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Presidential Documents

Title 3—

The President

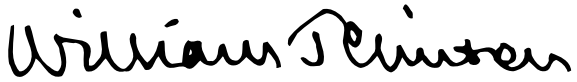
Presidential Determination No. 2000–10 of January 31, 2000

Determination Pursuant to Section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000, as Contained in the Consolidated Appropriations Act for FY 2000 (Public Law 106–113)

Memorandum for the Secretary of State

Pursuant to section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000, as Contained in the Consolidated Appropriations Act for FY 2000 (Public Law 106–113), I hereby certify that withholding from international financial institutions and other international organizations and programs funds appropriated or otherwise made available pursuant to that Act is contrary to the national interest.

You are authorized and directed to publish this determination in the **Federal Register.**



THE WHITE HOUSE,
Washington, January 31, 2000.

[FR Doc. 00–2684
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Rules and Regulations

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

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

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure in this part to conform certain provisions to the new part 1208 of the Board's regulations that is being issued simultaneously with this amendment. The new part 1208 describes the Board's practices and procedures with respect to appeals filed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, and the Veterans Employment Opportunities Act of 1998. This part is being amended to provide appropriate cross-references to the new part 1208 and to remove provisions that have been incorporated into the new part 1208.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Board is publishing separately a new part 1208 of its rules of practice and procedure to cover appeals filed under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) (Public Law 103–353), as amended, and the Veterans Employment Opportunities Act of 1998 (VEOA) (Public Law 105–339). Because certain provisions regarding USERRA appeals have been included previously in part 1201 (interim rule at 62 FR 66813, December 22, 1997; final rule at 64 FR 54507, October 7, 1999), certain changes are necessary to conform that part to the new part 1208. Part 1201 is being amended to provide appropriate cross-references to the new part 1208 and to remove provisions that have been incorporated into the new part 1208.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees, Lawyers.

Accordingly, the Board amends 5 CFR part 1201 as follows:

1. The authority citation for part 1201 is revised to read as follows:

Authority: 5 U.S.C. 1204 and 7701, unless otherwise noted.

2. Section 1201.3 is amended by adding ''and'' at the end of paragraph (a)(20), by removing ''; and'' at the end of paragraph (a)(21) and adding a period in its place, by removing paragraph (a)(22) in its entirety, by redesignating paragraph (b) as paragraph (b)(2), and by adding a new paragraph (b)(1) to read as follows:

§ 1201.3 Appellate jurisdiction.

(a) * * *

(b)(1) *Appeals under the Uniformed Services Employment and Reemployment Rights Act and the Veterans Employment Opportunities Act.* Appeals filed under the Uniformed Services Employment and Reemployment Rights Act (Public Law 103–353), as amended, and the Veterans Employment Opportunities Act (Public Law 105–339) are governed by part 1208 of this title. The provisions of subparts A, B, C, and F of part 1201 apply to appeals governed by part 1208 unless other specific provisions are made in that part. The provisions of subpart H of this part regarding awards of attorney fees apply to appeals governed by part 1208 of this title.

(2) * * *

* * * * *

3. Section 1201.22 is amended by revising paragraph (b)(2) to read as follows:

§ 1201.22 Filing an appeal and responses to appeals.

(a) * * *

(b) *Time of filing.* (1) * * *

(2) The time limit prescribed by paragraph (b)(1) for filing an appeal does not apply where a law or regulation establishes a different time limit or where there is no applicable time limit. No time limit applies to appeals under the Uniformed Services Employment and Reemployment Rights Act (Public Law 103–353), as amended; see part 1208 of this title. See part 1208 of this title for the statutory filing time limits applicable to appeals under the Veterans Employment Opportunities Act (Public Law 105–339). See part 1209 of this title for the statutory filing time limits applicable to whistleblower appeals and stay requests.

