarding the J&L shares, we agree that no subsidies were attributable to J&L's production in this investigation. Therefore, it would not be appropriate to apply the change-of-ownership methodology to the sale of J&L shares.

With respect to the sale of productive assets to Entreprise Jean LeFebvre and FOS-OXY, we have applied the change-of-ownership methodology. Although we agree with the petitioners that the purpose of verification is to ascertain the accuracy of already-presented information, the special circumstances of this case have led us to use the verified data we have on these transactions. First, we note that we did not request information on spin-offs of productive assets in our questionnaire. Second, because verification followed directly on the issuance of the *Preliminary Determination* and, in fact, the calculations were disclosed to the respondents at verification, Usinor did not have any opportunity to submit data after learning of our methodology in the *Preliminary Determination* and before verification. In light of these circumstances, we believe it is appropriate to use the data obtained at verification and to apply the change-of-ownership methodology to these transactions.

Comment 3: Privatization and Prior Subsidies

The GOF and Usinor comment that the Department should find that Usinor's privatization extinguished prior subsidies. The GOF and Usinor cite section 771(5)(F) of the Act and the SAA at 928, stating that the Department is required to examine the circumstances of the privatization transaction to determine whether and to what extent subsidies pass through to the privatized entity and to what extent the privatization of a government-owned firm eliminated subsidies.

The GOF and Usinor continue their argument citing *Inland Steel,* 155 F.3d at 1376:

> When [a market] price is paid in an arms [sic] length transaction by a new owner, it is difficult to understand why future production by the new owner would carry the burden of prior subsidization.

Usinor and the GOF conclude that the full value of pre-existing subsidies was embodied in the purchase price, such that the purchasers of Usinor shares paid for any residual value added to the company by the subsidies found previously. Usinor and the GOF argue that the Department is required to make an explicit finding of this pass-through of prior subsidies for the final determination.

The petitioners cite to section 771(5)(F) of the Act where it states that a change-in-ownership does not require an automatic finding of no pass-through of subsidies, even if accomplished by an arm's-length transaction. In addition, the petitioners cite to the SAA at 928 which notes that the statutory provision is intended to ''correct and prevent such an extreme interpretation'' as the idea that subsidies are eliminated automatically in an arm's-length sale. Contrary to the respondents' claim that the Department has never really faced the issue of whether an arms-length sale extinguishes subsidies under the URAA, the petitioners mention *Wire Rod from Italy* in which the Department rejected the assertion that an arm's length privatization at market value extinguished prior subsidies. The petitioners also point out that the Department's repayment calculation has been upheld by the Court of International Trade in *Delverde.*

Department's Position: As we stated in *Italian Plate,* under our existing methodology, we neither presume automatic extinguishment nor automatic pass-through of prior subsidies in an arms-length transaction. Instead, our methodology recognizes that a change-in-ownership has some impact on the allocation of previously bestowed subsidies and, through an analysis based on the facts of each transaction, determines the extent to which the subsidies pass through to the buyer. In the instant proceeding, the Department relied upon the pertinent facts of the case in determining whether the countervailable benefits received by Usinor Sacilor pass through to Usinor and Ugine. Following the GIA methodology, the Department subjected the level of previously bestowed subsidies and Usinor's purchase price to a specific, detailed analysis. This analysis resulted in a particular ''pass-through ratio'' and a determination as to the extent of repayment of prior subsidies. On this basis, the Department determined that when Usinor was privatized a portion of the benefits received by Usinor Sacilor passed through to Usinor and a portion was repaid to the government. This is consistent with our past practice and has been upheld in *Saarstahl AG* v. *United States,* 78 F.3d 1539 (Fed. Cir. 1996) (*Saarstahl II*), *British Steel plc* v. *United States,* 127 F.3d 1471 (Fed. Cir. 1997), and *Delverde.*

The Department rejects Usinor's argument that an arms-length transaction at fair market value extinguishes any previously bestowed subsidies because no benefit was conferred. As explained in the *Final Determination of Redetermination Pursuant to Delverde. SrL* v. *United States,* 989 F. Supp. 218 (CIT 1997) (*Delverde Remand*), the countervailable subsidy amount is fixed at the time that the government bestows the subsidy. The sale of a company, *per se,* does not and cannot eliminate this potential countervailability because the countervailing duty statute ''does not permit the amount of the subsidy, including the allocated subsidy stream, to be revalued based upon subsequent events in the market place.'' *GIA,* 58 FR at 37263. The Court of Appeals for the Federal Circuit, in *Saarstahl II,* addressed the Department's privatization methodology and ''specifically stated that the Department does not need to demonstrate competitive benefit.''

The Department's methodology requires it to consider and rely upon several facts particular to the change of ownership at issue. In this investigation, these facts included the nature of the previously bestowed subsidies, the amounts of those subsidies, the time when those subsidies were bestowed, the appropriate period for allocating the subsidies, the net worth over time of the company sold, and the amount of the purchase price. Based on these facts, the Department determined the ultimate repayment of the prior subsidies to the GOF. In sum, the Department considered all of the factual evidence presented by Usinor and then followed its existing methodology properly. Furthermore, this methodology was upheld by the Federal Circuit in

Saarstahl II, British Steel, 78 F.3d 1471, and *Delverde.*

Comment 4: Sale of Shares in 1996 and 1997

The petitioners argue that the GOF's sales of its shares in Usinor in 1996 and 1997 did not transfer control of Usinor and the Department should, therefore, not apply the change-in-ownership methodology to the sales of these shares (as discussed in the change-in-ownership section above). The petitioners purport that, because there was not a change in control, these sales of shares do not constitute a ''bona-fide change-in-ownership.''

The GOF and Usinor state that the Department should apply the change-in-ownership methodology arguing that the sales of these shares were not ''post-privatization.'' The GOF and Usinor contend that the 1996 and 1997 transfer of shares were the last stages of the privatization rather than ''post-privatization'' transactions. The GOF and Usinor note that the Department has applied its change-in-ownership methodology to partial privatizations in *IPA from Israel 1995 Review,* 63 FR at 13627.

Department's Position: We agree with the GOF and Usinor that the application of the change-of-ownership methodology is appropriate in this situation. As explained above, it is not the Department's practice to require a change in control in order to apply the change-in-ownership methodology. As we noted at verification, the 1995 privatization continued through the years 1996 and 1997. Moreover, the sales of these shares in these years were sufficiently large. *Compare IPA from Israel 1995 Review,* 63 FR at 13627 (where the Department did not apply the change-of-ownership methodology to small sales of shares). Therefore, we have applied the change-in-ownership methodology to the sales of these shares in these years.

Comment 5: Purchase of Power Plant

The petitioners urge the Department to reconsider its preliminary determination that the purchase of CSR by EDF was not a countervailable subsidy. The petitioners note that, in their questionnaire responses and at verification, Usinor and the GOF focused exclusively on the valuation method used to determine the FF 1 billion sales price. According to the petitioners, however, the valuation methodology detailed in the verification reports does not address the decisive question of whether Usinor received a financial benefit from the transaction. The petitioners argue that evidence does not establish that the valuation methodology can serve as a benchmark for an arms-length, negotiated commercial transaction between two entities.

According to the petitioners, the facts demonstrate that the power plant had little, if any, commercial value and as such, could not have been sold on the open market. The petitioners point out that there were no other offers to purchase the plant and the only potential offer—from Générale de Chauffe—refers to a ''significantly lower price.'' The petitioners allege that the two parties recognized that the plant had very little commercial value and, thus, developed the ''future revenue stream'' approach to value the transaction. The petitioners add that, according to the GOF's description, Usinor was anxious to sell the plant prior to its privatization.

The petitioners argue further that there is no evidence that the valuation methodology used by Usinor and the EDF was one that would be used by a private purchaser of a power plant. The petitioners contend that, while a private investor may evaluate the potential revenue in deciding whether to purchase an asset, it would not form the basis for establishing market value to the private investor. Rather, the petitioners claim, the basis for value would include the book value and the market value of the assets, as well as the cost of building a similar facility. Accordingly, the petitioners conclude that the power plant was purchased for more than its worth, resulting in a countervailable benefit in the amount of the gain over the net book value of the assets.

Usinor and the GOF contend that the relevant issue is not whether Usinor received a financial benefit from the transaction; rather, the issue is whether EDF paid ''more than adequate remuneration'' for the sale. Usinor and the GOF assert that facts, as verified by the Department, demonstrate that no excess remuneration was paid by EDF and, thus, the transaction was not countervailable. With respect to the potential offer by Générale de Chauffe, Usinor and the GOF argue that Générale de Chauffe never made a formal offer and the terms of the deal contemplated by Générale de Chauffe were different from the terms between Usinor and EDF. According to the respondents, Générale de Chauffe's potential terms contemplated that Usinor was to retain ownership of the plant. In addition, the respondents point out that an independent review of the transaction by the Audit Office (a quasi-judicial tribunal) suggested that the EDF had negotiated a good deal for itself.

Department's Position: We disagree with the petitioners that Usinor received a countervailable benefit from its sale of CSR to the government-owned EDF. Evidence on the record, which we verified, demonstrates that the valuation of the transaction was based on reasonable projections of future costs and revenues associated with the operation of CSR and the sale of electricity produced by CSR. The resulting sales price for CSR represented the amount of money, in net present terms, that would be saved by Usinor if it were to continue producing electricity through its CSR facilities. Additionally, we found no evidence to indicate that the negotiations were not conducted on an arms-length basis.

Because the sales price was based entirely on the value of the right to produce electricity, the amount of gain in excess of the nominal book value of the physical assets of CSR is irrelevant. Both Usinor and EDF indicated that the book value of the assets was, in fact, never considered in the valuation process. The parties were only interested in obtaining the right to produce and sell electricity; the physical facility of CSR was only a means to secure that right. The value of a company is often based on more than its physical assets. Intangible assets, *e.g.,* goodwill, patents, and licenses, which are valued for the future revenue stream that they represent, may constitute an important part of a company's worth. In the present investigation, the exclusive right to produce electricity was the significant intangible asset, if not the only material asset, of CSR.

In addition, given the nature of the transaction, it is not possible to compare the sales price with that of a similar transaction between private parties. As noted by the respondents, the difference in the material terms, as well as its inconclusive nature, renders the potential offer by Générale de Chauffe unsuitable for comparison purposes. We have not found, and the petitioners have not presented, a price from a comparable transaction that demonstrates that the price paid by EDF exceeded the fair value of the transaction.

Comment 6: Capital Increase

The petitioners argue that, by authorizing a capital increase of FF 4,999,999,975 at the time of Usinor's 1995 privatization, the GOF conferred a benefit upon Usinor in the amount of the increased capital. The petitioners claim that, as the sole owner of Usinor prior to the 1995 privatization, the GOF was entitled to all the revenue from the sale of the company, whether the revenue resulted from the sale of new or existing shares. By transferring the proceeds from the sale of new shares to Usinor, the petitioners argue, the GOF was foregoing revenue otherwise due to it, acting in a non-commercial manner. According to the petitioners, the fact that the report by the Privatization Commission concluded that the issuance of new shares would not alter substantially the value of the shares does not establish that the transaction did not confer a countervailable benefit. The petitioners contend that the respondents have not provided ''any objective studies that evaluated the extent to which the new shares diminished the value of the GOF's existing shares.''

In the alternative, the petitioners argue that the capital increase is countervailable as an indirect subsidy because the GOF structured the privatization transaction in such a way that the private investors were entrusted to make an equity investment in Usinor. The petitioners state that the transaction was inconsistent with a typical government-equity transaction in that the GOF did not receive any form of remuneration in exchange for its investment. As such, the petitioners argue that the GOF conferred a benefit upon Usinor in the amount of the foregone revenue from the sale of the new shares that the company otherwise would not have received but for the GOF's actions.

Usinor and the GOF rebut that, because the FF 4,999,999,975 that Usinor received through the capital increase was not provided by the GOF, Usinor did not receive a countervailable benefit as defined by section 771(5)(B) of the Act. The respondents argue that, rather than giving up revenue, the GOF benefitted from the capital increase because the private capital infusion resulted in increasing the value of the company being sold by the GOF. The respondents explain:

> It simply cannot be the case that every time a company (whether government-owned or otherwise) raises capital by means of a stock increase, it is the beneficiary of a grant. A shareholder does not in such circumstances give away money to which it otherwise would be entitled. Instead, it participates in the growth in the value of the company attributable to the capital increase.

The respondents add that the findings at verification demonstrate that there was an objective finding by the private investment bankers that the price of the shares would be not affected by the capital increase. This finding, according to the respondents, undercuts the petitioners' argument further that the GOF gave up revenues.

Department's Position: As an initial matter, we note that the arguments set forth by the petitioners may constitute a subsidy allegation made in untimely manner. According to § 351.301(d)(4)(i)(A) of the Department's regulations, a subsidy allegation in an investigation is due no later than 40 days before the scheduled date of the preliminary determination. The record shows that the first instance on which the petitioners presented this particular argument was a submission dated October 29, 1998 (''pre-preliminary comments''), merely ten days before the scheduled date of the preliminary determination (November 9, 1998). Nevertheless, we have opted to address the substantive aspects of the petitioners' comment. In exercising our discretion, we considered the fact that the respondents did not express an objection to the petitioners' allegation with respect to its possible untimeliness.

Substantively, we disagree with the petitioners that Usinor received a subsidy by virtue of the capital increase. The petitioners argue first that revenue otherwise due to the GOF was foregone when the GOF authorized a capital increase in Usinor and the money earned from the sale of shares to effect the capital increase was paid directly to Usinor. According to the petitioners, all revenues received from the sale of Usinor's shares should have accrued to the GOF because the GOF was the sole owner at that time.

We do not agree that, in fact, revenue was foregone by the GOF in this situation. In 1995, the GOF decided to privatize Usinor by selling off the majority of the existing shares in the company. At the same time, the GOF authorized an increase in Usinor's share capital. This increase was funded through the sale of newly issued shares in Usinor. These new shares were sold as part of the privatization but, instead of the proceeds going to the GOF, they went to Usinor. Potential purchasers of shares in Usinor were aware that new shares were being issued and how the proceeds from the sale of those shares would be used.

Had the GOF sold its outstanding shares in Usinor without any capital increase, the GOF would have received an amount reflecting the value of Usinor as it existed without the new capital. With the increase in its capital, the value of Usinor increased. However, since the increase in value did not result from an infusion of GOF funds, the GOF did not have a direct or exclusive claim on the increased value. Instead, the increase in Usinor's value came from the purchasers of the new shares and all shareholders benefitted. Thus, petitioners are incorrect that the GOF should have claimed all the proceeds of the sale of Usinor's shares. The GOF received the return from the sale of its existing shares and did not forego revenue when the proceeds from the sale of new shares went to Usinor.

As a holder and seller of existing shares, the GOF did have an indirect claim on the increased value of Usinor resulting from the capital increase. Specifically, as the value of Usinor increased, the value of shares in Usinor should have increased. At the same time, however, because the capital increase was effected through a sale of new shares, the total number of shares increased. Thus, although the total value of Usinor increased, the concurrent increase in the number of shares would offset the increase in value per share. The Privatization Commission Report to which the petitioners refer makes this very point when it states in reference to the share increase that, ''on the basis of experts'' reports which have been submitted to it, the Commission believes that this transaction shall not substantially alter the value of shares, in as much as its diluting nature shall be offset by its beneficial effects upon the Group's financial structure.'' These statements support the conclusion that no value was forgone by the GOF in authorizing the capital increase for Usinor through the sale of new shares.

In the alternative, the petitioners have argued that the capital increase was an indirect subsidy because the GOF structured the privatization such that private investors were entrusted to make a countervailable equity infusion into Usinor. We do not need to reach the issue of whether private investors were ''entrusted'' to provide a subsidy because we find that there is no subsidy in this equity purchase. Under section 771(5)(E)(i) of the Act, a countervailable subsidy is conferred, in the case of an equity infusion, ''if the investment decision is inconsistent with the usual investment practice of private investors * * * in the country in which the equity infusion is made.'' The focus of the Department's inquiry into this allegation is whether the decision Usinor's investors made was consistent with the private-investor standard. The Department will determine that the equity infusion was inconsistent with usual investment practice of private investors if the company is determined to be unequityworthy or if the terms and the nature of the equity purchased otherwise indicates that the investment was inconsistent with the usual private investment practice. *See* § 351.507(3) of the *Final CVD Regulations.*

In the instant investigation, we have not found, and the petitioners have failed to provide, any evidence indicating that Usinor was unequityworthy or that the equity purchased by the investors was otherwise inconsistent with the usual investment practice of private investors. See also § 351.507(a)(7) of the *Final CVD Regulations* (stating that the Department will not investigate an equity infusion in a firm absent a specific allegation by the petitioner that the investment decision was inconsistent with the usual investment practice of private investors). Therefore, we determine that Usinor's investors acted in a manner consistent with the investment practices of private investors.

For the reasons discussed above, we determine that the 1995 capital increase in Usinor was not a countervailable subsidy.

Comment 7: European Social Fund Grants

Usinor and the GOF argue that the ESF grant the Ugine Division received in 1997 is not specific and, therefore, not countervailable. The respondents point to two factors in support of their position. First, they claim that the Department found at verification that the Ugine Division did not receive a disproportionate amount of the ESF funds provided to France in 1997. Second, the respondents maintain that the purpose of the grant was to train people at risk of unemployment pursuant to Objective 4. Because Objective 4 projects are funded throughout France, assistance provided to such projects is not regionally specific, the respondents argue.

The petitioners refute the respondents' arguments. First, they say, the verification report merely quotes statements by GOF officials to the effect that Usinor did not get a disproportionate amount of ESF assistance and that Usinor was the only steel company receiving such funds during the POI. The petitioners note that GOF officials did not provide any documentation in support of these statements. Second, they argue that while EU officials stated at verification that Objective 4 projects are funded throughout France, they did not provide any documentation supporting this assertion. The petitioners also point out that, according to the EU verification report, the EU does not maintain any records showing which individual companies receive ESF funding. Thus, there is no documentation to support the notion that ESF grants are not specific, according to the petitioners.

Department's Position: We agree with the petitioners. Because we do not have sufficient information on the record regarding the actual use of Objective 4 funds in France during the POI, we must use facts available (see discussion under the description of the ESF grants in Section I above). On this basis, we have determined that the ESF grants received by the Ugine Division are specific and, therefore, countervailable.

Comment 8: Investment and Operating Subsidies

Usinor and the GOF argue that the investment and operating subsidies Usinor received from the GOF are not specific and, therefore, should not be countervailed. With regard to the funds received from regional water boards for water protection, pollution control, and water rehabilitation projects, Usinor and the GOF contend that the Department verified that these funds were not limited to Usinor or to the steel industry. Based on the information submitted by the GOF at verification, Usinor and the GOF also maintain that the steel industry did not receive a disproportionate amount of the water board subsidies.

The petitioners contend that the Department should continue to treat the investment and operating subsidies as specific and that they, therefore, should be subject to countervailing duties. The petitioners assert that the Department's GOF verification report does not draw any conclusions with respect to the specificity of this program. Furthermore, the petitioners argue that information supporting a respondent's claim of non-specificity should be submitted with the original questionnaire response in order to ensure that the Department and the petitioners have ample time to evaluate and comment upon the factual evidence prior to verification. They state that verification should not be used as an opportunity to submit new, substantive information to supplement the original questionnaire response.

The petitioners finally contend that, even if the information GOF officials provided at verification had been submitted in a timely manner, it would not corroborate the respondents' claim of non-specificity. The petitioners argue that, although GOF officials maintained that this assistance was provided to any type of enterprise or industry, the documentation presented at verification did not demonstrate actual usage by type of industry.

Department's Position: In our *Preliminary Determination,* we found that the investment and operating subsidies, including the assistance from the regional water boards, provided a financial contribution in the form of a direct transfer of funds from the GOF to Usinor pursuant to section 771(5)(D)(i) of the Act. Prior to the *Preliminary Determination,* the GOF argued that the water board grants were not specific but did not provide any information to support this statement. Therefore, as facts available, we determined preliminarily that these subsidies were specific under section 771(5A)(D) of the Act.

However, at verification the GOF presented, and we verified, information showing that assistance under the program provided by the water boards was provided to a wide variety of water-related projects. We also found that the amount received by Usinor constituted a very small percentage of the total amount provided by the water boards to combat industrial pollution. In principle we agree with the petitioners that information supporting a respondent's claim of non-specificity, as well as other factual information, should be submitted with the questionnaire response, but we do not believe that the information presented to us at verification should be classified as entirely ''new.'' We learned about the existence of the water program from Usinor's and the GOF's questionnaire responses in which the GOF also made a claim for non-specificity of this program. The Department has the discretion to accept new information at verification when ''the information makes minor revisions to information already on the record or * * * the information corroborates, supports, or clarifies information already on the record.'' *See Final Results of Antidumping Administrative Review: Titanium Sponge from the Russian Federation,* 61 FR 58525 (November 15, 1996), and *Certain Refrigeration Compressors from the Republic of Singapore: Final Results of Countervailing Duty Administrative Review,* 63 FR 32849, 32852 (June 16, 1998). In this instance, we believe that the information presented to us at verification merely clarified information already on the record. Although this information is not sufficient to determine that the water board program is not specific in general, we believe that it is enough to support a finding that the program is not specific to Usinor. Accordingly, we determine that the grants from the regional water boards are not specific to Usinor within the meaning of section 771(5A)(D)(iii) of the Act and, therefore, not countervailable.

However, due to the lack of information about their usage and distribution, as adverse facts available, we continue to find the other programs included in the category investment and operating subsidies to be countervailable (our reasons for using adverse facts available are explained in section I.D above).

Comment 9: Myosotis Project

Usinor and the GOF urge the Department to grant green-light status to the benefits received by Usinor for the Myosotis project. They argue that this project qualifies as industrial research as defined by section 771(5B)(B)(ii)(I) of the Act because its purpose is to develop ''new products, processes, or services'' or to bring about ''a significant improvement to existing products, processes, or services.'' The respondents state further that the level of assistance is far below the 75-percent maximum that the statute permits for industrial research and that the EU has found the project to be in concordance with its State Aids Code. Moreover, the respondents argue, the Myosotis project qualifies for green-light treatment because it is a pre-competitive development activity involving the development of a prototype that cannot be put to commercial use as described in section 771(5B)(B)(ii)(II) of the Act. According to the respondents, the level of assistance is well below the 50-percent maximum that the statute allows for pre-competitive development activities.

Usinor and the GOF argue that, if the Department should decide not to grant the Myosotis project green-light status, it should determine that the assistance for this project is not countervailable because it is not specific. The respondents state that the Myosotis assistance came from the GPI program which is administered by the Ministry of Industry. They contend that at verification the Department found that GPI funding is not limited by law to any particular industry and, also, that assistance from this fund is provided to a wide range of industries. Last, the respondents assert that the Department found at verification that the steel industry did not receive a disproportionate share of GPI funds in the years that Usinor received assistance for the Myosotis project.

The petitioners urge the Department to follow its decision in the *Preliminary Determination* and not address the respondents' green-light claim for the Myosotis project. First, the petitioners state, in the preliminary determination, the Department expensed the grants Usinor received between 1989 and 1993 for Myosotis because they were below 0.5 percent of the company's sales in the years of receipt and, with respect to the reimbursable advance received in 1997, the Department preliminarily determined that there was no benefit attributable to the POI. Accordingly, the petitioners observe, the countervailable subsidy rate for the Myosotis program was 0.00 percent *ad valorem* in the *Preliminary Determination*. The petitioners note that the new regulations state specifically that the Department will not consider a green-light claim for a subsidy that does not provide a benefit to the subject merchandise in the period of investigation or review. Therefore, they argue, the Department should not address the green-light claim advanced by Usinor and the GOF.

As a second argument for not making a green-light determination, the petitioners point to administrative efficiency. Citing *Final Negative Countervailing Duty Determination: Fresh Atlantic Salmon from Chile*, 63 FR 31437 (June 9, 1998), *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany*, 62 FR 54990 (October 22, 1997), and *Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Laminated Hardwood Trailer Flooring from Canada*, 62 FR 5201 (February 4, 1997), the petitioners argue that a decision not to address Usinor's green-light claim would be consistent with the Department's practice, as established in these cases, of not analyzing a program that has no impact on the net countervailable subsidy rate.

Third, the petitioners argue that the Department should not make a green-light determination because the administrative record in this proceeding is incomplete. Specifically, the petitioners point to the GOF's refusal to make certain reports on the Myosotis project available to the Department at verification. The petitioners believe that the absence of these documents from the record is particularly relevant in light of the Department's ''commitment to interpret [the green-light] provisions strictly as required by the SAA.''

The petitioners recommend that the Department to postpone a green-light decision on the Myosotis project until the next administrative review to ensure (1) that a more complete administrative record can be developed, and (2) that there is a benefit to Usinor from the 1997 reimbursable advance.

Department's Position: We agree with the petitioners that there is no need for us to make a determination regarding green-light treatment of the assistance provided under the Myosotis project. As stated in the preamble to the Department's recently issued regulations:

> [W]e will not consider claims for green light status if the subject merchandise did not benefit from the subsidy during the period of investigation or review. Instead, consistent with the Department's existing practice, the green light status of a subsidy will be considered only in an investigation or review of a time period where the subject merchandise did benefit from the subsidy.

See Final CVD Regulations, 63 FR at 65388. While these final regulations are not controlling in this case, they do reflect the Department's current practice. Therefore, we will not make a green-light determination when there is no countervailable benefit in the period of investigation or review, in accordance with our existing practice. We also consider a specificity determination to be unwarranted when there is no benefit in the POI. Instead, we intend to make determinations on green-light status and specificity in an administrative review, if this investigation results in a countervailing duty order.

Comment 10: Lending Rates

The petitioners argue that the Department should use the lending rates reported in Table 4.11 of the *Bulletin* of *Banque de France* as the benchmark lending rate for the years in which Usinor was found to be uncreditworthy. The petitioners assert that the statements made by private bank and GOF officials at verification indicate the lending rates in question represent an average cost of credit for companies in France which includes high- and low-risk financing. The petitioners argue that these interest rates provide a better indication of the rate at which Usinor could have actually obtained financing for those years in which Usinor was found to be uncreditworthy because they reflect some degree of greater risk.

Usinor and the GOF point out that the officials of the Banque de France indicated that the rates reported in Table 4.11 include variable rates. Usinor and the GOF argue that, as such, the Table 4.11 rates are inappropriate to use as benchmark rates because the Department's preference, as reflected in the *1989 Proposed Regulations*, is to use the average cost of long-term fixed-rate loans. Moreover, Usinor and the GOF point to the statement made by the GOF officials at verification asserting that the Table 4.11 rates ''do not reflect the cost of credit for a company as Usinor because the rates are surveys of rates applicable for companies of all sizes and types'' and that an average interest rate derived from a survey would, thus, not be an accurate indicator of the cost of credit for an individual company.

Department's Position: We agree with the petitioners that the rates reported in Table 4.11 of the *Bulletin* are more appropriate benchmark and discount rates for the years in which Usinor was found to be uncreditworthy and where the other benchmark interest rates are lower than the rates reported in Table 4.11. For this final determination, we have applied the methodology described in the *1989 Proposed Regulations* for calculating the benchmark and discount rates for the years in which Usinor was found uncreditworthy. Specifically, the *1989 Proposed Regulations* state that the long-term fixed benchmark rate for an uncreditworthy firm will be calculated by taking the sum of 12 percent of the prime interest rate in the country in question and, in order of preference: ''(1) the *highest* long-term fixed interest rate commonly available to firms in the country in question; (2) the *highest* long-term variable interest rate commonly available to firms in the country in question; or (3) the short-term benchmark interest rate determined in accordance with [the Department's methodology].'' § 355.44(b)(6)(iv)(A) of the *1989 Proposed Regulations* (emphasis added). Accordingly, we have applied the rates reported in Table 4.11 in our calculation where those rates represented the *highest* long-term interest rate among the various types of interest rates the respondents provided to us. Contrary to the respondents' assertion, an expressed ''preference'' for a fixed rate does not preclude us from using a rate that we find more appropriate, even if that rate happens to include variable rate loans. Further, we disagree with the respondents that the Table 4.11 rates are not appropriate because the rates are derived from surveys of rates applicable for companies of all sizes and types. While an average rate which by its very definition is derived from rates applicable to more than one company, may not represent the most *accurate* rate applicable to any single company, it nevertheless provides a reasonable indicator of rates ''commonly available to firms in the country in question.''

Verification. In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, and examining relevant accounting records and original source documents. Our verification results are detailed in the public versions of the verification reports, which are on file in the Central Records Unit.

Suspension of Liquidation. In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual rate for Usinor. Because Usinor is the only respondent in this case, its rate serves as the all-others rate. We determine that the total estimated net countervailable subsidy rate is 5.38 percent *ad valorem* for Usinor and for all others.

In accordance with our *Preliminary Determination,* we instructed the U.S. Customs Service to suspend liquidation of all entries of stainless steel sheet and strip in coils from France, which were entered or withdrawn from warehouse, for consumption on or after November 17, 1998, the date of the publication of our *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after January 2, 1999, but to continue the suspension of liquidation of entries made between September 4, 1998, and January 1, 1999. We will reinstate suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification. In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Destruction of Proprietary Information. In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13677 Filed 6–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Mexico

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

EFFECTIVE DATE: June 7, 1999.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Martin Odenyo, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2924 or (202) 482–5254, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1998).

Final Determination

We determine that stainless steel sheet and strip in coils (SSSS) from Mexico are being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

We published in the **Federal Register** the preliminary determination in this investigation on January 4, 1999. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Sheet and Strip in Coils from Mexico*, 64 FR 125 (January 4, 1999) (*Preliminary Determination*). Since publication of the *Preliminary Determination* the following events have occurred:

We received an allegation of ministerial errors from Allegheny Ludlum Corporation, J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation, the United Steelworkers of America, and AFL–CIO/CLC (petitioners) on December 28, 1998. We addressed those allegations in a memorandum to the file dated January 28, 1999.

On January 6, 1999, we issued a supplemental questionnaire to Mexinox S.A. de C.V. (Mexinox) regarding its section E (further manufacturing) response. In response Mexinox made two submissions, one on January 15, 1999, and the other on January 22, 1999.

We verified Mexinox's sections A (General Information), B (Home Market Sales), and C (U.S. Sales) responses in San Luis Potosi, Mexico, from February 1 through February 5, 1999. *See* Memorandum to the File; ''Verification of the Information Submitted by Mexinox S.A. de C.V.,'' March 5, 1999 (Mexinox sales verification report). We also verified Mexinox's section D (cost of production) response in San Luis Potosi from February 25 through February 29, 1999. *See* Memorandum to Neal Halper, Acting Director, Office of Accounting; ''Verification of the Cost of Production and Constructed Value Data,'' March 22, 1999 (Mexinox cost verification report). Public versions of these and all other Departmental memoranda referred to herein are on file in room B–099 of the main Commerce building.

From February 24, 1999 through February 26, 1999, we verified the sales response of a U.S. entity we have determined to be affiliated with Mexinox (Reseller). *See* Memorandum to the File; ''Verification of the Information Submitted by Reseller;'' March 15, 1999 (Reseller sales verification report). We verified the section E (further manufacturing) response of Reseller from March 2, 1999 through March 4, 1999. *See* Memorandum to Neal Halper, Acting Director, Office of Accounting; ''Verification of the Cost of Further Manufacturing,'' March 18, 1999 (Reseller cost verification report).

On January 22, 1999, and February 2, 1999, Mexinox and petitioners, respectively, requested a public hearing on this investigation. We received case briefs from petitioners and Mexinox on March 29, 1999; we received rebuttal briefs from petitioners and Mexinox on April 5, 1999. On April 14 and 15, 1999, petitioners and Mexinox, respectively, withdrew their requests for a hearing.

Scope of the Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs.

Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to AISI grade 420, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[5]

Period of Investigation

The period of investigation (POI) is April 1, 1997 through March 31, 1998.

Fair Value Comparisons

To determine whether sales of SSSS from Mexico to the United States were made at LTFV, we compared the export price (EP) or constructed export price (CEP) to the normal value (NV), as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs or constructed values (CVs).

Transactions Investigated

For its home market and U.S. sales, Mexinox reported the date of invoice as the date of sale, in keeping with the Department's stated preference for using the invoice date as the date of sale. *See* 19 CFR 351.401(i). As explained in response to comment 12 (below), for this final determination we have continued to rely upon Mexinox's invoice dates in the home and U.S. markets as the date of sale. However, should this investigation result in an antidumping duty order, we intend to scrutinize further this issue in any subsequent segment of this proceeding involving Mexinox.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent covered by the description in the ''Scope of the Investigation'' section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in Appendix V of the Department's August 3, 1998 antidumping questionnaire.

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 HI–C'', ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

Level of Trade

In our *Preliminary Determination,* we agreed with Mexinox that one level of trade (LOT) existed for Mexinox in the home market. Furthermore, we agreed with Mexinox that its U.S. EP and CEP sales constituted two distinct LOTs, and that a CEP offset to NV was warranted when comparing CEP to NV or CV. In their comments on the *Preliminary Determination*, petitioners challenged our LOT determination. However, based on our analysis of petitioners' comments and Mexinox's rebuttal comments, we have not changed our *Preliminary Determination* with respect to LOT. *See* comment 9 (below).

Export Price and Constructed Export Price

In the *Preliminary Determination,* we used Mexinox's reported EP/CEP classification of its U.S. sales. In their comments on the *Preliminary Determination*, petitioners challenged our acceptance of Mexinox's EP/CEP classification. However, based on our analysis of petitioners' comments and Mexinox's rebuttal comments, we have not changed our preliminary determination with respect to EP/CEP classification. *See* comment 8 (below).

We calculated EP and CEP using the same methods employed in the *Preliminary Determination* except as noted below in the ''Department's Position'' portions of the ''Comments,'' section of this notice and in the Final Determination Analysis Memorandum from Fred Baker to John Kugelman, dated May 19, 1999.

Normal Value

Home Market Viability

As discussed in the *Preliminary Determination,* in order to determine whether the home market was viable for purposes of calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. As Mexinox's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, we based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Cost of Production Analysis

In response to a timely allegation filed by petitioners, we conducted an investigation to determine whether Mexinox made sales of the foreign like product during the POI at prices below its cost of production (COP). In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP based on the sum of Mexinox's cost of materials, fabrication, general expenses, and packing costs. We relied on respondent's COP and CV amounts except in the following instances:

a. We made adjustments to the cost of inputs received from affiliates in accordance with sections 773(f)(2) and (3) of the Act.

b. We revised the reported general and administrative expense to include the accrued sludge clean-up for 1997 and to exclude expenses incurred on behalf of subsidiaries.

c. We recalculated Mexinox's general and administrative expense ratio based on the total cost of manufacturing.

d. We revised the reported net financing expense ratio to exclude unsubstantiated foreign exchange gains.

We compared the weighted-average COP for Mexinox to home market sales prices of the foreign like product, as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made (i) in substantial quantities within an extended period of time and (ii) at prices which permitted recovery of all costs within a reasonable period of time. On a product-specific basis, we compared COP to home market prices, less any applicable movement charges, early payment and other discounts, and direct and indirect selling expenses.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than twenty percent of a respondent's sales of a given product were at prices less than the COP, we do not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where twenty percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities, in accordance with sections 773(b)(2)(C)(i) and 773(b)(2)(B) of the Act. Because we used POI average costs, in such cases, pursuant to section 773(b)(2)(D) of the Act, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregard all sales of that product. When there were no home market sales of identical or similar merchandise to match to U.S. sales, we compared the U.S. sales to CV in accordance with section 773(a)(4) of the Act.

Our cost test for Mexinox revealed that for certain products less than twenty percent of Mexinox's home market sales were at prices below Mexinox's COP. Therefore, we retained all sales of those products in our analysis. For other products, more than twenty percent of Mexinox's sales were at prices below COP. In such cases we disregarded the sales that failed the cost test, while retaining the remaining sales for our analysis. *See* Final Determination Analysis Memorandum dated May 19, 1999.

Price-to-Price Comparisons

For those products with home market sales that passed the cost test, we based NV on Mexinox's sales to unaffiliated home market customers and to affiliated home market customers who passed the Department's arms-length test. (For an explanation of the arms-length test, see the *Preliminary Determination*, 64 FR at 129.) We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Where appropriate, we deducted from NV the amount of indirect selling expenses capped by the amount of the U.S. commissions. We made a CEP offset due to differences in LOT (see ''Level of Trade'' section (above) and comment 9 (below)). We continued to make circumstance-of-sale (COS) adjustments in accordance with section 773(a)(6)(c)(iii) of the Act.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. *See* section 773(e)(1) of the Act. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Mexico. We calculated the cost of materials, fabrication, and general expenses using the method described in the ''Cost of Production Analysis'' section (above).

For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We also made COS adjustments by deducting home market direct selling expenses from CV and adding U.S. direct selling expenses.

Facts Available

Section 776(a) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), the facts otherwise available in reaching the applicable determination. *See, e.g., Roller Chain, Other Than Bicycle Chain, From Japan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 63671, 63673 (November 16, 1998). In this investigation the Department has determined, for the reasons stated in detail below, that one of Mexinox's U.S. affiliates submitted information that could not be verified. Therefore, pursuant to section 776(a) of the Act, we have determined that the use of the facts otherwise available is necessary in this instance.

However, the statute requires that certain conditions be met before the Department may resort properly to the facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by [the Department]'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

Finally, in selecting from among the facts otherwise available, section 776(b) of the Act permits the use of an adverse inference if the Department also finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the requests for information. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' The Statement of Administrative Action (SAA) reprinted in H.R. Doc. 103–316 at 870 (1994). Furthermore, ''an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997) (*Final Rules*). The statute continues by noting that in selecting from among the facts available the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record.

As explained in the Department's response to Comment 6 (below), we have determined that we must resort to the facts available with respect to the sales and further-manufacturing data submitted by the Reseller. At verification, we discovered numerous and systemic errors in the data used by the Reseller to report its costs of further manufacturing of subject merchandise. These errors included, inter alia, the failure to match properly input coils and output finished products, the allocation of processing costs to sales which had undergone no further processing whatever, and cases where the quantities of output goods exceeded the inputs. The vast majority of the subject merchandise sold through the Reseller was first further processed by this company; therefore, the deficiencies in its data affect a corresponding percentage of the Reseller's submitted sales data. Furthermore, the mis-allocations not only affected the Reseller's reported sales which had been subject to further processing, but tainted the non-further-processed portion of its database as well. In addition, the Reseller failed to identify the producer of a significant portion of its sales in the United States, and failed to report physical criteria vital to our model matching for certain other transactions. As the breadth and depth of the discrepancies leave us with no confidence in the underlying further-processing data submitted by the Reseller, we have determined that these data cannot serve adequately in the calculation of Mexinox's overall weighted-average margin. Further, the record indicates that the Reseller could readily have discovered and corrected the majority of these errors prior to submitting its data to the Department and, at the latest, prior to verification. *See* comment 6 (below). Accordingly, as provided in section 776(b) of the Act, we find that the Reseller has failed to cooperate by not acting to the best of its ability in responding to the Department's requests for information. Therefore, we have relied upon adverse facts available for the entirety of the data submitted by the Reseller. As facts available we have assigned the highest non-aberrational margin calculated for this final determination to the weighted-average unit value for sales reported by the Reseller. To determine the highest non-aberrational margin we examined the frequency distribution of the margins calculated from Mexinox's reported data. We found that roughly ten percent of Mexinox's transactions fell within a range of 40 to 49 percent; we selected the highest of these as reflecting the highest non-aberrational margin. We then multiplied the resulting unit margin by the total quantity attributed to resales of subject merchandise by the Reseller. See also the Final Determination Analysis Memorandum, dated May 19, 1999. This total quantity includes the material affirmatively verified as being of Mexinox origin, as well as a portion of the merchandise of unidentified origin allocated to Mexinox. To apportion the unidentified sales among the investigations of stainless sheet in coil from Germany, Italy, and Mexico (*see* Comment 7, below) we have adjusted the quantity for each of the unidentified sales on a pro rata basis, using the verified percentages of the Reseller's merchandise supplied by each of the three respondent mills. We then applied the facts-available margin to these unidentified sales transactions as explained above.

Affiliation

As explained in the *Preliminary Determination* and immediately below, we find that for purposes of this investigation Mexinox is affiliated with Thyssen Stahl and Thyssen AG (Thyssen) and, through them, their affiliated sellers and steel service centers in the United States. The Act defines ''affiliated persons'' at section 771(33). Included within that definition are the following persons: family members, any organization and its officers or directors, partners, and employer and employee. See section 771(33)(A) through (D) of the Act. The statute also considers as affiliated persons:

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(G) Any person who controls any other person and such person.

See section 771(33)(E) through (G) of the Act.

''Control'' is defined as one person being ''legally or operationally in a position to exercise restraint or direction over the other person.'' The SAA at 870 explained that including control in an analysis of affiliated parties ''permit[s] a more sophisticated analysis which better reflects the realities of the market place.'' The SAA continues, ''[t]he traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm 'operationally in a position to exercise restraint or direction' over another even in the absence of an equity relationship.'' Id. at 838.

Finally, as the Department noted in its ''Explanation to the Final Rules'' (i.e., its regulations), ''section 771(33), which refers to a person being 'in a position to exercise restraint or direction,' properly focuses the Department on the ability to exercise 'control' rather than the actuality of control over specific decisions.'' *Final Rules,* 62 FR at 27348. Thus, the statute does not require that we find the actual exercise of control by one person over the other in order to find the parties affiliated; rather, the potential to exercise control is sufficient for such a finding.