§ 1201.31 [Amended]

4. Section 1201.31 is amended by removing paragraph (e) in its entirety.

§ 1201.121 [Amended]

5. Section 1201.121 is amended by revising the last sentence of paragraph (c) to read as follows: ''Such appeals are governed by part 1208 of this title.''

6. Section 1201.202 is amended by removing ''and'' at the end of paragraph (a)(6), by removing the period at the end of paragraph (a)(7) and adding in its place ''; and'', by adding a new paragraph (a)(8), and by revising paragraph (d)(1) to read as follows:

§ 1201.202 Authority for awards.

(a) * * *

(8) Attorney fees, expert witness fees, and other litigation expenses, as authorized by the Veterans Employment Opportunities Act; 5 U.S.C. 3330c(b).

* * * * *

(d)(1) A *proceeding on the merits* is a proceeding to decide an appeal of an agency action under 5 U.S.C. 1221 or 7701, an appeal under 38 U.S.C. 4324, an appeal under 5 U.S.C. 3330a, a request to review an arbitration decision under 5 U.S.C. 7121(d), a Special Counsel complaint under 5 U.S.C. 1214 or 1215, or an agency action against an administrative law judge under 5 U.S.C. 7521.

* * * * *

Dated: January 28, 2000.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 00–2338 Filed 2–3–00; 8:45 am]

BILLING CODE 7400–01–U

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1208

Practices and Procedures for Appeals Under the Uniformed Services Employment and Reemployment Rights Act and the Veterans Employment Opportunities Act

AGENCY: Merit Systems Protection Board.

ACTION: Interim rule; request for comments.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is publishing a new part 1208 of its regulations to describe its practices and procedures with respect to appeals filed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, and the Veterans Employment Opportunities Act of 1998. The Uniformed Services Employment and Reemployment Rights Act permits a person covered by that law to appeal to the Board if a Federal agency employer or the Office of Personnel Management fails or refuses to provide an employment or reemployment right or benefit to which the person is entitled after service in a uniformed service. The Veterans Employment Opportunities Act permits a person entitled to veterans' preference to appeal to the Board if a Federal agency violates the person's rights under any statute or regulation relating to veterans' preference. While both of these laws are intended to provide protections for veterans, and while there are similarities in the procedures and remedies under each of the laws, there are significant differences as well. The purpose of this new part is to provide guidance to parties and their representatives on how to proceed in cases filed under these laws.

The Board is simultaneously publishing an amendment to its rules at 5 CFR part 1201 to conform certain provisions in that part to the new part 1208.

DATES: Effective February 4, 2000. Submit written comments on or before April 4, 2000.

ADDRESSES: Send comments to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419. Comments may be sent via e-mail to mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Public Law 103–353, as amended, and the Veterans Employment Opportunities Act of 1998 (VEOA), Public Law 105–339, extend the jurisdiction of the Merit Systems Protection Board to include complaints filed by covered persons, principally veterans, under each of these laws.

The Board has previously issued regulations to implement provisions of USERRA in an amendment to its rules at 5 CFR part 1201 (interim rule at 62 FR 66813, December 22, 1997; final rule at 64 FR 54507, October 7, 1999). Various provisions of VEOA require or permit the Board to issue regulations to implement particular procedural requirements of that law (5 U.S.C. 3330a(d)(1), 5 U.S.C. 3330a(d)(2)(B), and 5 U.S.C. 3330b(c)).

The Board believes that persons who file appeals under USERRA or VEOA, their representatives, and the agency parties to such appeals will best be served by combining the regulations that apply *only* to USERRA and VEOA appeals in a single place in the Board's rules. Therefore, the Board is issuing a new 5 CFR part 1208, titled ''Practices and Procedures for Appeals under the Uniformed Services Employment and Reemployment Rights Act and the Veterans Employment Opportunities Act.'' The Board is publishing simultaneouly a rule making conforming amendments to part 1201.

To the extent consistent with the statutory requirements of USERRA and VEOA, the Board is processing appeals under these laws in the same manner as it processes other appeals under the Board's appellate jurisdiction regulations, subparts B and C of 5 CFR part 1201. Therefore, the new part 1208 contains only provisions that are unique to USERRA and VEOA, and parties should refer to the appellate jurisdiction procedures of part 1201 for other applicable requirements.

The Board's approach in the new part 1208, generally, is to include only provisions that restate or implement specific statutory requirements of USERRA and VEOA. For both USERRA and VEOA appeals, the new part 1208 includes additional requirements for the content of an appeal to ensure that information the Board needs to determine whether it has jurisdiction over an appeal under USERRA or VEOA is provided when the appeal is filed.

USERRA and VEOA are similar in that both provide new redress mechanisms for the protection of certain veterans' rights. They are also similar in that an appeal under each law may be filed with the Board after an appellant has first asked the Department of Labor to try to resolve the matter. (In the Department of Labor, both USERRA and VEOA complaints are processed by the Veterans Employment and Training Service.) Despite these similarities, there are significant differences between USERRA and VEOA, as summarized below.

Violations Covered

USERRA: The provisions of USERRA (codified at chapter 43 of title 38, United States Code) covering Federal employees apply to claims that a Federal agency employer or the Office of Personnel Management has failed or refused to provide an employment or reemployment right or benefit to which a person is entitled after service in a uniformed service (other than claims relating to benefits under the Thrift Savings Plan for Federal employees). USERRA also applies to claims of discrimination based on uniformed service in connection with initial employment, reemployment, retention in employment, promotion, or any benefit of employment (38 U.S.C. 4311(a)) and claims of reprisal (38 U.S.C. 4311(b)).

VEOA: The redress mechanism established by VEOA (section 3 of the Act, codified at 5 U.S.C. 3330a through 3330c) applies to claims that a Federal agency has violated a preference eligible's rights under any statute or regulation relating to veterans' preference.

Persons Covered

USERRA: The reemployment provisions of USERRA apply to persons who have left their employment for service in a uniformed service, provided they satisfy the Act's requirements relating to such matters as advance notice to the employer, cumulative length of absence, character of service, and the time limits for reporting back to work.

The USERRA anti-discrimination provision is broader; it applies to anyone who has served, applied to serve, or has an obligation to serve in a uniformed service. (It applies *only* to such a person; there is no *derived* right for a parent or spouse to claim discrimination based on a person's uniformed service; see *Lourens* v. *MSPB,* Fed. Cir. No. 99–3153, October 13, 1999.) The prohibition against reprisal in USERRA applies to anyone who exercises a right under the Act, assists someone else to exercise such a right, or testifies in a proceeding under the Act, regardless of whether the person alleging reprisal has served in a uniformed service.

VEOA: The VEOA redress mechanism applies to preference eligibles. The requirements a veteran (and, in certain instances, a mother or spouse of a veteran) must satisfy for preference eligible status are set forth at 5 U.S.C. 2108.

Choice of Procedure and Exhaustion Requirements

USERRA: USERRA permits a covered person to initiate a proceeding under the Act *either* by filing with the Secretary of Labor or by filing directly with the Board. The Board has ruled that a person who files a formal complaint with the Secretary of Labor must exhaust the procedures of the Department of Labor before an appeal may be filed with the Board. *Petersen* v. *Department of the Interior,* 71 M.S.P.R. 227 (1996). If the person simply seeks assistance from the Department of Labor, however, and does not file a formal complaint, the exhaustion requirement does not apply.

VEOA: VEOA *requires* a preference eligible who alleges a violation of veterans' preference to file first with the Secretary of Labor. The Board has no jurisdiction over a VEOA appeal until the Department of Labor procedures have been exhausted.

Filing Time Limits

USERRA: USERRA contains no statutory time limit for filing a complaint either with the Secretary of Labor or with the Board. The Board has determined that it would be inconsistent with the Congressional intent in enacting USERRA and its predecessor laws for the Board to establish a filing time limit by regulation. Therefore, there is no time limit for filing a USERRA appeal.