In this final determination, we continue to find that Mexinox is affiliated with Thyssen Stahl and Thyssen because Thyssen Stahl indirectly owns and controls, through Krupp Thyssen Stahl (KTS), thirty-six percent of Mexinox's outstanding stock. Thyssen, which wholly owns Thyssen Stahl, likewise indirectly owns and controls thirty-six percent of Mexinox. See *Preliminary Determination,* 64 FR at 126 and Memorandum to Joseph Spetrini, Mexinox Affiliation, December 17, 1998 (Affiliation Memo).

In addition, we continue to find that Mexinox is affiliated with Thyssen's U.S. sales affiliates because the nature and quality of corporate contact establish this affiliation by virtue of Thyssen's common control of its affiliates and of KTS. The record demonstrates that Thyssen, as the majority equity holder in, and ultimate parent of, its various affiliates, is in a position to exercise direction and restraint over the affiliates' production and pricing. As we stated in the *Preliminary Determination,* ''Thyssen's substantial equity ownership in Mexinox and Thyssen's other affiliates, in conjunction with the 'totality of other evidence of control' requires a finding that these companies are under the common control of Thyssen.'' Id. For a full discussion of Mexinox's affiliations see Comment 2 (below) and the Affiliation Memo.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Analysis of Interested Party Comments

Issues Relating to Sales

Comment 1: Affiliation

Mexinox argues that the Department erred in finding that it is affiliated with the Reseller, and in thus including the Mexinox-sourced U.S. sales by the Reseller in the margin calculation. It argues that under section 771(33) of the Act, the Department can find affiliation between Mexinox and the Reseller only if it finds either:

1. A direct relationship between Mexinox and the Reseller whereby one company:

a. Directly or indirectly owns, controls, or holds the power to vote five percent or more of the other company's outstanding voting shares (subsection (E)); or,

b. Otherwise controls the other company (subsection (G)); or

2. An indirect relationship between Mexinox and Reseller whereby the two companies directly or indirectly control, are controlled by, or are under common control with another party (subsection (F)).

Regarding a possible direct relationship between Mexinox and the Reseller, Mexinox argues that the facts do not support such a finding because neither company directly or indirectly owns, controls, or holds the power to vote five percent or more of the other company's outstanding voting shares, and there is no direct bilateral relationship that allows one company to control the other. It states that while the Reseller's parent company, Thyssen AG (Thyssen), does indirectly own more than five percent of Mexinox through its ownership of Thyssen Stahl AG (Thyssen Stahl) (which, jointly with Fried. Krupp AG Hoesch-Krupp (Krupp), owns the entity Krupp Thyssen Stainless (KTS), Mexinox's immediate parent), the relationship that must be examined is that between Mexinox and the Reseller, and not that between Mexinox and Thyssen. The corporate relationships at issue in this investigation, Mexinox argues, are similar to those that existed in *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Review,* 62 FR 18404 (April 15, 1997) (*Steel from Korea*). There respondent POSCO participated in a joint venture (the entity POCOS) involving DSM, a parent company of respondent Union. The Department concluded that despite the existence of the joint venture, POSCO and Union were not affiliated because (1) the two companies were separate operational entities with no overlapping stock ownership, and (2) nothing in the record indicated that either Union or POSCO was in a position to control, either legally or operationally, the other party. Mexinox argues that for the same reasons the Department must reach a similar conclusion here if it focuses on Mexinox and the Reseller, the entities at issue, rather than on Mexinox and Thyssen.

Given the absence of a direct relationship between the parties at issue, Mexinox argues, Mexinox and the Reseller cannot be deemed affiliated unless, in accordance with subsection (F) of section 771(33) of the Act, they directly or indirectly control a third party, or are themselves controlled by, or under common control with, another party. Since neither Mexinox nor the Reseller control Thyssen, Mexinox states, and the three companies are not under the common control of another party, Mexinox cannot be deemed affiliated with the Reseller unless Thyssen also directly or indirectly controls Mexinox. Mexinox argues that despite the Department's preliminary determination, such is not the case. It cites *Steel from Korea* to demonstrate that the Department has held that the participation of two companies in a joint venture (such as is the case here with Thyssen and Krupp, which jointly own KTS, Mexinox's immediate parent) does not mean that the companies' respective subsidiaries are affiliated with each other. As explained above, in *Steel from Korea,* POSCO and DSM jointly owned the entity POCOS, and

DSM independently owned and controlled a subsidiary, Union, which had no operational or legal connection to POCOS. In response to petitioners' argument that POSCO and Union were affiliated, the Department stated, ''POSCO affiliation with DSM (through POCOS) and DSM control over Union do not add up to POSCO control of Union. The affiliation standard set forth in subsection (F) is thus not satisfied.'' *See Steel from Korea,* 62 FR at 18417. Using the same reasoning, Mexinox argues, the Department cannot find affiliation between Mexinox and the Reseller simply because Krupp and Thyssen jointly own KTS.

Furthermore, Mexinox argues that in making its determination that Thyssen has the ability to control Mexinox and the Reseller (explained in a December 17, 1998 memorandum to Joseph Spetrini, available in the public file (Affiliation Memo)), the Department failed to consider both the applicable law and certain factual data indicating that no such control exists. 19 CFR § 351.102(b)(1998) states that:

> In determining whether control over another person exists, * * * the Secretary will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretary will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product * * *

Furthermore, in the preamble to the final rules adopting this definition the Department stated that ''we will consider the full range of criteria identified in the SAA (Statement of Administrative Action), at 838, in determining whether control exists.'' *See Final Rules,* 62 FR at 27998. Moreover, Mexinox argues, the SAA admonishes that the determination of whether control exists must ''reflect the realities of the marketplace.'' *See SAA* at 838.

Given these legal criteria, Mexinox argues, the Department's determination was flawed because it is Krupp, and not Thyssen, that controls the operations of KTS and Mexinox, including Mexinox's production, pricing, and cost decisions. Thyssen, Mexinox states, does not have the ''potential to impact'' such decisions. This ''marketplace reality'' is reflected in both a June 5, 1995 Krupp/Thyssen Stahl shareholders agreement and in the circumstances surrounding KTS's and Mexinox's operations. By its terms, this shareholders agreement, Mexinox argues, ensures that Thyssen does not have the ability to control KTS's operational decisions, and that the ability to make such decisions rests solely with Krupp. In the Affiliation Memo, Mexinox argues, the Department virtually ignored the provisions establishing Krupp's direct control over KTS, and focused instead on certain provisions that in principle allow Thyssen Stahl to exercise a degree of influence over KTS in certain limited circumstances. For example:

- The Department is correct that Thyssen was involved in defining the underlying purpose of the joint venture prior to the establishment of KTS, but the shareholders agreement in no way suggests that Thyssen enjoyed ongoing operational control over KTS *during the POI.* All joint venture partners enjoy freedom to contract at the outset of a project. In this case, Mexinox states, in consideration for giving up control over its stainless steel assets to Krupp through KTS, Thyssen gained Krupp's management expertise and experience in stainless steel manufacturing. From that point forward, Mexinox states, Thyssen by agreement became a passive partner in the management of KTS.
- The Department concluded from the shareholder's agreement that Thyssen Stahl retained ''the ability to affect KTS's stainless steel production and sales.'' However, Mexinox argues, the ability to affect a party is not tantamount to the ability to control the party. A finding of affiliation requires a showing of operational control, and not the ability to affect another.
- The Department, in stating that Thyssen Stahl's 40 percent holding in KTS is ''sufficient to block (*i.e.*, restrain) certain KTS activities,'' shows that it is focusing on issues relating to the corporate structure of KTS (*e.g.*, decision-making powers), rather than the operational matters that should be examined in an affiliation analysis (*e.g.*, the ability of one party to influence the production, sales, or transfer pricing of the other).
- The Department's affiliation memo states that under the shareholders agreement specific powers and authority are accorded directly to Thyssen as part of the agreement. This statement, Mexinox argues, is a broad overstatement. The plain language of the shareholders agreement establishes a dominant role for Krupp in the formation and operation of the KTS management team and sharply limits Thyssen's operational powers and authority as a party to the agreement.

Other examples Mexinox gives are not susceptible to public summary, and are discussed in its March 29, 1999 case brief at pages 16–18.

For these reasons, Mexinox argues that the Department should disregard the Reseller sales data and should instead calculate a margin based on the arm's-length sales *to* the Reseller.

Petitioners argue that the Department correctly determined that Mexinox and the Reseller are affiliated. First, they argue that Thyssen does not need to be a majority shareholder in a company for the Department to determine that control exists. As support for this proposition, they cite *Plate from Brazil* in which the Department stated,

> The legislative history of the URAA make it clear that the statute does not require majority ownership for a finding of control. Even a minority shareholder interest, examined within the totality of other evidence of control, can be a factor that we consider in determining whether one party is in a position to control another.

See Cut-to-Length Carbon Steel Plate from Brazil; Final Results of Antidumping Duty Administrative Review, 62 FR 18486, 18490 (April 15, 1997) (*Plate from Brazil*).

Furthermore, petitioners argue that contrary to Mexinox's arguments, evidence of actual control is not required under the statute to make a finding of control. Control is defined in terms of the ability to control, that is, having the power to restrain or direct another company's commercial activities. This does not require that the one company be in a position to exert absolute control over the other, either directly or indirectly. It is sufficient if the company merely has ''the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.'' *See* 19 CFR § 351.102(b). Petitioners argue that the substantial shareholdings in Mexinox through KTS by Thyssen Stahl (and, by extension, its parent Thyssen) are only one important indicator of Thyssen's control over Mexinox. Another is that Mexinox is publicly described and well-known as a member of both the Krupp and Thyssen Groups. Still another is that the record clearly demonstrates that the two industrial groups have had a high—and increasing—degree of cooperation and coordination.

Furthermore, petitioners argue that the fact that the shareholder's agreement nominally gives Krupp (rather than Thyssen) ''full operational and industrial control over KTS'' is not dispositive. The preamble to the Department's regulations makes clear, they argue, that the test is not whether a company has the ''enforceable ability to compel or restrain commercial actions,'' but whether one firm is ''in a position to exercise restraint or direction'' (regardless of whether such control is actually exercised). *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27298 (May 19, 1997). Moreover, they state, the terms ''restraint and direction'' are not synonymous with ''absolute control,'' but rather are more suggestive of substantial ''influence'' over the other party's commercial decisions.

Moreover, petitioners argue, the question is not which joint venture partner is dominant under the shareholders agreement or how disputes among the KTS directors are to be resolved under the agreement. They argue that the very nature of a joint venture is to operate a business for mutual benefit and with a least a large degree of consensus, whatever the relative equity interests of the parties. Clearly, Thyssen is participating in KTS because it hopes to benefit from the venture. It is extremely unrealistic to believe that Thyssen would take a forty percent stake in KTS and not expect that venture to be responsive to Thyssen's own commercial interests to at least some extent.

Furthermore, petitioners argue that the recent full merger of Krupp and Thyssen confirms the closely allied interests of the two firms. While Krupp and Thyssen formally remained separate companies during the POI, their formal merger agreement in September 1998 only confirmed what was obviously a longstanding strategic alliance between the two firms, reflected most prominently in KTS. Between the KTS joint venture and the ongoing merger discussions between them, petitioners state, Thyssen and Krupp can reasonably be regarded as part of a single corporate grouping during the POI.

Petitioners also argue that Mexinox's reliance on *Steel from Korea* is misplaced. The issue here is not, as in *Steel from Korea,* whether two parties who control a third party are themselves affiliated, but whether a person jointly controlled by two parties is affiliated with those parties' subsidiaries.

Based on the foregoing analysis, petitioners argue that Mexinox is affiliated with Thyssen and that Thyssen has the ability to exercise restraint over Mexinox within the meaning of 19 USC § 1677(33) of the Act. Moreover, given that Thyssen is affiliated with its subsidiaries and thus has the ability to control those subsidiaries, they argue that Mexinox is affiliated as well with the Thyssen subsidiaries under the combined provisions of 19 USC §§ 1677(33)(F) and (G) of the Act.

Department's Position: We disagree with Mexinox. As stated in our *Preliminary Determination* and Affiliation Memo, we have determined that Mexinox is affiliated with Thyssen Stahl and Thyssen. Section 771(33)(E) of the Act provides that the Department shall consider companies to be affiliated where one company owns, controls, or holds, with the power to vote, five percent or more of the outstanding shares of voting stock or shares of any other company. Where the Department has determined that a company directly or indirectly holds a five percent or more equity interest in another company, the Department has deemed these companies to be affiliated.

We examined the record evidence to evaluate the nature of Mexinox's relationship with Thyssen Stahl and Thyssen and have determined that Mexinox is affiliated with Thyssen and Thyssen Stahl. Thyssen Stahl indirectly owns and controls, through KTS, thirty-six percent of Mexinox's outstanding stock. Thus, Thyssen, which wholly owns Thyssen Stahl, likewise indirectly owns and controls thirty-six percent of Mexinox. Mexinox's Section A questionnaire response (p. A–12) dated September 8, 1998 (section A response), states that Mexinox is ninety-percent owned by KTS. The supporting exhibits to this submission confirm Thyssen Stahl's interest in KTS and KTS's ninety-percent shareholder interest in Mexinox. In a submission dated December 9, 1998, the petitioners placed on the record publicly available data that confirmed not only the foregoing shareholding interests, but also confirmed that Thyssen Stahl is a wholly-owned subsidiary of Thyssen. Consequently, Thyssen, through Thyssen Stahl and KTS, indirectly owns a thirty-six percent interest in Mexinox. Therefore, Mexinox as a subsidiary of the joint venture entity KTS, is affiliated with the joint venturer Thyssen Stahl and its parent company Thyssen pursuant to section 771(33)(E) of the Act. *See Steel Wire Rod From Sweden; Notice of Final Determination of Sales at Less Than Fair Value,* 63 FR 40449, 40453 (July 29, 1998) (*Rod from Sweden*).

In addition, we have determined that Mexinox is affiliated with Thyssen and its U.S. affiliates. Section 771(33)(F) of the Act provides that the Department shall consider companies to be affiliated where two or more companies are under the common control of a third company. The statute defines control as being in a position legally or operationally to exercise restraint or direction over the other entity. Actual exercise of control is not required by the statute. In this investigation the nature and quality of corporate contact necessitate a finding of affiliation by virtue of Thyssen's common control of its affiliates and of KTS. *See Preliminary Determination* 64 FR at 126 and the Affiliation Memo. Such a finding is consistent with the Department's determinations in *Plate from Brazil* (64 FR at 18490) and *Rod from Sweden* (63 FR at 40452).

We also agree with petitioners that record evidence show that Thyssen, as the majority equity holder and ultimate parent company of its various affiliates, is in a position to exercise direction and restraint over the Thyssen affiliates' production and pricing. *See Preliminary Determination* 64 FR at 126 and the Affiliation Memo. Thyssen also holds indirectly a substantial equity interest in Mexinox, plays a significant role in Mexinox's operations and management, and thus enjoys several avenues for exercising direction and restraint over Mexinox's production, pricing and other business activities (*see* Affiliation Memo). In sum, Thyssen's substantial equity ownership in Mexinox and Thyssen's other affiliates, in conjunction with the ''totality of other evidence of control,'' requires a finding that these companies are under the common control of Thyssen. Therefore, as in the *Preliminary Determination,* we continue to find that Mexinox is affiliated with Thyssen and Thyssen's U.S. subsidiaries, including the Reseller.

Comment 2: Overreporting of Sales

Mexinox states that the Reseller over-reported resales of material purchased from Mexinox by including transactions that it subsequently traced to purchases of non-subject cut-to-length sheet. Mexinox argues that since this merchandise is not covered by the scope of the investigation, these non-subject sales should be excluded from the Reseller's sales database.

Additionally, Mexinox separately listed at verification another much smaller number of transactions where the material sold by the Reseller was linked to non-subject cut-to-length metal purchased from Mexinox, but where the U.S. Reseller performed additional processing. Mexinox requests that this data set of non-subject merchandise also be excluded from the margin calculations for the final determination.

Department's Position: We agree with Mexinox that information on the record indicates that the Reseller reported some sales that are not subject to the investigation. *See* the March 15, 1999 Reseller sales verification report, p. 4. In our calculation of facts available for the Reseller's sales in this final determination, we have excluded the overreported volume of sales from the calculation.

Comment 3: Downstream U.S. Sales

Mexinox argues that the Department erred in the *Preliminary Determination* by including in its calculations a set of sales made by a downstream reseller of the Reseller, and by applying a facts available rate to these sales that was aberrational. The Reseller resold a small amount of merchandise to another reseller of the Thyssen Group of companies in the United States (Reseller II) on the last day of the POI, and the first of this material was resold by U.S. Reseller II after the POI. Mexinox argues that since the first sale to an unaffiliated party occurred outside of the POI, none of these sales should be included in the investigation. The respondent further argues that it put forth its best effort to provide information about the Reseller to the Department, and objects to the Department's decision to resort to *adverse* facts available. Specifically, Mexinox disagrees with the Department's decision to apply a facts available rate derived from a sale of non-prime material. Finally, Mexinox believes that the Department made a clerical error in applying facts available that resulted in an overstatement of the margin for the sales at issue.

Petitioners state that there is no basis for the respondent's objection to the Department's selection of facts available. They argue that it is not appropriate to assume that sales to which facts available are being applied are prime merchandise. They also restate that the respondent's non-prime designations were found to be completely unreliable at verification, and that the Department should continue to apply the highest transaction margin where it determines that facts available is appropriate for a quantity of U.S. sales.

Department's Position: We agree with Mexinox that because the sales were sold to the first unaffiliated buyer in the United States after the end of the POI, they should not be included in the analysis for this determination. In our calculation of facts available for the Reseller's sales in this final determination, we have excluded the downstream volume of sales from the calculation.

Comment 4: Early Payment Discounts

Mexinox contends that the Department should apply neutral, rather than adverse, facts available to the early payment discounts given by the Reseller that the Department discovered (after publication of the *Preliminary Determination*) at the Reseller verification. It states that the discounts were not identified prior to verification as a result of a misunderstanding on the part of company personnel. Furthermore, it argues that its volume of discounts was very small, and the Reseller would have gained no possible advantage by intentionally not reporting them. For these reasons, Mexinox argues, the Department should apply neutral facts available. It suggests applying a rate to all U.S. sales based on the value of early payment discounts as a share of total sales revenue.

Petitioners state that should the Department decide to use the Reseller's sales listings, it would be appropriate for the Department to attribute to each U.S. sale the maximum early payment discount offered. Petitioners argue that because the respondent failed to report these discounts on a sale-specific basis, the impact of this adjustment is not negligible, but rather unknown. They argue further that the respondent's explanation of why the adjustment was unreported is irrelevant, and that the overall volume of omissions throughout the investigation process should compel the Department to apply facts available to the entire quantity of the Reseller's sales listing. However, petitioners argue that if the Department decides to use the Reseller's sales listing, it should attribute to each U.S. sale the maximum early payment discount offered.

Department's Position: Because we have applied facts available to the Reseller's sales, this issue is moot.

Comment 5: Prime Merchandise

Mexinox disputes the Reseller sales verification report's determination that some of the material shipped as non-prime merchandise was prime merchandise. Mexinox claims that of the six non-prime transactions reviewed during verification, three had physical defects, one was mis-reported, and two involved obsolete products which remained in inventory for two years due to unusual product characteristics. Mexinox cites the existence of a Department memorandum which supports the definition of secondary merchandise as ''generally steel which has suffered some defect during the production process* * *'' (emphasis added). However, Mexinox argues that there are other circumstances, such as sales of obsolete inventory, 'side strands,' 'pup coils,' and the like which also call for non-prime designation of the material. In support of this argument, the respondent emphasizes that these sales were designated non-prime in the ordinary course of business before commencement of antidumping proceedings. Mexinox cites the existence of U.S. steel industry price lists which confirm that non-prime designations are not limited to products with surface damage or chemistries out of tolerance, but rather include products with unusual characteristics which make it impossible for the producer to sell the product as prime grade and at prime grade prices. Therefore, Mexinox argues, the Department should not presume that only products with specific physical damage or chemical irregularities are legitimately classified as secondary.

Petitioners object to Mexinox's method of identifying non-prime merchandise, stating that the method used has one implication when used throughout the industry but a very different (and inappropriate) implication in the context of an antidumping analysis. Petitioners do not dispute the contention that for certain reasons an industry may on occasion designate a non-defective product as non-prime. However, they argue that for antidumping purposes, only verifiably defective merchandise can be considered non-prime. Petitioners state that only through this approach to classifying prime vs. non-prime merchandise can the Department verify the *bona fide* nature of such categories. Petitioners state that at a minimum, the Department should apply adverse facts available to the quantity of Reseller sales reported as non-prime (with the exception, perhaps, of the three sales that were found at verification to be correctly so designated). Petitioners further argue that the Department should state in its final determination that in any administrative review proceedings, only products with objective physical defects will be treated as non-prime.

Department's Position: Because we have applied facts available to the Reseller's sales, this issue is moot.

Comment 6: Use of Facts Available for Reseller Based on Failure of Verification

Mexinox reiterates its position regarding its affiliation with the Reseller, but insists that if the Department uses the Reseller's data in determining the final dumping margin, it use neutral facts available as a result of any unforeseen errors or omissions in the data. Mexinox claims that the use of adverse facts available would be inconsistent with Departmental policy, because (1) Mexinox acted to the best of its ability to respond to the Department's request for information, and (2) any deficiencies in the data provided by the Reseller are due to circumstances beyond Mexinox's control because it is unaffiliated with the Reseller, and had no operational control over the Reseller. With respect to the latter point, Mexinox argues that the Department has in the past declined to use adverse facts available in cases where the respondent's inability to obtain the requested data is due to its lack of operational control over the reseller. In one instance where it did otherwise, the CIT reversed and remanded the Department's final determination applying adverse facts available to certain unreported downstream sales by secondary steel centers in which the respondent owned a minority interest. *See Usinor Sacilor* v. *United States,* 872 F.Supp. 1000 (Ct. Int'l Trade 1994) (*Usinor*).

Petitioners argue Mexinox has failed to make a case that the use of neutral facts available is appropriate in this case. They argue that particularly in light of Mexinox's affiliation with Thyssen and the Reseller (an indirect subsidiary of Thyssen), the Reseller's lack of cooperation should be imputed to Mexinox, and adverse facts available applied to the Reseller's response. Regarding Mexinox's argument that it cooperated to the best of its ability, petitioners state that the exceptional number and range of instances in which Mexinox has given incomplete and inaccurate data to the Department do not present the picture of a company that was truly intent on assisting the Department in the investigation. Had Mexinox straightforwardly wanted to give its unqualified cooperation to the Department, petitioners argue, Mexinox would have come forth with all of the Reseller's sales and would not have compiled such a spotty and unreliable record. Based on the record, they state, it is not reasonable to say that Mexinox has cooperated to the best of its ability, and adverse facts available are therefore appropriate.

Regarding Mexinox's argument that it had no operational control over Reseller, petitioners argue that allowing a respondent automatically to escape adverse facts available on the ground that the respondent cannot secure information from another party is not an axiom that the Department should embrace. The fact that necessary information lies with even an unrelated third party is not a bar to application of adverse facts available. *See Helmerich & Payne, Inc.* v. *United States,* 24 F.Supp. 2d 304, 308–309 n.6 (Ct. Int'l Trade 1998) (the Department may apply adverse facts available in its discretion even when the requested information is controlled by an uncooperative unrelated company); *Asociacion Colombiana de Exportadores de Flores* v. *United States,* 6 F.Supp. 2d 865, 887–88 (Ct. Int'l Trade 1998); *Transacom, Inc.* v. *United States,* 5 F.Supp. 2d 984, 990–91 (Ct. Int'l Trade 1998). Ultimately, therefore, whether or not the Department should resort to adverse facts available, petitioners argue, is a decision the Department has to make after having scrutinized the particular facts of a given case, including whether the respondent has cooperated to the best of its ability with the Department.

Furthermore, petitioners argue that the holding in *Usinor* has no application here. First, the operative facts of *Usinor* were very different from those here. In the proceeding that gave rise to *Usinor* there was obviously an active discussion of limiting reporting requirements. By contrast, Mexinox did not even attempt to engage in a dialogue about reporting requirements, instead unilaterally conferring permission for limited reporting upon itself. Moreover, the limited reporting in question for *Usinor* dealt with 180,000 invoices that would have had to be manually traced to the supplier—a hundred-fold more than were at stake in Mexinox's situation. Finally, the question in *Usinor*—whether the respondent has operational control over its affiliated reseller—is clearly moot in this case because Mexinox's affiliated reseller did in fact respond to the Department's questionnaire in the instant proceeding (albeit incompletely).

Moreover, petitioners argue that Mexinox's arguments are misplaced. The question at hand, they state, is not Mexinox's direct control over the Reseller, but Thyssen's control over both Mexinox and the Reseller, its indirect wholly-owned subsidiary. Had there been the will by Mexinox to be responsive, the means were at hand for it to secure the data through the intervention of Thyssen.

Further, petitioners argue that the verification uncovered numerous significant errors that degrade the integrity of the sales listing, and that therefore adverse facts available is warranted. First, the Reseller never reported that it had granted early payment discounts on sales to U.S. customers. The Department discovered the existence of these discounts at the verification. (Petitioners also argue that if the Department does not apply facts available to all of the Reseller's U.S. sales, it should at least apply facts available to the early payment discounts.)

Second, petitioners state that the Reseller improperly applied prime and non-prime designations to its reported sales. They state that the record does not support the Reseller's contention that it does not warrant non-prime merchandise. Furthermore, they argue, the verification report indicates that the Reseller acknowledged at the verification that some of the material it sells as non-prime actually has no physical defects. This admission is borne out, petitioners state, by the Department's attempt to verify the non-prime designation reported for specific sales. Of the six reported non-prime merchandise sales the Department examined at verification, only two actually consisted of defective merchandise. *See* Reseller sales verification report at 7. The danger presented by accepting without penalty what is at best a subjective designation by the Reseller is that it invites manipulation. Respondents will be free to label as non-prime any low-priced sales that they would like to have matched to lower priced sales in the home market, thereby limiting the Department's ability to detect and quantify dumping that is actually occurring.

Third, petitioners argue that there were numerous other errors in the sample sales selected for verification. These included:

- Misreported commission amounts;
- Misreported grades;
- Unreported further manufacturing charges;
- Misreported payment dates;
- Overstated gross prices;
- Misreported freight;
- Misreported quantities; and
- Misreported interest rates.

Petitioners argue that none of the four Mexinox observations examined by the Department came up ''clean.'' Even the overall quantity and value of sales reported to the Department could not be reconciled.

Furthermore, petitioners argue that the reported further manufacturing costs were also inaccurate. Based on the cost verification report, they state that:

- The cost allocation method (based on standard ''quantity extras'') proved to be flawed;
- Data underlying product-specific yield ratios proved to be nonsensical in that output exceeded input;
- The overall reporting of finished goods was grossly overstated;
- costs of certain processes went unallocated; and
- Neither the outside processing costs nor the basis upon which the Reseller allocated these costs to subject merchandise could be substantiated.

Petitioners argue that because of the last-mentioned point, if the Department decides not to use facts available for the

Reseller's entire sales database, it should at least use adverse facts available for the value-added adjustment.

Mexinox argues that the Reseller did not fail verification. Although the Department did identify some errors at verification, they were isolated and did not undermine the basic integrity of the data.

Regarding early payment discounts, Mexinox states that the failure to report this adjustment was caused by a misunderstanding on the part of Reseller officials, and was an isolated and discrete error that had no bearing on the accuracy or completeness of other portions of the reported data. Mexinox acknowledges that some form of partial facts available may be appropriate to fill in the gap in the data, but states it would be inappropriate and unfair to apply punitive adverse facts available.

Regarding the designation of prime and non-prime merchandise, Mexinox admits that the Reseller does sell a small amount of material as second grade that does not have physical or chemical defects, but states that that material does contain other physical features rendering it unfit for sale as a prime product (*e.g.*, unusual sizes, weights, and dimensions). Such non-standard material has lower value and more limited marketability because the material is either unsuitable for normal uses (such as where the coil is too small to be efficiently run through machinery) or must be further worked to become usable (such as where the material must be further slit, or cut to a standard size). Because of its limited commercial value, such material must be sold in the ordinary course of trade as non-prime products. The practice that the Reseller follows in this regard, Mexinox states, is no different from that followed by petitioner J&L Specialty Steel which publishes a price list for ''secondary'' products including prices for ''sidestrands'' and ''excess prime.'' Furthermore, Mexinox argues that if the Department were to follow the narrow definition of ''non-prime'' advocated by petitioners it would be ignoring real physical differences in the material that limit its marketability and justify downgrading the material as non-prime. The Department would err by unjustifiably ignoring an established industry-wide practice followed by petitioners themselves. Finally, Mexinox argues that petitioners' objection that the designation of quality under these circumstances is subjective and therefore not to be trusted makes no sense in the context of this investigation. The Reseller's coding of non-prime products occurred before the filing of the antidumping petition and was carried out in the ordinary course of business. Therefore, Mexinox argues, whatever concerns petitioners may have about ''manipulation'' of quality designations to affect dumping comparisons in the future do not apply to this investigation.

Regarding the numerous miscellaneous errors that petitioners cite, Mexinox states that though the Department did identify some small errors in the Reseller data during verification, the errors were not nearly as widespread or serious as petitioners would wish them to appear. Mexinox points out as a preliminary matter that the verification report indicates that some of the sales selected for tracing were selected because they had anomalous features. Thus, Mexinox argues, these sales transactions cannot be considered representative of the entire sales database. Furthermore, Mexinox states that the petitioners' summary of the other errors allegedly discovered in the Mexinox sample sales includes inaccuracies and exaggeration. For example:

• The ''misreported interest rates'' which petitioners cite actually refers to a first-day clerical correction, rather than an error discovered at verification.

• There were no unreported further manufacturing charges. The verification report clearly notes that a further manufacturing cost was reported for the transaction at issue.

• No freight was found to be misreported. The invoice presumably referred to by the petitioners was a transaction where the computer system did not include a standard freight amount. Rather than report zero freight for this transaction, the Reseller conservatively reported an average freight amount.

• The ''misreported payment dates'' and ''misreported commission amounts'' actually were not separate errors but instead were one isolated error in the reporting of payment date for a particular invoice which also affected the commission amount for that sale.

Mexinox also disputes petitioners' statement that the ''overall quantity and value of sales reported to the Department could not be reconciled.'' Mexinox, assuming that petitioners are referring to the tiny difference between the quantity and value in the reporting database and the data contained in the company's invoice history file, states that the Reseller fully reconciled these amounts. The Reseller sales verification report states, ''Reseller was able to produce a list of all the invoices that account for these differences. It is contained in verification exhibit 16.'' *See* Reseller sales verification report at 3.

Furthermore, Mexinox disputes petitioners' claims with respect to the cost verification. It disputes petitioners' claim that the cost allocation method used to report further manufacturing costs was found to be flawed. Mexinox acknowledges that a discrete error in the programming logic was identified at the verification, but states that the effect of that error was very limited and Mexinox was able to account for and list all of the transactions affected.

With respect to yield calculations, Mexinox states that there was no discrepancy in the quantity of finished goods used in the calculation as erroneously implied in the Reseller cost verification report. The Department perceived there to be a discrepancy only because the verifiers were comparing an incorrect figure submitted in the initial Section E response to the correct figure timely placed on the record before verification.

Also contrary to petitioners claims, Mexinox argues, there is no finding in the Department's verification reports that ''costs for certain processes went unallocated.'' The closest thing to such a finding is the Department's observation that the computer program did not directly assign a standard cost for re-spinning processing. However, the costs of respinning were fully absorbed in the reported further-manufacturing expenses through the application of the variance. Thus, no processing costs remained unallocated.

Finally, regarding the calculation of outside processing costs, Mexinox argues that it employed the best possible means of allocating outside processing costs for the combined processors given limitations in the available data. Similarly, although there may have been differences due to timing between the figures reported in the management reports used to report outside processing costs and the amounts booked, those differences were small and were not clearly biased in either direction. The Reseller's reporting method therefore, Mexinox states, was both reasonable and accurate.

Based on the above information, Mexinox argues that, contrary to petitioners' claims, the limited errors identified in the Reseller's data do not come close to justifying the rejection of the entire database in favor of facts available. Furthermore, even if the Department deems it necessary to apply partial facts available with respect to sales transactions identified as having errors, the Department may not lawfully apply an adverse inference with respect to those transactions absent a finding that the Reseller failed to act to the best of its ability. It argues that the conditions for the application of adverse facts available are not present here because it is clear that both Mexinox and the Reseller acted to the best of their abilities. Moreover, Mexinox argues, it is critically important for the Department to remember that the Reseller's data were compiled and presented by the Reseller, and not Mexinox (which, it states, has no operational control over the Reseller). Therefore, applying adverse facts available in this case would not further the Department's goal of encouraging future compliance because Mexinox simply lacks the ability to respond any more completely than it already has.

Department's Position: We agree with petitioners that, pursuant to section 776(a) of the Act, total facts available are warranted with regard to sales through Mexinox's affiliated further manufacturer. In the instant case, the use of total facts available for the Reseller portion of Mexinox's section C response is warranted because the method and computer programming used by the Reseller to identify its products' physical characteristics and to match each of these products with its associated costs were found at verification to be accomplishing neither end consistently or accurately. Moreover, both the frequency of the errors and the absence on the record of information necessary to correct certain of these errors serve to undermine the overall credibility of the further-manufacturing response as a whole, thus compelling the Department to rely upon total facts available for the Reseller's database. Reliance upon total facts available is required for all further manufactured sales because the submitted data do not permit calculation of the adjustments required under section 772(d)(2) of the Act for ''the cost of any further manufacture or assembly (including additional material and labor) * * *''.

We also find, as explained below, that the use of an adverse inference is appropriate in this case because the record established that the Reseller failed to cooperate with the Department by not acting to the best of its ability in responding to our requests for information. The manifest and manifold errors in the Reseller's response evidence a failure to conduct even rudimentary checks for the accuracy of the reported further-processing data. Indeed, a reasonable check by company officials could have shown that (i) products that underwent no further processing were being assigned further-processing costs, (ii) further-processed products were not being assigned their appropriate processing costs, (iii) coils passing through certain processes were not being allocated any cost for the process, and (iv) the output width of slit coils generated by a given master coil exceeded the original width of that input coil.

While the Department frequently corrects reported costs or adjusts incorrect data with facts otherwise available in order to complete an investigation, it does so only when it is able reasonably to do so using information on the record, and when its knowledge of the company's records and the reasonableness and accuracy of the reporting method serve to establish the integrity of the underlying data. In this case, correction of the specific flawed data is not a viable option because of the high percentage of errors found through our testing (nearly 40 percent of the items tested were found to be in error). In addition, some of these errors cannot be corrected using information on the record. More importantly, the fundamental nature of these errors raises concerns as to the validity not only of the data subjected to direct testing, but of the remainder of the response as well.

The Department's antidumping questionnaire put interested parties on notice that all information submitted in this investigation would be subject to verification, as required by section 782(i) of the Act, and, further, that pursuant to section 776 of the Act the Department may proceed on the basis of the facts otherwise available if all or any portion of the submitted information could not be verified. In addition, in letters dated February 17 and 23, 1999, the Department provided the Reseller with the sales and cost verification agendas it intended to follow, both of which repeated the warning that any failure to verify information could result in the application of facts available. The cost verification agenda identified nine transactions that the Department intended to test. The Reseller had a full week to gather supporting documentation for these nine transactions and to test for itself the accuracy of the further manufacturing data. Clearly, the Reseller did not avail itself of these opportunities, since our testing at verification revealed that costs for three of the nine selected transactions contained fundamental and significant errors. *See* Reseller cost verification report at 14 through 17. When the Department then selected nine additional transactions for review, four of these were also found to reflect significant errors. These included allocating processing costs to non-processed material (id. at 15), mis-allocating quantity surcharges (id.), and, more troubling, reporting finished weights which exceeded the weight of the input material (''[t]his is impossible and for this reason we could not verify the amount of processing for this observation.'' Id.).

The first step identified in the Department's verification agendas calls for the respondent, at the outset of verification, to present any errors or corrections found during its preparation for the verification. As we stated above, none of the errors discussed here were presented by the Reseller at the outset of verification; many of them were manifestly apparent and the Reseller was obligated to notify the Department of these problems prior to verification.

We disagree with Mexinox's assertion that the numerous errors identified by the Department affect only a small number of products out of the possible universe of transactions and that the effect of the errors is minuscule. As mentioned above, the Reseller created a computer program to respond to the Department's questionnaire which sought to match an input coil to each output coil sold and to assign a cost for each processing step through which the finished coil supposedly passed. When we tested this computer program at verification to assess its accuracy and reliability, we found that seven of eighteen tested transactions contained errors in either the allocation of processing costs or in the matching of input coils to output coils. In two of these cases, the Reseller had assigned processing costs to products which had, in fact, undergone no processing whatever. We note that this discrepancy arose from the input coils and output coils identified by the Reseller's own computer program. In another transaction, the combined widths of the finished products were greater than the original width of the input coil as identified by the system, an obvious physical impossibility that should have been identified by the Reseller as an error. The nature of these errors raises serious doubts as to the accuracy of the overall program used to match input master coils to output slit coils as sold. It also serves to undercut Mexinox's assertions that it acted to the best of its ability in compiling this portion of its section C response. Further, several of these errors served to understate the costs of further processing by shifting portions of these costs to non-further-processed merchandise. Since these errors affect the entire population of products sold (*i.e.*, both processed and unprocessed products), it is not possible for the Department to isolate the problems and adjust for the errors accordingly.

The program also failed to assign properly certain finishing costs. Certain coils with a pre-buff finish applied to the underside had no finishing costs reported for the additional processing. Finally, other transactions contained errors in the application of surcharges for processing small quantity orders. In the samples tested, the Reseller had reported quantity extra charges in excess of what should have been reported. This error led to an understating of the variance between the costs as allocated for purposes of the response and the costs as maintained in the Reseller's financial accounting system. Once again, both errors reduced the costs allocated to further processed products, thus creating further doubts as to the accuracy of the underlying reporting method.

We also find unpersuasive Mexinox's suggestion that because the Reseller had to develop the computer program as a result of the Department's highly detailed questionnaire it should therefore be held blameless for any errors arising from its implementation of its chosen computer logic. We must stress that every respondent in every antidumping investigation is faced with the question of how best to sort and retrieve the sales and cost data as maintained in its normal course of business to respond to our questionnaire. This necessarily entails the winnowing of its larger universe of sales to capture only that merchandise subject to our investigation, and the further creation of unique data fields to reflect the specific model-match criteria and the applicable expense adjustments set forth in the questionnaire. Finally, the resulting database must be refined to present the transaction-specific information on sales and adjustments in the precise formats required by the Department. That the Reseller, like virtually all respondents in antidumping proceedings, chose to rely upon a computer program as the easiest means to accomplish this end is unremarkable and in no way mitigates the failings found in this case. We note further that Mexinox itself largely succeeded in supplying data relating to sales, expenses, and COP in compliance with equally detailed reporting requirements. The surfeit of errors in the Reseller's data was not the result of any unduly burdensome reporting requirements imposed by the Department; rather, these shortcomings resulted in their entirety from the Reseller's reliance on faulty computer programming and data which the Reseller apparently failed to review prior to verification.

Finally, we disagree with Mexinox's assertion that it was able to quantify the extent of the cost errors on the final day of verification. First, we note that the Reseller made no attempt to explain or quantify two of the errors discovered by the Department, the allocation of processing costs to unprocessed material and the misreporting of the small-quantity surcharge. More importantly, due to the volume of information that must be verified in a limited amount of time, the Department does not look at every transaction, but rather samples and tests the information provided by respondents. See, e.g., *Bomont Industries* v. *United States*, 733 F. Supp. 1507, 1508 (CIT 1990) ([v]erification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness.'') and *Monsanto Company* v. *United States*, 698 F. Supp. 275, 281 (''[v]erification is a spot check and is not intended to be an exhaustive examination of a respondent's business.''). It has been the Department's longstanding practice that if no errors are identified in the sampled transactions, the untested data are deemed reliable. However, if errors are identified in the sample transactions, the untested data are presumed to be similarly tainted. This is especially so if, as here, the errors prove to be systemic in nature. The fact remains unchallenged that for two days of a scheduled three-day verification we tested a number of further-manufactured transactions to assess the reliability of the Reseller's method for reporting costs and discovered numerous errors. The Reseller claimed on the last day of verification that it had reviewed its further-manufacturing data and isolated the magnitude of these errors. However, Mexinox's assertion in its case brief that the Reseller succeeded in identifying all of the errors is an unsubstantiated ipse dixit which could not be verified in the time remaining. The only way to test this eleventh-hour claim would have been to re-verify the entire further-manufacturing database. Moreover, the proper time for the Reseller to check the accuracy of its reported data was before these data were submitted, or, at the latest, prior to the start of the verification. We presented Mexinox and the Reseller with the cost verification agenda one week in advance precisely to allow them to prepare properly for verification. Had the Reseller reviewed the accuracy of the computer program used to report its further manufacturing costs prior to verification, it could have identified the errors and presented them to the Department on the first day of verification. We consider it inappropriate for respondents to expect the Department to retest the entire further manufacturing database on the last day of verification after the Department uncovers numerous errors as a result of its routine testing. Furthermore, the requirements of section 782(d) that the Department provide a respondent the opportunity to remedy such errors is inapplicable. Rather, as we stated in Certain Cut-to-Length Carbon Steel Plate from Sweden,

> [w]e believe [respondent] SSAB has misconstrued the notice provisions of section 782(d) of the [Tariff] Act. Specifically, we find SSAB's arguments that the Department was required to notify it and provide an opportunity to remedy its verification failure are unsupported. The provisions of section 782(d) apply to instances where ''a response to a request for information'' does not comply with the request. Thus, after reviewing a questionnaire response, the Department will provide a respondent with notices of deficiencies in that response. However, after the Department's verifiers find that a response cannot be verified, the statute does not require, nor even suggest, that the Department provide the respondent with an opportunity to submit another response.