VEOA: VEOA establishes statutory filing time limits for each stage of the redress procedure. Unless the Secretary of Labor has notified the appellant that the Department of Labor has been unable to resolve the appellant's VEOA complaint, a VEOA appeal may not be filed with the Board before the 61st day after the complaint was filed with the Secretary. If the Secretary notifies the appellant that the Department of Labor has been unable to resolve the complaint, any VEOA appeal to the Board must be filed within 15 days of the date of receipt of the Secretary's notice. VEOA does not provide for waiver of any of its statutory filing time limits for good cause.

Representation

USERRA: USERRA authorizes the Special Counsel to represent a person in a USERRA appeal before the Board. Such representation is available only where the person has filed a USERRA complaint with the Secretary of Labor, the Secretary has notified the person that the Department of Labor cannot resolve the complaint, and the person asks the Secretary to refer the complaint to the Special Counsel. There is no provision for representation by the Special Counsel where a person files a USERRA appeal directly with the Board. Regardless of whether a USERRA appellant files with the Board directly, after exhausting the procedures of the Department of Labor, or after the Special Counsel has declined to represent the appellant, he may choose a representative in accordance with the Board's regulations at 5 CFR 1201.31.

VEOA: VEOA contains no provisions regarding representation of a VEOA appellant. The appellant may choose a representative in accordance with the Board's regulations at 5 CFR 1201.31.

Termination of Proceeding

USERRA: There is no provision in USERRA for a person who has filed a USERRA appeal with the Board to terminate the Board proceeding before it has concluded with the issuance of a decision.

VEOA: VEOA permits a person who has filed a VEOA appeal to elect to terminate the Board proceeding and file a civil action in district court if the Board has not issued a judicially reviewable decision within 120 days after the appeal was filed. The Board proceeding must terminate immediately upon the Board's receipt of the appellant's election.

Remedies

USERRA and VEOA: Both laws provide that if the Board determines that the agency has committed a violation, the Board must order the agency to comply with the provision(s) violated and award compensation for any loss of wages or benefits suffered by the appellant because of the violation.

USERRA: USERRA provides that any compensation received by the appellant pursuant to the Board's order shall be in addition to any other right or benefit provided for by chapter 43 of title 38, United States Code, and shall not diminish any such right or benefit. USERRA also *permits* the Board, when it orders an agency to comply, to award reasonable attorney fees, expert witness fees, and other litigation expenses.

VEOA: VEOA provides that where the Board finds that the agency's violation was willful, it *must* award an amount equal to backpay as liquidated damages. VEOA also *requires* the Board, when it orders an agency to comply, to award reasonable attorney fees, expert witness fees, and other litigation expenses.

Judicial Review

USERRA: USERRA explicitly provides that a final Board decision on a USERRA appeal is subject to judicial review in accordance with 5 U.S.C. 7703, which provides for judicial review by the United States Court of Appeals for the Federal Circuit.

VEOA: VEOA does not include a judicial review provision comparable to that in USERRA. It does, however, implicitly acknowledge that a final Board decision on a VEOA appeal is subject to judicial review by referring to the Board's issuance of a ''judicially reviewable decision.'' In the absence of an explicit judicial review provision, the Board relies on precedent construing the applicability of 5 U.S.C. 7703 to final Board decisions in cases other than those decided under chapter 77 of title 5, United States Code (See, e.g., *Frazier, et al.,* v. *MSPB*, 672 F.2d 150, 160 (D.C. Cir. 1982)). Therefore, the Board's decisions on VEOA appeals will provide notice that judicial review is available in the United States Court of Appeals for the Federal Circuit.

Appeals Under Another Law, Rule, or Regulation.

USERRA: Nothing in USERRA prevents an appellant who may appeal an agency action to the Board under any other law, rule, or regulation from raising a claim of a USERRA violation in that appeal. The Board has ruled that it will treat such a claim as an affirmative defense that the agency action was not in accordance with law. See *Morgan* v. *United States Postal Service*, 82 M.S.P.R. 1 (1999).