Certain Cut-to-Length Carbon Steel Plate from Sweden, 62 FR 18396, 18401 (April 15, 1997).

Finally, we reject Mexinox's arguments with respect to the propriety of drawing an adverse inference with respect to a respondent over whom they allegedly had no operational control. Mexinox goes to great pains to assert that it never had control over the data submitted by the Reseller; therefore, any lack of cooperation evinced by Reseller cannot be imputed to Mexinox. See, e.g., Mexinox's case brief at 5. Mexinox presents the issue as one in which Mexinox was at the mercy of recalcitrant parties, only some of whom could be persuaded to participate in the investigation: ''It is critically important in this regard for the Department to remember that the U.S. Reseller's data was compiled and presented *by the U.S. Reseller*—without the involvement of Mexinox or any other respondent in these proceedings. Mexinox has not even seen—let alone reviewed or prepared—the challenged data, and was therefore not in a position to affect what or how that information is compiled or presented.'' (Emphasis in original). *See* Mexinox's rebuttal brief at 25. However, Mexinox's protestations that its officials did not have the opportunity to review the Reseller's submitted data for accuracy beg the point. The Department has never suggested that Mexinox was in a position to compel a reluctant Reseller to provide its sales and cost data to Mexinox; rather, the thrust of our affiliation determination has consistently been that *Thyssen,* not Mexinox, was in a position to direct its U.S. affiliates to provide complete and timely responses to the Department. For reasons beyond the Department's ken, the Reseller chose to submit responses under the guise of a cooperative respondent while withholding crucial information to make its responses usable for purposes of establishing statutory U.S. price.

We note that throughout this investigation Mexinox has been represented by legal counsel who certified each of Mexinox's (and the Reseller's) submissions of fact in this case, claiming the counsel had read the submission and had ''no reason to believe [it] contains any material misrepresentation or omission of fact.'' See 19 CFR 351.303(g). Similarly, on January 15, 1999, the Reseller certified that the responsible company official had read its submission and that the information therein was, to the best of the official's knowledge, complete and accurate. See, e.g., Mexinox's January 15, 1999 section E supplemental response. Finally, throughout the preparation for the Reseller verifications and the verifications themselves, counsel were present at all times in the conference room. The Reseller was also assisted by economic consultants retained by Mexinox specifically for purposes of preparing responses in this antidumping investigation. The fact remains that despite its disagreement with the Department's decision on affiliation, Thyssen succeeded in persuading the Reseller to submit a response; from that moment forward, it was incumbent upon the Reseller to submit complete and accurate responses to our questionnaires. It was the further responsibility of Mexinox's legal representatives, acting throughout this proceeding on Mexinox's behalf, to ensure that the data it helped prepare were reliable. Finally, the record does not reflect that after Mexinox was directed to submit the Reseller's sales and cost information it had trouble securing the Reseller's cooperation (aside from Mexinox's stated objections for the Department's legal reasoning). Had it been a case of Mexinox painfully and laboriously extracting each datum from a recalcitrant unaffiliated party, one would expect the record to reflect this in, for example, written pleas of an inability to submit the requested data, or appeals for modifications to reporting requirements in response to limited available data. Instead, there is silence on this point. Mexinox proceeded throughout the investigation as though the Reseller's full cooperation was a given, once the Department had notified Mexinox that the further-processed sales would be required for our analysis.

Therefore, we find the record clearly indicates that Mexinox had the resources to secure the necessary level of cooperation from the Reseller. The record also indicates that the Reseller failed to cooperate by not acting to the best of its ability in compiling its further-manufacturing response. Moreover, because the information possessed by the Reseller is essential to the dumping determination, the use of adverse facts available is appropriate regardless of Mexinox's involvement in providing the information. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Japan,* 64 FR 24329, 24367 (May 6, 1999). Therefore, consistent with section 776(b) of the Act, we have drawn an adverse inference in selecting among the facts available for use in lieu of the Reseller's unverifiable data. As adverse facts available, we have assigned the highest non-aberrational margin calculated on Mexinox's properly reported U.S. sales. *See* the Final Determination Analysis Memorandum, dated May 19, 1999.

Comment 7: U.S. Sales of Unidentified Origin

Petitioners argue that if the Department does not apply facts available to the Reseller's U.S. sales based on the results of verification, it should apply facts available to the Reseller's U.S. sales because Mexinox intentionally withheld until January 7, 1999 (six months after receiving the August 3, 1998 antidumping questionnaire and on the eve of verification) the existence of 2,000 (public version figure) U.S. sales made by the Reseller. These were sales of merchandise for which the Reseller claims it was unable to identify the supplier. Petitioners argue that Mexinox's failure to report these sales earlier than January 7, 1999 clearly demonstrates that Mexinox did not act to the best of its ability to provide information in a timely manner. Mexinox's tardiness in reporting these sales, petitioners argue, is all the more serious in light of the high volume they constitute as a percentage of Mexinox's reported total U.S. sales quantity. The Department should reject Mexinox's attempt to downplay the importance of these sales. Petitioners argue that the Department should reject as implausible Mexinox's claim that it could not identify the supplier of the merchandise. They argue that it is impossible that a supplier of stainless steel sheet and strip products in the United States would be unable to determine the origin of input coils in the event of a product liability claim or a tax audit. Moreover, petitioners argue, the listing was and remains irreparably incomplete in that Mexinox has continued to withhold the identity of the suppliers (despite the fact that the Department found at verification that suppliers could have been identified for several sales reported as ''unidentified vendor'') and failed to provide important product characteristics for numerous sales. For all of these reasons, petitioners argue, the use of facts available is justified under section 776(a) of the Act which provides that if an interested party withholds information that has been requested, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to section 782(d) and (e), facts otherwise available in reaching the applicable determination. In the alternative, petitioners argue that adverse facts available should at least be applied to the sales of unknown origin.

Mexinox argues that petitioners' insinuation that Mexinox deliberately conspired to withhold information from the Department related to the unattributed sales is nonsense. It states that it could not have engaged in such a conspiracy because it had no direct involvement in the preparation of the Reseller's data, and had absolutely no knowledge of the content of the data.

Mexinox also argues that petitioners are incorrect in characterizing the information as untimely. It states that the Department did not request the information in the August 3, 1998 questionnaire, as petitioners suggest, but in an October 29, 1998 supplemental questionnaire. Furthermore, they argue, under section 351.301(b)(1) of the regulations, a respondent may submit factual information at any time up to seven days before verification. Moreover, Mexinox argues, petitioners cannot credibly claim that they were prejudiced by the timing of the submission, as evidenced by their multiple submissions commenting on the sales.

Mexinox also contests petitioners' claim that it is implausible that the Reseller could not trace the origin of the material. It states that this issue was examined by the verifiers at both the sales and cost verifications, and that the verification reports conclusively confirm that the Reseller's computer system could only trace the origin of the material as far back as its re-booking into inventory following transfer from another Reseller location. Because the rebooking identified the Reseller itself as the vendor in these circumstances, there was no computerized link available to the original supplier of the material. This, Mexinox argues, is indicated in the clearest terms in the Reseller cost verification report which states, ''The system traces vendors from purchase orders (''P.O.s''). Transfers between warehouses have their own P.O.s, therefore, the Company is unable to identify their original source through the system.'' Given the nature of the Reseller's computer system, Mexinox argues, petitioners' suggestion that the Reseller should have manually traced the origin of all of these transactions is absurd. Such tracing, though physically possible, would have required searching by hand through multiple layers of internal paper transactions, inventory records, and sales records. While the Reseller can, and occasionally does, do this on an ad hoc basis to investigate individual claims, repeating that effort for every invoice and line item in the body of untraceable sales would have imposed an impossible burden.

Finally, Mexinox takes issue with petitioners' charge that Mexinox is attempting to downplay the magnitude of the unattributed transactions. Mexinox states that the petitioners are exaggerating the magnitude of the sales by attributing 100 percent of the unattributed sales to Mexinox.

Department's Position: We agree, in part, with petitioners and with Mexinox. In its January 7, 1999 supplemental response, Mexinox reported a large quantity of sales by the Reseller which lacked any information identifying the supplying manufacturer. As noted, Mexinox claimed that it had no immediate computer link to trace the origin of coils which had been transferred between the Reseller's different warehouses. Thus, it had included this unidentified mass of sales in each of the sales databases filed on the records of the investigations of stainless sheet in coils from Germany, Mexico, and Italy.

As explained in response to comment 6 (above), we have determined that the errors affecting the Reseller's reported sales and cost data, including its failure to identify properly the supplier of a major portion of its sales, render these data unreliable in their entirety for purposes of our margin calculations. However, this conclusion does not dispose of the issue of the proper treatment of these unidentified transactions. For a significant portion of the Reseller's U.S. transactions during the POI the manufacturer is simply unknown. The absence of the supplying mill for this body of sales affects not only this investigation, but also those involving stainless steel sheet in coils from Germany and Italy. Furthermore, the absence of this elementary and critical information forecloses any attempt by the Department to apportion these sales accurately between merchandise which is subject to one of the three ongoing investigations and that which is properly considered non-subject merchandise because it was obtained from either a domestic or other foreign mill. Thus, this gap in the record is one of overarching importance, impinging upon our ability to calculate accurately the margins in three separate antidumping duty investigations.

We cannot accede to Mexinox's suggestion that we exclude the unidentified transactions entirely from our calculations. While we are not able to state with precision which of these transactions represent subject stainless sheet in coils from Mexico, Mexinox has conceded that some are properly subject to this investigation (as, indeed, some are subject to the concurrent investigations involving Germany and Italy). The Act and the implementing regulations do envision a number of scenarios where the Department may disregard transactions in its analysis (sample transactions or sales of obsolete merchandise, for example, or when sampling transactions pursuant to section 777A of the Act). However, these exceptions all involve an independent analysis by the Department of the facts surrounding the proposed exclusions and its reasoned explanation on the basis of the record that the transactions at issue are either unnecessary or inappropriate for inclusion in our calculations. There are no provisions allowing the Department simply to ignore a significant portion of U.S. sales based on a reseller's putative inability to identify the affiliated respondent manufacturer.

As for this claimed inability, Mexinox attempts to present as the Department's own conclusions what were, in fact, its reporting of Reseller explanation claims at verification. Thus, the Reseller sales verification report noted that ''Reseller explained that if material from its warehouse is sold to another location * * * the [receiving] warehouse subsequently will enter the merchandise into its own inventory by recording itself as the supplier.'' *See* Reseller sales verification report at 6. However, as we note on the previous page, ''Reseller clarified that the original supplier's identification is traceable, but is not vital to its own needs.'' Id. at 5. Further, we found at verification that, notwithstanding the Reseller's protestations, in many cases it was possible through a rudimentary search of the Reseller's existing computerized records to identify the supplier. As petitioners note, of seven ''unidentified supplier'' transactions sampled at verification, we were able to trace immediately the outside supplier for three of these using nothing more than a personal computer in the Reseller's offices. *See* Reseller sales verification report at 10.

Section 776(b) of the Act specifies that if the Department concludes that an interested party failed to act to the best of its ability to comply with a request for information, the Department ''may make an inference that is adverse to the interests of that party in selecting among the facts otherwise available.'' As noted above, we have determined that the use of facts available is appropriate for the sales and further-manufacturing data submitted by the Reseller. As for the unidentified body of sales, the Department also finds that the available computer records would allow the Reseller to trace with facility the supplier for nearly half of the sample transactions selected at verification. Had the Reseller made full use of its readily-available computer data, the effort required to identify the manufacturer for the remaining transactions would have been substantially less, thus largely attenuating the ''enormous amount of work'' involved in manual tracing ''* * * through several layers of internal paper transactions, inventory records, and sales records.'' Mexinox's Rebuttal Brief at 12. Accordingly, we find that the Reseller did not act to the best of its ability in compiling information essential to our analysis, such as the identity of the supplying mill, and thus the use of adverse facts available is appropriate.

In selecting the appropriate facts available, we find that there is no record support for Mexinox's proposal that we allocate a portion of the unidentified-supplier sales to Mexinox based on the percentage of the Reseller's sales that is known to have been supplied by Mexinox; this approach would still result in the Department's disregarding over half of the unidentified-supplier transactions without any justification in the record. First, since by Mexinox's own admission some portion of the unidentified sales were supplied by Mexinox, the resulting percentage of merchandise identified as being of

Mexican origin is understated. In addition, we have no means of conducting an independent evaluation of this large body of sales to determine whether the patterns found for the identified universe of transactions would hold true for merchandise which, obviously, moved in different channels of distribution (*e.g.*, through its transfer between or among the Reseller's locations). Thus, for purposes of this final determination we have adopted a variant of Mexinox's proposal. As an adverse inference, we are treating all of the unidentified merchandise as having originated with one of the three respondent firms in the concurrent investigations, rather than assuming that some of it may have originated from a producer other than AST, KTN, or Mexinox. To apportion the unidentified sales among the three investigations we have adjusted the quantity for each of the unidentified sales on a pro rata basis, using the verified percentages of the Reseller's merchandise supplied by each of the three respondents' mills. We have then applied a facts-available margin to these transactions, as explained above in response to Comment 6.

Comment 8: Classification of U.S. Sales as EP or CEP

Petitioners argue that the Department should consider all of Mexinox's U.S. sales involving Mexinox USA as CEP sales, rather than EP sales. Mexinox reported two types of EP sales: Direct shipments (*i.e.*, sales of merchandise produced to the customer's order and shipped through Mexinox USA's Brownsville, Texas, facility directly to the unaffiliated U.S. customer without remaining in Mexinox USA's warehouse for longer than four days) and San Luis Potosi (SLP) stock sales (*i.e.*, sales of merchandise sold out of finished goods inventory held at the SLP factory and shipped through Mexinox USA's Brownsville, Texas, facility directly to the unaffiliated U.S. customer without remaining in Mexinox USA's warehouse for longer than four days). The record shows, petitioners state, that Mexinox's reported EP sales are virtually indistinguishable from its reported CEP sales.

Petitioners state that in evaluating sales made prior to importation, it is the Department's practice to evaluate:

1. Whether the merchandise is shipped directly to the unaffiliated buyer without being introduced into the physical inventory of the selling agent;

2. Whether direct shipment to the unaffiliated buyer is the customary channel for sales of subject merchandise between the parties involved; and

3. Whether the selling agent in the United States acts only as a processor of sales-related documentation and a communication link with the unaffiliated U.S. buyer.

Petitioners argue that Mexinox's reported EP sales clearly meet the first of these criteria because Mexinox freely acknowledges that for direct shipments, the merchandise ''must pass through Mexinox USA's distribution facility in Brownsville (Texas) so that it can be transferred from the Mexican carrier to a U.S. carrier for further shipment.'' *See* Mexinox's section A response at A–16 (n.5). The same is true for Mexinox's sales of stock held in SLP. *See* section A response at A–17 (n.7). Thus, petitioners state, the first criterion is clearly met because the criterion contemplates only whether merchandise enters the affiliates' inventory, and not the length of time in inventory.

Petitioners argue that the second criterion is met inasmuch as there is no reason to conclude that shipment through Mexinox USA's Brownsville warehouse is anything but the customary channel of distribution for Mexinox's reported EP sales.

With respect to the third criterion, petitioners begin by stating that the Department has amplified its policy of evaluating the level of involvement of U.S. subsidiaries by determining that sales are appropriately classified as CEP sales where the U.S. subsidiary: (1) Was the importer of record and took title to the merchandise; (2) financed the relevant sales transactions; (3) arranged and paid for further processing; and (4) assumed the seller's risk. *See Certain Cold Rolled and Corrosion Resistant Carbon Steel Flat Products from Korea; Preliminary Results of Antidumping Duty Administrative Reviews*, 61 FR 51882, 51885 (October 4, 1996) (*Steel from Korea Preliminary Results*). These facts are significant, petitioners state, because for all of Mexinox's reported EP sales Mexinox USA:

- Was the importer of record;
- Took title to the merchandise;
- Warehoused the merchandise after importation;
- Invoiced the U.S. customer; and
- Collected payment.

For direct sales, petitioners state, Mexinox USA also negotiates directly with U.S. customers and takes purchase orders. Furthermore, petitioners argue that even though Mexinox USA did not report any further processing after its importation of the subject merchandise, Mexinox USA was responsible for other post-importation services such as arranging customs clearance and U.S. freight, and it also assumed the financial risk associated with its U.S. sales. For all of these reasons petitioners conclude that it is evident that Mexinox USA is not merely a ''paper processor,'' but that it handles almost every aspect of making U.S. sales, and meets the criteria set forth in *Steel from Korea* with respect to its level of involvement in direct and SLP stock sales.

Moreover, petitioners claim that contrary to Mexinox's statement that price terms are ultimately set by management in Mexico, there is no evidence that Mexinox USA's invoice prices reflect prices initially approved by Mexinox. Even if the Department is convinced that Mexico sets U.S. prices, petitioners argue, the Department must also consider other forms of the affiliate's involvement, such as contact with the U.S. customer, contacting the factory to arrange production and shipment, and issuing the final invoice to, and collecting payment from, the customer.

Petitioners also argue that as a general guideline the Department should take the mere involvement of a U.S.-based subsidiary, particularly one comprised of a large staff that includes an active sales force, and billing and accounting staff, as a strong indication that the activity of the U.S. sales force must be significant. Otherwise a respondent would simply conduct operations from its home market. The degree of significance is determined by the per-unit amount of the indirect selling expenses. For example, a true paper-processing subsidiary would have an inexpensive office and a small, clerical staff with little more than telephone and facsimile equipment in order to communicate with the home office.

Therefore, petitioners argue, because of Mexinox USA's extensive involvement in the selling process, the Department should deduct the indirect selling and operating costs of Mexinox USA from the starting prices for all U.S. sales involving Mexinox USA. In the alternative, petitioners state that if the Department determines that Mexinox USA's role in the direct and SLP sales does not cross the CEP threshold, the Department must recalculate the reported indirect selling expense ratio to allocate it only to CEP sales (and not EP sales) by Mexinox USA.

Mexinox argues that the Department correctly determined that its direct shipment and SLP stock sales were EP sales. It bases this argument on the analysis of the three criteria identified by petitioners (cited above) that the Department uses in evaluating sales made prior to importation. Regarding the first criterion, Mexinox states that petitioners are factually incorrect in saying that the direct shipment and SLP stock sale material enters Mexinox USA's inventory. It states that the Department verified through sample sales transactions the period of time between shipment to Brownsville and further shipment from Brownsville, and confirmed in each case that the period was less than four days. Mexinox also takes issue with petitioners' reading of the term ''whether'' as used in conjunction with the inventory prong of the Department's test for EP treatment. Petitioners' interpretation, Mexinox states, would mean that merchandise had been inventoried if it was physically on the premises of an affiliate for any length of time, presumably even for one minute. To be in an entity's inventory, Mexinox states, means the product must not merely be physically present on the premises, but must instead be considered part of the stock of the affiliate. As support for this distinction, Mexinox cites *Steel from Korea*, in which the Department said, ''While in some cases certain merchandise sold by [the foreign producer] was entered into [the U.S. affiliate's] inventory, this merchandise was sold prior to the importation of the merchandise, but not from [the U.S. affiliate's] inventory.'' *See Steel from Korea*, 62 FR at 18439. This same distinction, Mexinox states, can be made with respect to Mexinox's sales at issue, where the material is not being sold out of Mexinox USA's general inventory, but rather directly from Mexinox's factory in SLP.

Mexinox also argues that petitioners' interpretation of what constitutes inventory also ignores the reasons why the material was brought to Mexinox USA's distribution facility in the first place. It cites a portion of its October 28, 1998 supplemental questionnaire response in which it says that it had no choice:

> All shipments from Mexinox's factory in Mexico must stop in Brownsville for at least some period of time to allow for transfer to a US truck. This is because the United States, contrary to its obligations under the North American Free Trade Agreement, refuses to allow Mexican trucks access to US border states. Therefore uninterrupted shipment of the material from Mexico to the US customer is a practical impossibility and an incidental stop-over in Brownsville is unavoidably part of the direct shipment process.

See Mexinox's October 28, 1998 submission at 6–7. Mexinox argues that the brief period (no longer than four days) during which direct shipment or SLP stock material may have been held in the Brownsville distribution facility did not transform the material into inventory as petitioners would have the Department believe.

Regarding the second criterion, Mexinox agrees with petitioners that shipment through Mexinox USA's Brownsville warehouse is the customary channel of distribution for Mexinox's direct and SLP stock sales.

Regarding the third criterion, Mexinox does not dispute that Mexinox USA performs the selling activities that petitioners cite (with the exception of warehousing), but insists that these selling activities are consistent with EP treatment. It states that the Court of International Trade (CIT) has on many occasions upheld EP (formerly purchase price (PP)) classification where the U.S. affiliate engaged in activities that were at least equal to or exceeded those alleged to be conducted by Mexinox USA:

- PP classification was upheld where the U.S. affiliate first shipped merchandise to independent warehouses whose cost was borne by the U.S. affiliate, the U.S. affiliate was the importer of record, the U.S. affiliate paid estimated antidumping duties on the merchandise, the U.S. affiliate retained title prior to sale to the unrelated U.S. party, and the U.S. affiliate received commissions for its role in the transactions. *Outokumpu Copper Rolled Products* v. *United States*, 829 F. Supp. 1371, 1379–80 (Ct. Int'l. Trade 1993), *appeal after remand dismissed*, 850 F. Supp. 16 (Ct. Intl. Trade 1994).
- PP classification was upheld where the U.S. affiliate received purchase orders and invoiced the related customer, the U.S. affiliate was invoiced for and directly paid the shipping company for movement charges, the U.S. affiliate occasionally warehoused, at its own expense, and the U.S. affiliate received a substantial mark-up over the price at which it purchased from the exporter. *E.I. DuPont de Nemours & Co.* v. *United States*, 841 F. Supp. 1237, 1248–50 (Ct. Int'l. Trade 1993).
- PP classification was upheld where the U.S. affiliate invoiced customers, collected payments, acted as the 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, 873–74 (Ct. Intl. Trade 1994).
- PP classification was upheld where the U.S. affiliate processed the 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. No. 94–45 (Ct. Int'l Trade 1995).

Furthermore, Mexinox argues that while these cases all pre-date the URAA, the SAA states that ''no change is intended in the circumstances under which export price versus constructed export price are used.'' *See SAA* at 152–53.

Mexinox also disagrees with petitioners that Mexinox USA's selling activity in connection with these transactions ''meets the criteria set forth in *Steel from Korea*.'' It argues that the preliminary determination notice in that case classified as CEP only a sub-category of the respondent's sales ''where the merchandise was further processed by an outside contractor in the United States.'' *See Steel from Korea Preliminary Results*, 61 FR at 51885. Furthermore, in the final results in that case, the Department refused to extend CEP treatment to any of the other transactions, even though the U.S. affiliate's activities went beyond what petitioners would presumably deem acceptable for EP treatment. The Department stated:

> ''UA's (U.S. affiliate's) role, for example, in extending credit to U.S. customers, processing of certain warranty claims, limited advertising, processing of import documents, and payment of cash deposits on antidumping and countervailing duties, appears to be consistent with purchase-price classification. These selling services as an agent on behalf of the foreign producer are thus a relocation of routine selling functions from Korea to the United States. In other words, we determine that UA's selling functions are of a kind that would normally be undertaken by the exporter in connection with these sales.''

See Steel from Korea, 62 FR at 18439. Mexinox states that with the exception of a set of sales identified on the first day of verification (which Mexinox admits are CEP), no products were further-processed in the United States. Thus, Mexinox argues, Mexinox USA's activities do not meet the criteria laid out in *Steel from Korea*.

Mexinox also disputes petitioners' contention that there is no evidence that price terms for U.S. sales are set by management in Mexico. It cites the sales verification report, which states, ''In both markets the final price paid is the ''price in effect,'' at the time of shipment. The ''price in effect'' is a customer-specific price determined by the commercial director based on prevailing market prices, and is negotiated with each customer.'' *See* Mexinox sales verification report at 6. Mexinox states that the commercial director referred to is a Mexinox official located in SLP. Mexinox also contests petitioners' attempt to downplay the significance of who sets the price, stating that it is a very important factor, and in some cases has even been a decisive factor.

Mexinox also urges the Department to reject petitioners' argument that sales should be classified as CEP based on ''mere involvement'' of a U.S. affiliate in the U.S. sales process. It states that following this very restrictive approach would conflict directly with the Department's three-part test which it has consistently applied, with express judicial sanction, since 1987.

Finally, Mexinox disagrees with petitioners' argument that Mexinox USA's indirect selling expenses should be allocated solely to the reported CEP sales rather than to all U.S. sales handled by Mexinox USA. It states that Mexinox USA's indirect selling expenses relate to the affiliate's overall sales operations, and therefore cover expenses incurred by Mexinox USA in connection with both CEP and EP sales. Mexinox states that by allocating the indirect selling expenses only to CEP sales, as petitioners propose, the Department would overstate indirect selling expenses.

Department's Position: We disagree with petitioners that Mexinox's reported EP sales should be reclassified as CEP sales. We find that Mexinox's reported EP sales pass the Department's three-prong test for evaluating sales made through affiliates prior to importation. Regarding the first criterion, we agree with Mexinox that the circumstances under which the imported merchandise passes through Mexinox USA's facility en route to the ultimate customer justify a determination that the merchandise did not enter Mexinox USA's inventory within the meaning of the Department's three-prong test. As Mexinox points out, the Department in *Steel from Korea* drew a distinction between (1) merchandise sold prior to U.S. entry that subsequently entered the inventory of the U.S. affiliate and (2) merchandise sold from the U.S. affiliate's inventory. We stated, ''While in some cases certain merchandise sold by [the foreign producer] was entered into [the U.S. affiliate's] inventory, this merchandise was sold prior to the importation of the merchandise, but not from [the U.S. affiliate's] inventory.'' *See Steel from Korea*, 62 FR at 18439. Where, as here, the merchandise (sold prior to importation) was situated at Mexinox USA's facility for the period of no more than four days and only for the necessary purpose of transferring to other trucks, we determine that the merchandise was not sold from the inventory of the U.S. affiliate.

Regarding the second criterion, no party has disputed that this channel was Mexinox's customary channel of distribution for its U.S. sales.

Regarding the third criterion, we agree with Mexinox that Mexinox USA's selling activities are comparable to those that have been upheld by the courts as consistent with EP treatment. Therefore, Mexinox USA's performance of these activities do not compel CEP classification for the sales at issue. Furthermore, our verification uncovered no evidence that conflicts with Mexinox's claims that the sales were made in Mexico, and petitioners have cited to none. Moreover, we agree with Mexinox that the facts of *Steel from Korea* differ from those present here in that in *Steel from Korea* the affiliate arranged for further manufacturing, whereas here no further manufacturing is performed for the sales at issue. For these reasons we have not reclassified Mexinox's EP sales in this final determination.

Finally, we disagree with petitioners that all of Mexinox USA's reported indirect selling expenses should be attributed to CEP sales. Although we have determined that the direct sales and SLP stock sales are appropriately classified as EP sales, they do pass through Mexinox USA's facility and Mexinox USA performs some selling activities in connection with them. Therefore, it is appropriate that we allocate a proportionate share of indirect selling expenses to them.

Comment 9: Level of Trade

Petitioners argue that the Department erred in its *Preliminary Determination* with respect to level of trade (LOT). In the *Preliminary Determination*, the Department determined that there was one LOT in the home market, that there were two LOTs in the U.S. market (corresponding to the EP and CEP sales channels), and that Mexinox's sales to its home market customers were at a LOT that was different and at a more advanced stage of distribution than were its sales to its affiliated customers in the United States (*i.e.*, Mexinox USA, the Reseller, and the Krupp affiliate). Based on these determinations, it made a CEP offset for Mexinox's CEP sales in accordance with section 773(a)(7)(B) of the Act. Petitioners argue that there is only one LOT in the United States, and that it is more advanced than the home market LOT. Thus, they argue, no CEP offset is warranted. Furthermore, they argue that the Department should find that the sales to the Reseller and the Krupp affiliate are at the same LOT as Mexinox's EP sales because Mexinox did not even attempt to distinguish them as separate LOTs as it did for its CEP sales to Mexinox USA.

Petitioners argue first that the list of selling activities Mexinox submitted to support its LOT adjustment claim exaggerates and distorts the activities, resulting in the creation of different LOTs where none exist. Specifically, they argue that Mexinox's list of seventeen selling activities should be condensed into a list of only seven activities. They argue:

1. The first four activities on Mexinox's list (pre-sales technical assistance, sample analysis, prototypes and trial lots, and continuous technical assistance) really are only one activity, technical assistance.
2. The next two activities (negotiating prices and processing customer orders) are really not properly included in the analysis because anyone selling a product performs these activities for all customers, regardless of market or affiliation.
3. The next two activities (inventory maintenance and just-in-time delivery) are both essentially the same service.
4. Two other activities (arranging freight services and shipment of small packages) should also be considered the same activity.
5. The next two activities (making sales calls and traveling internationally) are the same activity.
6. The ''further processing'' activity is a manufacturing activity and thus not properly included as a selling activity. Moreover, to the extent that it entails cutting to length, such activity is not even related to the sale of subject merchandise.
7. The credit and collection activity is an activity that companies selling products routinely engage in with respect to most, if not all, customers and thus is not properly included in an LOT analysis.
8. The last three activities (accepting currency risk, warranting merchandise, and accepting low-volume orders) can be considered distinct selling activities.

Thus, the list of selling activities, as condensed by petitioners, amounts to:

1. Technical service.
2. Inventory maintenance.
3. Freight services.
4. Sales calls.
5. Currency risks.
6. Warranties.
7. Low-volume orders.

With regard to technical service, petitioners argue that although Mexinox purports to provide lower levels of technical service for most U.S. channels, the nature of manufacturing the subject merchandise requires uniformly high quality levels. Furthermore, petitioners state that evidence on the record (not susceptible to public summary) demonstrates that Mexinox affords technical services directly or indirectly to both domestic and U.S. customers.

With respect to inventory maintenance and freight services, petitioners argue that evidence on the record (not susceptible to public summary) demonstrates that these activities are equally pertinent to both EP sales and Mexinox's CEP sales to Mexinox USA.

With respect to sales calls, petitioners point out that Mexinox has stated that ''this selling activity does not apply to the CEP transaction between Mexinox and Mexinox USA.'' *See* section A response at attachment A–4. Petitioners argue that the Department should not accept a representation that Mexinox does not need to be in contact with Mexinox USA because it is not plausible that Mexinox does not make telephonic and personal sales calls to Mexinox USA as it would with any other large customer.

With respect to currency risks (a selling activity Mexinox associates only with home market sales, and not U.S. sales), petitioners argue that currency risk is normally associated with export sales, and not home market sales. Further more, during the POI the peso was remarkably steady. Thus, petitioners state, if this activity is a factor at all, it should be attributed to EP and CEP sales, but not to home market sales.

Finally, with respect to warranty claims, petitioners argue that there is evidence on the record that Mexinox, not Mexinox USA, handles warranty claims. Furthermore, they argue that examination of Mexinox USA's itemization of selling expenses reflects nothing that would indicate that it handles this activity.

Based on the above analysis, petitioners conclude that Mexinox clearly engages in the same type of selling activities in its dealings with Mexinox USA as it does with home market and U.S. EP customers. The only selling activity that petitioners recognize as being different between the U.S. and home markets is the acceptance of low-volume orders in the home market.

Moreover, petitioners argue that the Department's preliminary determination with respect to this issue yields the implausible conclusion that every transaction between Mexinox and a customer in North America was at the same LOT except for Mexinox's transactions with its affiliated reseller. It is inconsistent for the Department to find that, on the one hand, sales to home market customers and EP sales to U.S. customers are at the same LOT but, on the other hand, that the EP sales that the Department has constructed using its CEP sales method (*i.e.*, the sales between Mexinox and Mexinox USA) are not at the same LOT as the ''regular'' EP sales. The construction of hypothetical EP prices to Mexinox USA should, petitioners believe, make the CEP and EP transactions comparable and representative of the same LOT.

Finally, petitioners argue that, in the alternative, if the Department continues to grant a CEP offset, it should correct the offset calculation which, they allege, contains three errors. First, petitioners claim that in calculating indirect selling expenses incurred in the United States, the Department incorrectly included expenses that Mexinox incurred in the home market. Second, the CEP offset should be the lesser of either: (1) The sum of home market indirect selling expenses (excluding inventory carrying costs (ICC)) and home market commissions or (2) U.S. ICC and indirect selling expenses. In the Department's calculation, the offset was the lesser of either (1) the sum of home market indirect selling expenses (excluding ICC) and home market commissions or (2) the sum of home market and U.S. ICC and home market and U.S. indirect selling expenses. Finally, petitioners argue, the Department failed to ensure that the combined amount of the deduction for the CEP offset and deductions for the commission offset do not exceed total U.S. incurred indirect selling expenses (including ICC).

Mexinox argues that the Department was correct in its LOT determination and in granting a CEP offset to NV for the CEP LOT. It argues first that the petitioners' arguments are useless to the Department because their analysis focuses on the differences between EP and CEP LOTs, rather than the CEP LOT versus the home market LOT. It argues that it is this difference between the CEP LOT and the home market LOT that ultimately justifies the granting of a CEP offset.

Mexinox next argues that its home market sales are at a more advanced stage in marketing than its U.S. sales. Its argument centers on the central role that service centers play in its U.S. chain of distribution both for EP and CEP sales, as distinguished from its home market chain of distribution in which Mexinox sells to no service centers. The reason service centers are important, Mexinox argues, is that they function by acting as intermediaries between the mills and the larger community of specialized end users. To do so, Mexinox states, service centers tend to purchase large master coils from the mills and then further process the material to make it possible for end users to use them. Service centers also generally provide their customers with a package of individualized selling services (*e.g.*, just-in-time deliveries and other forms of inventory maintenance, technical advice, and flexible credit terms) that the foreign producer would otherwise be required to provide. Thus, selling to U.S. service centers allows Mexinox to concentrate on the production and sale of larger, higher-yield coils in standard grades, surface finishes, and dimensions, while the service center focuses on the next level of distribution to end-users. The sales to service centers encompass a smaller scope and intensity of selling activities precisely because the service center takes over the role of providing the specialized selling services that are requested by end users, such as flexible credit terms, pre-sale and post-sale technical advice, further processing, just-in-time delivery, and other specialized inventory requirements.

Furthermore, Mexinox argues that the Department has in the past recognized that sales to service centers represent a different and less advanced stage in the marketing process than sales to customers further downstream. Thus, in the preliminary determination of SSSS from the United Kingdom the Department explained that, ''Normally, stages of marketing focus on whether sales are to service centers or end-users, in some instances taking into account whether or not sales are made through intermediate parties.'' *See SSSS from United Kingdom, Preliminary Determination of Sales at Less Than Fair Value*, 64 FR 85 (January 4, 1999). Similarly, in *Cold-Rolled Carbon Steel Flat Products from the Netherlands* the Department determined that home market sales to service centers and sales to end users constituted entirely different LOTs. *See Cold-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Administrative Review*, 63 FR 13204 (March 18, 1998). Mexinox acknowledges that the details of these cases may differ from the present investigation, but states that the observations the Department made are all generally consistent with the circumstances relating to Mexinox's sales in the U.S. and Mexican markets. The essential characteristic of Mexinox's sales, it states, is that it sells directly *to* service centers in the U.S. market and *acts as* a service center in the home market.

Next, Mexinox argues that it performs far fewer selling functions in its CEP sales than it does in the home market where it acts as a service center. It states that petitioners are correct that many of the selling activities that are associated with Mexinox's U.S. sales (whether EP or CEP) are carried out by Mexinox USA. However, to construct the CEP LOT, Mexinox states, all of these selling activities undertaken by Mexinox USA in the United States must be excluded in accordance with section 772(d)(1)(D) of the Act and 19 CFR § 351.412(c)(ii)(1998). When that is done, the CEP transactions between Mexinox and Mexinox USA involve relatively few selling functions at all. Essentially the only selling activities required in connection with the relevant transactions between the related parties is a low level of freight and delivery arrangements (via the same SLP-to-Brownsville trucking route) and order processing.

Next, Mexinox discusses its reported selling functions. Regarding its reported selling activity ''small package size and low volume orders,'' Mexinox argues that this activity is fundamentally different in the home and U.S. markets. Because it sells to service centers in the United States, Mexinox states, it tends to sell larger coils in standard sizes, grades, and surface finishes which the service centers then cut. In the home market, Mexinox itself performs the service center function of cutting and slitting from master coils. Thus, the coils tend to be smaller. It also tends to sell in smaller lots, thus increasing the number of transactions and selling services required to be performed in the home market. Mexinox states that though arguably not a selling activity itself, average coil size is a compelling indicator both of the differences in selling functions performed by Mexinox as a home market service center and the intensity of those selling functions because many routine selling activities must be repeated for each transaction and therefore vary roughly in accordance with the number of transactions involved.

With respect to further processing, Mexinox disagrees with petitioners' argument that further processing is a manufacturing activity and thus not properly included as a selling activity. It states that the Department has recognized the relevance of further processing to the LOT analysis in other cases, including the *Preliminary Determination* of this case. It argues that further processing of this kind must be recognized and taken into account as an integral part of the distinct bundle of selling services offered by Mexinox in the home market but not the U.S. market.

With respect to technical services, Mexinox states that it provides no pre-sale technical analysis, sample analysis, prototypes and trial lots, or continuous technical service in connection with the CEP transactions between itself and Mexinox USA. Moreover, even if the Department were to look further downstream, the level of technical assistance provided in connection with U.S. sales is lower than in the home market. This is because service centers tend to buy large master coils in standard sizes, grades, and surface finishes, often without a specific end user in mind, thus limiting the need for pre- and post-sale technical assistance, sample analysis, prototypes, or continuous technical assistance. Furthermore, when a downstream customer does seek technical assistance, it naturally turns first to the party that sold the material to him, which in this case is the service center and not Mexinox. Mexinox states that the opposite situation exists in the home market because Mexinox itself serves as the service center.

With respect to inventory maintenance and just-in-time deliveries, Mexinox argues that it provides no inventory maintenance or just-in-time delivery services in connection with the CEP transactions between itself and Mexinox USA. However, in keeping with its function as a service center in the home market, it offers a wide variety of inventory maintenance and just-in-time delivery services for home market customers.

With respect to freight and delivery services, Mexinox states that the intensity of this activity is extremely low in connection with the CEP sales between itself and Mexinox USA because freight is exclusively limited to consolidated shipments over a single route between the factory in SLP and the distribution point in Brownsville, Texas. In contrast, freight arrangements in the home market involve smaller volumes and more frequent and varied deliveries from Mexinox's mill in SLP and from the various remote warehouses located throughout Mexico.

With respect to the order processing, credit, and collection, Mexinox states that in connection with the CEP transactions between Mexinox and Mexinox USA, these activities are essentially automatic and risk free. Moreover, such order processing essentially involves a single point of contact for all sales. In contrast, Mexinox argues, the transactions at issue involve handling a full range of unaffiliated customers. Furthermore, because individual transaction volumes are smaller, the level of such activities is much higher on a per-ton basis in the home market than in the United States.

With respect to price negotiation and sales calls, Mexinox states that these activities are logically more frequent in the home market because of the higher number and smaller per-transaction volume of sales in the home market.

With respect to currency risk, Mexinox argues that petitioners have failed to properly evaluate the currency risk which Mexinox faces in selling stainless steel in the United States. All home market sales during the POI were in Mexican pesos. Therefore, because Mexinox extends credit to its home market customers, Mexinox assumes all currency risks associated with the peso during the credit period. Furthermore, Mexinox argues that contrary to the petitioners' comments, the peso was not remarkably stable during the POI, but instead depreciated 7.6 percent against the dollar between April 1, 1997 and March 31, 1998.

Based on the above analysis, Mexinox states that the CEP LOT involves fewer and different selling functions and is less advanced than the home market LOT. Accordingly, the Department is required, if possible, to make a LOT adjustment when matching CEP to NV. Because there is only one LOT in the home market and it is therefore not possible to quantify a LOT adjustment, Mexinox states, the Department should grant a CEP offset.

Finally, Mexinox disagrees with petitioners' contention that the Reseller and the Krupp affiliate should be deemed to be at the same LOT as EP sales. First, if the Department determines to use the resale prices from these entities in its analysis, there is no question that such sales are properly classified as CEP transactions because the relevant sales were made after importation. Second, because these sales are CEP transactions, the Department is required to exclude all selling functions carried out in the United States by both the reseller and Mexinox USA in determining the constructed LOT for these sales. Accordingly, under the Department's standard analysis, Mexinox states, selling functions associated with sales by these resellers and Mexinox USA must be backed out until all that is left is the bare transaction made between Mexinox and Mexinox USA. The LOT and the LOT analysis for these sales is exactly the same as for other CEP transactions, and a CEP adjustment is also justified for these sales.

Department's Position: After careful review of the facts on the record, we have determined not to change our preliminary determination with respect to LOT. We agree with petitioners that some of the seventeen selling activities that Mexinox reported could legitimately be collapsed, resulting in a shorter list of activities. Furthermore, some of the reported selling activities raise questions, and some more strongly support our determination than others.

Nevertheless, we find that taken collectively the selling activities Mexinox reported and the way it performs these activities in the two markets support a finding that there is one LOT in the home market and two LOTs in the U.S. market. We also find that the EP and home market sales channels represent one stage of marketing and the U.S. CEP channel represents another, and that the home market LOT is more advanced than the CEP LOT. In its section A response, Mexinox provided the information that some activities are not performed or are performed at a low level of intensity with respect to the CEP transactions between itself and Mexinox USA (*e.g.*, technical services, inventory maintenance, just-in-time delivery). *See* Mexinox's section A response, exhibit A–4 and its April 5, 1999 Rebuttal Brief, attachment 1. Petitioners have put no information on the record to rebut Mexinox's representations.

Furthermore, because of the smaller lots sold in the home market, we find that the home market order processing, price negotiation, and payment collection activities would be more expensive on a per-unit basis than for the CEP sales between Mexinox and Mexinox USA, and thus reflect a more advanced stage of marketing. Moreover, we agree with Mexinox that the freight and delivery service activity would likely be more routine in the CEP transactions between Mexinox and Mexinox USA than between Mexinox and its customers throughout Mexico, and thus also reflects a less advanced stage of marketing. Similarly, while petitioners are doubtless correct that Mexinox does make telephone calls to Mexinox USA, such calls between a parent and its foreign subsidiary are likely more routine than calls between a parent and its numerous unaffiliated home market customers. Further, we agree with Mexinox that the peso did decline by approximately 7.6 percent during the POI, and that therefore the peso was not, as petitioners have alleged, ''remarkably steady.'' Thus, Mexinox did incur some currency risk in the home market during the POI. For these reasons, we determine that there is no basis in the record for departing from our LOT determination as set forth in the *Preliminary Determination* and, thus, we have not changed it for this final determination.

Furthermore, we agree with Mexinox that because the sales to the U.S. Krupp affiliate are CEP transactions sold through Mexinox USA, the relevant sales transactions we must examine in determining the correct LOT are those between Mexinox and Mexinox USA. There is therefore no reason to treat these sales differently than any other of Mexinox's CEP transactions. Therefore, in our calculations for the final determination we have continued to make a CEP offset for the sales to the U.S. Krupp affiliate as well as Mexinox's other CEP sales. With respect to the Reseller this question is moot because we have used total facts available.

Finally, we agree with petitioners that the CEP offset calculation in the *Preliminary Determination* should be corrected for the three stated errors. We have done so in this final determination.

Comment 10: Downstream Home Market Sales

Petitioners argue that the Department should never exclude from its analysis sales made through affiliated resellers (downstream sales) in the home market. (In the *Preliminary Determination* the Department did not require Mexinox to report its downstream sales in the home market because the sales to the affiliated resellers all passed the Department's arm's-length test.) Such a practice is bad policy, petitioners argue, because it invites the affiliate to mark up its resale prices and thereby mask true dumping. Furthermore, they argue that since the Department's arm's-length test is only applied to those particular products that were sold to unaffiliated parties, a respondent may wholly exclude high-priced home market sales from the Department's dumping analysis by selling them only through an affiliate. Petitioners stress that even small quantities can have an enormous impact that is completely disproportionate to their relative quantity because they may represent the sales that would be matched to U.S. sales in a LTFV analysis. Additionally, petitioners state that the existence of potential matches (even identical matches) among sales to non-affiliates is not necessarily of use because such sales may prove either unuseable by virtue of being outside the ordinary course of trade (*e.g.*, below cost) and thus not under consideration in the LTFV analysis, or otherwise unrepresentative, particularly if they are below prices that a reseller is charging to its unaffiliated customers. For these reasons, petitioners argue that the Department should state for the record that its policy in the future, particularly for any administrative reviews of any order in this proceeding, will be to require the reporting of all downstream sales by affiliated home market customers.

Mexinox disagrees with the petitioners' argument, but prefaces its counter-argument by stating that the appropriate forum for the petitioners' advisory comment is the rule-making process and not an antidumping investigation. In any event, it argues that for two reasons the petitioners' proposal cannot be sustained. First, it argues that the Department does not have the authority to completely ignore section 351.403(d) of the Department's regulations, as petitioners have recommended, and that even if the Department agreed with the petitioners, it would be obligated to follow lawful administrative procedure to formally amend or repeal this section of its regulations.

Second, Mexinox claims that the Department's downstream sales reporting requirements, and the arm's-length test in particular, already deal effectively with petitioners' concerns. It states that if it were to sell to affiliates at artificially lowered prices in order to manipulate the dumping margins, those sales would fail the arm's-length test. Therefore, it argues, even if the petitioners can contrive an implausible scenario in which the affiliated party purchasing at arm's length could resell the merchandise at an even higher profit in a downstream sale, the fact remains that sales to the affiliates that pass the stringent arm's-length test would be completely reliable for the purpose of determining NV.

Department's Position: We agree with Mexinox that the appropriate context for the petitioners' comment is the rule-making process. Furthermore, we will not use this final determination to promulgate announcements on reporting requirements for possible future segments of this proceeding. Such requirements are determined on a case-by-case basis based on the facts of each administrative review.

In the preliminary determination of this investigation we performed an arm's-length test in accordance with 19 CFR § 351.403(d). We found that all of Mexinox's home market sales to affiliated resellers were made at arm's-length prices. *See* the Department's preliminary determination analysis memorandum, dated December 17, 1998, p. 12, and the *Preliminary Determination* at 129. For this final determination we performed the same arm's-length test, and found the same results. Therefore, we have not required Mexinox to report its downstream home market sales.

Comment 11: Arm's-Length Test

Petitioners argue that for this and future proceedings the Department should permanently revise its arm's-length test by comparing all prices to affiliates against prices charged to unaffiliated customers. The Department's current practice, petitioners state, is to test only prices for which identical products were also sold to unaffiliated customers, and then to apply the result to all sales to the affiliate. This ''identicals-only'' arms-length test, petitioners state, was developed before the Department began running its own model match concordance program. They argue that in light of the Department's now longstanding practice of itself determining all product matches for the antidumping analysis, there is no technical obstacle or policy reason preventing the Department from applying the same method in the arm's-length test. In other words, the Department should analyze all models sold to affiliates, whether or not matched to identical models sold to unaffiliated parties. Petitioners state that doing so would reduce the risk of a manipulated arm's-length test result that in turn would distort the margin analysis.

Mexinox states that the burden of proof rests with the petitioners to demonstrate to the Department that the arm's-length test has been manipulated or is in some way distorting the margin analysis of this investigation, and that the petitioners have failed in this regard. Respondent states that where petitioners fail to support assertions against the arm's-length test, the Department's practice is to maintain its position and use of the arm's-length test method. *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 Review and Termination in Part,* 63 FR 20585 (April 27, 1998) (*Tapered Roller Bearings*). Mexinox also states that courts have consistently supported the Department in its defense of the arm's-length test. Thus, in *Tapered Roller Bearings,* when presented with lack of evidence of any distortion of price comparability, the CIT found the application of the Department's arm's-length test reasonable. *See Tapered Roller Bearings,* 63 FR at 20592. Thus, Mexinox argues that the Department should decline to consider modifications to the arm's-length test given that petitioners cannot point to any information on the record to suggest that the arm's-length test is distortive and unreasonable.

Department's Position: We disagree with petitioners. Without a match of an identical product sold to an unaffiliated party, the Department has nothing against which to test the sale to the affiliated party. Thus, to implement the petitioners' suggestion, we would have to conduct the arms'-length test using similar, rather than identical, merchandise. Doing so would result in a less accurate measure of the effect of affiliation on pricing. In the absence of any evidence that the present arms'-length test is distortive, for our purposes of determining comparability within the meaning of 19 CFR § 351.403(d), we would have no reason to implement a new method that could result in a less accurate result.

Comment 12: Date of Sale

Petitioners argue that the Department erred in the *Preliminary Determination* by using the invoice date, rather than the contract or change order date, as the date of sale. They argue that although the regulations state that the Department will normally use the date of invoice as the date of sale (*see* 19 CFR § 351.401(i)), the evidence of record in this case supports the use of the date of order confirmation or change order as the date of sale. They cite the final results of review of circular welded non-alloy steel pipe from the Republic of Korea as support. There, the Department articulated that it evaluates the correct date of sale selection on a case-by-case basis in light of all relevant facts. The Department stated, ''* * * while we agree with the respondents that the Department prefers to use invoice date as the date of sale, we are mindful that this preference does not require the use of invoice date if the facts of a case indicate a different date better reflects the time at which the material terms of sale were established.'' *See Final Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,* 63 FR 32833 (June 16, 1998) (*Pipe from Korea*). Based on the facts of that case, the Department used invoice date as the date of sale in the home market and contract date as the date of sale in the U.S. market (except for CEP sales made out of inventory) because:

1. Sales in the home market were typically out of inventory with the purchase order/contract, invoice, and shipment dates all occurring within a relatively short period of time. In contrast, U.S. sales terms were set on the contract date and any subsequent changes were usually immaterial in nature or, if material, rarely occurred.

2. Due to the made-to-order nature of U.S. transactions, there was a very long period of time between the contract date and the subsequent shipment and invoicing of the sale.

3. There was no information on the record indicating that the material terms of sale changed frequently enough between contract date and invoice date on U.S. sales to give both buyers and sellers any expectation that the final terms would differ from those agreed to in the contract.

The Department explained:

> As can be seen from the foregoing, ''invoice'' dates in both markets, while the same in name, are materially quite different for purposes of determining price discrimination simply because the sales processes for the two markets are quite different. If we were to use invoice date as the date of sale for both markets, we would effectively be comparing home market sales in any given month to U.S. sales whose material terms were set months earlier—an inappropriate comparison for purposes of measuring price discrimination in a market with less than very inelastic demand.

See Pipe from Korea, 63 FR at 32836.

Petitioners argue that the facts in the instant investigation parallel the facts in *Pipe from Korea,* particularly for those sales Mexinox reported as EP direct sales, in that sales tend to be on a made-to-order basis, and there can be a long period of time between the contract date and the date of shipment and invoicing. Moreover, some changes in quantity are usually envisioned by the sales contract, and the parties are free to divide orders over more than one shipment; hence, changes in quantity do not necessarily give rise to changes in the agreed price (and a new ''sale''). Accordingly, petitioners argue, the Department should use the date of order confirmation (or the date of any subsequent change order) as the date of sale.

Mexinox argues against the use of order date for the date of sale in both markets, and states that the petitioners ignore factual information verified by the Department regarding the frequency of changes in price and quantity between order and invoice date. It cites Department regulations (19 CFR § 351.401(i)) which support the use of invoice date as the presumptive date of sale unless the record evidence demonstrates that the material terms of sale, *i.e.*, price and quantity, are established on a different date. Furthermore, Mexinox argues that petitioners have not provided evidence in support of their position, other than the unsubstantiated claim that the case parallels the facts in *Pipe from Korea.* Mexinox states that these two antidumping cases differ in the sense that in the present case, the Department extensively verified that in both markets price and quantity were subject to change up until the date of invoice and frequently did change during the POI. Moreover, Mexinox disagrees with petitioners' comment that ''changes in quantity do not necessarily give rise to changes in agreed price (and a 'new sale'),'' stating that if petitioners are suggesting that a material change in quantities exceeding the normal ±/−10 percent delivery tolerance does not change the date of sale, they are arguing for new law. Mexinox claims that it has submitted documents on the administrative record in this case pertaining to this issue, and that the minuscule number of sales in which the order date terms of sale remain intact is overwhelmed by the large number of verified instances where the final terms of sale were not established until the invoice date.

Department's Position: We agree with Mexinox that petitioners have not provided a compelling reason to deviate from our practice of using the invoice date as the date of sale, as established by our regulations. *See* 19 CFR § 351.401(i). In this investigation there is evidence on the record that in a significant number of instances there are changes to the material sales terms of price or quantity between the order date and the invoice date. *See* Mexinox's November 17, 1998 submission, p. 5. At the Mexinox sales verification, Mexinox substantiated this evidence and the Department noted no discrepancies. *See* Mexinox sales verification report, p. 6. Thus, in this case, unlike *Pipe from Korea,* there is information on the record indicating that material terms of sale changed frequently enough between contract date and invoice date on U.S. sales to give both buyers and sellers the expectation that the final terms might differ from those agreed to in the contract. For this reason, we will not deviate from the regulatory presumption that the invoice date is the appropriate date of sale.

Comment 13: New Information Given at Verification

Petitioners argue that the Department should apply adverse facts available for a group of U.S. sales Mexinox did not report to the Department until the verification. Petitioners argue that it is the Department's longstanding policy not to accept the submission of new information at verification unless: (1) The need for that information was not evident previously, (2) that information makes minor corrections to information already on the record, or (3) that information corroborates, supports, or clarifies information already on the record. Because, petitioners argue, no party contends that the need to report these sales was not evident previously or that the information was to corroborate information already on the record, the only question is whether the disclosure of these sales constitutes minor correction to information already on the record. In petitioners' view, given the volume of sales at issue, the answer is no.

Furthermore, petitioners argue that the sheer number of transactions made it impossible for the Department to be sure that the information Mexinox provided was complete; thus, including the sales without penalty would be inappropriate because the information had not been verified. Additionally, petitioners state, there is an important principle at stake: Mexinox's failure to include these sales in the questionnaire response precluded the Department and petitioners from being able to engage in pre-verification analysis of a complete sales listing in order to focus efforts on areas of potential concern going into verification. The Department should send a message that withholding such information will not be tolerated no matter what the reason.

Mexinox disagrees with the petitioners' argument that adverse facts available should be applied to the unreported sales identified by Mexinox at verification. Respondent states that there is no basis to the petitioners' claim because: (1) Staff preparing the data submissions did not discover the coils at issue here until shortly before verification; (2) the unreported sales were relatively few and represented an insignificant proportion of Mexinox's overall sales; (3) the sales were voluntarily provided by Mexinox on the first day of verification; (4) the Department has in the past accepted new sales at verification even where the respondent failed to reveal them voluntarily at the start of verification (*see e.g., Disposable Pocket Lighters from the People's Republic of China; Final Determination of Sales at Less Than Fair Value,* 60 FR 22359 (May 5, 1995)) (*Pocket Lighters from China*). In fact, the Department's 1998 Antidumping Manual provides for the acceptance of new sales data on a case-by-case basis (Chapter 13 at 30); and, 5) four of the sales in question were successfully verified by the Department, contrary to petitioners' assertion that the information had not been verified.

Department's Position: We disagree with petitioners that the use of adverse facts available is warranted. We have no reason to believe that Mexinox intentionally withheld from the Department the sales at issue here. Mexinox provided them on the first day of verification and the volume of sales is very small as a percentage of Mexinox's total U.S. sales volume. Furthermore, the Department did verify four of the sales. Moreover, as in *Pocket Lighters from China,* ''we are satisfied that the record is now complete and accurate regarding this company's sales of subject merchandise during the POI.'' *See Pocket Lighters from China,* 60 FR at 22365. For these reasons, we have determined not to resort to facts available for these sales, but to treat them the same as Mexinox's other reported sales.

Comment 14: Classification of Merchandise as ''Non-Prime Merchandise'

Petitioners argue that the Department should treat all Mexinox's merchandise as prime unless it has been clearly shown to be defective. With respect to Mexinox, petitioners argue that Mexinox admitted at verification that its sidestrand designation (which, they state, Mexinox apparently equates with non-prime in some cases) had nothing to do with the physical characteristics of the merchandise, and was a function of whether the product in question had been made to order (in which case it was not labeled sidestrand). With respect to the Reseller, petitioners argue that the Reseller's verification showed that it designated some material as non-prime that it was simply trying to move from inventory. As with sidestrand, designating such material as non-prime is simply, in petitioners' view, a question of semantics rather than a true indicator of defectiveness. There is no physical difference, they state, between ''prime merchandise,'' ''seconds,'' ''sidestrand,'' and ''non-sidestrand'' (at least the way Mexinox uses those terms). To allow such arbitrary distinctions into the dumping analysis, petitioners argue, would open the door for Mexinox to reduce its duty exposure simply by designating its low-priced U.S. sales as non-prime. Accordingly, petitioners argue that the Department should serve notice in its final determination that henceforth sidestrand with no defects must be considered prime merchandise for matching purposes. They also argue that to the extent the Department uses the sales by the Reseller, it should at a minimum reclassify as prime all of the Reseller's merchandise reported as seconds because verification revealed that most of the merchandise reported as seconds was actually prime merchandise.

Mexinox disagrees with the petitioners and urges the Department to accept Mexinox's classification of sidestrands as secondary on the same basis as any other non-prime sales made by Mexinox. For the record, Mexinox does not agree that only products with defects in surface finish or chemistry should be classified as non-prime, citing that it is industry practice, based on real physical differences in the material, to classify sidestrands as non-prime material products. However, Mexinox claims that the petitioners' assertion that the Department should treat Mexinox's sidestand sales as prime unless the merchandise has been shown to be defective is a hollow argument since Mexinox in fact only graded sidestrands as second grade if they were defective, and that all other sidestrands were graded and sold as prime grade, as confirmed at verification. Respondent emphasizes that the non-prime merchandise in every transaction examined by the Department at verification was shown to have a physical defect.

Department's Position: With respect to the Reseller, the issue is moot because, as indicated above, we have applied total facts available to the Reseller's sales. With respect to Mexinox, we verified Mexinox's reporting of non-prime merchandise (including some examples of sidestrand non-prime merchandise) at the sales verification in SLP. We found no evidence that it misclassified any of its non-prime merchandise. *See* the Mexinox sales verification report, p. 8. Furthermore, petitioners have cited to no evidence that Mexinox misclassified any of its sidestrand merchandise.

Comment 15: Miscoding of Prime Merchandise

Petitioners argue the Department should correct the miscoding of Mexinox's SLP stock sales by assuming that all SLP stock sales were of prime merchandise.

Mexinox argues that petitioners cannot provide any evidence to illustrate why all SLP stock sales should be re-coded as prime products.

Department's Position: Evidence on the record indicates that some SLP stock sales were incorrectly reported as secondary merchandise rather than prime merchandise. *See* Mexinox sales verification exhibit 1, p. 1. However, we do not agree with petitioners that there is any need to assume that all SLP stock sales were prime merchandise. Instead, we have recoded the SLP stock sales in accordance with information Mexinox gave on its list of corrections on the first day of verification. *See* Mexinox sales verification exhibit 1, p. 1.

Comment 16: Duty Drawback

Petitioners argue that the Department should disallow Mexinox's claimed duty drawback adjustment. They base this argument on 19 USC § 1677a(c)(1)(B) (section 772(c)(1)(B) of the Act) which states that EP shall be increased by "the amount of any *import duties* imposed by the country of exportation which have been rebated, or which have not been collected, by reason of exportation of the subject merchandise to the United States' (emphasis added). In its questionnaire response, Mexinox reported that "import duties on hot-rolled stainless steel into Mexico are 0%." *See* Mexinox's November 17, 1998 submission, p. 114. Petitioners state that the fee that Mexinox allegedly pays is not a duty, and thus should not be allowed as a drawback adjustment. They argue that if the Department does grant the adjustment, the reported adjustment should be corrected to reflect the amount that Mexinox's cost verification exhibit 16 demonstrates was the actual fee recorded by Mexinox.

Mexinox disagrees with the petitioners' assertion that the 0.8 percent fee paid by Mexinox is not a duty, and that the fee should thus not be allowed as a drawback adjustment under section 772(c)(1)(B) of the Act. In support of its position, Mexinox states that the U.S. Customs Service regulations define a duty as "Customs duties and any internal revenue taxes which attach upon importation" (19 CFR § 101.1 (1998)). Furthermore, the questionnaire issued in this investigation, in defining what is to be reported as the U.S. customs duty, specifically includes "the unit cost of the U.S. customs processing fee." Thus, Mexinox states, it is clearly the Department's practice to consider ad valorem fees such as these as duties for the purposes of duty drawback. Indeed, respondent states, the Mexican processing fee is analogous to the U.S. merchandise processing fee, which is considered part of U.S. duties. Moreover, Mexinox argues that the Department should allow its claimed duty drawback adjustment because such an adjustment is necessary to ensure a fair price comparison. Because this fee is levied only on home market sales, to include the fee in home market prices without adding a corresponding amount to the U.S. price pursuant to section 772 (c)(1)(B) of the Act would violate the underlying objective of fair comparisons between NV and U.S. price.

Finally, Mexinox argues that petitioners erred in insinuating that Mexinox may have incorrectly overstated its adjustment. It states that the cost verification exhibit mentioned by the petitioners as containing an alternate standard processing fee actually relates to private customs brokers' fees, not the processing fees paid to the government.

Department's Position: We agree with Mexinox that the customs processing fees at issue qualify for a duty drawback adjustment. Mexinox claimed this adjustment under article 49 of the Mexican *Federal Law of Rights. See* Mexinox November 17, 1998 submission, p. 25. That statute refers to the customs processing fee at issue here as a "general importation tax." *See* Mexinox sales verification exhibit 36, p. S3032. As an "importation tax" it is an import duty within the meaning of section 772(c)(1)(B) of the Act. Therefore, in this final determination, as in the *Preliminary Determination,* we made a duty drawback adjustment.

Regarding the calculation of the adjustment, article 49 of the *Federal Law of Rights* indicates that the 0.8 percent rate that Mexinox used in its computation of the duty drawback adjustment was the correct rate. *See* Mexinox sales verification exhibit 36, p. S3032 and Mexinox's section C response, p. 73. Further, petitioners have cited to no information on the record to establish that the line item from cost verification exhibit 16 to which they refer can only be a fee paid to the government, and not customs brokers' fees as Mexinox asserts. In the absence of any evidence that Mexinox recorded its customs processing fees differently in its books than how it reported them to us in its duty drawback calculation, we have accepted Mexinox's calculation.

Comment 17: U.S. Brokerage

Petitioners argue that the Department should correct Mexinox's reported U.S. brokerage because, due to a rounding error discovered at verification, Mexinox's reported U.S. brokerage expense is overstated. *See* Mexinox sales verification report at 17.

Department's Position: We agree and have made this correction in this final determination.

Comment 18: Model Match

Petitioners argue that the Department should explain for the record the manner in which grades have been matched (*i.e.,* how the weights were assigned for the model match program). They state that the Department's matching should reflect an objective selection process that can be applied if different grades become involved in any administrative review.

Mexinox agrees that the Department should disclose the manner in which goods are matched in the model match program.

Department's Position: We assigned individual weighting factors to reported grades provided they were recognized American Iron and Steel Institute (AISI) grades. We also assigned unique factors to reported proprietary grades or foreign grade specifications if the chemical content was sufficient to distinguish them from any AISI grade to which we already had assigned a ranking factor in our matching hierarchy (*e.g.*, DIN specification 1.4462). Where a proprietary or foreign grade specification was similar in chemical composition to an AISI grade, we did not assign a unique weighting factor to that particular grade. Rather, we assigned it the same weight as the comparable AISI grade. We also did not assign unique weights to certain ''sub'' grades (*e.g.*, 304DDQ) because the percentage ranges of chromium, carbon, nickel, and molybdenum do not differ from the broader AISI grade.

After deciding which grades to assign unique weighting factors, we established a linear weighting system designed to search for matches within the general classes of stainless steel (*e.g.*, the chromium-nickel series, the straight chromium (hardenable) series, and the straight chromium (non-hardenable) series). In addition to ensuring matches within the general classes or families of stainless steel, our weighting system is designed to match grades in the same family based on chemical composition. For example, within the chromium-nickel series, where an identical match is not possible, our preference is to pair grades containing molybdenum (*e.g.*, 316, 317) with each other before searching for a grade with no molybdenum (*e.g.*, 302, 304).

Comment 19: Business Proprietary Information

Petitioners argue that the names of Mexinox's home market and U.S. affiliated customers should be publicly released or at least be released under administrative protective order (APO). In the latter respect, they state, there is no clear and compelling need to withhold the names of these affiliated parties from APO disclosure. They argue that the record in this investigation shows that (1) the parties in question are affiliated distributors and not Mexinox's customers, and (2) the identities of these parties are not even proprietary, but have long been in the public domain.

Petitioners argue that in this investigation Mexinox's home market and U.S. affiliates do not constitute customers in the true sense of the word. Instead, they are affiliated distributors or resellers that form Mexinox's corporate chain of distribution. In contrast, actual customers are those unaffiliated companies that purchase subject merchandise. Petitioners argue that this distinction is especially clear with respect to Mexinox's activities in the United States because a respondent's affiliated U.S. resellers of merchandise are not considered *bona fide* customers of that respondent under the statute. Thus, whereas companies in the home market that purchase and consume foreign like product from an affiliated respondent can be treated as that respondent's customers if the sales are shown to have been at arm's-length, a respondent's affiliated parties in the United States are not treated as a respondent's customers, and sales by a respondent to its U.S. affiliated resellers are not subject to the arm's-length test. Therefore, petitioners argue, these U.S. affiliates are not customers for purposes of the statute whose identities can properly be withheld from disclosure.

Mexinox argues that the Department has already considered this issue and issued its determination in a December 4, 1998 letter in which it asked Mexinox to revise its earlier filings in this proceeding and to provide codes for all double-bracketed U.S. and home market customers that were, or were argued to be, affiliated with Mexinox. Mexinox complied with the Department's request and resubmitted its questionnaire responses on December 15, 1998, with codes that represent the identities of the allegedly affiliated customers. Given that the Act expressly allows respondents to protect customer names under APO (without regard to whether those customer are affiliated), Mexinox argues, the December 15, 1998 coded responses reflect a more detailed response than that to which the petitioners are entitled.

Furthermore, Mexinox argues that the petitioners' request that the Department order Mexinox to release the identification of all affiliated customers is incorrect as a matter of law. Section 777(c)(1)(A) of the Act provides that:

> ''Customer names obtained during any investigation which requires a determination under section 1671d(b) or 1673d(b) of this title may not be disclosed by the administering authority under protective order until either an order is published under section 1671e(a) or 1673e(a) of this title as a result of this investigation or the investigation is suspended or terminated.''

See 19 U.S.C. § 1677f(c)(1)(A). Mexinox argues that there is no ambiguity in the language of this prohibition. There is no qualification, implied or express, of the right to non-disclosure of the word ''customer.'' Any acquiescence in petitioners'' request for disclosure of Mexinox's customer names by the Department, Mexinox argues, would therefore be contrary to the statute.

Furthermore, Mexinox argues that petitioners' argument that affiliated distributors are not *bona fide* customers under the statute is patent nonsense. Even if the entities at issue were determined to be affiliated distributors, they are also customers, and as such fall squarely within the protection of section 777(c)(1)(A) of the Act. Mexinox states that there is no definitional provision in either the Act or the Department's regulations that qualifies the common definition of the word ''customer'' or lends support to petitioners' claims that affiliated companies are not ''customers'' within the meaning of the statute.

Furthermore, Mexinox dismisses petitioners' circular argument that because the identities of Mexinox's customers are otherwise publicly known their identities as customers of Mexinox are not protected from disclosure. It states that it is not the existence of a company that is a customer that is protected from disclosure under 19 U.S.C. § 1677f(c)(1)(A) of the Act, but rather the fact that the company in question was, or is, a customer of Mexinox.

Finally, Mexinox argues that given the clarity of the law on the protection of customer names from APO disclosure, petitioners' repeated attempts to persuade the Department to violate the protection afforded to Mexinox's customers' identities under the statute approaches an abuse of the Department's processes. The participation of respondents in antidumping investigations, Mexinox states, was never intended as a means for petitioners to gain access to proprietary information to which they are not entitled. Petitioners' repeated demands that the Department require Mexinox to disclose its customer names, arguments that are not accompanied by citations to any legal authority or justified by any need, are not only baseless, but they have also proven to be extremely disruptive to the investigation procedure.

Department's Position: We disagree with petitioners. From the onset of this investigation, Mexinox has not released the names of its affiliates in the U.S. or home markets under APO and, thus, has double-bracketed the names of its affiliates. On October 13, 1998, petitioners wrote the Department requesting that Mexinox be required to replace double-bracketed affiliated party names with affiliate codes that would permit the consistent and reliable tracking of affiliations throughout the investigation. On November 5, 1998, respondents in the SSSS from Germany, Italy, and Mexico investigations submitted a letter to the Department arguing that in accordance with section 777(c)(1)(A) of the Act, they should not be forced to disclose their customers to counsel for petitioners. In response, on November 12, 1998, petitioners submitted onto the record of the SSSS from Germany investigation documentation which it believed supported its assertions that the respondent had publically released its affiliates' names which it had double-bracketed for the instant proceeding. (Petitioners submitted this same document for the record of the SSSS from Mexico investigation on December 11, 1998.) After a thorough review of the record, on December 4, 1998, the Department issued a letter to Mexinox stating that ''* * * we will permit the double bracketing of all customers in both the home market and U.S. market. We require however, that you code the affiliated customers in both markets.''[6] On December 15, 1998, Mexinox submitted such coding. Further, on March 17, 1999, petitioners placed information on the record in support of a new argument that the identity of Mexinox's U.S. affiliates should be treated as public information.

Section 777(c)(1)(A) of the Act states that ''[c]ustomer names obtained during any investigation which requires a determination under section 705(b) or 735(b) may not be disclosed by the administering authority under protective order until either an order is published under section 706(a) or 736(a) as a result of an investigation or the investigation is suspended or terminated.'' *See* 19 U.S.C. § 1677f(c)(1)(A). Further, section 351.304(a)(2)(i) of the Department's regulations states that the Secretary will require that all business proprietary information presented to, or obtained or generated by, the Secretary during a segment of a proceeding be disclosed to authorized applicants, except customer names submitted in an investigation.

Based on the statute and our regulations, we have concluded that Mexinox was entitled to withhold from release the names of its customers in the U.S. or home market under APO during this proceeding. We agree with respondent that it is not the company name in the sense of the company's existence that it is protected under the statute and the implementing regulation. Rather, it is the relationship of a respondent to that company as a customer of the respondent that is the protected information. This is the case regardless of whether the company in question is a customer in the U.S. market or in the home market. While petitioners provided voluminous submissions arguing that Mexinox's affiliates' names had been available publicly during the POI, due to the sensitive nature of this issue we have determined that the documentation does not demonstrate that they were indeed customers of Mexinox. Requiring Mexinox to release publicly such information without conclusive evidence could cause potential competitive harm to Mexinox. Further, it is important to note that as stated above, the Department instituted one of the petitioners' proposed methods by requiring Mexinox to provide codes for its affiliates which were then made part of the public record. Therefore, for this final determination we have not altered our treatment of respondents' customers' names.

Comment 20: Customs Classification

Petitioners argue that HTS subheading 9802.00.60 should be listed in the scope of the investigation. They argue that it is the Department's policy that antidumping duties apply to the full value of entries under subchapter 9802 of the HTS, covering U.S. goods exported and returned. To reduce the chance of errors by the U.S. Customs Service in implementing this policy and to ensure that full duties are collected, the Department, petitioners argue, should include in the instructions accompanying any antidumping order in this case clear statements that (1) subject merchandise may enter the United States under HTS subheading 9802.00.60 in addition to its regular HTS subheadings, (2) that such merchandise is covered by the order, and (3) that the antidumping duty deposit rate is to be applied to the full value of the merchandise (*i.e.,* including the U.S. value).

Mexinox opposes petitioners' recommendation for an amendment to the scope description as described above. Respondent acknowledges that it is possible for subject merchandise to enter under HTS 9802.00.60, but argues that such an amendment is more likely to create confusion and increase the likelihood of errors. Since any metal article from pipe to hubcaps that otherwise meets the requirements may be imported from Mexico under HTS 9802.00.60, if the Department includes this designation in the scope description and issues instructions to the U.S. Customs Service which include that tariff category, there is a significant risk that the Customs Service staff will inadvertently suspend liquidation of a whole range of non-subject articles from Mexico and disrupt legitimate trade.

Respondent also questions the need for such instructions when it is already not disputed that (1) any subject material will be entered concurrently under one of the previously listed tariff numbers and therefore will be already appropriately ''flagged'' by Customs, and (2) the tariff categories in any event are not themselves dispositive—only the written scope description is.

Department's Position: We agree with Mexinox that it is not necessary to amend the scope language on the HTS numbers under which subject merchandise enters. The U.S. Customs Service is aware through the identification system already in place that merchandise subject to antidumping duty orders may be entered under HTS 9802.00.60. It is also already aware through prior practice that the antidumping duty deposit rate is to be applied to the full value of the merchandise, including the U.S. value. As Mexinox has argued, to include petitioners' recommended language in the scope description and instructions to Customs could result in suspension of liquidation of non-subject merchandise. Therefore, we believe it unnecessary to amend the scope.

Issues Related to Cost

Comment 21: Major Inputs

The following comments relate to the cost of production of inputs received from Krupp KTN, Acerinox S.A. (Acerinox), and AST. (Both AST and KTN cost verification exhibits were submitted to the record for SSSS from Mexico on May 13, 1999.) Each of these companies provided black band and white band to Mexinox which is an input used in the production of subject merchandise. Both petitioners and the respondent provided comments on the proper treatment of the cost of these inputs.

(a) Arm's-length transfer prices.

Mexinox maintains that the transfer prices from affiliated parties KTN and

[6] See Letter from Ann Sebastian, Senior APO Specialist, to Hogan and Hartson, December 4, 1998.

AST represent arm's-length prices and should be accepted by the Department.

Petitioners state that the transfer prices from affiliated parties do not represent arm's-length prices and the Department should apply its major input rule in valuing the inputs from affiliates.

Department's Position: We agree with petitioners that the reported transfer prices for these inputs between Mexinox and its affiliated suppliers were below market prices. Therefore, in accordance with section 773(f)(2) of the Act, we have used the higher of transfer price or market price in valuing these inputs.

(b) Inputs from Acerinox.

Petitioners state that Mexinox failed to report the actual COP data for inputs obtained from its affiliate Acerinox. Therefore, petitioners claim that the Department should resort to facts available to value these inputs and apply an adverse inference.

Mexinox states that it should not be penalized for its inability to obtain COP data from Acerinox.

Department's Position: We agree with the petitioners, in part, that the value of inputs received from Acerinox should be adjusted. While Mexinox was unable to supply the COP of this input, we do not consider purchases from Acerinox to be a major input in accordance with section 773(F)(3) of the Act due to the insignificant quantity obtained from Acerinox. For the final determination we have adjusted Acerinox's transfer price to reflect the higher market price in accordance with section 773(f)(2) of the Act.

(c) Inputs from KTN.

Petitioners argue that the reported COP for inputs obtained from KTN could not be substantiated. In calculating the COP of the inputs obtained from KTN, petitioners argue that the Department should adjust KTN's financial expense factor to include total foreign exchange losses and exclude total foreign exchange gains. Regarding G&A included in the COP of the inputs obtained from KTN, petitioners state that Mexinox has not supported its position that international project expenses and year-end adjustment for pensions and social expenses and accruals for legal liabilities were properly excluded from KTN's G&A expenses. Petitioners argue that these should be included in KTN's G&A ratio because these costs are recognized in KTN's financial statements.

Mexinox argues that the Department should not adjust KTN's financial expense factor to include foreign exchange losses and exclude total foreign exchange gains in calculating the COP of the inputs obtained from KTN. Mexinox states that it was cooperative and acted to the best of its ability to provide the information requested and that the Department should not make an adverse inference and exclude the exchange gains. Regarding G&A included in the COP of the inputs obtained from KTN, Mexinox argues that no adjustment should be made for international project expenses because these expenses are not related to the production and sale of subject merchandise. Mexinox argues that the accrual of severance payments was made for the anticipated downsizing of the company, but that these personnel are still employed and no severance payments have been made. Therefore, it argues, these expenses should also be excluded from KTN's G&A.

Additionally, Mexinox argues that its allocation of KTN's G&A (used in calculating KTN's COP) based on processing costs is correct. It maintains that the Department's regulations authorize discretion regarding allocation methods. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61736 (November 19, 1997). Mexinox argues that allocating G&A expenses based on total cost of manufacturing (COM) would overstate the per-ton G&A of control numbers (CONNUMs) with high COMs. Mexinox argues that the G&A activities performed by KTN for each category of merchandise is the same for each ton of steel and do not vary with the steel grade. However, they argue that it is reasonable to assign a higher G&A cost to a product that undergoes more processing.

Department's Position: We agree with the petitioners that the COP and CV for KTN are incorrect and require adjustment. In calculating the COP of the inputs received from KTN, we adjusted the submitted input cost to reflect KTN's adjustments to G&A. With regard to G&A included in the COP of the major input, we agree with petitioners that the costs associated with international projects and year-end adjustments should be included in the G&A because they relate to the operations of the company as a whole. Since emerging international projects are a normal part of KTN's business, we have included the related costs in KTN's G&A expense ratio calculation. Throughout the investigation we received conflicting reports as to the nature of the year-end adjustments. At verification we determined that the majority of KTN's year-end adjustments were for severance accruals. We consider severance costs to be expenses that relate to the general operation of a company as a whole and they directly affect the KTN world wide manufacturing scheme. By setting up a severance accrual, KTN is reasonably certain that it will make severance payments for workers currently employed by the company in the near future. These costs were recognized during the current year and directly relate to the company's current employees. Accordingly, we consider it appropriate to include these year-end adjustments in KTN's G&A calculation.

We disagree with petitioners' assertion regarding the financial expenses in the COP of the major inputs. Because all three entities are members of the same consolidated group, Fried. Krupp, we did not include the financial expenses in the COP of the inputs. If we included financial expenses in the COP build-up of the input and again in the COP or CV of the subject merchandise, we would double-count the financial expenses.

We agree with petitioners that KTN's G&A expenses should be allocated as a percentage of the total COM, as opposed to KTN's assertion that they should be allocated as a percentage of processing costs. As set forth in the Department's *Final Determination: Certain Carbon and Steel Wire Rod from Canada,* 59 FR 18791, 18795 (April 20, 1994) and *Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan* 61 FR 38139, 38149 (July 23, 1996) our normal method for allocating G&A expenses is to apply these types of costs as a percentage of total manufacturing cost (*i.e.,* materials, labor and overhead). We use this method in recognition of the fact that G&A expenses consist of a wide range of costs which are indirectly related to the production process and that any allocation based on a single factor (*e.g.,* processing costs) is purely speculative. The Department's normal method for allocating G&A costs based on the total manufacturing cost takes into account all production factors (i.e., materials, labor, and overhead) rather than a single arbitrarily chosen factor. By consistently allocating G&A over the total manufacturing costs, the Department attempts to minimize discriminatory cost allocations. In addition, G&A expenses are period costs, not product costs, and, as such, they should be spread proportionately over all merchandise produced in the period. By computing G&A based on a percentage of total manufacturing costs, a product absorbs the same proportional amount of G&A expenses relative to its total cost. Therefore, this method avoids distortions to the price or cost analysis that would result if lower-cost products are overburdened with a higher percentage of processing costs.

(d) Inputs from AST.

Mexinox argues that the Department's claim that there was a discrepancy between the variable COM reported by AST for a particular grade of material (*see* Mexinox cost verification report, p. 22) is incorrect. Additionally, Mexinox states that the Department's claim, that AST's ''variable COM percentage of standard'' and the ''fixed overhead percentage of DirLab and VOH'' could not be supported (*see* Mexinox cost verification report, p. 22), is not valid. Mexinox states that it provided the support for the information in materials which, though presented to the Department at the cost verification, were not taken as exhibits.

Petitioners argue that the worksheet Mexinox included in its case brief (which Mexinox claims was presented at the verification) constitutes new, untimely information in violation of the Department's regulations, and it should be removed from the record. Moreover, they argue that the Department must uphold the principle that it, as arbiter, decides what information is to be included in the record and what conclusions are to be made following verification.

Department's Position: We determined that there was no discrepancy between the variable COM reported by AST at verification and the January 7, 1999 data submitted by Mexinox. Furthermore, we determined that the worksheet Mexinox used in support of its position does not constitute new, untimely information because all of the information contained in the worksheet can be linked to page S3883 of verification exhibit 33.

(e) Equalized costs.

Petitioners argue that the Department should reject Mexinox's contention that hot-band prices should be ''equalized'' to account for alleged differences in market conditions, and should continue to rely on the per-unit material costs recorded in Mexinox's accounting records. Petitioners state that *Certain Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review,* 62 FR 42496, 42508 (August 7, 1997), (*POS Cookware from Mexico*), cited by Mexinox in support of its position, involved a comparison of the affiliated supplier's price to the respondents and to unaffiliated customers. Petitioners argue that in this case Mexinox did not provide this analysis for KTN, AST, and Acerinox.

Mexinox argues that if the Department decides to adjust Mexinox's material costs based on the major input rule, the Department should use ''equalized'' prices. According to Mexinox, using ''equalized'' prices is consistent with *POS Cookware from Mexico.*

Department's Position: We agree with Mexinox that an equalization adjustment should be applied in order to perform adequately a fair price comparison. That is, in making the comparison of transfer price to market price, we adjusted for differences in the specifics of the transactions between the affiliated and unaffiliated suppliers.

(f) COP for black band.

Petitioners argue that Mexinox failed to report the COP for one grade of black band from KTN.

Mexinox states that it did not withhold relevant cost information for one grade of black band. Mexinox states that it did not report this data because it did not purchase that particular grade of black band from KTN during the POI.