VEOA: VEOA provides that a preference eligible who may appeal directly to the Board from an agency action that is appealable under any other law, rule, or regulation, may do so *in lieu of administrative redress under VEOA* (emphasis added) (5 U.S.C. 3330a(e)(1)). Such an appellant, however, may not pursue redress for an alleged violation of veterans' preference under VEOA at the same time he pursues redress for the violation under any other law, rule, or regulation (5 U.S.C. 3330a(e)(2)). An appellant who elects to appeal to the Board under another law, rule, or regulation must comply with the provisions of subparts B and C of 5 CFR part 1201, including the time of filing requirement of 5 CFR § 1201.22(b)(1).

The Board is publishing this rule as an interim rule pursuant to 5 U.S.C. 1204(h), 5 U.S.C. 3330a, 5 U.S.C. 3330b, and 38 U.S.C. 4331.

List of Subjects in 5 CFR Part 1208

Administrative practice and procedure, Government employees, Veterans.

Accordingly, the Board amends 5 CFR chapter II, subchapter A, by adding part 1208 reading as follows:

PART 1208—PRACTICES AND PROCEDURES FOR APPEALS UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT AND THE VETERANS EMPLOYMENT OPPORTUNITIES ACT

Subpart A—Jurisdiction and Definitions

Sec.

1208.1 Scope.
1208.2 Jurisdiction.
1208.3 Application of 5 CFR part 1201.
1208.4 Definitions.

Subpart B—USERRA Appeals

1208.11 Choice of procedure under USERRA; exhaustion requirement.
1208.12 Time of filing.
1208.13 Content of appeal; request for hearing.
1208.14 Representation by Special Counsel.
1208.15 Remedies.
1208.16 Appeals under another law, rule, or regulation.

Subpart C—VEOA Appeals

1208.21 VEOA exhaustion requirement.
1208.22 Time of filing.
1208.23 Content of appeal; request for hearing.
1208.24 Election to terminate MSPB proceeding.
1208.25 Remedies.
1208.26 Appeals under another law, rule, or regulation.

Authority: 5 U.S.C. 1204(h), 3330a, 3330b; 38 U.S.C. 4331.

Subpart A—Jurisdiction and Definitions

§ 1208.1 Scope.

This part governs appeals filed with the Board under the provisions of 38 U.S.C. 4324, as enacted by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Public Law 103–353, as amended, or under the provisions of 5 U.S.C. 3330a, as enacted by the Veterans Employment Opportunities Act of 1998 (VEOA), Public Law 105–339. With respect to USERRA appeals, this part applies to any appeal filed with the Board on or after October 13, 1994, without regard as to whether the alleged violation occurred before, on, or after October 13, 1994. With respect to VEOA appeals, this part applies to any appeal filed with the Board which alleges that a violation occurred on or after October 31, 1998.

§ 1208.2 Jurisdiction.

(a) *USERRA.* Under 38 U.S.C. 4324, a person entitled to the rights and benefits provided by chapter 43 of title 38, United States Code, may file an appeal with the Board alleging that a Federal agency employer or the Office of Personnel Management has failed or refused, or is about to fail or refuse, to comply with a provision of that chapter (other than a provision relating to benefits under the Thrift Savings Plan for Federal employees). In general, the provisions of chapter 43 of title 38 that apply to Federal employees guarantee various reemployment rights following a period of service in a uniformed service, provided the employee satisfies the requirements for coverage under that chapter. In addition, chapter 43 of title 38 prohibits discrimination based on a person's service—or application or obligation for service—in a uniformed service (38 U.S.C. 4311). This prohibition applies with respect to initial employment, reemployment, retention in employment, promotion, or any benefit of employment.

(b) *VEOA.* Under 5 U.S.C. 3330a, a preference eligible who alleges that a Federal agency has violated his rights under any statute or regulation relating to veterans' preference may file an appeal with the Board, provided that he has satisfied the statutory requirements for first filing a complaint with the Secretary of Labor and allowing the Secretary at least 60 days to attempt to resolve the complaint.

§ 1208.3 Application of 5 CFR part 1201.

Except as expressly provided in this part, the Board will apply subparts A (Jurisdiction and Definitions), B (Procedures for Appellate Cases), C (Petitions for Review of Initial Decisions), and F (Enforcement of Final Decisions and Orders) of 5 CFR part 1201 to appeals governed by this part. The Board will apply the provisions of subpart H (Attorney Fees, and Litigation Expenses, Where Applicable), Consequential Damages, and Compensatory Damages) of 5 CFR part 1201 regarding awards of attorney fees to appeals governed by this part.

§ 1208.4 Definitions.

(a) *Appeal.* ''Appeal'' means a request for review of an agency action (the same meaning as in 5 CFR § 1201.4(f)) and includes a ''complaint'' or ''action'' as those terms are used in USERRA (38 U.S.C. 4324) and a ''complaint'' or ''appeal'' as those terms are used in VEOA (5 U.S.C. 3330a).

(b) *Preference eligible.* ''Preference eligible'' is defined in 5 U.S.C. 2108.

(c) *USERRA appeal.* ''USERRA appeal'' means an appeal filed under 38 U.S.C. 4324, as enacted by the Uniformed Services Employment and Reemployment Rights Act of 1994 (Public Law 103–353), as amended. The term includes an appeal that alleges a violation of a predecessor statutory provision of chapter 43 of title 38, United States Code.

(d) *VEOA appeal.* ''VEOA appeal'' means an appeal filed under 5 U.S.C. 3330a, as enacted by the Veterans Employment Opportunities Act of 1998 (Public Law 105–339).

Subpart B—USERRA Appeals

§ 1208.11 Choice of procedure under USERRA; exhaustion requirement.

(a) *Choice of procedure.* An appellant may file a USERRA appeal directly with the Board under this subpart *or* may file a complaint with the Secretary of Labor under 38 U.S.C. 4322.

(b) *Exhaustion requirement.* If an appellant files a complaint with the Secretary of Labor under 38 U.S.C. 4322, the appellant may not file a USERRA appeal with the Board until the Secretary notifies the appellant in accordance with 38 U.S.C. 4322(e) that the Secretary has been unable to resolve the complaint. An appellant who seeks assistance from the Secretary of Labor under 38 U.S.C. 4321 but does not file a complaint with the Secretary under 38 U.S.C. 4322 is not subject to the exhaustion requirement of this paragraph.

(c) *Appeals after exhaustion of Department of Labor procedure.* When an appellant receives notice from the Secretary of Labor in accordance with 38 U.S.C. 4322(e) that the Secretary has been unable to resolve the complaint, the appellant may file a USERRA appeal directly with the Board or may ask the Secretary to refer the complaint to the Special Counsel. If the Special Counsel agrees to represent the appellant, the Special Counsel may file a USERRA appeal directly with the Board. If the Special Counsel does not agree to represent the appellant, the appellant may file a USERRA appeal directly with the Board.

§ 1208.12 Time of filing.

Under chapter 43 of title 38, United States Code, there is no time limit for filing a USERRA appeal with the Board. However, the Board encourages appellants to file a USERRA appeal as soon as possible after the date of the alleged violation or, if a complaint is filed with the Secretary of Labor, as soon as possible after receiving notice from the Secretary in accordance with

38 U.S.C. 4322(e) that the Secretary has been unable to resolve the complaint, or, if the Secretary has referred the complaint to the Special Counsel and the Special Counsel does not agree to represent the appellant, as soon as possible after receiving the Special Counsel's notice.

§ 1208.13 Content of appeal; request for hearing.