Department's Position: We found that Mexinox did not withhold relevant cost information for one grade of black band as alleged by the petitioners. Mexinox did not report this data because it did not purchase that particular grade of black band from affiliates during the POI.

Comment 22: Consulting Fees

Petitioners argue that Mexinox should increase its G&A expenses to include the administrative, consulting, and technical assistance provided by KTN.

Mexinox states that the KTN consulting fees are already included in Mexinox's reported G&A expenses. Accordingly, Mexinox argues that, if the Department accepts the petitioners' proposal, expenses would be double-counted.

Department's Position: We agree with Mexinox that the consulting fees were included in Mexinox's reported G&A, and as a result no adjustment is necessary.

Comment 23: Depreciation

Petitioners argue that Mexinox understated its depreciation expenses. They state that Mexinox's 1997 financial statement indicates that Mexinox revised its method of valuing assets and the estimated useful lives of assets during 1997. As a result, petitioners contend that the Department should apply the 1996 depreciation amount for the POI depreciation. Additionally, petitioners argue that if the Department excludes depreciation attributable to Tuberias ASPE from the numerator of the depreciation expense rate, the corresponding ''transformation expenses'' must also be removed from the denominator to ensure that the ratio is correct.

Mexinox argues that it did not under-report depreciation. It states that the petitioners were comparing the accumulated depreciation by year-end 1996 to the depreciation for 1997. Mexinox further argues that its reported depreciation is slightly overstated because it includes the depreciation for equipment located at Tuberias ASPE in its total depreciation amount.

Department's Position: We agree with Mexinox that its depreciation was reported correctly.

Petitioners were comparing the accumulated depreciation amounts, rather than the depreciation expense for 1996, to the depreciation for 1997. We disagree with petitioners' assessment that Mexinox changed the useful lives of assets and its method of valuing the assets. The footnote to the financial statements which petitioners referenced indicated that Mexican generally accepted accounting principles (GAAP) changed with respect to the method required to revalue assets to reflect the effects of inflation. It was not a change in the valuation of the assets. The change was to allow the application of an index rather than to require companies to have all assets appraised. We note that the footnote indicated that the prescribed GAAP method to determine the useful lives of assets changed as well. However, the useful life change is a prospective change and does not affect the useful lives of the assets already in service. Therefore, there is no need to adjust the reported depreciation.

Comment 24: Sludge Clean-up

Petitioners argue that reported costs should be increased by the amount accrued for the clean-up of old sludge. They argue that in its financial statements Mexinox spreads the cost of the sludge clean-up over three years, and the fact that the 1997 expense was accrued to adjust prior years' accruals is no reason to ignore the 1997 expense. Petitioners therefore contend that the increase in the 1997 accrual should be included in Mexinox's reported costs. Petitioners argue that the Department normally includes accrued amounts recognized in the financial statements in general corporate expenses as it did in the *Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile,* 63 FR 31411, 31425 (June 9, 1998) (*Salmon from Chile*). Petitioners argue that Mexinox did not retroactively charge the sludge clean-up expenses to periods dating back to 1978 but instead recorded a reserve shown in the 1996 financial statements and subsequent periods. Therefore, according to the petitioners, the increase to the reserve account which was recorded during the POI must be included in the G&A even if Mexinox did not spend the full amount.

Mexinox claims that there is no basis for an adjustment to the reported sludge clean-up costs. According to Mexinox, it properly excluded from the reported costs the increase in the reserve account shown on the income statement because the amount is a provision and not a period expense. Mexinox asserts that all clean-up expenses for current sludge generated were included in the reported costs. It argues that the increase in the reserve for clean-up is not an expense that was incurred during the POI, but instead is an accounting provision booked at the end of 1997 to account for the revised estimate of the clean-up expenses.

Department's Position: We agree with petitioners. These expenses relate to the clean-up of sludge generated from 1978 through the present time. Mexinox set up a reserve in 1996 to account for the sludge clean-up. Reserve accounting dictates that amounts expended for the clean-up are offset to the reserve account but not recognized as an expense during the year. Periodically, the reserve is replenished with any increase recognized as an expense on the income statement during the year. This expense amount is a period cost which is properly included in G&A expenses.

Comment 25: Inventory Reconciliation

Petitioners argue that the COM should be adjusted to reflect the average difference between the reported COM and the value recorded in Mexinox's inventory system.

Mexinox argues that the COM should not be adjusted to reflect this difference. Mexinox argues that comparisons between inventory values and reported cost are not meaningful because its inventory system is less product-specific than the reported costs.

Department's Position: We agree with Mexinox and have not adjusted the COM for the difference between the reported values and the inventory value. Values in Mexinox's inventory are less specific than the amounts reported to the Department. The amounts in the inventory system are for groups of products while the reported values are specific to the product characteristics designated by the Department.

Comment 26: Scrap Revenue

Petitioners state that Mexinox reported material costs net of scrap revenue and that it is the Department's practice to apply scrap revenue as an offset to G&A expenses.

Mexinox states that its scrap revenue was properly applied as an offset to material costs. Mexinox argues that scrap is generated from direct materials, a component of COM. Therefore, the revenue generated should be used to offset COM.

Department's Position: We agree with Mexinox. Mexinox only included the scrap generated from the production of subject merchandise as a reduction of the direct materials costs. This is consistent with the Department's normal practice. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan,* 62 FR 51427, 51431 (October 1, 1997).

Comment 27: Expenses Incurred on Behalf of Subsidiaries

Mexinox argues that the Department should not include expenses it incurred on behalf of its subsidiaries in the G&A expense ratio. According to Mexinox, these expenses are properly classified as selling expenses because they are the salaries and employee benefits for personnel that were employed at Mexinox's sales subsidiaries.

Department's Position: We agree with Mexinox that the expenses incurred on behalf of the selling subsidiaries should not be included in the calculation of the G&A expense ratio. In this final determination we have removed them from the computation of total G&A expenses.

Comment 28: Financial Expense

Mexinox states that the Department should allow exchange gains to offset exchange losses even though it was unable to substantiate the exchange gains. Mexinox states that if the Department disallows its exchange gains because Mexinox could not substantiate the amounts on the submitted schedule, it would amount to the application of adverse facts available when it was cooperative and acted to the best of its ability.

In addition, Mexinox also states that short-term interest income should be allowed as an offset to financial expenses. Mexinox maintains that at verification the Department found sufficient evidence to distinguish between short-term and long-term interest on Fried. Krupp's 1997 consolidated financial statements.

Petitioners state that since the Department was unable to reconcile the schedule of foreign exchange gains and losses to the audited financials of Fried. Krupp it should include total foreign exchange losses and exclude the total foreign exchange gains in calculating the net financial expenses.

Department's Position: We agree with petitioners and Mexinox, in part. The Department requested in two questionnaires and again at verification that Mexinox provide information to support the inclusion of Fried. Krupp's exchange gains and exclusion of its exchange losses from the interest expense computation. Mexinox, however, failed to provide any supporting information. Mexinox has the ability and responsibility to support its claim for the inclusion of these exchange gains or the exclusion of the exchange losses. Thus, we agree with petitioners that since Mexinox failed to provide support to justify the inclusion of Fried. Krupp's exchange rate gains and the exclusion of its exchange rate losses from the financial expense ratio calculation, we should include Fried. Krupp's exchange rate losses but exclude its exchange rate gains from the financial expense ratio calculation. We have done so in this final determination.

We agree with Mexinox that, based on our findings at verification, the interest income used as an offset to financial expenses was appropriately classified as short-term. Fried. Krupp's 1997 consolidated financial statement does distinguish between interest earned from long-term financial assets and short-term assets. Accordingly, we included this interest income earned from short-term assets, less the amounts relating to trade receivables, as an offset to financial expenses.

Comment 29: Allocation Base for G&A Expenses

Mexinox argues that it should be allowed to allocate its G&A based on processing costs because the regulations allow the Department some discretion in determining appropriate allocation bases. Mexinox argues that allocating G&A expenses based on total COM would overstate the per-ton G&A of CONNUMs with high COMs. Mexinox argues that the G&A activities performed by Mexinox for each category of merchandise is the same for each ton of steel and do not vary with the steel grade. However, it argues that it was reasonable to assign a higher G&A cost to a product that undergoes more processing.

Petitioners assert that the Department should follow its normal practice of allocating G&A expenses on the basis of cost of sales. They state that while they do not dispute Mexinox's contention that regulatory discretion exists in this area, such discretion is conferred on the Department rather than a respondent.

Department's Position: We agree with petitioners. The Department's normal method, as set forth in *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan; Final Determination of Sales at Less Than Fair Value,* 61 FR 38139, 38150 (July 23, 1996), allocates G&A expenses based on cost of sales. We use this method in recognition of the fact that the G&A expense category consists of a wide range of different types of costs which are so unrelated or indirectly related to the immediate production process that any allocation based on a single factor (*e.g.,* head counts, fixed costs, or transformation costs) is purely speculative. The Department's normal method for allocating G&A costs based on cost of sales takes into account all production factors. Therefore, for this final determination we have allocated G&A based on the total manufacturing costs.

Comment 30: Yield Ratio

Petitioners argue that Mexinox's U.S. Reseller incorrectly calculated its scrap yield ratio. The amount of further processed stainless steel used as the denominator in determining the yield ratio includes both internally processed and externally processed stainless steel. Petitioners assert that the numerator of stainless steel scrap sold appears to relate only to internally processed stainless steel; thus, the denominator should only include internally processed stainless steel. This would result in a higher scrap yield ratio to be applied to internally processed products. Mexinox did not address the inclusion of externally processed stainless steel in the scrap ratio denominator.

Department's Position: Because we have determined it appropriate to resort to total facts available for sales by the Reseller, this issue is moot.

Comment 31: Outside Processing Costs

Petitioners argue that outside processing costs of slitting and finishing applicable to the Reseller could not be verified. Petitioners state that the Reseller failed to show that the percentage used to the allocate costs for processors of all materials reasonably reflects the true amounts of outside processing. Also, petitioners claim that because the Department found that the management reports used to establish the calculated processing costs were understated in comparison to the financial accounting records, and the invoices sampled indicated a further understatement of costs, the management report used for the submission is unreliable and unverifiable.

Mexinox maintains that the information necessary to directly identify the specific portion of charges from combined processors that related to stainless steel alone was not available in the Reseller's computer system; thus, it is simply not possible to specifically identify those costs. Additionally, Mexinox argues that the combined processors at issue represent a small minority of the total outside processing expenses. Mexinox contends that the method used to allocate the combined processors was reasonable because it reflected the Reseller's actual experience with respect to the proportion of stainless and non-stainless materials taken from its stock that required further processing. The Reseller claims the financial accounting system used in the comparison was not available until January 1998; thus, the management reports used for reporting purposes were the only available source of information on processor-specific outside processing costs covering the entire POI. Additionally, the discrepancies noted by the Department were isolated and would average out over the entire POI. Furthermore, a sample of only one month is not reflective of the costs reported for the entire POI.

Department's Position: Because we have determined it appropriate to resort to total facts available for sales to the Reseller, this issue is moot.

Comment 32: Financial Statements

Petitioners assert that the review of the Reseller's financial statements by outside auditors showed serious discrepancies. The outside auditors discovered that cost of sales as recorded by the reseller were overstated, net SG&A expenses were understated, and interest expenses were understated.

Mexinox's affiliate argues that the financial statements prepared by outside auditors were created to put the Reseller's accounts into a pre-determined format conforming to the further manufacturer's parent company for purposes of consolidation. Mexinox states that the reclassifications had nothing to do with correcting information or conforming internal statements to GAAP.

Department's Position: Because we have determined it appropriate to resort to total facts available for sales to the Reseller, this issue is moot.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after January 4, 1999, the date of publication of the *Preliminary Determination* in the **Federal Register**.

We will instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percentage)
Mexinox	30.86
All Others	30.86

International Trade Commission Notification

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

This determination is issued and published in accordance with section 735(d) and 777(i)(1) of the Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13678 Filed 6–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–814]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From France

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

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Douglas Campau, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3793.

The Applicable Statute

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

Final Determination

We determine that stainless steel sheet and strip in coils (''SSSS'') from France are being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination, issued on December 17, 1998 (*Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from France,* 64 FR 130 (January 4, 1999) (''*Preliminary Determination*''), the following events have occurred:

On January 12, 1999, we issued a supplemental questionnaire to Usinor for sections A, B, and C of our initial questionnaire. On January 26, 1999, Usinor's submitted its response to the Department's supplemental questionnaire. On January 15, and January 21, 1999, we issued our cost and sales verification outlines, respectively.

On January 8, 1999, petitioners submitted comments on the planned Usinor sales and cost verifications. During February and March 1999, we conducted sales and cost verifications of Usinor and its affiliates' responses to the antidumping questionnaires in France and the United States. Between March 30, and April 7, 1999, we issued our sales and cost verification reports for Usinor and its affiliates (i.e., Ugine, Ugine Service, Bernier, Uginox, Hague, and Edgcomb). On April 15, 1999, respondent submitted revised sales and cost databases. Petitioners and respondent submitted case briefs on April 14, 1999, and rebuttal briefs on April 21, 1999. On April 28, 1999, the Department held a public hearing.

Scope of Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''. [5]

Period of Investigation

The period of investigation (''POI'') is April 1, 1997 through March 31, 1998.

Transactions Investigated

For its home market and U.S. sales, Usinor reported the date of invoice as the date of sale. See 19 CFR § 351.401(i). As explained in response to Comment 10, below, for the final determination, we have continued to rely upon Usinor's invoice dates in the home and U.S. markets as the date of sale.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Usinor covered by the description in the *Scope of Investigation* section, above, and sold in France during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We relied on nine characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of preference): grade, hot/cold rolled, gauge, finish, metallic coating, non-metallic coating, width, tempered/tensile strength, and edge trim. These characteristics have been weighted by the Department where appropriate. The Department's questionnaire authorized respondent to make distinctions (sub-codes) within some of these characteristics, but not within others. For certain product characteristics (*i.e.*, finish and coating) Usinor reported additional sub-codes which were specifically permitted by the Department's questionnaire. However, Usinor also reported additional sub-codes in its hot/cold rolled, and tempered product characteristic categories. These are characteristics for which the Department's questionnaire did not explicitly permit sub-codes. However, for purposes of the preliminary determination, the Department included these additional codes. *See Analysis Memo from Doug Campau to The File,* dated December 17, 1998. At verification, we reviewed respondent's claims for the additional sub-codes. *See Home Market*

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

Verification Report of Usinor/Ugine at pages 6–9, dated April 6, 1999. In light of our findings at verification, we conclude that use of these additional codes is appropriate, and have included them in the Department's product matching methodology.

Also, respondent commented on the Department's finish matching methodology. As explained in response to Comment 4, below, for this final determination we have not changed our finish matching methodology.

Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics discussed above, which were listed in the August 3, 1998 antidumping questionnaire and the reporting instructions.

Changes Since the Preliminary Determination

On February 23, 1999, the Department published the amended preliminary determination, incorporating corrected scope language. *See Notice of Preliminary Determinations of Sales at Less than Fair Value; Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, Mexico, South Korea, and United Kingdom; and Amended Preliminary Determination of Sales at Less Than Fair Value, Stainless Steel Sheet and Strip from Taiwan,* 64 FR 8799 (February 23, 1999).

Based on our analysis of comments received, we have made certain corrections to our preliminary determination. We have corrected certain programming and clerical errors in our preliminary determination, where applicable, and they are discussed in the relevant comment sections below.

Also, the Department corrected the model match and margin programs in calculating packing costs for use in the cost test and constructed value analysis. In the *Preliminary Determination,* the Department inadvertently used a sale-specific packing cost for use in the calculation of interest expenses in both the cost test and constructed value analysis. For the final determination, the Department has revised this section of the program to calculated a weighted-average packing cost per CONNUM for use in these calculations. For a more complete analysis, please see the *Final Determination Analysis Memo,* dated May 19, 1999.

Fair Value Comparisons

To determine whether sales of SSSS from France to the United States were made at LTFV, we compared constructed export price (''CEP'') to the Normal Value (''NV''), as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEP sales for comparison to weighted-average NV sales or constructed value (CV) sales.

Constructed Export Price

We calculated CEP in accordance with section 772(b) of the Act because the first sale to an unaffiliated purchaser took place through an affiliated purchaser after the subject merchandise was imported into the United States.

We based CEP on the packed ex-warehouse or delivered prices to unaffiliated purchasers in the United States. We identified the starting price by accounting for billing adjustments to the invoice price. See 19 CFR § 351.401(c). Where appropriate, we made deductions from the starting price for billing adjustments, credit, warranty expenses, and commissions. We also made deductions for the following movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act: inland freight from plant to distribution warehouse, inland freight from plant/warehouse to port of exportation, international freight, marine insurance, U.S. inland freight from port to warehouse, U.S. inland freight from warehouse to the unaffiliated customer, U.S. inland insurance, U.S. warehouse expenses, and U.S. Customs duties. In accordance with section 772(d)(1) of the Act, we deducted selling expenses associated with economic activities occurring in the United States, including direct selling expenses, inventory carrying costs, and other indirect selling expenses. We recalculated credit expenses for those sales with missing payment dates. For U.S. sales with missing payment dates, the Department set the date of payment to the final date of the U.S. sales verification. Additionally, for international freight by affiliated freight forwarders, we used the average of the reported rates for unaffiliated freight forwarders. See Comment 6.

For products that were further manufactured after importation, we adjusted for all costs of further manufacturing in the United States in accordance with section 772(d)(2) of the Act. We relied on Usinor's submitted further manufacturing costs, except where the Department determined that the submitted further manufacturing costs could not be relied upon.

Specifically, we made the following adjustments:

1. We adjusted Hague's further manufacturing costs by applying the percentage difference between the reported values and the subject merchandise specific value. We address this issue further in our response to comment 30 in the ''Interested Party Comments'' section of the notice. See Final Cost Analysis Memorandum at 4.

2. Because Edgcomb was unable to report further manufacturing costs in the manner required by the Department, we had to resort to facts otherwise available. Where we did find that Edgcomb's reported costs were reported correctly (i.e., SG&A and financial expense calculations), we used those costs. We also used certain yield loss and processing costs data verified at Edgcomb. However, for all other costs, as facts otherwise available, we have utilized the manufacturing costs reported by Usinor's other affiliated further manufacturer, Hague. Specifically, we developed process string specific costs to adjust Edgcomb's reported single weighted-average material and conversion costs. We address this issue further in our response to comment 25 in the ''Interested Party Comments'' section of the notice. Also, See Final Cost Analysis Memorandum at 5.

3. We also applied Usinor's adjusted financial expense factor to the further manufacturing costs reported by Hague.

We deducted the profit allocated to expenses deducted under section 772(d)(1) and (2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity (including further manufacturing costs), based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market.

Normal Value

After testing home market viability, as discussed below, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparisons'' sections of this notice.

1. Home Market Viability

As discussed in the preliminary determination, we determined that the home market was viable. See *Preliminary Determination* at 134. The parties did not contest the viability of the home market. Consequently, for the final determination, we have based NV on home market sales wherever possible.

2. Cost of Production Analysis

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of Usinor's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses, interest expenses, and packing costs. We relied on the COP data submitted by Usinor in its original and supplemental cost questionnaire responses, except in the following specific instances:

1. Usinor valued hot-rolling services proved by affiliated parties at the transfer price. In accordance with section 773(f)(2) of the Act, we compared the reported transfer price for this hot-rolling service to a reported market price provided by the affiliate to unaffiliated parties. We found that the transfer price was below the market price. Thus, for the final determination, we have increased Usinor's affiliated hot rolling cost to reflect the market value paid by non-affiliates in accordance with section 773(f)(2). We address this issue further in our response to comment 19 in the ''Interested Party Comments'' section of the notice. Also, See Final Cost Analysis Memorandum at 1.

2. Usinor did not include profit sharing expense and certain other expenses reported on the company's income statement in the calculation of COP and CV. We included these expenses in the calculation of the revised G&A expense rate. We address these items further in our response to comments 21 and 22 in the ''Interested Party Comments'' section of the notice. Also, See Final Cost Analysis Memorandum at 2.

3. We increased Usinor's reported net interest expense by the ratio of Usinor Holding's (a member of the Usinor Group generating most of the Group's financial expenses and revenues) gross and net financial expenses. We address these issues further in our response to comments 23 and 32 in the ''Interested Party Comments'' section of the notice. Also, See Final Cost Analysis Memorandum at 3.

We conducted our sales below cost test in the same manner as that described in our *Preliminary Determination* at 134–135. As with our preliminary determination, we found that for certain models of SSSS, more than 20 percent of Usinor's home market sales were at prices less than the COP within an extended period of time, and were not at prices that would provide for recovery of cost. We therefore disregarded the below-cost sales and used the remaining above cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

3. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Usinor's cost of materials, fabrication, general and administrative (G&A), U.S. packing costs, direct and indirect selling expenses, interest expenses and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Usinor in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses. We relied on the submitted CVs, except as noted above in the *Cost of Production Analysis* section.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on prices to home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

We calculated NV based on prices to unaffiliated home market customers. Where appropriate, we deducted credit expenses, warranty expenses, inland freight, inland insurance, and warehousing expense. We also adjusted the starting price for price adjustments such as discounts, rebates and freight revenue.

We recalculated credit expenses for those sales with missing payment dates. For home market sales with missing payment dates, the Department set the date of payment as the last day of the home market sales verification.

For reasons discussed below in the *Level of Trade* section, we allowed a CEP offset for comparisons made at different levels of trade. To calculate the CEP offset, we deducted the home market indirect selling expenses from normal value for home market sales that were compared to U.S. CEP sales. We limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We deducted from CV the weighted-average home market direct selling expenses and allowed a CEP offset adjustment (see *Level of Trade* section, below).

Arm's-Length Sales

Usinor reported that it made sales in the home market to affiliated end users. Sales to affiliated customers in the home market not made at arm's-length prices are excluded from our analysis under 19 CFR § 351.403(c). To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. Where prices to the affiliated party were on average 99.5 percent or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993).

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market, or when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level, but the data available do not provide an appropriate basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). 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, 61732 (November 19, 1997).

In reviewing the selling functions reported by the respondent, we examined all types of selling functions and activities reported in respondent's questionnaire response on LOT. In analyzing whether separate LOTs existed in this investigation, we found that no single selling function was sufficient to warrant a separate LOT in the home market.

We determined that Usinor sold merchandise at two LOTs in the home market during the POI. One level of trade involved sales made through two channels: (1) Sales by Usinor's Ugine division, directly to unaffiliated service centers or end users, as well as arm's-length sales by Usinor's Ugine division, directly to affiliated service center/reseller Ugine Service (Channel 1); and (2) sales made by Usinor's Ugine division, with the assistance of Ugine-Service in its capacity as sales agent, to unaffiliated service centers or end users (Channel 2). The second level of trade involved sales from Ugine to Usinor's affiliate Bernier, together with subsequent resales by Bernier to unaffiliated end users (Channel 3). From our analysis of the marketing process for these sales, we determined that sales through Channel 3 were made at a more remote marketing stage than that for sales through Channels 1 or 2. See *Memorandum from Doug Campau to Roland MacDonald,* dated December 12, 1998, on file in Import Administration's Central Records Unit, Room B–099, U.S. Department of Commerce, 14th & Constitution Avenue, N.W., Washington, D.C. We also found significant distinctions in selling activities and associated expenses between the sales through channel 3 and those through channel 1 or 2. Based on these differences, we concluded that two LOTs existed in the home market.

In order to determine whether separate LOTs actually existed between the U.S. and home market, we reviewed the selling activities associated with each channel of distribution. Usinor only reported CEP sales in the U.S. market. Because all of Usinor's CEP sales in the U.S. market were made through Uginox, there was only one level of trade. For these CEP sales, we determined that fewer and different selling functions were performed for CEP sales to Uginox than for sales at either of the home market LOTs. In addition, we found that the home market sales were at a more advanced stage of distribution (to service centers or end-users) compared to the CEP sales (to the affiliated distributor).

We examined whether a LOT adjustment was appropriate. The Department makes this adjustment when it is demonstrated that a difference in LOTs affects price comparability. However, where the available data do not provide an appropriate basis upon which to determine a LOT adjustment, and where the NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP transactions, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). We were unable to quantify the LOT adjustment in accordance with section 773(a)(7)(A) of the Act, as we found that neither of the LOTs in the home market matched the LOT of the CEP transactions. Because of this, we did not calculate a LOT adjustment. Instead, a CEP offset was applied to the NV-CEP comparisons. See *Memorandum from Doug Campau to Roland MacDonald,* dated December 12, 1998, on file in Import Administration's Central Records Unit, Room B–099, U.S. Department of Commerce, 14th & Constitution Avenue, N.W., Washington, D.C.

We applied the aforementioned criteria in our preliminary determination. See *Preliminary Determination* at 135. For the final determination, we continue to find that respondent has two levels of trade in the home market and one level of trade in the U.S.

Use of Facts Available

In accordance with section 776 of the Act, we have determined that the use of facts available is appropriate for certain portions of our analysis of Usinor's data. For a discussion of our application of facts available, see Comment 25.

Currency Conversion

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

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Usinor for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by Usinor.

Interested Party Comments

Home Market and U.S. Sales

Comment 1: Use of Home Market Downstream Resales in Determining Normal Value

Respondent argues the Department should not utilize the home market downstream resales of Bernier and Ugine Service for comparison purposes in the final determination. According to respondent, in deciding whether downstream resales need to be reported, the Department should consider the nature of the merchandise sold to and by the affiliate, the volume of sales to the affiliate, the levels of trade involved, and whether sales to affiliates were made at arm's length. See *Preamble,* 62 FR at 27356. Respondent argues that these factors militate against using Bernier's and Ugine Service's downstream resales. According to respondent, Bernier's and Ugine Service's downstream resales of subject merchandise together account for approximately five percent of total home market sales. Respondent argues that Ugine's home market sales are far more representative for margin determination purposes, being at a closer level of trade to Ugine's CEP sales to Uginox. Furthermore, according to respondent, the Department could have readily included Ugine's sales to Ugine Service, rather than downstream resales. According to respondent, Ugine's sales to Ugine Service pass the Department's arm's-length test, and including these sales rather than downstream sales would have captured ninety-nine percent of the total home market sales. Respondent argues that given the significant coverage provided by the Ugine sales, there is no way the Department's margin calculation would be compromised by the absence of Bernier's and Ugine Service's resales. *Preamble,* 62 FR at 27356.

Respondent points out that the Department has determined and verified that all sales of subject merchandise in France were made at different levels of trade than sales in the United States. All sales in the United States were CEP sales made through Ugine's super-distributor Uginox, whereas Ugine's home market sales were made to end users and resellers. Thus, according to respondent, all home market sales were made at levels of distribution more advanced than that of Ugine's sales to Uginox. This difference is all the more significant for downstream resales by Bernier and Ugine Service, which, according to respondent, involve a significant extra layer of selling activities and expenses, and which are far more remote from the factory than Ugine's CEP sales to Uginox.

Respondent argues that because the average U.S. CEP sale was—according to respondent—more than eleven times the size of the average home market downstream resale, no fair comparison can be made between Ugine's CEP sales to Uginox and downstream home market sales of Bernier and Ugine Service. According to respondent, the law requires that a fair comparison be made between CEP and normal value, and that the Department—to the extent practicable—establish normal value using sales at the same level of trade as the constructed export price. See section 773(a) of the Act. Respondent argues that current law gives the Department ample authority to favor the level of trade proximity of sales by Ugine over the more remote downstream sales by Bernier and Ugine Service in making sales comparisons. In order to make a fair comparison under current law, respondent believes the Department's matching should attempt to find satisfactory product comparisons at the nearest level of trade (i.e., involving sales by Ugine), rather than seeking identical matches at more remote levels of trade. Respondent argues that a comparison of downstream resales of merchandise of Bernier and Ugine Service can not be satisfactorily made because they are at remote, different levels of trade. Thus, respondent believes the Department's comparisons should use Ugine's sales of comparable merchandise. Respondent argues that Ugine's sales are the only sales of merchandise that may be reasonably compared with Ugine's CEP sales to Uginox.

Respondent argues that significant differences between the level of trade of Bernier and Ugine Service sales and the level of trade of sales from Ugine to Uginox are not addressed by the statute's level of trade or CEP offset provisions. Specifically, respondent believes the CEP offset applied in the preliminary determination did not address the higher costs for slitting and processing performed by the downstream resellers, nor the costs of holding coils in inventory prior to such processing. Respondent also believes the CEP offset failed to take into account the pricing/profit structure of the downstream resellers—which reflects the far lower quantities sold, the customers involved, and the risk associated with carrying inventory of finished product.

To conclude, respondent argues that the Department's consideration of downstream home market sales was distortive and did not result in fair comparisons. Consequently, respondent believes the Department should base normal value on Ugine sales, rather than home market downstream sales, for comparison purposes.

According to petitioners, respondent's request that the Department disregard downstream sales of Bernier and Ugine Service has no basis in law, is contrary to the facts of the case, and would result in a less accurate calculation of normal value. Petitioners argue that Ugine provides no argument or evidence to dispute the memoranda prepared during the preliminary phase of this proceeding that detailed the Department's analysis and rejection of Ugine's request when it was initially made.

Petitioners also argue the Department should dismiss respondent's argument that inclusion of the aforementioned downstream sales would distort the margin calculation by matching sales at widely varying levels of trade. According to petitioners, the statute provides for a level of trade adjustment, in appropriate circumstances, and for a CEP offset where a level of trade adjustment can not be calculated. According to petitioners, the very fact that the adjustment and offset exist is testament to the fact that the statute permits matching across levels of trade, contrary to respondent's argument.

Petitioners also argue that the Department captured all of the selling expenses the statute directs it to capture in calculating CEP offset. Petitioners point out that in calculating CEP offset, the Department is required to deduct only the amount of indirect selling expenses incurred in the country in which normal value is determined on sales of foreign like product, but not more than the amount of such expenses for which a deduction is made. Thus, petitioners argue that the costs respondent claims the Department should deduct—namely costs for slitting and processing subject merchandise in very small quantities, costs for holding coils in inventory for such processing, and costs relating to the pricing/profit structure of the downstream resellers—actually have no bearing on the Department's CEP offset calculation because they are not indirect selling expenses.

Department's Position: We agree with respondent that the downstream sales of Ugine Service should be disregarded in the final determination. According to 19 CFR § 351.403(c), if an exporter or producer sells the foreign like product to affiliated parties, the Department may calculate normal value based on such sales if it determines that the net prices for such sales are comparable to the prices at which the exporter or producer sold the foreign like product to persons not affiliated with the seller. It is the Department's normal practice to run an arm's-length analysis on home market sales made by a producer to an affiliated company to determine whether the prices for such sales are comparable to prices charged to unaffiliated parties. If the Department determines that prices for sales to the affiliated company were sufficiently comparable to prices for sales to unaffiliated parties, then the Department need not use downstream sales from the affiliated company in its subsequent calculations.

Prior to making its *Preliminary Determination*, the Department ran an arm's-length analysis on Ugine's home market sales to affiliated resellers Ugine Service and Bernier. This analysis led the Department to conclude that such sales were not made on an arm's-length basis. Consequently, downstream sales from Ugine Service and Bernier to unaffiliated customers were used in all calculations for the *Preliminary Determination*. In preparing to run its analysis for the final determination, the Department discovered that the data tape used to run the arm's-length analysis for the *Preliminary Determination* contained incomplete data on the sales from Ugine to Ugine Service and Bernier. This tape had been submitted to the Department on December 1, 1998. The Department subsequently reran its arm's length analysis using a data tape containing complete data on the sales from Ugine to Ugine Service and Bernier. This tape had been submitted to the Department on November 16, 1999. In rerunning the arm's length analysis with the November tape, the Department found that Ugine's sales to Ugine Service were in fact made on an arm's length basis. Thus, for all affected calculations made for the final determination, the Department used the sales from Ugine to Ugine Service. The Department did not use the downstream sales from Ugine Service to unaffiliated customers. Conversely, the Department has continued to use the downstream sales of Bernier because the sales from Ugine to Bernier failed the arm's length analysis for the final determination.

Section 773(a)(1)(B)(i) states that ''to the extent practicable'', the comparison will be made at the same level of trade. Thus, where it is not practicable—e.g., where there is no sale at the same LOT—comparing across LOTs is reasonable and permissible. Also, as Petitioners note, the very existence of the level of trade adjustment and CEP offset is testament to the fact that the statute permits matching across levels of trade, and that comparisons involving downstream resales by Bernier can be fairly and satisfactorily made. As stated in the *Preliminary Determination*, to determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of New Shipper Antidumping Duty Administrative Review*, 62 FR 23760, 23761 (May 1, 1997). For the final margin determination, we again made the appropriate CEP offset. Consequently, we disagree with Usinor that it is inappropriate for comparison purposes because they may be at a different level of trade.

We also agree with petitioners that all appropriate selling expenses were captured in the Department's CEP offset calculation. To the extent Usinor discusses expenses in the Bernier sales not accounted for in the CEP offset, these are accounted for elsewhere in the margin program. For example, any additional slitting and processing performed by Bernier is accounted for in the difference in merchandise adjustment, where appropriate, under section 773(a)(6)(C)(2). The cost of holding coils in inventory prior to further processing is included in inventory carrying cost calculations. Therefore, for the final determination, the Department has continued to use Bernier's downstream sales.

Comment 2: Inclusion of Resales by Edgcomb in Determining CEP

According to respondent's submissions, all of Ugine's U.S. sales of subject merchandise were made via Uginox, a wholly-owned and U.S.-based subsidiary of Usinor. Uginox, in turn, sells subject merchandise to Edgcomb, a downstream processor and reseller. Respondent argues that, although Edgcomb is affiliated with Usinor pursuant to section 771(33) of the Act, Edgcomb should not be regarded as affiliated with Uginox. Respondent states that Uginox and Edgcomb are not under common control within the meaning of section 771(33)(F) of the Act, and that neither Uginox nor Edgcomb controls the other within the meaning of section 771(33)(G) of the Act. Furthermore, respondent argues that neither Usinor nor Uginox exercises sufficient control over Edgcomb to compel Edgcomb to provide timely and accurate responses to the Department's requests for information. In light of this, respondent believes the Department should reverse its finding that Edgcomb is an affiliated person. Respondent also believes the Department should utilize Uginox's sales to Edgcomb for comparison purposes instead of Edgcomb's sales to its downstream customers.

Respondent argues that even though Uginox and Edgcomb are each affiliated with Usinor, such affiliations do not in turn mean that Uginox and Edgcomb are necessarily affiliated with each other under section 771(33)(F) of the Act. According to respondent, to be so affiliated, Uginox and Edgcomb would have to be under common control. Respondent argues that Uginox and Edgcomb are not under common control. Respondent points out that Usinor is limited to three of ten seats on the Board of Directors of Macsteel, Edgcomb's parent company.

Respondent further argues that Uginox and Edgcomb are not affiliated pursuant to section 771(33)(G) of the Act, which provides that any person who controls any other person shall be considered affiliated with that person. According to respondent, the statute describes control as existing where one person is legally or operationally in a position to exercise restraint or direction over another person. Respondent argues that no such control exists between Uginox and Edgcomb. According to Respondent, Uginox and Edgcomb are not part of the same corporate family group, do not have intertwined computer systems, have an insignificant supply-purchase relationship, and negotiate prices on an arm's-length basis. Moreover, according to respondent, Uginox has absolutely no say in Edgcomb's business decisions, including sources of supply, customers to whom Edgcomb sells, and prices which Edgcomb charges. Consequently, respondent believes Edgcomb and Uginox should not be found affiliated under section 771(33)(G) of the Act.

Respondent further argues that exclusion of Edgcomb's resales would not distort the margin calculation because Uginox's sales to Edgcomb were made at arm's-length prices, and because there is nothing else to suggest that Edgcomb's downstream sales were distortive such that they must be included in the Department's analysis. Moreover, according to respondent, Hague's downstream sales accounted for a much larger percentage of Uginox's sales than those of Edgcomb. Respondent also asserts that the sales profiles of Hague and Edgcomb closely resemble one another, such that the absence of Edgcomb statistics would not meaningfully affect the Department's margin calculation—such calculation being based on the weighted average price of each product sold in the U.S. for the entire POI. To conclude, respondent argues the Department should include Uginox's sales to Edgcomb and should exclude Edgcomb's resales to its downstream customers in its margin calculation.

Petitioners cite section 772(b) of the Act, which defines CEP as the price at which subject merchandise is first sold to a purchaser not affiliated with the producer or exporter. Petitioners also point out that Usinor has admitted that Edgcomb and Usinor are affiliated. Thus, petitioners argue, the first purchasers not affiliated with Usinor within this particular sales channel would be Edgcomb's customers.

According to petitioners, the record establishes and the Department has determined that Edgcomb and Uginox are affiliated through the common control of Usinor under section 771(33)(F) of the Act. Petitioners believe respondent's argument that the Department should reverse its determination that Edgcomb and Uginox are affiliated is contrary to the Department's regulations and has no support on the record.

According to petitioners, for purposes of affiliation, control is defined as the quality of being legally or operationally in a position to exercise restraint or control over a person. See section 771(33) of the Act. Petitioners do not believe this definition requires a finding of actual control, but only the capacity to exercise control. *Ferro Union Inc.* v. *United States,* Slip Op. 99–27 at 32 (Ct. Int'l Trade Mar. 23, 1999). According to petitioners, the Department has emphasized that the essence of being legally or operationally in a position to exercise restraint and direction is having the potential to impact decisions concerning production, pricing or cost.

See Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27297 (May 19, 1997). Petitioners argue that the application of this standard to the facts of this case demonstrates control within the meaning of the statute. Petitioners point out that for the first half of the POI, Usinor owned 49 percent of Edgcomb through its wholly-owned subsidiary Sollac; that during the second half of the POI, Usinor indirectly owned 28.5 percent of Edgcomb; that Usinor holds three of ten seats on the board of directors during the POI; and that Edgcomb and Usinor (through Uginox) have a customer/supplier relationship. By virtue of these facts, petitioners believe Usinor is in a position to exercise restraint or direction over Edgcomb. Further, Usinor has the potential to impact Edgcomb's decisions concerning production, pricing or cost, and thus Usinor has control over Edgcomb during the POI within the meaning of section 771(33) of the Act.

Petitioner argues that the fact that Usinor's ownership interest was a minority interest and that Usinor did not have majority representation on the board of directors does not prevent the finding of control. According to petitioners, minority and majority owners can control an entity at the same time, singly or as a group. *Ferro Union,* Slip Op. 99–27 at 32. Petitioners also argue that majority stock ownership is not a prerequisite for a finding of control according to the *Uruguay Round Agreement Acts, Statement of Administrative Action,* reprinted in H.R. Doc. No. 316, 103d Cong., 2d Sess. At 838 (1994).

Department's Position: We agree with petitioners that it is appropriate to use resales by Edgcomb in the final margin calculations.

According to section 771(33)(E) of the Act, as amended by the URAA, ''any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization'' shall be considered affiliated. According to section 771(33)(F) of the Act, as amended by the URAA, ''two or more persons directly or indirectly controlling, controlled by, or under common control with, any person'' shall be considered affiliated. For purposes of section 771(33), ''a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.''

Respondent acknowledges that Edgcomb and Usinor are affiliated pursuant to section 771(33)(E). *See* Usinor Case Brief at p. 8, dated April 14, 1999. We have also determined that Edgcomb and Uginox are affiliated within the meaning of section 771(33)(F) of the Act because they are both controlled by Usinor. The evidence also establishes that Edgcomb was controlled by Usinor during the POI within the meaning of section 771(33)(F) of the Act. As noted in its letter of August 31, 1998, Usinor indirectly owned 49% of Edgcomb, through its wholly-owned affiliate Sollac, for the first half of the POI, and 28% during the second half of the POI. The legislative history makes clear that the statute does not require majority ownership for a finding of control. Rather, the statutory definition of control encompasses both legal and operational control. Indeed, the very purpose of adding the ''control'' provision to the Act was to establish that parties may be affiliated in the absence of any ownership interest at all. *See* Statement of Administrative Action (''SAA'') in H. Doc. 103–316 (vol. 1) 103d Cong., 2d Sess., at. p. 838. A minority ownership interest, examined within the context of the totality of the evidence, is a factor that the Department considers in determining whether one party is operationally in a position to control another. See *Certain Cut-To-Length Carbon Steel Plate From Brazil,* 62 FR 18486, 18490 (April 15, 1997); and 19 CFR 351.102(b). In this case, during the POI, Edgcomb was also a service center, processor, and reseller of subject merchandise produced by Usinor. Furthermore, as confirmed during verification and acknowledged in respondent's case brief, Usinor held at least three of ten seats on Edgcomb's board of directors for the duration of the POI. Finally, at verification we learned that Usinor dictated that Edgcomb use a certain accounting procedure which Edgcomb acknowledged it would not otherwise have used. These facts, juxtaposed with the substantial ownership interest, lead us to conclude that Usinor is ''in a position to exercise restraint or direction over'' Edgcomb.

Additionally, as noted in its letter of August 31, 1998, Usinor wholly owns its U.S. affiliate Uginox. Because Usinor is the sole owner of Uginox, it is ''in a position to exercise restraint or direction over'' Uginox within the meaning of section 771(33) of the Act. Usinor thus controls both Edgcomb and Uginox, fulfilling the common control element required for finding affiliation between Edgcomb and Uginox under section 771(33)(F) of the Act.

Because we find that Edgcomb and Uginox are affiliated under section 771(33)(F), and have used the downstream resales of Edgcomb in our calculations for the final determination instead of the sales from Uginox to Edgcomb, it is not necessary to address the petitioners' comment that under section 772(b) we must use the downstream resales of Edgcomb because of Edgcomb's affiliation with Usinor, regardless of Edgcomb's affiliation with Uginox.