(a) *Content.* A USERRA appeal may be in any format, including letter form, but must contain the following:

(1) The nine (9) items or types of information required in 5 CFR 1201.24(a)(1) through (a)(9);

(2) Evidence or argument that the appellant has performed service in a uniformed service, including the dates of such service (or, where applicable, has applied for or has an obligation to perform such service), and that the appellant otherwise satisfies the requirements for coverage under chapter 43 of title 38, United States Code;

(3) A statement identifying the provision of chapter 43 of title 38, United States Code, that was allegedly violated and an explanation of how the provision was violated;

(4) If the appellant filed a complaint with the Secretary of Labor under 38 U.S.C. 4322(a), evidence of notice under 38 U.S.C. 4322(e) that the Secretary has been unable to resolve the complaint (a copy of the Secretary's notice satisfies this requirement); and

(5) If the appellant's complaint was referred to the Special Counsel and the appellant has received notice that the Special Counsel will not represent the appellant before the Board, evidence of the Special Counsel's notice (a copy of the Special Counsel's notice satisfies this requirement).

(b) *Request for hearing.* An appellant must submit any request for a hearing with the USERRA appeal, or within any other time period the judge sets. A hearing may be provided to the appellant once the Board's jurisdiction over the appeal is established. The judge may also order a hearing if necessary to resolve issues of jurisdiction. The appellant has the burden of proof with respect to issues of jurisdiction (5 CFR 1201.56(a)(2)(i)).

§ 1208.14 Representation by Special Counsel.

The Special Counsel may represent an appellant in a USERRA appeal before the Board. A copy of any written request by the appellant to the Secretary of Labor that the appellant's complaint under 38 U.S.C. 4322(a) be referred to the Special Counsel for litigation before the Board will be accepted as the written designation of representative required by 5 CFR 1201.31(a).

§ 1208.15 Remedies.

(a) *Order for compliance.* If the Board determines that a Federal agency employer or the Office of Personnel Management has not complied with a provision or provisions of chapter 43 of title 38, United States Code (other than a provision relating to benefits under the Thrift Savings Plan for Federal employees), the decision of the Board (either an initial decision of a judge under 5 CFR 1201.111 or a final Board decision under 5 CFR 1201.117) will order the Federal agency employer or the Office of Personnel Management, as applicable, to comply with such provision(s) and to compensate the appellant for any loss of wages or benefits suffered by the appellant because of such lack of compliance. Under 38 U.S.C. 4324(c)(3), any compensation received by the appellant pursuant to the Board's order shall be in addition to any other right or benefit provided for by chapter 43 of title 38, United States Code, and shall not diminish any such right or benefit.

(b) *Attorney fees and expenses.* If the Board issues a decision ordering compliance under paragraph (a) of this section, the Board has discretion to order payment of reasonable attorney fees, expert witness fees, and other litigation expenses under 38 U.S.C. 4324(c)(4). The provisions of subpart H of part 1201 shall govern any proceeding for attorney fees and expenses.

§ 1208.16 Appeals under another law, rule, or regulation.

Nothing in USERRA prevents an appellant who may appeal an agency action to the Board under any other law, rule, or regulation from raising a claim of a USERRA violation in that appeal. The Board will treat such a claim as an affirmative defense that the agency action was not in accordance with law (5 CFR 1201.56(b)(3)).

Subpart C—VEOA Appeals

§ 1208.21 VEOA exhaustion requirement.

Before an appellant may file a VEOA appeal with the Board, the appellant must first file a complaint under 5 U.S.C. 3330a(a) with the Secretary of Labor within 60 days after the date of the alleged violation and allow the Secretary at least 60 days from the date the complaint is filed to attempt to resolve the complaint.

§ 1208.22 Time of filing.

(a) Unless the Secretary of Labor has notified the appellant that the Secretary has been unable to resolve the appellant's VEOA complaint, a VEOA appeal may not be filed with the Board before the 61st day after the date on which the appellant filed the complaint under 5 U.S.C. 3330a(a) with the Secretary.