Comment 3: Home Market Indirect Selling Expenses and CEP Offset

Respondent argues that the Department incorrectly excluded indirect selling expenses associated with Ugine's Building Products Group (''The Group'') in determining the CEP offset in the preliminary determination. Respondent states that the Department made this determination based on its conclusion such costs were ''not clearly attributable to scope merchandise.'' See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Sheet and Strip in Coils from France,* 64 FR 130 (January 4, 1999) (''*Stainless Steel Sheet and Strip from France*''). Respondent notes that this exclusion resulted in an understatement of its indirect selling expenses in the home market. Further, respondent contends that contrary to the Department's preliminary determination, the subject merchandise was in fact sold by the Building Products Group and the Group's mission is to promote the use of stainless steel products (including the subject merchandise) in France. Thus, the Group's costs are properly included in Ugine's indirect selling expenses and in the CEP offset. Furthermore, respondent notes that in its questionnaire response, Ugine allocated the expenses of the building products cost center in a reasonable manner which was pursuant to the Department's questionnaire and prior practice by allocating its home market indirect selling expenses related to sales of all products over company-wide sales. See *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Korea,* 62 FR 51420, 51426 (October 1, 1997). Specifically, respondent noted that these expenses support all sales of stainless steel products in France, not just certain products. Therefore, respondent stated that the Department should include the expenses of Ugine's Building Products Group in its calculation of home market indirect selling expenses and the CEP offset in the final determination.

Petitioners acknowledge respondent's argument that Ugine Sales Verification Exhibit UG–20 (Feb. 26, 1999) contains proof that Ugine Building Products sold subject merchandise, and that, consequently, total indirect selling expenses should not have been reduced by indirect selling expenses related to Ugine's Building Products Division. However, according to petitioners, the Ugine Sales Verification Report provides no clear evidence or finding to support Usinor's claim. Petitioners also point out that Usinor itself has stated that the Building Products Group's mission is to promote the use of stainless steel ''products''. According to petitioners, this statement demonstrates that the activities to which the Building Products Group's activities relate are not the promotion of subject merchandise, but rather the promotion of products made from subject merchandise. According to petitioners, such activities are not clearly attributable to the subject merchandise. Thus, petitioners argue, the Department properly excluded these indirect selling expenses from the numerator of its preliminary calculation.

Department's Position: We agree with respondent. The Department has examined the respondents' home market indirect selling expenses, specifically Ugine Building Products (UBI) indirect selling expenses, and found that these expenses have been properly reported. The Department included the indirect selling expenses associated with UBI in its calculation of Ugine's indirect selling expense ratio. We have verified that Ugine has properly included UBI's expenses in its numerator of indirect selling expenses. The Department has verified that UBI was formed to develop new stainless steel products for the French and European building construction industry and UBI's main mission is improve Ugine's stainless steel sales to the building construction industry, including sales of subject merchandise. Additionally, we verified that UBI is in charge of promoting and selling stainless steel products such as the subject merchandise to the different markets as ''an attempt at trying to convince end-users (contractors and architects) to try it, switching from their traditional zinc-coated products or other non-steel products'' to Ugine's stainless steel products. See *Home Market Verification Report of Usinor/Ugine,* at page 38, April 6, 1999. Furthermore, the Department has determined that the respondent has properly included an allocated portion of UBI's selling expenses in Ugine's indirect selling expense calculation. Therefore, we have determined that the respondent has properly reported its home market indirect selling expenses.

Comment 4: Model Match Methodology/ Group Products According to Finish Overruns

Respondent argues that the Department's product matching methodology with respect to weighting of the finish characteristics is not supported by factual evidence. Respondent noted that the Department never disclosed its rationale for weighting the individual characteristics. Respondent contended that the Department disregards the level of processing required to achieve the designated finish. For example, the Department's methodology for matching finishes matches a bright-annealed finish (i.e., requires no finishing beyond the rolling mill), first to a product with a polish finish, then to a product that requires more finishing. Thus, rather than matching to other products without a finish step beyond rolling, the Department matches a product with no finish steps to products with one or two finish steps. Hence, respondent argued that the Department's weighting of finishes fails to account for the differences in finishes with respect to cost, value and difficulty in finishing. Therefore, respondent argues that the Department should first match products with identical finishes, and if no identical finish match is available, then the Department should match to all other finishes requiring the same number of finish steps, which would be reasonable and proper as well as supported by the record.

Petitioners argued that the Department should reject Usinor's proposed finish groupings because it fails to adequately distinguish between the physical characteristics created by the finishing processes as required by the statute, and consequently fails to retain important cost distinctions among different products. According to petitioners, section 771(16) of the Act requires that products be matched according to identical and similar physical characteristics. For the subject merchandise, petitioners argued that finish is an identifiable and quantifiable difference in merchandise. Petitioners asserted that the subcategories suggested by respondent, which, according to petitioners, are based on a simple count of the number of finishes, do not recognize the differences in the physical characteristics and costs of the subject merchandise that are created by the finishing process. According to petitioners, to treat products with different finishes as identical would be to ignore the strict hierarchy of section 771(16) of the Act, as well as the different costs of production of each product.

Department's Position: We disagree with respondent. In July 1998, the Department solicited comments addressing potential model match criteria. The comments respondent submitted on July 27 and 28, 1999 made no suggestion that the Department consider number of finish processes involved in production of subject merchandise in establishing its matching criteria. In fact, the suggested matching criteria for finish that respondent submitted on July 27, 1998 contained only six possible types of finish (including ''[n]one'').

In this case, level of processing is not determinative of what constitutes a best match for model match purposes. Thus, whether a product goes through three, two, one or no finishing processes is not reflected in the model match program. This is because section 771(16) requires that products be matched according to physical characteristics rather than according to production processes, as suggested by respondent. We agree with petitioners that the subcategories suggested by respondent (based on number of finish steps) do not adequately distinguish products based on the differences in physical characteristics of subject merchandise produced via the different types of finishing processes.

Finally, it is not possible—utilizing the information gathered at verification or otherwise submitted to the record by Ugine—to consistently determine how many finish processes a particular product has gone through. Exhibit 8 of respondent's case brief indicates that a majority of the finish types assigned model match codes by the Department involve more than one finish process. However, as illustrated in exhibits UG–3(f) and UG–5, the information verified and on record is not detailed enough to allow the Department to conclude that a particular quantity of subject merchandise was produced via a particular number of finish processes. Therefore, even if we wished to follow Ugine's suggestion, Ugine has not provided sufficient information to enable us to utilize the number of finish process steps in our model matching procedures.

Comment 5: Foreign Inland Freight

Petitioners stated that respondent failed to report inland freight expenses between the Gueugnon plant and the Macon containerization facility and did not provide an explanation why these expenses were not reported. Thus, petitioners argued that the Department is required to base this expense on facts available in accordance with section 776(a) of the Act because respondent made no effort to provide the actual freight information in its pre-verification submission although its records permitted it to report other foreign inland freight for other sales. Also, because respondent did not provide any evidence that it acted to the best of its ability to provide the missing information. Further, petitioners contended that because respondent did not demonstrate that it acted to the best of its ability, the Department should apply adverse facts available. *See* section 776(b) of the Act. Petitioners argued that adverse facts available are warranted because neither the information itself or sufficient justification for its omission was provided, and not applying adverse facts available would allow respondent to selectively provide information and improperly influence the outcome of the margin calculation, which would be contrary to the purpose of the facts available provisions. *See Olympic Adhesives,* 899 F.2d at 1571. Furthermore, petitioners stated that to apply the average transportation cost for all reported sales, as suggested by respondent, would not be appropriate, because it would potentially permit the respondent to manipulate the database. Therefore, the correct facts available rate to apply for these sales, is the highest reported transportation rate paid by Ugine on any such sale. *See Circular Welded Non-Ally Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review,* 63 FR 33041, 33046–47 (June 17, 1998).

Respondent argues that petitioners' contention that it failed to report inland freight expenses between the Gueugnon plant and the Macon containerization facility is erroneous. According to respondent, it disclosed in its September 28, 1998 section C response that the company was unable to collect the foreign inland freight expense data for certain shipments destined for Hague, and that for such shipments, an average per-unit expense was reported. Respondent further explains that prior to verification, Ugine discovered the average expense had been inadvertently omitted for these sales, and subsequently presented the average freight expense as a minor correction. Respondent also notes that during the Hague verification, it provided the Department with actual freight expenses from the Gueugnon plant to the Macon containerization facility for the sales transactions selected for review, and that such actual freight expenses were approximately equal to the reported average freight expense. Respondent claims it resorted to utilization of average transportation cost only for those sales where transaction-specific data were unavailable.

Respondent further asserts that petitioners' citation to *Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review* does not support petitioners' claim that the Department should apply the highest reported transportation rate paid by Ugine to all sales for which no expense was reported. *Id.* According to respondent, the Department applied facts available in the aforementioned case only after having placed the respondent on notice—in prior reviews—that verifiable freight expense information was required and should not be destroyed, and where the respondent continued to destroy its freight records. Respondent asserts that in the present case, Ugine presented verifiable expense information, and average freight expense information only where transaction-specific data were unavailable. According to respondent, Ugine has cooperated fully and to the best of its ability with all of the Department's requests. Thus, respondent believes the Department should deny petitioners' request for use of facts available for foreign inland freight expenses on Hague transactions.

Department's Position: We disagree with petitioners. In this instance, although we verified that respondent was unable to report the freight expense at issue for all transactions, respondent has been fully cooperative and has acted to the best of its ability to provide the Department with all available information as the Department has requested. Moreover, respondent has provided a reasonable estimate of the freight amount for those transactions where respondent could not identify the exact amount. Thus, we do not believe the facts warrant the application of an adverse assumption as facts available in this instance. We note that the Department allows respondents to correct for minor changes in preparation of verification. The verification outline of January 21, 1999 provided for ''presentation by Usinor of minor changes, if any, to the response resulting from verification preparation. Identification of the specific observation(s) involved, and corresponding database(s), must also be provided.'' *See Verification Outline* at page 3, dated January 21, 1999. Respondent provided minor corrections for its freight on U.S. sales/foreign inland freight on Hague sales at the start of Ugine's home market sales verification. *See Home Market Verification Report of Usinor/Ugine* at page 3, April 6, 1999. Furthermore, during Ugine's home market sales verification, we compared several of the reported average freight figures with an the actual freight expense from the Gueugnon plant to the Macon containerization facility, and found that the average figures were reasonable. *See Home Market Verification Report of Usinor/Ugine,* at pages 42–45, April 6, 1999; and Exhibits UG–28, UG–35, UG–36, UG–37 and UG–39.

Moreover, we disagree with petitioners in their citation of *Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review* in support of their facts available claim for this issue. 63 FR 33041, 33046–47 (June 17, 1998). In that case, the Department stated that it was justified in applying the use of partial adverse facts available because the respondent did not cooperate to the best of its ability. In this instance, Usinor has cooperated to the best of its ability in supplying the Department with all of the relevant information, including, when necessary, careful estimates of missing information, for the inland freight expenses between the Gueugnon plant and the Macon containerization facility. In sum, for the final determination, we used respondent's information for the inland freight expenses between the Gueugnon plant and the Macon containerization facility.

Comment 6: Affiliated Freight Forwarders

Petitioners state that respondent was unable to demonstrate that rates from its affiliated freight forwarder were arm's-length rates. Petitioners argue that the fact that the affiliated freight forwarder made profit does not necessarily prove the rates it charged to respondent and its affiliates were arm's-length rates. Petitioner believes that respondent should have been able to present information to establish that the affiliate charged arm's-length prices. Because, in petitioners' opinion, respondent did not establish the arm's-length nature of the affiliated freight forwarder's rates, petitioners believe these transactions should be disregarded pursuant to section 773(f)(2) of the Act, and that the Department should base rates for affiliated freight forwarders on the highest reported rate for an unaffiliated freight forwarder.

Respondent argues that petitioners' claim that Usinor is unable to demonstrate that it deals with its affiliated freight forwarder on an arm's-length basis—and that the Department should therefore base affiliated freight forwarder rates on the highest reported rate for an unaffiliated freight forwarder—is incorrect. According to respondent, the Department verified the fact that the affiliated freight forwarder made a reasonable profit on the services it provided to Ugine. According to respondent, no further evidence of the arm's-length character of these services is needed.

Respondent also claims that the vast majority of charges by the affiliated freight forwarder are what respondent refers to as ''pass-throughs of charges'' from unaffiliated service providers. Respondent further indicates that any charges to be found on invoices of the affiliated freight forwarder that are not what respondent refers to as ''pass-throughs of charges'' from unaffiliated entities will represent minuscule percentages of the total amounts for each invoice.

Department's Position: We agree with petitioners in part. It is clear from the record evidence that Usinor was unable to demonstrate that its affiliated freight forwarder rates were at arm's length prices. At verification, respondent stated that ''it can not show how the affiliated freight forwarder's rates are generated and charged versus the rates of other, non-affiliated freight forwarders.'' *See Home Market Verification Report of Usinor/Ugine,* at page 31, April 6, 1999. Consequently, we are unable to conclude that these affiliated party transactions were carried out at arm's length prices.

Further, we disagree with respondent's argument that a profit made on the services of the affiliated freight forwarder provided to Ugine proves that these services were at arm's length. The arm's length test compares prices charged by or paid to affiliated parties with prices which would otherwise be obtained in transactions with unaffiliated parties. *See Circular Welded Non-Alloy Steel Pipe from Korea,* 63 FR 32833, 32838 (June 16, 1998). The level of profit on these sales is not a relevant consideration.

Nevertheless, because Usinor was unable to provide the requested information, it would inappropriate to use the rate proposed by petitioners, because use of such a rate would require an adverse assumption under section 776(b) of the Act. Because we find that Usinor has acted to the best of its ability with respect to this adjustment, as non-adverse facts available, we have used the average of Usinor's reported freight-forwarder rates.

Comment 7: Product Matching

Petitioners noted that Edgcomb sometimes shipped higher quality, higher cost products than that which was ordered by a particular customer. Petitioners argued that where GRADEU (grade) and INGRADU (invoiced grade) differ, the Department should match sales according to INGRADU. According to petitioners, the statute requires the Department to match products according to the similarity of the actual physical characteristics of the products. Therefore, according to petitioners, the actual grade sold and shipped—the IN GRADU—must be the basis for product matching with home market sales in order to determine the actual level of dumping on such sales.

Additionally, petitioners argued the Department should ensure that Usinor has reported constructed value information based on INGRADU and not on GRADEU. According to petitioners, because the products shipped actually have a higher cost of production than the product invoiced, the constructed value reported must reflect the higher actual cost of production. If constructed value is not available on an INGRADU basis for any U.S. sale being compared to constructed value, petitioners believe the margin for that sale should be based on facts available.

Respondent asserted that Ugine accurately reported the physical characteristics of the material actually produced and shipped in fields GRADEH or GRADEU as required by the Department's questionnaire. Respondent stated that where the information contained in fields INGRADH or INGRADU differs from the information in fields GRADEH or GRADEU, it is because the grade invoiced differed from the grade actually produced and shipped to the customer. Respondent further stated that, per the Department's instructions, the grade reported in INGRADH or INGRADU is the grade appearing on the invoice to the customer, even though it does not always reflect the actual physical characteristics of the product in those circumstances. Hence, according to respondent, the information in fields GRADEH and GRADEU should be used for product comparisons, as such information reflects the actual physical characteristics of the material produced and sold.

Department's Position: We disagree with petitioners' contention that product matching must be based on the data reported in field INGRADU. Petitioners appear to misunderstand the reported characteristics: although they correctly argue that matching should be based on the characteristics of the merchandise actually shipped, they mistakenly state that the fields INGRADU and INGRADH are the fields which contain those characteristics. In fact, in response to the Department's initial and supplemental questionnaires, respondent reported the grades of subject merchandise invoiced to customers in fields INGRADU and INGRADH. Respondent reported the grades of subject merchandise actually produced and shipped to customers in fields GRADEU and GRADEH. As Edgcomb explained at verification, for a number of sales, the grades reported in fields GRADEU and INGRADU differ. *See United States Verification Report of Edgcomb,* at page 5, April 7, 1999. According to Edgcomb, when necessary, they would ship higher quality and higher cost product than what was ordered, while invoicing a customer for the lower quality and lower cost grade ordered. *See United States Verification Report of Edgcomb,* at page 5, April 7, 1999. Edgcomb representatives explained that this was sometimes necessary because of shortages in inventory. *See United States Verification Report of Edgcomb,* at page 5, April 7, 1999. Edgcomb would also do this at times to reduce inventory of certain products. Thus, in some cases, the fields INGRADU and INGRADH do not reflect the actual merchandise delivered to the customer. The Department is required to base its calculations on products actually sold for consumption in the U.S. and home markets. In cases where the grades reported in fields GRADEU and INGRADU differ, the Department will base its product comparison on the product actually produced and shipped. Thus, the Department used the data reported in fields GRADEU (or GRADEH, as appropriate) for comparison purposes.

Comment 8: Credit Expenses/Bernier Sales

Petitioners claimed that Bernier was not able to report its actual dates of payment for its home market sales, but instead provided an average delay between invoice and payment. Additionally, petitioners noted that Bernier recalculated the average payment period using only roughly 70 percent of its reported sales value. Thus, petitioners argued the average payment period proposed by respondent should be rejected because the recalculation is not based on the total sales value. Further, petitioners contended that the omitted 30 percent of sales could substantially reduce the average payment period, and the sales chosen for recalculating the average payment period do not appear to be sampled randomly. Therefore, petitioners argued that Bernier's credit expense for home market sales should be rejected because Bernier has not provided either actual payment dates or accurate average date of payment for all sales.

According to respondent, at the outset of verification, Bernier made a minor correction to revise the reported delay between invoice date and date of payment in order to correct an error in its computer program used to compute the data. Respondent explains that in providing the corrected data, Bernier examined its largest sales—representing over 80 percent of the total quantity and 70 percent of total value of sales of subject merchandise—provided the Department with figures for actual payment delay on such sales, and then calculated average payment delay on its remaining sales based on the actual data. Thus, respondent believes petitioners' demand that Bernier should be denied an adjustment for credit expense should be rejected.

Department's Position: We disagree with petitioners. Respondent's methodology for reporting its credit expenses is acceptable. At the beginning of verification, Bernier presented the Department with a minor correction on its date of receipt of payment which revised the reported delay between invoice date and the receipt of payment dates which had previously been misreported due to a computer programming error. To correct this error, respondent manually researched its largest sales, which represented over 80 percent of the total quantity of their sales of subject merchandise (roughly 70 percent of the total sales value). *See Home Market Verification Report of Bernier,* at page 2, April 6, 1999 and Exhibit BE–1. Once Bernier had completed its research, it provided the Department with revised figures with the actual payment delay on the aforementioned pool of sales. *See* Sales Transactions, Verification Exhibits BE–14 through BE–16. Further, Bernier only used an average payment date for the remaining pool of sales that did not have an actual payment date, and based that average date on the actual payment date data for the largest sales. Moreover, the Department's questionnaire clearly states, ''if actual payment dates are not readily accessible in your accounting system, you may base the calculation on the average age of accounts receivable.'' *See Department's Questionnaire* at page B–28, August 3, 1998. Thus, it is reasonable for respondent to calculate an average payment date for those sales that did not have an actual payment date. Therefore, respondent has been fully cooperative and has acted to the best of its ability to provide the Department with all available information and facts available is warranted in this regard. In sum, for the final determination, the will use respondent's information for credit expense.

Comment 9: Credit Expenses/Ugine Service Sales

Petitioners stated that Ugine Service was not able to report its actual dates of payment for its home market sales, but instead provided an average delay between invoice and payment. Additionally, petitioners noted that Ugine Service recalculated the average payment period using a small portion of its sales database. Thus, petitioners argued the average payment period proposed by respondent should be rejected because the recalculation is not based on the total sales value. Further, petitioners contended that the larger omitted portion of sales could substantially change the average payment period, and Ugine Service did not provide information on how it chose the sales for its sample. Since the Department cannot determine whether the sales chosen are representative of all other sales and cover a representative period in the POI, petitioners state the validity of the sample cannot be determined and thus is not reliable. Therefore, petitioners argued that Ugine Service's credit expense for home market sales should be rejected because Ugine Service has not provided either actual payment dates or demonstrated that it has provided an accurate average date of payment for all sales.

According to respondent, Ugine Service was able to manually identify and report actual date of payment for a significant percentage of its reported home market sales. Where possible, Ugine Service computed the average days payment was outstanding based on customer-specific information. For the rest, respondent claims Ugine Service applied an overall average based on the customer-specific information. According to respondent, such data was reported to the best of Ugine Service's ability. Thus, respondent believes the Department should deny petitioners' request to reject Ugine Service's credit expense adjustment.

Department's Position: We disagree with petitioners. Respondent's methodology for reporting its credit expenses is acceptable. At the beginning of verification, Ugine Service presented the Department with a minor correction on its receipt of payment date. Respondent stated that they had to revised the date of receipt of payment due to double-counting the period from the actual invoice date to the due date. Due to this error, respondent stated that it manually researched its files and reported the actual date of receipt of payment on a transaction-specific basis for a portion of its sales file. *See Home Market Verification Report of Ugine Service* at page 2, April 5, 1999 and Exhibit UGS–1, Attachment 2. For the remaining sales, Ugine Service used an average based on customer specific data, to calculate a number of days outstanding for the credit calculation. That calculated average is very close to the average number of days based on transaction-specific information. *See Home Market Verification Report of Ugine Service,* April 5, 1999 and Exhibit UGS–1, Attachment 3. Thus, Ugine Service's calculated average days was a reasonable surrogate because Ugine Service could not provide the actual payment dates for these sales. Further, the Department's questionnaire clearly states, ''if actual payment dates are not readily accessible in your accounting system, you may base the calculation on the average age of accounts receivable.'' *See Department's Questionnaire* at page B–28, August 3, 1998. Thus, it is reasonable for respondent to calculate an average payment date for those sales that did not have an actual payment date. Therefore, respondent has been fully cooperative and has acted to the best of its ability in providing the Department with all available information and facts available is not warranted in this instance. In sum, for the final determination, we used respondent's information for credit expense.

Comment 10: Date of Sale in the Home Market

According to petitioners, the verification report for Ugine demonstrates that order confirmation date is the appropriate date of sale for home market sales. Specifically, petitioners stress that an order acknowledgment document is generated by Ugine's order entry system for each order and each change of order. Petitioners argued that the Department should conclude that order date—as defined by the order confirmation—is the appropriate date of sale because it is the date of sale on which the terms of sale are set and recorded.

According to respondent, the date of invoice properly reflects date of sale in this case. Respondent claims that Ugine and Uginox maintain their sales records based on invoice date in the normal course of business. Thus, respondent asserted that the companies reported their sales by invoice date on the basis of the Department's regulations, the Questionnaire instructions, and the applicable facts. According to respondent, the Department verified that order date would not be the appropriate date of sale in this case, as price and quantity are subject to continued negotiation until a sale is invoiced. Thus, respondent argued that the Department should reject petitioners' contention that the home market date of sale should be based on order date.

Department's Position: We agree with respondent that invoice date is the correct date of sale for Usinor's home market sales. Under our current practice, as codified in the Department's Final Regulations at section 351.401(i), in identifying the date of sale of the subject merchandise, the Department will normally use the date of invoice, as recorded in the producer's records kept in the ordinary course of business. See *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Administrative Review*, 63 FR 55578, 55587 (October 16, 1998) (''*Pipes and Tubes from Thailand*''). However, in some instances, it may not be appropriate to rely on the date of invoice as the date of sale, where the evidence indicates that the material terms of sale were established on some date other than invoice date. See *Preamble to the Department's Final Regulations*, 62 FR 27296, 27348–27350 (May 19, 1997). Thus, despite the general presumption that the invoice date constitutes the date of sale, the Department may determine that this is not an appropriate date of sale where the evidence of the respondent's selling practice points to a different date on which the material terms of sale were set.

In this investigation, in response to the original questionnaire, Usinor reported invoice date as the date of sale in both the U.S. and home markets. On November 2, 1998, Usinor submitted a letter requesting that the Department not require the submission of order confirmation date data because the companies' record keeping systems were not equipped to report order acknowledgments, in some cases because order acknowledgments were not generated, and in some cases because they were routinely purged from the involved databases. Furthermore, Usinor reported that the essential terms of the companies' orders change between the date of order acknowledgment and the invoice date for most, but not all, of its U.S. and home market sales. For purposes of our preliminary determination, we accepted the date of invoice as the date of sale subject to verification. See *Preliminary Determination* at 133–134.

At verification, we carefully examined Usinor and its affiliates selling practices, namely, the manner in which each company records the sales in its financial records by date of invoice. For the home market, we reviewed several sales observations for which the price and quantity changed subsequent to the original order confirmation. See *Home Market Verification Report of Usinor/Ugine* at pages 12, and 39–47, dated April 6, 1999. Additionally, at verification we examined respondent's study of order modifications in 1995 and found that the terms of sale for a large portion of sales in that year were modified multiple times between the initial order date and the invoice date, and that the vast majority of orders were modified at least once. See *Home Market Verification Report of Usinor/Ugine* at pages 12, and 39–47, dated April 6, 1999. Further, we discovered at verification that when an order is changed only the most recent set of information can be retrieved from the database system. Thus, if an order is changed, Usinor would only be able to recover information from the most recent version of the changed order, and is thus not able to recover historical information about that order. In addition, at verification we discovered that Usinor purges its record keeping database system (i.e., CDSTAT) every six months in order to keep computer memory space at a maximum, and only the original order date and other original order data are retained in another (i.e., FACSTAT) database. See *Home Market Verification Report of Usinor/Ugine* at page 11, April 6, 1999. Thus, based on respondent's representations, and as a result of our examination of Usinor and its affiliates records kept in the ordinary course of business, we are satisfied that the date of invoice should be used as the date of sale because it best reflects the date on which material terms of sale were established for Usinor and its affiliates' home market and U.S. sales.

Comment 11: Reimbursement of Antidumping Duties Paid

According to petitioners, the Uginox verification report indicates that Ugine charges Uginox prices net of all export and import-related expenses. Petitioners concluded that this amounts to a discount or rebate to Uginox from Ugine of all the export and import related expenses, plus an amount for profit, on each U.S. sale. In light of this practice, petitioners argued that Ugine will now discount the price to Uginox on U.S. sales by the amount of any antidumping duties collected, contrary to the requirements of 19 C.F.R. § 351.402(f)(1)(i). Petitioners contended that the Department should apply section 353.402(f) of its regulations, find that there is an agreement between Ugine and Uginox that will result in the reimbursement of antidumping duties by Ugine to Uginox, and then add the amount of the duties to be reimbursed into the duty deposit rate for Usinor.

Petitioners asserted that the Department previously applied the reimbursement regulation in a case where duties had yet to be assessed, and that the Department specifically concluded that an agreement to reimburse was sufficient to trigger the regulation. Petitioners further stated that there is no legal or logical reason to wait until the end of the first administrative review to apply the reimbursement regulation, thereby frustrating the remedial effect of the antidumping laws for that additional time. In support of this, petitioners quote cases indicating that the regulation is designed to preserve the statute's remedial purpose by discouraging foreign exporters from assuming the cost of duties, and that the remedial effect must be preserved as soon as an agreement to reimburse duties is apparent.

According to respondent, the Department's reimbursement regulations do not apply at this stage of the proceeding. Respondent asserted that petitioners fail to cite any cases where reimbursement was found or considered in an investigation. Respondent further stated that petitioners only cite administrative reviews—covering periods for which duties had already been imposed—in support of their argument. Respondent argued that there must be a finding of sales at less than fair value before a dumping margin can be imposed, and there must in turn be an established dumping margin prior to any finding that reimbursement is taking place. Respondent contended that in this case the Department has not determined that the subject merchandise is being sold at less than fair value, so there is no basis for an actual assessment of duties. Thus, according to respondent, the Department can not find that reimbursement is taking place.

Respondent claimed that there is no agreement by Ugine to reimburse Uginox for antidumping duties. Respondent further claimed that petitioners have failed to satisfactorily allege the required elements of duty reimbursement. According to respondent, the Department's regulations require that a petitioner show evidence that an exporter either directly pays antidumping duties for its affiliated importer or has reimbursed the importer for duties already paid. Respondent claimed that no such payments or reimbursements have been or can be made. Respondent also argued that petitioners' claim is legally infirm because the Department's policy and practice related to the treatment of possible discounts or reimbursements of the type discussed above require more and different evidence than has been presented in this case.

Finally, respondent argued the Department should reject petitioners' argument for a rebuttable presumption of reimbursement against Uginox. According to respondent, the Department's regulations state that a rebuttable presumption of reimbursement may be imposed if, at the time duties are being paid, the importer has not filed a pre-liquidation certificate with Customs. Respondent argued that such a presumption is impossible in this case because duties have not been assessed and are not being paid. Thus, respondent stated that the Department should reject petitioners' reimbursement claim.

Department's Position: We disagree with petitioners. First, our reimbursement regulations are not applicable at this stage of the proceeding. For the Department to apply the duty reimbursement provision, there must be a duty to reimburse. During the POI, there was no liability for antidumping duties to be assessed.

Second, petitioners have improperly cited certain cases in support of their argument, e.g., *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Administrative Review*, 61 FR 48465, 48470 (September 13, 1996); *Porcelain-on-Steel Cookware from Mexico: Preliminary Results of Antidumping Administrative Review*, 64 FR 1592, 1593 (January 11, 1999) (''Porcelain Cookware''). Both of these cases involve administrative reviews. In all administrative reviews—unlike in investigations—actual duties are to be assessed on the transactions under review. Therefore, these cases are not applicable.

In light of the stage of the proceeding, we conclude that there is no basis to apply the reimbursement regulation in this case.

Comment 12: CEP Sales and Home Market Level of Trade

Petitioners point out that the Department compared CEP sales to home market sales based on a constructed level of trade for those CEP sales after the adjustments under section 772(d) of the Act were made. According to petitioners, the Court of International Trade has ruled that the Department's interpretation that the adjustments under section 772(d) of the Act must be made prior to level of trade matching contravenes the purpose of the statute. *Borden, Inc.* v. *United States*, 4 F. Supp. 2d 1221 (Ct. Int'l Trade 1998). Thus, for the final determination of this investigation, petitioners argued that the Department is required to determine level of trade prior to the application of adjustments under section 772(d) of the Act.

Respondent argued the Department should adhere to its current practice of beginning its level of trade analysis after adjusting for U.S. selling expenses and profit. According to respondent, petitioners' reliance on *Borden Inc.* v. *United States* is misguided, as the Department has indicated its disagreement with *Borden*, and because the case is under appeal. 4 F. Supp. 2d 1221 (Ct. Int'l Trade 1998). Respondent also asserted that petitioners' claim is fundamentally identical to an argument expressly considered and rejected in *Certain Stainless Steel Wire Rod From France: Final Results of Antidumping Duty Administrative Review*, 63 FR 30185 (June 3, 1998).

Department's Position: We disagree with petitioners. The Department is continuing its practice, articulated in section 351.412(c) of the new regulations (see 62 FR 27296, 27414), of making the level of trade comparisons for CEP sales on the basis of the CEP after adjustments provided for in section 772(d) of the statute.

As we stated in *Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review*, starting price is not the basis for comparison for CEP sales. 62 FR 7206 (February 18, 1997) (''*SSWR II*''). The statutory comparison is based on the CEP, which is defined as starting price net of the CEP deductions (i.e., those deductions provided for in section 772(d) of the Act which are only applicable to CEP sales). See section 772(b) of the Act. The Act requires the Department to make comparisons between NV and EP or CEP to the extent practicable, at the same level of trade. See section 773(a)(1)(B) of the Act. If the starting price is used to determine the level of trade for CEP sales, the Department's ability to make meaningful comparisons at the same level of trade (or appropriate adjustments for differences in levels of trade) would be severely undermined in cases involving CEP sales. Similarly, using the unadjusted price to determine the level of trade of both EP and CEP sales would result in a finding of different levels of trade for an EP and a CEP sale when, after adjustment, the selling prices reflect the same selling functions. Moreover, using the adjusted CEP for establishing the level of trade is consistent with the purposes of the CEP adjustment: to determine what the sales price would have been had the transaction between the producer and its U.S. affiliate qualified as an export price sale. Accordingly, we have followed our practice, which specifies that the level of trade analyzed for CEP sales is the level of trade of the price after the deduction of U.S. selling expenses and profit associated with economic activity in the United States pursuant to section 772(d) of the Act. Therefore, for the final determination, the Department has continued to apply the level-of-trade analysis from its preliminary determination.

The U.S. Court of International Trade (CIT) has recently held that the Department's practice to base the LOT comparisons of CEP sales after CEP deductions is an impermissible interpretation of section 772(d) of the Act. See *Borden Inc., et al.* v. *United States*, Court No. 96–08–01970, Slip Op. 98–36 (March 26, 1998), at 58 (*Borden*); see also *Micron Technology Inc.* v. *United States*, Court No. 96–06–01529, Slip Op. 99–02 (Jan. 28, 1999). The Department believes, however, that its practice is in full compliance with the statute, and that the CIT decision does not contain a persuasive statutory analysis. Because *Borden* is not a final decision, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) prior to starting a LOT analysis, as articulated in the regulations at section 351.412.

Comment 13: Hague's Credit Expense

Respondent argued that the Department incorrectly recalculated Hague's credit expenses when it recalculated the credit expenses associated with unpaid invoices. Respondent contended that because Hague's sales do not have specific payment dates, Hague's credit expenses are based on average days outstanding and are not transaction specific. Thus, blank payment dates for Hague sales do not indicate unpaid invoices. Respondent noted that the Department's computer program mistakenly mistook Hague sales with blank payment dates as unpaid invoices and recalculated the credit expenses for these sales. Therefore, respondent argued that for the final determination, this recalculation of credit expense for

Hague sales with blank payment dates should be removed.

Petitioners did not comment on this issue.

Department's Position: We agree with respondent and have corrected our computer programming (i.e., margin calculation program) with respect to Hague's U.S. credit expenses for sales with blank or missing payment dates for the final determination. In the final margin program, the Department added specific computer language to correct this problem. For a complete listing of the changes the Department has made to its final margin program, please see the Department's analysis memorandum and final margin computer program.

Comment 14: CEP Profit Calculation

Respondent argued that the Department incorrectly double-counted U.S. and home market freight revenue when it calculated CEP profit in the preliminary determination. Respondent states that on the home market side, the Department added freight revenue (FRTREVH) to the home market revenue (REVENVH), but the Department had already included FRTREVH in the CEP profit calculation as an offset to movement expenses. Thus, the Department should correct the double counting of FRTREVH.

Additionally, respondent argued that on the U.S. side, the Department added freight revenue (FRTREVU) to the U.S. revenue (REVENU), but the Department had already included FRTREVU in the CEP profit calculation as an offset to movement expenses. Thus, the Department should correct the double counting of FRTREVU.

Petitioners did not comment on this issue.

Department's Position: We agree with respondent and have corrected our computer programming (i.e., model match and margin calculation programs) to prevent double-counting home market and United States freight revenue for the final determination. For a complete listing of the changes the Department has made to its final margin program, please see the Department's analysis memorandum and final margin computer program.

Comment 15: CEP Profit Calculation/ Currency Conversion of U.S. Packing Expense

Respondent argued that the Department did not correctly convert the currency for U.S. packing cost in its CEP profit calculation. Respondent noted that the Department converted the packing expense variable PACKU to U.S. dollars and saved this result in the variable PACKINGU. However, respondent contended that the Department included the dollar-denominated variable PACKINGU in the calculation of the French franc-denominated variable string (COGS), therefore mixing the currencies. Thus, respondent stated that the Department should correct this currency conversion for the final determination.

Petitioners did not comment on this issue.

Department's Position: We agree with respondent and have corrected our computer programming (i.e., margin calculation program) with respect to the packing costs in the CEP profit calculation. In the final margin program, the Department has corrected the currency conversion problem in the CEP profit calculation. For a complete listing of the changes the Department has made to its final margin program, please see the Department's analysis memorandum and final margin computer program.

Comment 16: U.S. Intercompany Sales between Uginox and Edgcomb

Petitioners stated that the Department incorrectly included sales from Uginox to Edgcomb in its preliminary determination. Petitioners noted that in the preliminary determination the Department fully intended to include all downstream sales from Bernier, Ugine Service, Hague and Edgcomb in its dumping calculation but not intercompany sales. Thus, petitioners stated that by including the sales between Uginox and Edgcomb and the downstream sales of Edgcomb, the Department has double-counted these sales and calculated an improper CEP for Edgcomb sales. Petitioners stated that the Department should correct this error for the final determination and only use Edgcomb's downstream sales.

Respondent stated that it agrees with petitioners that the Department should not double-count Edgcomb's resales as well as sales from Uginox to Edgcomb. However, respondent argues that the Department should eliminate Edgcomb's resales for the reasons stated above comment 2.

Department's Position: We agree with petitioners. As stated in comment 2 above, the Department has concluded that Edgcomb should be considered affiliated with both Usinor and Uginox for the purposes of this final determination. See Comment 2. Therefore, for purposes of calculating a final antidumping duty margin for Usinor, the Department included Edgcomb's downstream sales in its margin calculation, and eliminated sales from Uginox to Edgcomb.

Comment 17: Failure to Deduct U.S. Freight Expenses From Port to Warehouse

Petitioners argued that the Department inadvertently failed to include U.S. port to warehouse expenses (i.e., the variable INLFPWU) in its calculation of total U.S. movement expenses. Petitioners stated that the Department should correct this inadvertent error for the final determination.

Respondent did not comment on this issue.

Department's Position: We agree with petitioners. In the preliminary determination, the Department inadvertently failed to include U.S. port to warehouse expenses (INLFPWU) in its calculation of total U.S. movement expenses. In the final determination, we have included INLFPWU in our calculation of U.S. movement expenses. Please see the Department's analysis memorandum and final margin computer program for this change.

Comment 18: Missing Payment Dates

Petitioners stated that in the preliminary determination, the Department recalculated credit expenses for sales with missing payment dates. However, in the Department's revised credit expense calculation, petitioners contend that the revised net price calculation failed to deduct early payment discounts and other discounts in the home market credit expense calculation, and early payment discounts in the U.S. credit expense calculation. Further, petitioners noted that the respondent included other discounts and early payment discounts in its calculations of both the U.S. and home market credit expenses. Therefore, petitioners argue that without considering these additional deductions, the credit expense calculation is not consistent with the respondent's reported data for credit expenses.

Respondent stated that petitioners objection to the Department's calculation of credit expense for sales with missing payment dates has been overtaken by events. Specifically, credit expense on the revised files has been recalculated to account for actual payment dates, where available, or average days outstanding. Therefore, respondent argued that there is no basis for alteration of the Department's program with regards to credit expenses.

Department's Position: We agree with respondent in part. On April 8, 1999, the Department provided respondent an opportunity to revise its sales and cost files with minor corrections found at the recent sales and cost verifications in France and the United States. See *Memorandum to the File,* dated April 8, 1999. On April 15, 1999, respondent provided the Department with revised sales and cost tapes. The Department has confirmed that Respondent's U.S. credit expenses do not need to be recalculated because the respondent has already recalculated all of its U.S. credit expenses to account for actual payment dates, where available, or average days outstanding. However, in the preliminary determination, we did not deduct early payment discounts and other discounts in the home market credit expense calculation. Additionally, respondent's revised home market sales tape continues to have missing payment dates for certain sales which have not been paid. Therefore, for the final determination, we have recalculated respondent's home market credit expense for sales with missing payment dates by designating the last day of the home market verification as payment date, and have deducted early payment discounts and other discounts in our recalculation of home market credit expense, where appropriate. For a complete listing of the changes the Department has made to its final margin program, please see the Department's analysis memorandum and final margin computer program.

Cost of Production/ Constructed Value

Comment 19: Affiliated Party Transactions (Usinor)

Petitioners argue that the Department should adjust Usinor's reported hot rolling costs to reflect a market value in accordance with the major input rule. According to the petitioners, the Department determines the value of a major input purchased from an affiliated party based on the highest of the price paid to the affiliated party, the market price, or the cost of producing the major input (see *Final Results of Antidumping Duty Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom*, 62 FR 2081, 2115 (January 15, 1997); *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or less in Outside Diameter, and Components Thereof, from Japan*, 61 FR 57629, 57644 (Nov. 7, 1996)). In this instance, the petitioners claim the record shows that the market price is higher than either the reported transfer price or the affiliates cost of production (''COP'').

Usinor disagrees with the petitioners' assertion that an adjustment is necessary. According to Usinor, Ugine properly valued affiliated party inputs at the transfer price which exceeded actual cost. As for the comparison to a market price, Usinor claims that the Department cannot make a proper comparison between the reported market price and the reported transfer price because of the differing market conditions. Thus, Usinor states that no adjustment to hot rolling costs is necessary for the final determination.

Department's Position: We agree with petitioners that the hot rolling services Usinor obtained from an affiliate should be adjusted to a market price. Section 773(f)(2) allows the Department to test whether transactions between affiliated parties involving any element of value are at prices that ''fairly reflect * * * the market under consideration.'' Section 773(f)(3) allows the Department to test whether transactions between affiliated parties involving a major input is above the affiliated supplier's cost of production. In other words, if an understatement in the value of an input would have a significant impact on the reported cost of the subject merchandise, the law allows the Department to insure that the transfer price or market price is above the affiliated supplier's cost. The determination as to whether an input is considered major is made on a case-by-case basis. *See Final Rule* 62 FR at 27362.

In determining whether an input is considered major, among other factors, the Department looks at both the percentage of the input obtained from affiliated suppliers (verses unaffiliated suppliers) and the percentage the individual element represents of the subject merchandise's COM (*i.e.*, whether the value of inputs obtained from an affiliated supplier comprises a substantial portion of the total cost of production for subject merchandise). In the instant case, we looked at these percentages for hot rolling services provided by an affiliate. The cost of these services represent a relatively small percentage of the subject merchandise's COM, which reduces the risk of misstatement of the subject merchandise's costs to such a degree that we have determined that section 773(f)(3) of the Act does not apply to these inputs. However, we found that the weighted-average transfer price of hot rolling services reported by Usinor was below market price and therefore, in accordance with section 773(f)(2) of the Act, we have increased the subject merchandise's COM accordingly.

As for Usinor's concern that the reported market price is not comparable to the reported transfer price, we disagree. For the market price, Ugine reported the arm's length sales price the affiliate charged to non affiliates for performing analogous hot rolling services. Thus, we note that the reported market price does represent the amount usually reflected in sales of the major input in the home market under consideration as required by section 773(f)(3) of the Act.

Comment 20: Depreciation Expense (Usinor)

To calculate COP and CV, petitioners claim that the Department should rely on the depreciation expense recorded in Ugine's cost accounting system rather than the depreciation expense reported on the financial statements. According to petitioners, section 773(f)(1)(A) of the Tariff Act of 1930, as amended, provides that the Department normally relies on data from a respondent's books and records in which its costs are normally kept if those records are prepared in accordance with the home country's generally accepted accounting principles (''GAAP''), and where they reasonably reflect the cost of producing the merchandise. In this instance, the petitioners claim that the cost accounting system is in fact the company's normal books and records. Thus, in order for the Department to reject Ugine's cost accounting system for the valuation of the depreciation expense, the petitioners argue that the Department must find that Ugine's cost accounting system is not in accordance with French GAAP, or that costs recorded in the cost accounting system are not reasonably reflective of the production costs. Moreover, petitioners claim that there is no record evidence to suggest that Ugine's cost accounting system does not reasonably reflect the costs associated with the production of stainless steel sheet and strip in coils. Petitioners assert that the burden is on Usinor to demonstrate on the record that the costs recorded in their normal books and records are not reasonable (*see Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand*, 60 FR 29553, 29559 (June 5, 1995); *Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe from the Republic of Korea*, 57 FR 53693, 53705 (November 12, 1992) and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from South Africa*, 60 FR 22550, 22556 (May 8, 1995)). Without such demonstration on the record by Usinor, the petitioners assert that the Department should, in the final determination, base depreciation on the figures recorded in Ugine's cost accounting records.

Usinor contends that it properly relied on the depreciation expense reported in the company's audited financial statements prepared in the accordance with French GAAP to calculate depreciation expense. According to Usinor, Ugine's cost accounting system does not reflect depreciation in accordance with GAAP and therefore such depreciation cannot properly be used in this investigation. Usinor states that the Department has traditionally preferred to use the figures found on the financial statements (*see Final Results of Antidumping Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Romania, Singapore, Sweden, and the United Kingdom,* 62 FR 54043, 54080 (1997)). Moreover, Usinor claims that the Department has traditionally relied on the depreciation expense reported on the financial statements rather than the depreciation expense reported in the respondent's cost accounting system (*see Usinas Siderurgicas de Minas Gerias S.A.* v. *United States,* No. 93–09–00557–AD, 1998 WL 442297, at *9 (CIT 1998); *FAG U.K. LTD* v. *United States,* 945 F.Supp. 260, 271 (CIT 1996); *Cinsa S.A. de C.V.* v. *United States,* 966 F.Supp 1230, 1234 (CIT 1997); *Final Results of Administrative Review: Silicon Metal From Brazil,* 64 FR 6305, 6321 (February 9, 1999); and the *Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire From Canada,* 64 FR 17324, 17335 (April 15, 1999)). Therefore, Usinor requests that the Department reject petitioners' attempt to overturn the Department's longstanding practice in this area and use the depreciation as recorded in Usinor's financial accounting system.

Department's Position: We agree with Usinor that in this case the depreciation expense reported on Usinor's audited financial statements should be used in the calculation of COP and CV. Specifically, Ugine S.A. became a division of Usinor at the end of 1995. As a result of the merger, Usinor revised Ugine's depreciation expense. This revision to Ugine's depreciation expense was made in accordance with French GAAP. Although Usinor revised Ugine's depreciation expense for financial statement purposes, Ugine never revised its internal financial accounting and cost accounting depreciation ledgers to reflect the change. Thus, Ugine's cost accounting system and financial accounting system generate different depreciation results than the amount Usinor officially recognizes for the division. For submission purposes, Usinor adjusted the depreciation expense reported in Ugine's cost accounting system to the amount Usinor reported for the Ugine division in Usinor's financial statements. Contrary to petitioners' claim, we found that the depreciation expense recorded in the cost accounting system conforms to French GAAP only after the company has made adjustments to reflect the amount reported on Usinor's audited financial statements. We note that the independent auditors base their opinion on the final amounts reported on the financial statements and not on the amounts that may be recorded in the internal cost accounting system. Moreover, Ugine demonstrated that its depreciation expense contained in its cost accounting system eventually reconciled to Ugine's divisional financial statement and that the depreciation expense reported on this divisional statement reconciled to the depreciation expense reported on Usinor's financial statements. Since the amount of depreciation expense detailed in Ugine's cost accounting system reconciles to Usinor's audited financial statements, we believe that Ugine's reported depreciation expense does not distort its COP and CV figures. Finally, we note that Usinor's ''change'' to Ugine's depreciation expense was made prior to the POI.

Additionally, our use of amounts reported on a company's financial statement has been upheld by the Court of International Trade (see, *FAG U.K. LTD* v. *United States,* 945 F.Supp. 260, 271 (CIT 1996) (upholding the Departments reliance on a firm's expense as recorded on the firm's financial statements); *Hercules, Inc.* v. *United States,* 673 F. Supp. 454 (CIT 1987) (upholding the Department's reliance on COP information from the respondent's normal financial statements maintained in conformity with GAAP); See also: *Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire From Canada,* 64 FR 17324, 17335 (April 9, 1999)) (The Department relied on respondent's expense as recorded on the firm's financial statements). More importantly, the Court of International Trade has consistently sustained our practice of relying on the depreciation expense reported in the company's audited financial statements (see *Cinsa S.A. de C.V.* v. *United States,* 966 F.Supp 1230, 1234 (CIT 1997) (upholding the Department's reliance on depreciation expense reported on the financial statements); *Laclede Steel Co.* v. *United States,* 965 Slip OP 94–160, *24 (CIT 1994) (upholding the Departments reliance on depreciation expense reported on the financial statements); *Final Results of Administrative Review: Silicon Metal From Brazil,* 64 FR 6305, 6321 (1999). For the final determination, we relied on the depreciation expense reported by Usinor.

Comment 21: Including Employee Payments in the Cost of Production (Usinor)

For the final determination, petitioners assert that the Department should recalculate Ugine's COP and CV to include certain employee profit-sharing payments. According to petitioners, the Department has addressed this issue before, and in each case has determined that ''profit-sharing'' payments are appropriately considered an employee remuneration cost to the company and should be included in the calculation of COP and CV. As examples of such instances, the petitioners cite the *Final Results of Antidumping Duty Administrative Review: Porcelain-on-Steel Cooking Ware From Mexico,* 60 FR 2378 (January 9, 1995); the *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Austria,* 60 FR 33551, 33557 (June 28, 1995); and the *Final Results of Antidumping Administrative Review: Porcelain-on-Steel Cooking Ware from Mexico,* 58 FR 43327, 43331 (August 16, 1993), in which Department included similar profit-sharing costs in the calculation of COP.

Respondent had no comment on this issue.

Department's Position: We agree with the petitioners that Usinor's profit sharing expense should be included in the calculation of COP and CV. Under French law, an employer is required to distribute a portion of its profit to employees. This distribution of profits is reflected on the company's income statement as an expense. With respect to the employees involved in the production and administration of the subject merchandise, the distribution represents a form of compensation. Moreover, our established practice is to include this type of compensation in the calculation of COP and CV, because this profit sharing represents an expense recognized within the POI and should be reflected in the product cost, in accordance with full absorption costing principle (see *Final Results and Partial*

Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey, 63 FR 68429 (December 11, 1998); *Notice of Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate From Germany,* 61 FR 13834, 13838 (March 28, 1996); and *Final Results of Antidumping Duty Administrative Review: Porcelain-on-Steel Cooking Ware from Mexico;* 60 FR 2378 (January 9, 1995). For the final determination, therefore, we included Usinor's profit-sharing expense in the calculation of COP and CV to reflect the fully absorbed cost of producing the stainless steel sheet and strip.

Comment 22: Including ''Exceptional'' Expenses and Other Expenses in the General and Administrative Expense Calculation (Usinor)

Petitioners state that the Department should include certain omitted expenses in the calculation of Ugine's general and administrative expense ratio. According to the petitioner, these expenses represent normal general and administrative expenses for the operations. Thus, they should be included in the general and administrative expense calculation for the final determination.

Usinor asserts that it properly excluded the expenses in question because they do not relate to the production of the subject merchandise. According to Usinor, Ugine's exclusion of certain non-operating and extraordinary expenses was entirely justifiable. Moreover, Usinor claims that the Department verified these omitted expenses and only had a concern with donations and football club expenses. Thus, Usinor believes that the items excluded, as verified by the Department, are not production costs. Therefore, consistent with past Department's practice (see *Final Results of Administrative Review: Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan,* 56 FR 41508, 41516 (1991); and *Final Results of Administrative Review: Television Receivers, Monochrome and Color, From Japan,* 56 FR 5392 (1991)), Usinor claims that they properly should not be included in Ugine's G&A expenses.

Department's Position: We agree with both petitioners and respondent in part. We agree with petitioners that some of the omitted expenses in question should be included in the calculation of the G&A expense rate. For instance, we agree that contributions (i.e., donation and the football expenses) should be included in the calculation of G&A expense because these expenses are a part of Usinor's overall administrative expenses attributable to all production, including production of subject merchandise. As for the exceptional expenses, we agree with the respondents that these items are related to investing activities and should not be included in the calculation of COP and CV (see, *Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey,* 62 FR 9737, 9748 (March 4, 1997); and *Final Results of Administrative Review: Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan,* 56 FR 41508, 41516 (1991) (Department included extraordinary expenses).

Comment 23: Disregarding Usinor's Claim for an Offset of Short-Term Interest Income in Its Financial Expense Calculation (Usinor)

Petitioners argue that the Department should deny Usinor's claim for an offset of short-term interest income in its financial expense calculation because the respondent could not distinguish short-term interest income from total interest income. Moreover, the petitioner asserts that Usinor could not support its claim that interest income was generated from short-term sources. Petitioners state that the Department will not allow an offset in such circumstances and cite the *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China,* 62 FR 61964, 61970 (November 20, 1997) in which the Department stated that it ''* * * will offset interest expense by short-term interest income only where it is clear from the financial statements that the interest income was indeed short-term in nature.'' In that case, the Department did not offset the interest income in the financial expense calculation. Therefore, the petitioners argue that since Usinor was not able to clearly distinguish short-term interest income from total interest income in the financial statements, the Department should disallow and reverse the offset taken by Usinor in its financial expense calculation.

Usinor claims that the Department should accept Ugine's offset of short-term interest income in calculating its financial expenses—just as the Department has done in other cases involving Usinor (see *Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From France,* 58 FR 68865, 68872 (December 29, 1993)). According to the respondent, Ugine calculated the offset in the same manner as previously approved by the Department. Thus, Usinor contends that petitioners' request to disallow Ugine's short-term interest income offset is without merit.

Department's Position: We agree with petitioners. Usinor's consolidated financial statements only reported a net interest expense figure. Therefore, in order to calculate a financial expense figure Usinor imputed its gross interest expense, long-term interest income, and the short-term interest expense offset based on an adjustment methodology used by the Department in a previous antidumping investigation involving Usinor (see *Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From France,* 58 FR 68865, 68872 (December 29, 1993)). In that case, the Department made an adjustment to financial expense because Usinor incorrectly deducted both short-term and long-term interest income, rather than limiting the deduction to short-term income as required by the Department's practice, when calculating its reported financial expense rate. As a result, the Department limited the interest income offset claim to an estimated short-term amount. By contrast, in this proceeding, we have excluded Usinor's short-term interest offset because neither of respondent's audited financial statements reported any breakdown of long- vs. short-term investments or investment income, nor was the respondent able to provide support for its claimed short-term interest income. Therefore, based on the Department's past practice, we have disallowed Usinor's short-term interest income offset in the financial expense calculation (see, e.g., *Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Silicon Metal From Brazil,* 64 FR 1974 (February 9, 1999) (Department disallowed the short-term offset.).

Comment 24: Accepting New Information Presented by Usinor on the Costs of Products Sold but Not Produced (Usinor)

Petitioners claim that the Department should not accept Usinor's minor correction provided on the first day of verification that relates to products sold but not produced during the POI. According to petitioners, this change is not a minor correction because the correction is the submission of new costs for thirteen control numbers. More important, the revision is based on new factual information that was not submitted a week before verification took place. As a result, neither the Department nor the petitioner had time to review the submitted information before verification.

Petitioners further argue that while they recognize the need to allow respondents an opportunity to correct minor errors at the beginning of the verification, they do not believe that verification is an appropriate venue for the submission of new factual information. According to petitioners, the Department generally only collects and uses information obtained at verification when minor discrepancies are found or when the Department believes that a respondent's methodology may not have been reasonable but can be simply changed (see *Final Results of Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China,* 63 FR 16758, 16761 (April 6, 1998)). Verification, claim the petitioners, is used by the Department to clarify and support information already on the record. Thus, the Department will correct errors found at verification as long as those errors are minor and do not exhibit a pattern of systemic misstatement of fact (see *Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Brazil,* 59 FR 732, 736 (Jan. 6, 1994)). Therefore, the petitioners assert that the submission of these new costs cannot be considered minor by any measure and should not be used in the margin calculation.

Usinor disagrees with petitioners position that the presentation of revised cost data for these thirteen control numbers is inappropriate. According to Usinor, the revised cost data does constitute a minor correction because the reported costs of these control numbers were incorrectly submitted due to a computer error. Moreover, Usinor asserts this type of correction is typically accepted by the Department at the commencement of verification. Usinor further states that this minor correction was thoroughly verified by the Department. The Department, therefore, should reject petitioners' attempt to create an issue where none exists.

Department's Position: We agree with Usinor that the revised cost of the thirteen control numbers in question is a minor correction appropriately provided at the beginning of verification. Contrary to the petitioners' argument, this revision is not based on the submission of new information because the change relates to the correction of existing information for these control numbers. Specifically, Usinor presented the Department with revised cost data for 13 control numbers (i.e., models) on the first day of verification. In its original submission, Usinor thought that these thirteen models had been produced outside the POI. To calculate the POI cost of these models in its response, Usinor relied on surrogate values (i.e., the costs of the most similar control number produced during the POI). During the preparation for verification, however, Usinor realized that these models had actually been produced during the POI. As a result, the company did have the actual cost of the model available to make more accurate calculations. During verification, we obtained and reviewed with company officials a list of the actual cost of manufacture for these control numbers (see cost verification exhibit 1). We noted costs had changed but did not find the difference to be significant. As for the collection of the corrected information, we believe the revised calculation of the cost of these models was properly submitted prior to the beginning of verification since the error was found as a result of verification preparation (i.e., reconciliation of costs, as requested in the agenda). Therefore, we have accepted the revised costs for the final determination.

Comment 25: Application of Facts Available to Edgcomb's Further Manufacturing Data (Edgcomb)

Petitioners contend that the dumping margin for U.S. sales further manufactured by Edgcomb should be based on adverse facts available. According to petitioners, it is appropriate for the Department to use adverse facts available pursuant to section 776(b) of the Act in this case because Usinor has failed to cooperate by not acting to the best of its ability to comply with a request for information within the meaning of section 776(b) of the Act. The verification report establishes this non cooperation in several different areas. According to petitioners, in similar cases, the Department has applied the highest margin in the petition, the notice of initiation, or the highest non-aberrant calculated margin in the database (see *Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8910 (Feb. 23, 1998)).

Petitioners first argue that Edgcomb did not provide the most product-specific costs available. According to petitioners, Edgcomb has a standard cost system that calculates model-specific costs, but Edgcomb elected not to use it for submission purposes. Petitioners argue that Edgcomb calculated and reported a single weighted-average per-unit further manufacturing cost based on an inappropriate allocation methodology that was found to be inaccurate and distortive by the Department. Specifically, petitioners first point out that Edgcomb's reported costs did not account for the processing steps through which the merchandise actually passed. In addition, the reported costs were an average of all stainless steel products rather than just subject merchandise. Thus, Edgcomb included costs for non subject merchandise like bars and angles. Then, the petitioners note that the respondent allocated costs using sales quantities (which do not accurately represent production quantity, due to product-specific changes in inventory) and sales values (which do not account for differences in product mix). As a result of failing to provide information based on their cost accounting system and of creating an entirely new costing system, the petitioners argue that the information on the record concerning Edgcomb's further manufacturing costs is so incomplete that it cannot serve as the basis for the final determination, and the data cannot be corrected and used without undue difficulty.

Petitioners further allege that Edgcomb deviated from its normal accounting system in reporting its costs without obtaining authorization from the Department for the methodologies used. Thus, the company failed to provide information requested by the Department in the form and manner requested. According to petitioners, the Department's instructions required Usinor to contact the Department before offering an alternative methodology, which respondent failed to do. As a result, petitioners maintain that Edgcomb's unilateral decision to use an average rather than product-specific costs were improper. The burden, according to the petitioners, is on the respondent to create a complete and accurate record (see *Final Results of Administrative Review: Circular Welded Carbon Steel Pipes and Tubes From Thailand,* 62 FR 53808, 53814 (October 16, 1997)). Moreover, respondents cannot be allowed the unilateral discretion to decide which information to provide the Department (see *Olympic Adhesives, Inc.* v. *United States,* 899 F.2d 1565, 1571 (CIT. 1990) and *Mitsubishi Heavy Indus., Ltd.* v. *United States,* 833 F. Supp. 919, 924 (CIT 1993) (It is Commerce, not the respondent, that determines what information is to be provided for an investigation)). Lastly, petitioners contend that

Edgcomb failed to provide verifiable information that significantly impeded the investigation. As a result, Edgcomb has not demonstrated that it has acted to the best of its ability to provide requested information to the Department.

Usinor asserts that no basis exists to apply adverse facts available to Edgcomb's further manufacturing costs. Usinor claims that Edgcomb clearly disclosed in its section E questionnaire response that it was not relying on its cost accounting system to calculate its further manufacturing costs. Moreover, Usinor asserts that the Department never requested revised data from Edgcomb, nor did it even request a further explanation of Edgcomb's methodology. Thus, Usinor asserts that Edgcomb should not be penalized for the Department's failure to give Usinor adequate notice of any perceived deficiencies in Edgcomb's methodology. Respondent also claims that it would be particularly unfair and inappropriate to penalize Usinor for any perceived shortcomings in Edgcomb's cost data. According to Usinor, it fully cooperated with the Department's investigation and provided the Department with further cost of manufacturing data to the best of its ability. Usinor maintains that it does not control Edgcomb, and although Usinor believes that Edgcomb cooperated fully, it was unable to compel Edgcomb to proceed in a particular manner or with specified resources to provide the information pertinent to the investigation.

Moreover, Usinor argues that the further manufacturing data is acceptable and reasonable and should be used in the Department's final determination. Usinor argues that the methodology Edgcomb used was the only feasible method available and that this method accurately represents the cost of further processing. Usinor then asserts that Edgcomb's cost accounting system did not calculate accurate costs during the entire POI because the system was brand new. According to Usinor, Edgcomb installed the system during the POI but was slow to correct the cost inaccuracies the system calculated because further processing cost represents an insignificant portion of the Company's total cost. Since the cost system generated inaccurate results during the POI, Usinor claims that Edgcomb's cost accounting system could not be used. As an alternative, Usinor claims that Edgcomb appropriately used its financial accounting system to calculate the submitted single weighted-average per-unit cost.

If the cost accounting system had been completely implemented and usable, Usinor then argues that Edgcomb would still not be able to use the system to calculate its further manufacturing costs. According to Usinor, the company would have to overcome the problem of linking the sales orders back to the original plant that processed the subject merchandise. Usinor claims that this would involve extensive computer programming as well as an unreasonable amount of manual work on Edgcomb's behalf. In such instances, Usinor claims that the Department does not normally request such extensive undertakings and cites *Usinor Sacilor* v. *United States,* 872 FS 1000, 1007 (CIT 1994) to support its position that such an undertaking is not necessary.

Usinor then contends that calculating a single weighted-average further manufacturing costs for Edgcomb is not distortive. According to Usinor, the single weighted-average cost is appropriate because Edgcomb's slitting and cutting fabrication costs represent approximately the same amount. Usinor maintains that the Department often accepts single weighted-average per-unit costs. To support its position, Usinor cites several cases in which the Department accepted respondent's non-product specific weighted-average production costs when product-specific costs were not available (see *Final Results of Antidumping Review: Certain Porcelain-on-Steel Cookware from Mexico,* 62 FR 42496, 42506 (August 7, 1997) (''Cookware from Mexico''); *Final Results of Antidumping Review: Certain Welded Carbon Steel Pipe From Turkey,* 61 FR 69067, 69072 (December 31, 1996) (''Steel Pipe from Turkey''); *Final Results of Antidumping Review: Certain Cold-Rolled Carbon Steel Flat Products From Germany,* 60 FR 65264, 65266 (December 19, 1995) (''Steel Sheet Flat Products from Germany''). In the same context, Usinor disagrees with the Department's finding discussed in the further manufacturing cost verification report that indicates that the required processing route of a model does have an impact on the model's specific costs. According to Usinor, the verifiers incorrectly compared the fabricating costs associated with the cutting and slitting processes and not the average gross unit prices of the models involved. If the verifiers had compared the gross unit price, Usinor maintains that the total difference in costs would be found to be de minimis. In addition, Usinor asserts that the Department based its findings on a limited sample that is unrepresentative of the total population.

As for using sales quantity and value as an allocation bases, Usinor maintains that the approach is not distortive. According to Usinor, sales quantity is appropriate as an allocation base because it approximates Edgcomb's actual production quantity. In such instances, Usinor claims that the Department normally accepts the sales quantities in lieu of production quantity. To support this claim, Usinor cites several cases in which the Department accepted sales quantities in lieu of production quantities (see *Final Results of Antidumping Duties: Certain Welded Carbon Steel Pipe and Tube from Turkey,* 61 FR 69067, 69071 (December 31, 1996); *Final Determination of Sales at Less Than Value: Stainless Steel Round Wire from Canada,* 64 FR 17324, 17330 (April 9, 1999)). As to the use of sales value as an allocation base, respondent notes that this allocation base was used principally because the data for other allocation bases were not available.

Usinor then disagrees with the petitioners' contention that Edgcomb's reported costs were based on incomplete data. Usinor maintains that the only instance of Edgcomb basing its calculations on limited data is its process material yield loss calculations. According to Usinor, Edgcomb had to calculate this cost based on the last three months of the POI because of the deficiencies in its cost accounting system. Specifically, Edgcomb's cost accounting system did not retain all the production data for the POI. Moreover, Usinor claims that the sample used to generate the yield loss is representative because it is based on Edgcomb's experience and there is no reason to believe the yield losses change over time.

Department's Position: We agree with petitioners that the further manufacturing costs cannot be used for the final determination, and therefore the Department must resort to facts otherwise available. While we agree with petitioners that the further manufacturing costs contain errors that are not correctable, we disagree that the application of adverse facts available is warranted in this case. Section 777(b) allows the Department to use an inference that is adverse to the respondent, if it finds that the ''interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information.'' However, we were able to verify that, because Edgcomb was in the process of switching accounting systems during the POI, it experienced extraordinary difficulties in reporting to the Department. While we agree with petitioners that Usinor or Edgcomb should have notified the Department—prior to the submission of the further manufacturing response—that it did not intend to use its normal cost accounting system for reporting purposes, the Department did not direct Edgcomb to resubmit its further manufacturing costs. Therefore they have not failed to cooperate and an adverse inference is not warranted.

However, based on our findings at verification, we conclude that the cost methodology reported by Usinor for Edgcomb's costs is unusable. We disagree with Usinor's argument that the reporting of one single weighted-average per-unit further manufacturing cost does not distort the analysis. Edgcomb's single weighted-average per-unit cost not only obscured all cost differences associated with some of the physical characteristics identified in this investigation as being significant, but also included all cost differences associated with the physical characteristics of non-subject merchandise. At verification, we found that Edgcomb included the fabricating costs of both subject and non-subject merchandise in its submitted weighted-average cost.

We also disagree with Usinor that the use of sales values and quantities is appropriate. While the Department has allowed the use of sales quantities when it is established that they are reflective of production quantities, the use of sales values is seldom appropriate. Sales values are not typically appropriate for purposes of allocating cost because they do not necessarily reflect the actual factors that drive certain costs. The court of appeals has found the use of sales value as an allocation base leads to a circular methodology, in the context to antidumping calculations (see *IPSCO, Inc.* v. *United States,* 965 F. 2d 1056 (Fed. Cir. 1992) (Court determined price-based allocations of costs methodologies circular, and ''contradict the express requirements of the statute which set forth the cost of production as an independent standard for fair value.'').

Additionally, we disagree with Usinor's interpretation of several cases which Usinor relies upon to support its claim that the Department has normally accepted respondent's non-product specific weighted-average production costs when product-specific costs were not available. For example, in *Cookware from Mexico,* 62 FR at 42506, the Department actually determined that the respondent's reported costs ''were allocated to a sufficient level of product specific detail in accordance with the Department's questionnaire instructions.'' In *Steel Pipe From Turkey,* 61 FR at 69072, the Department determined that, even though respondent's reported cost did provide some level of product specificity, it did not reflect the same level as the costs maintained in its normal course of business. Therefore, the Department made necessary adjustments through application of partial facts available to reflect more product-specific data available on the record. In *Steel Flat Products from Germany,* 60 FR at 65266, the Department determined that the reported costs did have a certain level of product specificity and did reflect the costs as reported in the company's normal cost accounting system.

Finally, Usinor has also argued that the samples the Department obtained of the cost accounting system are not representative of the total population. We disagree. We note that the court has upheld our use of testing the respondent's data through the use of samples. In *Tatung Co.* v. *United States,* Slip Op. 94–195 (CIT 1994), the court opinion stated ''verification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness, so that Commerce can justifiably rely on that information.'' Moreover, we note that Usinor itself selected the two samples upon which the Department's conclusions are based prior to verification. See *Memo to the File from Garri Gzirian,* dated March 19, 1999.

Therefore, we have not relied on Edgcomb's reported cost of manufacturing data. Where we did find that Edgcomb's costs were reported correctly, we have used those costs. However, in other instances, as facts otherwise available we have utilized the manufacturing costs of Usinor's other further manufacturer, Hague. We adjusted Hague's reported costs using certain yield loss and processing costs data verified at Edgcomb. We have relied on Edgcomb's SG&A and financial expense calculations.

Comment 26: Combined Financial Statements of Edgcomb and EEHC, and Leasing Arrangement Between the Entities (Edgcomb)

Petitioners assert that Usinor understated Edgcomb's further manufacturing costs by not including the true cost of leasing its plant and equipment (''P&E'') from an affiliate. According to petitioners, Usinor relied on the amounts reported in Edgcomb and EEHC's combined financial statements. The combined financial statements collapsed the results of Edgcomb and EEHC (which is a partnership that leases P&E to Edgcomb) into a single reporting entity. However, by relying on amounts reported in the combined financial statements, petitioners assert that Edgcomb only included the depreciation expense associated with this leased P&E rather than the actual lease payments incurred. Petitioners argue that this combination is improper because Edgcomb and EEHC are distinct entities with separate revenues and costs. Thus, petitioners contend that Usinor inappropriately understated Edgcomb's further manufacturing costs.

Usinor disagrees with the petitioners' contention. According to Usinor, Edgcomb manages EEHC's financial records in the normal course of business and normally combines the financial results of the two entities. Moreover, Usinor maintains that EEHC is simply a paper company that was created solely for the purpose of implementing the sale/leaseback financing arrangement. As such, Usinor maintains that there is no actual substance to the separateness of these business entities. In addition, Usinor claims that it is the Department's normal practice to collapse such affiliated entities into a single reporting entity. To support its claim, Usinor cites *Koenig & Bauer Albert AG* v. *United States,* LEXIS 23, at *12 (CIT 1999) and *Asociación Colombiana de Exportadores de Flores* v. *United States,* 6 FS 2d 865, 892–896 (CIT 1998) (Demonstrates the Department's practice of collapsing affiliated parties and treating them as a single entity.). Usinor further notes that Edgcomb's recording of EEHC's actual depreciation expenses instead of the actual rental expense in the combined financial statements is in accordance with U.S. GAAP. Therefore, according to respondent, the Department should continue its practice of adhering to a respondent's accounting practices in accordance with GAAP so long as the practices do not significantly distort the firm's financial position and actual costs. To support this point, respondent cites *Laclede Steel Co.* v. *United States,* 965 LEXIS 186, at *28 (CIT 1994) and *Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Italy,* 63 FR 40422, 40429 (July 29, 1998).

Department's Position: We agree with petitioners that Edgcomb understated its reported costs by only reporting the depreciation expense on its leased assets rather than the transfer price. However, we find this issue is moot because we are not relying on Edgcomb's reported fabrication costs for the final determination.

Comment 27: Value of Scrap Sales Used To Offset Further Manufacturing Material Costs (Edgcomb)

Usinor admits that Edgcomb may have slightly understated its material costs by overstating its scrap revenue used as an offset to these costs. However, Usinor claims that revising the value would only increase further manufacturing costs by a de minimis amount.

Petitioners refer to the overstatement of the value of scrap sales offset as another reason for not accepting Edgcomb's reported further manufacturing costs. However, if the Department does not resort to facts available, petitioners claim that the Department should make an adjustment to correct for this understatement of costs.

Department's Position: We agree with petitioners that Edgcomb understated its reported material costs by overstating its scrap revenue offset. However, this issue is moot because we are not relying on Edgcomb's fabrication costs for the final determination.

Comment 28: Including the Consolidation Depreciation Adjustment to Further Manufacturing Costs (Edgcomb)

Usinor argues that the Department should not include the depreciation adjustment reported in Edgcomb's 1997 financial statements in the company's further manufacturing cost. According to Usinor, this depreciation is the result of making a year-end adjustment for financial statement purposes. Specifically, Usinor notes that this adjustment was made in accordance with U.S. GAAP because the new parent (i.e., Samsteel) of Edgcomb changed the useful lives used by Edgcomb previous parent (i.e., Usinor). Moreover, Usinor claims that this adjustment was later eliminated through consolidating entries when Samsteel prepared its 1997 consolidated financial statements. In 1998, Usinor notes that this adjustment wasn't even recorded at Edgcomb's level. If the depreciation adjustment is added to Edgcomb's further manufacturing costs, Usinor notes that the resulting change would have a de minimis impact on the margin calculations.

To capture accurately the expenses incurred, petitioners contend that the Department should include the adjustment in Edgcomb's further manufacturing costs.

Department's Position: We agree with petitioners that this expense should be included in Edgcomb's further manufacturing fabrication costs. However, this issue is moot because we are not relying on Edgcomb's fabrication costs for the final determination.

Comment 29: Applying Facts Available to Hague's Further Manufacturing Costs (Hague)

Petitioners argue that the Department cannot accept the further manufacturing costs reported by Hague, and should base the margin calculations on adverse facts available. Petitioners point out that Hague reported its unit cost of material based on overall figures that include the total cost and quantity of subject and non-subject merchandise. Petitioners claim that information presented on the verification exhibits show that Hague's accounting system is capable of providing a more detailed cost of material. Based on this conclusion, petitioners assert that Hague failed to provide the most product-specific costs allowed by its cost of production records, which creates grounds for application of the adverse facts available under section 776 of the Act.

Usinor argues that petitioners' claims of inaccuracy and demands to apply adverse facts available to Hague's further manufacturing cost should be rejected. Usinor refutes petitioners' conclusion on the capabilities of Hague's accounting system by claiming that it was not feasible to provide more product-specific calculations based on the information generated by the system. According to Usinor, in those cases, where the system keeps track of major grade categories, it does not allow to separate subject from non-subject material within each grade. In other cases, where it does allow identification of the source and process (which is essential for identifying subject merchandise), it does not contain information by grade. Respondent contends that Hague's further manufacturing data is based on a reasonable methodology, consistent with the available records that Hague maintains in its normal course of business.

Department's Position: We disagree with the petitioners' contention that the methodologies used by Hague to calculate its reported cost of further manufacturing warrant the application of adverse facts available. To calculate model specific costs, Hague relied on the most specific and reasonable allocation methods available within its normal record keeping system. Specifically, Hague relied on the costs reported in its financial accounting system to calculate its reported further manufacturing costs because the company does not have a detailed cost accounting system that generates model-specific costs. Using the amounts reported in its financial accounting system and available production reports, Hague was able to calculate a unique further manufacturing cost for each major fabrication process. Where the respondent has provided model specific costs that reasonably reflect the cost of production, our practice is to accept the respondent's reported costs (*see Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey,* 61 FR 69067 (December 31, 1996). In accordance with section 782(e) of the Act, even where information does not meet all of the established requirements, we will use it where it is timely, reliable, and can be used without undue difficulty.

Moreover, our verification revealed nothing to contradict Hague's claim that it does not maintain more product-specific data in its normal course of business. We also verified that Hague was not able to calculate more model specific fabrication costs than those provided. While the accounting records identified by petitioner could in theory be used to calculate more specific costs for each specific order, Hague does not retain all the necessary production records in its normal course of business to make such calculations. As a result, Hague's methodology does provide a reasonable level of product specificity that is consistent with the company's records maintained in the normal course of business. Moreover, we found that the deficiencies we had identified in our further manufacturing cost verification report (e.g., understatement of material costs, additional process strings, etc.) can be adjusted without undue difficulties using data available on the record. Therefore, we find that the application of adverse facts available is not warranted in this instance.

Comment 30: Adjusting the Reported Further Manufacturing Material Costs (Hague)

Usinor maintains that the Department does not need to adjust Hague's reported material costs. Usinor argues that the methodology used by the Department in its further manufacturing cost verification report to show that costs may be understated is inaccurate. Specifically, Usinor points out that the numerator in the verifiers' calculations includes non-subject as well as subject material purchases. In addition, the Department's calculated cost is based on 1997 calendar year figures. In contrast, the denominator includes only subject merchandise sales and is POI based. To make the Department's calculation more accurate and to show that the reported material cost is not distortive, Usinor provided a revised calculation of Hague's material costs in its case brief. Since the resulting figure is only slightly higher than the reported costs, Usinor believes that Hague's approach was fair and reasonable and should be accepted by the Department.

Petitioners argue that the Department should adjust Hague's cost of material to exclude non-subject materials in accordance with the methodology suggested in the cost verification report.

Department's Position: We have reviewed the information on the record and agree with Usinor that the material cost calculated in Hague's cost verification report was overstated. In addition, we reviewed the methodology suggested by Hague in its case brief and have found it to be reasonable and more product-specific. Therefore, for the final determination, we have adjusted Hague's further manufacturing costs using the method outlined in Usinor's case brief.

Comment 31: Claim Reimbursement Offset Further Manufacturing Costs (Hague)

Usinor argues that the Department should not reverse the adjustment made to Hague's raw material costs to exclude a warranty expense. According to Usinor, Hague appropriately reduced its reported costs for an expense that relates to the resolution of a 1996 warranty claim on a 1995 sale.

Petitioners contend that the Department should reverse the adjustment to include this warranty cost because it was expensed during the POI.

Department's Position: We agree with Usinor that Hague should not include this expense in the calculation of its further manufacturing costs. We note that the adjustment in question (''Claim Reimbursement—95'') actually represents a finished goods inventory adjustment. Specifically, information on the record show that a customer rejected a shipped product because of a defect caused by the fabrication process. Regardless of the timing of the events and transactions underlying this adjustment, the adjustment essentially represents a revaluation of finished goods inventory which should not be considered a part of Hague's further manufacturing costs. Therefore, consistent with our normal practice, we have allowed Hague to exclude this cost from its costs calculations (see *Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada*, 64 FR 17324, 17334 (April 9, 1999)).

Comment 32: Adjusting Further Manufacturing Financial Expense Ratio (Hague)

Usinor argues that the Department should not adjust Hague's reported further manufacturing financial expense. According to Usinor, Hague appropriately deducted imputed amounts from the consolidated financial expense figure to avoid double counting. Usinor maintains that imputed credit and inventory carrying costs are already deducted from the sales price in the margin calculations. Therefore, these expenses should not be included in the calculation of the further manufacturing costs which is also a deduction to the sales price. Respondent asserts that it is the Department's standard practice to avoid such double-counting. To support this assertion, respondent cites *Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea*, 64 FR 12927, 12931 (March 16, 1999) (''Carbon Steel Flat Products From Korea''); *Final Determination of Sales at Less Than Fair Value: New Minivans From Japan*, 57 FR 21937, 21956 (May 26, 1992) (''New Minivans From Japan''); and *Final Results of Antidumping Duty Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany*, 56 FR 31692, 31721 (July 11, 1991) (i.e., ''AFB from Germany'').

Petitioners, however, argue that in fact *Carbon Steel Flat Products from Korea* undercuts the respondent claim, and demonstrates that, to the contrary, the Department's standard practice is not to accept such adjustments.

Department's Position: We disagree with Usinor. It is not appropriate for Hague to reduce the consolidated financial expense with imputed amounts. In fact, we have always maintained that regular interest expenses represent a legitimate production cost of a U.S. further manufacturing affiliate and therefore should not be reduced by imputed interest (see *Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan*, 61 FR 38139, 38165 (July 23, 1996). In that case, the Department disagreed with the respondent that we double counted costs in the further manufacturing interest expense by deducting both interest and imputed credit in our CEP calculation. As for Usinor's citations to support their position, we note that the Department's position is taken out of context. Specifically, our position in *Carbon Steel Flat Products From Korea* (which references *Minivans* and *AFBs From Germany*) addresses the possibility of double-counting of imputed interest in the context of U.S. indirect selling expenses. However, we note that indirect selling expenses are not a component of further manufacturing cost. Furthermore, even in the context of U.S. indirect selling expenses, the Department stated its position that ''because activities of U.S. sales affiliates differ considerably across cases, the Department must determine the appropriate universe of CEP deductions on a case-by-case basis.'' Therefore, we have disallowed the adjustment in question, and applied the financial expense ratio calculated at the consolidated level.

Comment 33: Further Manufacture Financial Expense Ratio Calculation (Edgcomb)

Usinor states that the Department should accept Edgcomb reported further manufacturing financial expense that was calculated using Samsteel, Inc.'s consolidated financial statements. Usinor maintains that Edgcomb's ultimate parent, the Macsteel Group of South Africa, does not prepare a consolidated financial statement. Thus, Edgcomb calculated its financial expense ratio using the consolidated amounts from the highest level financial statement obtainable (i.e., that of Samsteel). Usinor also notes that the financial expense ratio for Samsteel is not significantly different from Usinor's consolidated financial expense ratio.

According to petitioners, Edgcomb is not cooperating in this investigation by refusing to provide the consolidated financial figures of Edgcomb's ultimate parent, Macsteel Group of South Africa. Petitioners refer to the overstatement of the value of scrap sales offset as another reason for not accepting Edgcomb's reported further manufacturing costs. If the Department does not resort to adverse facts available for Edgcomb, petitioners claim that the Department should still adjust respondents financial expense.

Department's Position: We agree with Usinor that Edgcomb appropriately relied on the financial statements of the highest consolidation level available to calculate the company's further manufacturing financial expense ratio. During verification, we confirmed that no higher level of consolidation existed (*see*, Edgcomb's cost verification exhibit 13). Moreover, relying on Samsteel's consolidated statements as being the highest level available is consistent with our prior practice (see *Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire From Canada*, 64 FR 17324–17336 (April 9, 1999) (Department relied on the amounts reported on the consolidated financial statements of the highest level available to calculate the financial expense ratio). Likewise, we found that it would be inappropriate to use the Usinor Group's consolidated financial expense ratio as a surrogate. We note that the Usinor Group only held a minority interest in Edgcomb. As a result, Edgcomb's financial results were not consolidated into the Group's financial results. Since Edgcomb's financial expense is not a component of the reported further manufacturing costs which are being based on facts available, as discussed above, we have relied on the company's submitted financial expense ratio for the final determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Tariff Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from France that are entered, or withdrawn from warehouse, for consumption on or after January 4, 1999 (the date of publication of the *Preliminary Determination* in the **Federal Register**). The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. The suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)
Usinor	10.64
All Others	10.64

ITC Notification

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

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13679 Filed 6–7–99; 8:45 am]

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federal register

Tuesday
June 8, 1999

Part III

Department of Health and Human Services

Office of Public Health and Science

Announcement of Anticipated Availability of Funds for Family Planning Services Grants; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science

Announcement of Anticipated Availability of Funds for Family Planning Services Grants

AGENCY: Office of Population Affairs, OPHS, HHS.

ACTION: Notice.

SUMMARY: The Office of Population Affairs announces the anticipated allocation of funds for FY 2000 family planning services grant projects under the authority of Title X of the Public Health Service Act and solicits applications for competing grant awards to serve the areas and/or populations set out below. Only applications which propose to serve the populations and/or areas listed in Table I will be accepted for review and possible funding. In addition, general program information is included to provide potential grantees with information about future funding opportunities.

OMB Catalog of Federal Domestic Assistance 93.217.

DATES: Application due dates vary. See **SUPPLEMENTARY INFORMATION** below.

ADDRESSES: Completed applications for DHHS Regions II, III, and IV should be sent to: Office of Grants Management for Family Planning Services, Atlanta Federal Center, 61 Forsyth Street, S.W., Suite 5B95, Atlanta, GA 30323–8909.

Completed applications for DHHS Regions, V, VI, VII, IX, and X should be sent to: Office of Grants Management for Family Planning Services, 1301 Young Street, Suite 766, Dallas, TX 75202.

See **SUPPLEMENTARY INFORMATION** section for addresses for additional information.

FOR FURTHER INFORMATION CONTACT:

Program Requirement

Region Program Consultants for Family Planning: Region I, James Sliker, 617/565–1060; Region II, Lucille Katz—212/264–3935; Region III, Louis Belmonte—215/861–4641; Region IV, Christino Rodriquez—404/562–7900; Region V, Janice Ely—312/886–3864; Region VI, Paul Smith—214/767–3060; Region VII, Elizabeth Curtis—816/426–2924; Region VIII, John J. McCarthy, Jr.—303/844–6163; Region IX, Nadine Simons—414/437–8116; Region X, Janet Wildeboor—206/615–2501.

Administrative and Budgetary Requirements

Region II, III and IV: June Faizi (Office of Grants Management for Family Planning Services)—404/562–7902; Regions V, VI, VII, IX and X: Maudeen Pickett (Office of Grants Management for Family Planning Services)—214/767–3401.

SUPPLEMENTARY INFORMATION: Title X of the Public Health Service Act, 42 U.S.C. 300, *et seq.*, authorizes the Secretary of Health and Human Services (HHS) to award grants to public or private nonprofit entities to assist in the establishment and operation of voluntary family planning projects to provide a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents). The statute requires that, to the extent practicable, entities shall encourage family participation. Also, Title X funds may not be used in programs where abortion is a method of family planning. Implementing regulations appear at 42 CFR part 59, subpart A.

On February 5, 1993, HHS published at 58 FR 7462 an interim rule that suspends the 1988 Title X rules, pending the promulgation of new regulations. The principal effect of this action was to suspend the definitions of ''family planning,'' ''grantees,'' ''prenatal care,'' ''Title X,'' ''Title X Program,'' and ''Title X Project'' presently found at 42 CFR 59.2 and 42 CFR 59.7–59.10. Proposed rules were also published at 58 FR 7464 on the same date. During the pendency of rulemaking, the policies and interpretations relating to the provision of abortion-related services by Title X grantees that were in effect prior to the issuance of the 1988 rule, including those set out in the 1981 Family Planning Guidelines, are being used by the program. Copies of the pre-1988 policies and interpretations are available from the Regional Program Consultants for Regions I, II, III, IV, V, VI, VII, VIII, IX, and X, at the addresses listed below.

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont): DHHS/PHS Region I, JFK Federal Building, Room 2126, Boston, MA 02203

Region II (New Jersey, New York, Puerto Rico, Virgin Islands): DHHS/PHS Region II, 26 Federal Plaza, Room 3337, New York, NY 10278

Region III (Delaware, Washington, D.C., Maryland, Pennsylvania, Virginia, W. Virginia): DHHS/PHS Region III, 150 S. Independence Mall West, Philadelphia, PA, 19106–3499

Region IV (Kentucky, Mississippi, N. Carolina, Tennessee, Alabama, Florida, Georgia, S. Carolina): DHHS/PHS Region IV, 61 Forsyth Street, Suite 5B95, Atlanta, GA 30303

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin): DHHS/PHS Region V, 105 West Adams Street, 17th Floor, Chicago, IL 60603

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas): DHHS/PHS Region VI, 1301 Young Street, Suite 1124, Dallas, TX 75202

Region VII (Iowa, Kansas, Missouri, Nebraska): DHHS/PHS Region VII, 601 East 12th Street, Room 210, Kansas City, MO 64106

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming): DHHS/PHS Region VIII, Federal Building, 4th Floor, 1961 Stout Street, Denver, CO 80294–3538

Region IX (Arizona, California, Hawaii, Nevada, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, Republic of the Marshall Islands): DHHS/PHS Region IX, 50 United Nations Plaza, Room 327, San Francisco, CA 94102

Region X (Alaska, Idaho, Oregon, Washington): DHHS/PHS Region X, Blanchard Plaza, 2201 Sixth Avenue, M/S RX–29, Seattle, WA 98121

Incorporating Public Health Initiatives, Program Priorities and Key Issues for Family Planning.

The proposal should reflect the applicant's ability to incorporate into the project plan public health initiatives such as Healthy People 2000 health promotion and disease prevention objectives for family planning, and the U.S. Department of Health and Human Services priorities of assuring a healthy start for every child by increasing the proportion of pregnancies that are intended, promoting personal responsibility for healthy lifestyles, and addressing the elimination of racial and ethnic disparities in health as identified by the President's Initiative on Race.

In addition, the following priorities represent overarching goals for the Title X program and, along with the key issues, should be reflected in the applicant's project plan:

(1) Expansion and enhancement of the quality of clinical reproductive health services through partnerships with entities that have related interests and that work with similar priority populations;

(2) Increased emphasis on services to adolescents, including emphasis on postponement of sexual activity and more accessible provision of contraceptive counseling and services;

(3) Increased services to hard-to-reach populations by partnering with

community-based organizations and others that have a stake in the prevention of unintended pregnancy;

(4) Expansion of comprehensiveness of reproductive health services, including STD and cancer screening and prevention, HIV prevention, education and counseling, and substance abuse screening and referral;

(5) Increased services to males, emphasizing shared responsibility for preventing unintended pregnancy and STD/HIV infection.

Key issues impacting family planning:

Other key issues are impacting the current and future delivery of family planning services. These issues include:

(1) Medicaid waivers and managed care;

(2) Implications of welfare reform and other issues that are affecting family planning services, such as Temporary Assistance to Needy Families (TANF) and the Children's Health Insurance Program (CHIP) as well as other Federal and State initiatives;

(3) Electronic technology;

(4) Research findings;

(5) Legislative mandates, such as counseling teens on involving families and avoiding coercive sexual relationships.

These program priorities and key issues are being pursued to the extent that funding or increases in program efficiency allow.

The proposed FY 2000 budget for the Title X Family Planning program is approximately $240 million. It is anticipated that during FY 2000 approximately 35 percent of the amount that is appropriated for the program will be allocated to competing applications. It is anticipated that the balance will be used to support non-competing grantees in the 10 regions and central office. Because some of the grants expected to be funded with the appropriation for FY 2000 have application due dates in the next few months, this action is being taken now to permit the orderly processing of the applications.

Each regional office is responsible for evaluating applications, establishing priorities, and setting funding levels according to criteria in 42 CFR 59.11.

This notice announces the anticipated allocation of funds, if appropriated, for competitive family planning service grants in 22 States, Puerto Rico, Guam, the Republic of Palau, and the Federated States of Micronesia. Subject to enactment of the anticipated appropriation, competing grant applications are invited for the following areas:

TABLE I.

Populations or areas to be served	Number of competing grants to be awarded	FY99 funding	Appl. due date	Grant funding date
Region I: No grants available for competition in FY 2000.				
Region II:				
Univ. of PR/Public Hlth	1	1,735,229	03/01/00	07/01/00
NY State Health Dept.	1	7,703,876	03/01/00	07/01/00
Region III:				
Delaware Dept. of Health	1	690,187	12/01/99	04/01/00
Virginia Dept. of Health	1	3,724,186	12/01/99	04/01/00
Maryland Dept. of Health	1	3,205,729	12/01/99	04/01/00
WV Dept. of Health	1	1,693,832	12/01/99	04/01/00
Family Health Council	1	2,762,425	03/01/00	07/01/00
Family Planning Council of Central PA	1	2,086,193	03/01/00	07/01/00
Family Planning Council	1	3,487,780	03/01/00	07/01/00
Maternal and Family Health Council	1	1,264,753	03/01/00	07/01/00
Region IV:				
Florida Dept. of Health	1	6,578,352	03/01/00	07/01/00
Tennessee Dept. of Health	1	5,503,248	03/01/00	07/01/00
Kentucky Cab. For Human Resources	1	3,864,571	03/01/00	07/01/00
Georgia Dept. of Human Resources	1	5,824,306	03/01/00	07/01/00
North Carolina Dept. of Human Resources	1	4,736,317	03/01/00	07/01/00
Alabama Dept. of Human Resources	1	3,698,168	03/01/00	07/01/00
South Carolina Dept. of Human Resources	1	4,131,705	03/01/00	07/01/00
Mississippi Dept. of Health	1	3,722,603	03/01/00	07/01/00
Region V:				
Ohio Dept. of Health	1	4,133,315	11/01/99	03/01/00
Planned Parenthood of Central Ohio	1	623,535	11/01/99	03/01/00
Planned Parenthood of Summit, Portage and Medina Counties	1	676,843	03/01/00	07/01/00
Region VI:				
New Mexico Department of Health	1	1,995,334	09/01/99	01/01/00
Arkansas Department of Health	1	2,961,564	11/01/99	03/01/00
Oklahoma Department of Health	1	2,891,198	08/01/99	12/01/99
Region VII:				
Kansas State Department of Health and Environment	1	1,786,800	03/01/00	07/01/00
Region VIII: No grants available for competition in FY 2000.				
Region IX:				
Government of Guam	1	168,408	03/01/00	07/01/00
Republic of Palau	1	57,971	03/01/00	07/01/00
Federated States of Micronesia	1	220,564	03/01/00	07/01/00
Gila River Indian Community	1	172,582	03/01/00	07/01/00
Region X:				
Planned Parenthood of the Columbia/Willamette	1	561,485	03/01/00	07/01/00
Idaho Department of Health and Welfare	1	961,979	03/01/00	07/01/00
International Community Health Service	1	123,800	05/30/00	09/30/00
Total	32	83,748,838		

Applications must be postmarked or, if not sent by U.S. mail, received at the appropriate Grants Management Office no later than close of business on application due dates listed above. Private metered postmarks will not be acceptable as proof of timely mailing. Applications which are postmarked or, if not sent by U.S. mail, delivered to the appropriate Grants Management Office later than the application due date will be judged late and will not be accepted for review. (Applicants should request a legibly dated postmark from the U.S. Postal Service.) Applications which do not conform to the requirements of this program announcement or do not meet the applicable regulatory requirements at 42 CFR part 59, subpart A will not be accepted for review. Applicants will be so notified, and the applications will be returned.

Applications will be evaluated on the following criteria:

(1) The extent to which family planning services are needed locally;

(2) The capacity of the applicant to address the family planning needs of the area to be served;

(3) The relative need of the applicant;

(4) The capacity of the applicant to make rapid and effective use of the Federal assistance;

(5) The adequacy of the applicant's facilities and staff;

(6) The relative availability of non-Federal resources within the community to be served and the degree to which those resources are committed to the project; and

(7) The degree to which the project plan adequately provides for the requirements set forth in the Title X regulations.

Application Requirements

Application kits (including the application form, PHS 5161–1, Revised 5/96) (OMB approval No. 0937–0189) may be obtained by contacting the appropriate Office of Grants Management in Atlanta or Dallas. Limited technical assistance regarding programmatic aspects of proposal preparation is available from the regional offices. For information on administrative and budgetary aspects of proposal preparation, contact the appropriate Office of Grants Management. An application must contain: (1) a narrative description of the project and the manner in which the applicant intends to conduct it in order to carry out the requirements of the law and regulations; (2) a budget that includes an estimate of project income and costs, with justification for the amount of grant funds requested; (3) a description of the standards and qualifications that will be required for all personnel and facilities to be used by the project; and (4) such other pertinent information as may be required by the Secretary as specified in the application kit. In preparing an application, applicants should respond to all applicable regulatory requirements. (The information collections contained in this notice have been approved by the Office of Management and Budget and assigned control number 0937–0189.)

The Office of Public Health and Science (OPHS) requires all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. This is consistent with the OPHS mission to protect and advance the physical and mental health of the American people.

Application Review and Evaluation

Each regional office is responsible for conducting its own competitive application reviews. Applications must be submitted to the appropriate Office of Grants Management at the address listed above. Staff are available to answer questions and provide limited technical assistance in the preparation of grant applications.

Grant Awards

Grant projects are generally approved for 3 to 5 years with an annual non-competitive review of a continuation application to obtain continued support. Non-competing continuation awards are subject to factors such as the project making satisfactory progress and the availability of funds, In all cases, continuation awards require a determination by HHS that continued funding is in the best interest of the Federal Government.

Review Under Executive Order 12372

applicants under this announcement are subject to the review requirements of Executive Order 12372, Intergovernmental Review of Department of Health and Huamn Services Programs and Activities, as implemented by 45 CFR part 100. As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those State not represented on the listing, further inquiries should be made to the Governor's office of the pertinent states for information regarding the review process designed by their state or the State Single Point of Contact (SPOC) for the state in question. SPOC comments must be received by the appropriate Grants Management Office (Atlanta or Dallas) 30 days prior to the funding date to be considered.

When final funding decisions have been made, each applicant will be notified by letter of the outcome of its application. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purposes of the grant, and terms and conditions of the grant award.

(**Authority:** 42 U.S.C. 300)

Dated: June 2, 1999.

Denese O. Shervington,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 99–14425 Filed 6–7–99; 8:45 am]

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federal register

Tuesday
June 8, 1999

Part IV

The President

Executive Order 13123—Greening the Government Through Efficient Energy Management

Federal Register

Vol. 64, No. 109

Tuesday, June 8, 1999

Presidential Documents

Title 3—

The President

Executive Order 13123 of June 3, 1999

Greening the Government Through Efficient Energy Management

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Energy Conservation Policy Act (Public Law 95–619, 92 Stat. 3206, 42 U.S.C. 8252 *et seq*.), as amended by the Energy Policy Act of 1992 (EPACT) (Public Law 102–486, 106 Stat. 2776), and section 301 of title 3, United States Code, it is hereby ordered as follows:

PART 1—PREAMBLE

Section 101. *Federal Leadership*. The Federal Government, as the Nation's largest energy consumer, shall significantly improve its energy management in order to save taxpayer dollars and reduce emissions that contribute to air pollution and global climate change. With more than 500,000 buildings, the Federal Government can lead the Nation in energy efficient building design, construction, and operation. As a major consumer that spends $200 billion annually on products and services, the Federal Government can promote energy efficiency, water conservation, and the use of renewable energy products, and help foster markets for emerging technologies. In encouraging effective energy management in the Federal Government, this order builds on work begun under EPACT and previous Executive orders.

PART 2—GOALS

Sec. 201. *Greenhouse Gases Reduction Goal.* Through life-cycle cost-effective energy measures, each agency shall reduce its greenhouse gas emissions attributed to facility energy use by 30 percent by 2010 compared to such emissions levels in 1990. In order to encourage optimal investment in energy improvements, agencies can count greenhouse gas reductions from improvements in nonfacility energy use toward this goal to the extent that these reductions are approved by the Office of Management and Budget (OMB).

Sec. 202. *Energy Efficiency Improvement Goals.* Through life-cycle cost-effective measures, each agency shall reduce energy consumption per gross square foot of its facilities, excluding facilities covered in section 203 of this order, by 30 percent by 2005 and 35 percent by 2010 relative to 1985. No facilities will be exempt from these goals unless they meet new criteria for exemptions, to be issued by the Department of Energy (DOE).

Sec. 203. *Industrial and Laboratory Facilities.* Through life-cycle cost-effective measures, each agency shall reduce energy consumption per square foot, per unit of production, or per other unit as applicable by 20 percent by 2005 and 25 percent by 2010 relative to 1990. No facilities will be exempt from these goals unless they meet new criteria for exemptions, as issued by DOE.

Sec. 204. *Renewable Energy*. Each agency shall strive to expand the use of renewable energy within its facilities and in its activities by implementing renewable energy projects and by purchasing electricity from renewable energy sources. In support of the Million Solar Roofs initiative, the Federal Government shall strive to install 2,000 solar energy systems at Federal facilities by the end of 2000, and 20,000 solar energy systems at Federal facilities by 2010.

Sec. 205. *Petroleum.* Through life-cycle cost-effective measures, each agency shall reduce the use of petroleum within its facilities. Agencies may accomplish this reduction by switching to a less greenhouse gas-intensive, nonpetroleum energy source, such as natural gas or renewable energy sources; by eliminating unnecessary fuel use; or by other appropriate methods. Where alternative fuels are not practical or life-cycle cost-effective, agencies shall strive to improve the efficiency of their facilities.

Sec. 206. *Source Energy.* The Federal Government shall strive to reduce total energy use and associated greenhouse gas and other air emissions, as measured at the source. To that end, agencies shall undertake life-cycle cost-effective projects in which source energy decreases, even if site energy use increases. In such cases, agencies will receive credit toward energy reduction goals through guidelines developed by DOE.

Sec. 207. *Water Conservation.* Through life-cycle cost-effective measures, agencies shall reduce water consumption and associated energy use in their facilities to reach the goals set under section 503(f) of this order. Where possible, water cost savings and associated energy cost savings shall be included in Energy-Savings Performance Contracts and other financing mechanisms.

PART 3—ORGANIZATION AND ACCOUNTABILITY

Sec. 301. *Annual Budget Submission.* Each agency's budget submission to OMB shall specifically request funding necessary to achieve the goals of this order. Budget submissions shall include the costs associated with: encouraging the use of, administering, and fulfilling agency responsibilities under Energy-Savings Performance Contracts, utility energy-efficiency service contracts, and other contractual platforms for achieving conservation goals; implementing life-cycle cost-effective measures; procuring life-cycle cost-effective products; and constructing sustainably designed new buildings, among other energy costs. OMB shall issue guidelines to assist agencies in developing appropriate requests that support sound investments in energy improvements and energy-using products. OMB shall explore the feasibility of establishing a fund that agencies could draw on to finance exemplary energy management activities and investments with higher initial costs but lower life-cycle costs. Budget requests to OMB in support of this order must be within each agency's planning guidance level.

Sec. 302. *Annual Implementation Plan.* Each agency shall develop an annual implementation plan for fulfilling the requirements of this order. Such plans shall be included in the annual reports to the President under section 303 of this order.

Sec. 303. *Annual Reports to the President.* (a) Each agency shall measure and report its progress in meeting the goals and requirements of this order on an annual basis. Agencies shall follow reporting guidelines as developed under section 306(b) of this order. In order to minimize additional reporting requirements, the guidelines will clarify how the annual report to the President should build on each agency's annual Federal energy reports submitted to DOE and the Congress. Annual reports to the President are due on January 1 of each year beginning in the year 2000.

(b) Each agency's annual report to the President shall describe how the agency is using each of the strategies described in Part 4 of this order to help meet energy and greenhouse gas reduction goals. The annual report to the President shall explain why certain strategies, if any, have not been used. It shall also include a listing and explanation of exempt facilities.

Sec. 304. *Designation of Senior Agency Official.* Each agency shall designate a senior official, at the Assistant Secretary level or above, to be responsible for meeting the goals and requirements of this order, including preparing the annual report to the President. Such designation shall be reported by each Cabinet Secretary or agency head to the Deputy Director for Management of OMB within 30 days of the date of this order. Designated officials shall participate in the Interagency Energy Policy Committee, described in section

306(d) of this order. The Committee shall communicate its activities to all designated officials to assure proper coordination and achievement of the goals and requirements of this order.

Sec. 305. *Designation of Agency Energy Teams.* Within 90 days of the date of this order, each agency shall form a technical support team consisting of appropriate procurement, legal, budget, management, and technical representatives to expedite and encourage the agency's use of appropriations, Energy-Savings Performance Contracts, and other alternative financing mechanisms necessary to meet the goals and requirements of this order. Agency energy team activities shall be undertaken in collaboration with each agency's representative to the Interagency Energy Management Task Force, as described in section 306(e) of this order.

Sec. 306. *Interagency Coordination.* (a) *Office of Management and Budget.* The Deputy Director for Management of OMB, in consultation with DOE, shall be responsible for evaluating each agency's progress in improving energy management and for submitting agency energy scorecards to the President to report progress.

(1) OMB, in consultation with DOE and other agencies, shall develop the agency energy scorecards and scoring system to evaluate each agency's progress in meeting the goals of this order. The scoring criteria shall include the extent to which agencies are taking advantage of key tools to save energy and reduce greenhouse gas emissions, such as Energy-Savings Performance Contracts, utility energy-efficiency service contracts, ENERGY STAR® and other energy efficient products, renewable energy technologies, electricity from renewable energy sources, and other strategies and requirements listed in Part 4 of this order, as well as overall efficiency and greenhouse gas metrics and use of other innovative energy efficiency practices. The scorecards shall be based on the annual energy reports submitted to the President under section 303 of this order.

(2) The Deputy Director for Management of OMB shall also select outstanding agency energy management team(s), from among candidates nominated by DOE, for a new annual Presidential award for energy efficiency.

(b) *Federal Energy Management Program.* The DOE's Federal Energy Management Program (FEMP) shall be responsible for working with the agencies to ensure that they meet the goals of this order and report their progress. FEMP, in consultation with OMB, shall develop and issue guidelines for agencies' preparation of their annual reports to the President on energy management, as required in section 303 of this order. FEMP shall also have primary responsibility for collecting and analyzing the data, and shall assist OMB in ensuring that agency reports are received in a timely manner.

(c) *President's Management Council.* The President's Management Council (PMC), chaired by the Deputy Director for Management of OMB and consisting of the Chief Operating Officers (usually the Deputy Secretary) of the largest Federal departments and agencies, will periodically discuss agencies' progress in improving Federal energy management.

(d) *Interagency Energy Policy Committee.* This Committee was established by the Department of Energy Organization Act. It consists of senior agency officials designated in accordance with section 304 of this order. The Committee is responsible for encouraging implementation of energy efficiency policies and practices. The major energy-consuming agencies designated by DOE are required to participate in the Committee. The Committee shall communicate its activities to all designated senior agency officials to promote coordination and achievement of the goals of this order.

(e) *Interagency Energy Management Task Force.* The Task Force was established by the National Energy Conservation Policy Act. It consists of each agency's chief energy manager. The Committee shall continue to work toward improving agencies' use of energy management tools and sharing information on Federal energy management across agencies.

Sec. 307. *Public/Private Advisory Committee.* The Secretary of Energy will appoint an advisory committee consisting of representatives from Federal agencies, State governments, energy service companies, utility companies, equipment manufacturers, construction and architectural companies, environmental, energy and consumer groups, and other energy-related organizations. The committee will provide input on Federal energy management, including how to improve use of Energy-Savings Performance Contracts and utility energy-efficiency service contracts, improve procurement of ENERGY STAR® and other energy efficient products, improve building design, reduce process energy use, and enhance applications of efficient and renewable energy technologies at Federal facilities.

Sec. 308. *Applicability.* This order applies to all Federal departments and agencies. General Services Administration (GSA) is responsible for working with agencies to meet the requirements of this order for those facilities for which GSA has delegated operations and maintenance authority. The Department of Defense (DOD) is subject to this order to the extent that it does not impair or adversely affect military operations and training (including tactical aircraft, ships, weapons systems, combat training, and border security).

PART 4—PROMOTING FEDERAL LEADERSHIP IN ENERGY MANAGEMENT

Sec. 401. *Life-Cycle Cost Analysis.* Agencies shall use life-cycle cost analysis in making decisions about their investments in products, services, construction, and other projects to lower the Federal Government's costs and to reduce energy and water consumption. Where appropriate, agencies shall consider the life-cycle costs of combinations of projects, particularly to encourage bundling of energy efficiency projects with renewable energy projects. Agencies shall also retire inefficient equipment on an accelerated basis where replacement results in lower life-cycle costs. Agencies that minimize life-cycle costs with efficiency measures will be recognized in their scorecard evaluations.

Sec. 402. *Facility Energy Audits.* Agencies shall continue to conduct energy and water audits for approximately 10 percent of their facilities each year, either independentlyor through Energy-Savings Performance Contracts or utility energy-efficiency service contracts.

Sec. 403. *Energy Management Strategies and Tools.* Agencies shall use a variety of energy management strategies and tools, where life-cycle cost-effective, to meet the goals of this order. An agency's use of these strategies and tools shall be taken into account in assessing the agency's progress and formulating its scorecard.

(a) *Financing Mechanisms.* Agencies shall maximize their use of available alternative financing contracting mechanisms, including Energy-Savings Performance Contracts and utility energy-efficiency service contracts, when life-cycle cost-effective, to reduce energy use and cost in their facilities and operations. Energy-Savings Performance Contracts, which are authorized under the National Energy Conservation Policy Act, as modified by the Energy Policy Act of 1992, and utility energy-efficiency service contracts provide significant opportunities for making Federal facilities more energy efficient at no net cost to taxpayers.

(b) *ENERGY STAR® and Other Energy Efficient Products.*

(1) Agencies shall select, where life-cycle cost-effective, ENERGY STAR® and other energy efficient products when acquiring energy-using products. For product groups where ENERGY STAR® labels are not yet available, agencies shall select products that are in the upper 25 percent of energy efficiency as designated by FEMP. The Environmental Protection Agency (EPA) and DOE shall expedite the process of designating products as ENERGY STAR® and will merge their current efficiency rating procedures.

(2) GSA and the Defense Logistics Agency (DLA), with assistance from EPA and DOE, shall create clear catalogue listings that designate these

products in both print and electronic formats. In addition, GSA and DLA shall undertake pilot projects from selected energy-using products to show a ''second price tag'', which means an accounting of the operating and purchase costs of the item, in both printed and electronic catalogues and assess the impact of providing this information on Federal purchasing decisions.

(3) Agencies shall incorporate energy efficient criteria consistent with ENERGY STAR® and other FEMP-designated energy efficiency levels into all guide specifications and project specifications developed for new construction and renovation, as well as into product specification language developed for Basic Ordering Agreements, Blanket Purchasing Agreements, Government Wide Acquisition Contracts, and all other purchasing procedures.

(4) DOE and OMB shall also explore the creation of financing agreements with private sector suppliers to provide private funding to offset higher up-front costs of efficient products. Within 9 months of the date of this order, DOE shall report back to the President's Management Council on the viability of such alternative financing options.

(c) *ENERGY STAR® Buildings.* Agencies shall strive to meet the ENERGY STAR® Building criteria for energy performance and indoor environmental quality in their eligible facilities to the maximum extent practicable by the end of 2002. Agencies may use Energy-Savings Performance Contracts, utility energy-efficiency service contracts, or other means to conduct evaluations and make improvements to buildings in order to meet the criteria. Buildings that rank in the top 25 percent in energy efficiency relative to comparable commercial and Federal buildings will receive the ENERGY STAR® building label. Agencies shall integrate this building rating tool into their general facility audits.

(d) *Sustainable Building Design.* DOD and GSA, in consultation with DOE and EPA, shall develop sustainable design principles. Agencies shall apply such principles to the siting, design, and construction of new facilities. Agencies shall optimize life-cycle costs, pollution, and other environmental and energy costs associated with the construction, life-cycle operation, and decommissioning of the facility. Agencies shall consider using Energy-Savings Performance Contracts or utility energy-efficiency service contracts to aid them in constructing sustainably designed buildings.

(e) *Model Lease Provisions.* Agencies entering into leases, including the renegotiation or extension of existing leases, shall incorporate lease provisions that encourage energy and water efficiency wherever life-cycle cost-effective. Build-to-suit lease solicitations shall contain criteria encouraging sustainable design and development, energy efficiency, and verification of building performance. Agencies shall include a preference for buildings having the ENERGY STAR® building label in their selection criteria for acquiring leased buildings. In addition, all agencies shall encourage lessors to apply for the ENERGY STAR® building label and to explore and implement projects that would reduce costs to the Federal Government, including projects carried out through the lessors' Energy-Savings Performance Contracts or utility energy-efficiency service contracts.

(f) *Industrial Facility Efficiency Improvements.* Agencies shall explore efficiency opportunities in industrial facilities for steam systems, boiler operation, air compressor systems, industrial processes, and fuel switching, including cogeneration and other efficiency and renewable energy technologies.

(g) *Highly Efficient Systems.* Agencies shall implement district energy systems, and other highly efficient systems, in new construction or retrofit projects when life-cycle cost-effective. Agencies shall consider combined cooling, heat, and power when upgrading and assessing facility power needs and shall use combined cooling, heat, and power systems when life-cycle cost-effective. Agencies shall survey local natural resources to optimize use of available biomass, bioenergy, geothermal, or other naturally occurring energy sources.

(h) *Off-Grid Generation.* Agencies shall use off-grid generation systems, including solar hot water, solar electric, solar outdoor lighting, small wind turbines, fuel cells, and other off-grid alternatives, where such systems are life-cycle cost-effective and offer benefits including energy efficiency, pollution prevention, source energy reductions, avoided infrastructure costs, or expedited service.

Sec. 404. *Electricity Use.* To advance the greenhouse gas and renewable energy goals of this order, and reduce source energy use, each agency shall strive to use electricity from clean, efficient, and renewable energy sources. An agency's efforts in purchasing electricity from efficient and renewable energy sources shall be taken into account in assessing the agency's progress and formulating its score card.

(a) *Competitive Power.* Agencies shall take advantage of competitive opportunities in the electricity and natural gas markets to reduce costs and enhance services. Agencies are encouraged to aggregate demand across facilities or agencies to maximize their economic advantage.

(b) *Reduced Greenhouse Gas Intensity of Electric Power.* When selecting electricity providers, agencies shall purchase electricity from sources that use high efficiency electric generating technologies when life-cycle cost-effective. Agencies shall consider the greenhouse gas intensity of the source of the electricity and strive to minimize the greenhouse gas intensity of purchased electricity.

(c) *Purchasing Electricity from Renewable Energy Sources.*

(1) Each agency shall evaluate its current use of electricity from renewable energy sources and report this level in its annual report to the President. Based on this review, each agency should adopt policies and pursue projects that increase the use of such electricity. Agencies should include provisions for the purchase of electricity from renewable energy sources as a component of their requests for bids whenever procuring electricity. Agencies may use savings from energy efficiency projects to pay additional incremental costs of electricity from renewable energy sources.

(2) In evaluating opportunities to comply with this section, agencies should consider: my Administration's goal of tripling nonhydroelectric renewable energy capacity in the United States by 2010; the renewable portfolio standard specified in the restructuring guidelines for the State in which the facility is located; GSA's efforts to make electricity from renewable energy sources available to Federal electricity purchasers; and EPA's guidelines on crediting renewable energy power in implementation of Clean Air Act standards.

Sec. 405. *Mobile Equipment.* Each agency shall seek to improve the design, construction, and operation of its mobile equipment, and shall implement all life-cycle cost-effective energy efficiency measures that result in cost savings while improving mission performance. To the extent that such measures are life-cycle cost-effective, agencies shall consider enhanced use of alternative or renewable-based fuels.

Sec. 406. *Management and Government Performance.* Agencies shall use the following management strategies in meeting the goals of this order.

(a) *Awards.* Agencies shall use employee incentive programs to reward exceptional performance in implementing this order.

(b) *Performance Evaluations.* Agencies shall include successful implementation of provisions of this order in areas such as Energy-Savings Performance Contracts, sustainable design, energy efficient procurement, energy efficiency, water conservation, and renewable energy projects in the position descriptions and performance evaluations of agency heads, members of the agency energy team, principal program managers, heads of field offices, facility managers, energy managers, and other appropriate employees.

(c) *Retention of Savings and Rebates.* Agencies granted statutory authority to retain a portion of savings generated from efficient energy and water management are encouraged to permit the retention of the savings at the facility or site where the savings occur to provide greater incentive for that facility and its site managers to undertake more energy management initiatives, invest in renewable energy systems, and purchase electricity from renewable energy sources.

(d) *Training and Education.* Agencies shall ensure that all appropriate personnel receive training for implementing this order.

(1) DOE, DOD, and GSA shall provide relevant training or training materials for those programs that they make available to all Federal agencies relating to the energy management strategies contained in this order.

(2) The Federal Acquisition Institute and the Defense Acquisition University shall incorporate into existing procurement courses information on Federal energy management tools, including Energy-Savings Performance Contracts, utility energy-efficiency service contracts, ENERGY STAR® and other energy efficient products, and life-cycle cost analysis.

(3) All agencies are encouraged to develop outreach programs that include education, training, and promotion of ENERGY STAR® and other energy-efficient products for Federal purchase card users. These programs may include promotions with billing statements, user training, catalogue awareness, and exploration of vendor data collection of purchases.

(e) *Showcase Facilities.* Agencies shall designate exemplary new and existing facilities with significant public access and exposure as showcase facilities to highlight energy or water efficiency and renewable energy improvements.

PART 5—TECHNICAL ASSISTANCE

Sec. 501. Within 120 days of this order, the Director of OMB shall:

(a) develop and issue guidance to agency budget officers on preparation of annual funding requests associated with the implementation of the order for the FY 2001 budget;

(b) in collaboration with the Secretary of Energy, explain to agencies how to retain savings and reinvest in other energy and water management projects; and

(c) in collaboration with the Secretary of Energy through the Office of Federal Procurement Policy, periodically brief agency procurement executives on the use of Federal energy management tools, including Energy-Savings Performance Contracts, utility energy-efficiency service contracts, and procurement of energy efficient products and electricity from renewable energy sources.

Sec. 502. Within 180 days of this order, the Secretary of Energy, in collaboration with other agency heads, shall:

(a) issue guidelines to assist agencies in measuring energy per square foot, per unit of production, or other applicable unit in industrial, laboratory, research, and other energy-intensive facilities;

(b) establish criteria for determining which facilities are exempt from the order. In addition, DOE must provide guidance for agencies to report proposed exemptions;

(c) develop guidance to assist agencies in calculating appropriate energy baselines for previously exempt facilities and facilities occupied after 1990 in order to measure progress toward goals;

(d) issue guidance to clarify how agencies determine the life-cycle cost for investments required by the order, including how to compare different energy and fuel options and assess the current tools;

(e) issue guidance for providing credit toward energy efficiency goals for cost-effective projects where source energy use declines but site energy use increases; and

(f) provide guidance to assist each agency to determine a baseline of water consumption.

Sec. 503. Within 1 year of this order, the Secretary of Energy, in collaboration with other agency heads, shall:

(a) provide guidance for counting renewable and highly efficient energy projects and purchases of electricity from renewable and highly efficient energy sources toward agencies' progress in reaching greenhouse gas and energy reduction goals;

(b) develop goals for the amount of energy generated at Federal facilities from renewable energy technologies;

(c) support efforts to develop standards for the certification of low environmental impact hydropower facilities in order to facilitate the Federal purchase of such power;

(d) work with GSA and DLA to develop a plan for purchasing advanced energy products in bulk quantities for use in by multiple agencies;

(e) issue guidelines for agency use estimating the greenhouse gas emissions attributable to facility energy use. These guidelines shall include emissions associated with the production, transportation, and use of energy consumed in Federal facilities; and

(f) establish water conservation goals for Federal agencies.

Sec. 504. Within 120 days of this order, the Secretary of Defense and the Administrator of GSA, in consultation with other agency heads, shall develop and issue sustainable design and development principles for the siting, design, and construction of new facilities.

Sec. 505. Within 180 days of this order, the Administrator of GSA, in collaboration with the Secretary of Defense, the Secretary of Energy, and other agency heads, shall:

(a) develop and issue guidance to assist agencies in ensuring that all project cost estimates, bids, and agency budget requests for design, construction, and renovation of facilities are based on life-cycle costs. Incentives for contractors involved in facility design and construction must be structured to encourage the contractors to design and build at the lowest life-cycle cost;

(b) make information available on opportunities to purchase electricity from renewable energy sources as defined by this order. This information should accommodate relevant State regulations and be updated periodically based on technological advances and market changes, at least every 2 years;

(c) develop Internet-based tools for both GSA and DLA customers to assist individual and agency purchasers in identifying and purchasing ENERGY STAR® and other energy efficient products for acquisition; and

(d) develop model lease provisions that incorporate energy efficiency and sustainable design.

PART 6—GENERAL PROVISIONS

Sec. 601. *Compliance by Independent Agencies.* Independent agencies are encouraged to comply with the provisions of this order.

Sec. 602. *Waivers.* If an agency determines that a provision in this order is inconsistent with its mission, the agency may ask DOE for a waiver of the provision. DOE will include a list of any waivers it grants in its Federal Energy Management Programs annual report to the Congress.

Sec. 603. *Scope.* (a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable by law by a party against the United States, its agencies, its officers, or any other person.

(b) This order applies to agency facilities in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction. Agencies with facilities outside of these areas, however, are encouraged to make best efforts to comply with the goals of this order for those facilities. In addition, agencies can report energy improvements made outside the United States in their annual report to the President; these improvements may be considered in agency scorecard evaluations.

Sec. 604. *Revocations.* Executive Order 12902 of March 9, 1994, Executive Order 12759 of April 17, 1991, and Executive Order 12845 of April 21, 1993, are revoked.

Sec. 605. *Amendments to Federal Regulations.* The Federal Acquisition Regulation and other Federal regulations shall be amended to reflect changes made by this order, including an amendment to facilitate agency purchases of electricity from renewable energy sources.

PART 7—DEFINITIONS

For the purposes of this order:

Sec. 701. ''Acquisition'' means acquiring by contract supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

Sec. 702. ''Agency'' means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of DOD.

Sec. 703. ''Energy-Savings Performance Contract'' means a contract that provides for the performance of services for the design, acquisition, financing, installation, testing, operation, and where appropriate, maintenance and repair, of an identified energy or water conservation measure or series of measures at one or more locations. Such contracts shall provide that the contractor must incur costs of implementing energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel in exchange for a predetermined share of the value of the energy savings directly resulting from implementation of such measures during the term of the contract. Payment to the contractor is contingent upon realizing a guaranteed stream of future energy and cost savings. All additional savings will accrue to the Federal Government.

Sec. 704. ''Exempt facility'' or ''Exempt mobile equipment'' means a facility or a piece of mobile equipment for which an agency uses DOE-established criteria to determine that compliance with the Energy Policy Act of 1992 or this order is not practical.

Sec. 705. ''Facility'' means any individual building or collection of buildings, grounds, or structure, as well as any fixture or part thereof, including the associated energy or water-consuming support systems, which is constructed, renovated, or purchased in whole or in part for use by the Federal Government. It includes leased facilities where the Federal Government has a purchase option or facilities planned for purchase. In any provision of this order, the term ''facility'' also includes any building 100 percent leased for use by the Federal Government where the Federal Government pays directly or indirectly for the utility costs associated with its leased space. The term also includes Government-owned contractor-operated facilities.

Sec. 706. ''Industrial facility'' means any fixed equipment, building, or complex for production, manufacturing, or other processes that uses large amounts of capital equipment in connection with, or as part of, any process or system, and within which the majority of energy use is not devoted to the heating, cooling, lighting, ventilation, or to service the water heating energy load requirements of the facility.

Sec. 707. ''Life-cycle costs'' means the sum of the present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs, and disposal costs, over the lifetime of the project, product, or measure. Additional guidance on measuring life-cycle costs is specified in 10 C.F.R. 436.19.

Sec. 708. ''Life-cycle cost-effective'' means the life-cycle costs of a product, project, or measure are estimated to be equal to or less than the base case (i.e., current or standard practice or product). Additional guidance on measuring cost-effectiveness is specified in 10 C.F.R. 436.18 (a), (b), and (c), 436.20, and 436.21.

Sec. 709. ''Mobile equipment'' means all Federally owned ships, aircraft, and nonroad vehicles.

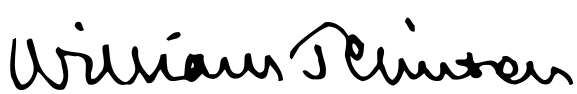
Sec. 710. ''Renewable energy'' means energy produced by solar, wind, geothermal, and biomass power.

Sec. 711. ''Renewable energy technology'' means technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities. The term also means the use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

Sec. 712. ''Source energy'' means the energy that is used at a site and consumed in producing and in delivering energy to a site, including, but not limited to, power generation, transmission, and distribution losses, and that is used to perform a specific function, such as space conditioning, lighting, or water heating.

Sec. 713. ''Utility'' means public agencies and privately owned companies that market, generate, and/or distribute energy or water, including electricity, natural gas, manufactured gas, steam, hot water, and chilled water as commodities for public use and that provide the service under Federal, State, or local regulated authority to all authorized customers. Utilities include: Federally owned nonprofit producers; municipal organizations; and investor or privately owned producers regulated by a State and/or the Federal Government; cooperatives owned by members and providing services mostly to their members; and other nonprofit State and local government agencies serving in this capacity.

Sec. 714. ''Utility energy-efficiency service'' means demand side management services provided by a utility to improve the efficiency of use of the commodity (electricity, gas, etc.) being distributed. Services can include, but are not limited to, energy efficiency and renewable energy project auditing, financing, design, installation, operation, maintenance, and monitoring.



THE WHITE HOUSE,
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H.R. 1034/P.L. 106–32

To declare a portion of the James River and Kanawha Canal in Richmond, Virginia, to be nonnavigable waters of the United States for purposes of title 46, United States Code, and the other maritime laws of the United States. (June 1, 1999; 113 Stat. 115)

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