(b) If the Secretary of Labor notifies the appellant that the Secretary has been unable to resolve the appellant's VEOA complaint and the appellant elects to appeal to the Board under 5 U.S.C. 3330a(d), the appellant must file the VEOA appeal with the Board within 15 days after the date of receipt of the Secretary's notice. A copy of the Secretary's notice must be submitted with the appeal.

§ 1208.23 Content of appeal; request for hearing.

(a) *Content.* A VEOA appeal may be in any format, including letter form, but must contain the following:

(1) The nine (9) items or types of information required in 5 CFR 1201.24(a)(1) through (a)(9);

(2) Evidence or argument that the appellant is a preference eligible;

(3) A statement identifying the statute or regulation relating to veterans' preference that was allegedly violated, an explanation of how the provision was violated, and the date of the violation;

(4) Evidence that a complaint under 5 U.S.C. 3330a(a) was filed with the Secretary of Labor, including the date the complaint was filed; and

(5)(i) Evidence that the Secretary has notified the appellant in accordance with 5 U.S.C. 3330a(c)(2) that the Secretary has been unable to resolve the complaint (a copy of the Secretary's notice satisfies this requirement); or

(ii) Evidence that the appellant has provided written notice to the Secretary of the appellant's intent to appeal to the Board, as required by 5 U.S.C. 3330a(d)(2) (a copy of the appellant's written notice to the Secretary satisfies this requirement).

(b) *Request for hearing.* An appellant must submit any request for a hearing with the VEOA appeal, or within any other time period the judge sets. A hearing may be provided to the appellant once the Board's jurisdiction over the appeal is established and it has been determined that the appeal is timely. The judge may also order a hearing if necessary to resolve issues of jurisdiction or timeliness. The appellant has the burden of proof with respect to issues of jurisdiction and timeliness (5 CFR 1201.56(a)(2)(i) and (ii)).

§ 1208.24 Election to terminate MSPB proceeding.

(a) *Election to terminate.* At any time beginning on the 121st day after an appellant files a VEOA appeal with the Board, if a judicially reviewable Board decision on the appeal has not been issued, the appellant may elect to terminate the Board proceeding as provided under 5 U.S.C. 3330b and file a civil action with an appropriate United States district court. Such election must be in writing, filed with the Board office where the appeal is being processed, and served on the parties. The election is effective immediately on the date of receipt by the Board office where the appeal is being processed.

(b) *Termination order.* Following receipt by the Board of an appellant's written election to terminate the Board proceeding, a termination order will be issued to document the termination of the proceeding. The termination order will state that the proceeding was terminated as of the date of receipt of the appellant's written election. Such an order is neither an initial decision under 5 CFR 1201.111 nor a final Board decision and is not subject to a petition for review in accordance with subpart C of part 1201, a petition for enforcement in accordance with subpart F of part 1201, or a petition for judicial review.

§ 1208.25 Remedies.

(a) *Order for compliance.* If the Board determines that a Federal agency has violated the appellant's VEOA rights, the decision of the Board (either an initial decision of a judge under 5 CFR 1201.111 or a final Board decision under 5 CFR 1201.117) will order the agency to comply with the statute or regulation violated and to compensate the appellant for any loss of wages or benefits suffered by the appellant because of the violation. If the Board determines that the violation was willful, it will order the agency to pay the appellant an amount equal to back pay as liquidated damages.

(b) *Attorney fees and expenses.* If the Board issues a decision ordering compliance under paragraph (a) of this section, the Board will order payment of reasonable attorney fees, expert witness fees, and other litigation expenses. The provisions of subpart H of part 1201 shall govern any proceeding for attorney fees and expenses.

§ 1208.26 Appeals under another law, rule, or regulation.

(a) The VEOA provides that 5 U.S.C. 3330a shall not be construed to prohibit a preference eligible from appealing directly to the Board from any action that is appealable under any other law, rule, or regulation, in lieu of administrative redress under VEOA (5 U.S.C. 3330a(e)(1)). An appellant may not pursue redress for an alleged violation of veterans' preference under VEOA at the same time he pursues redress for such violation under any other law, rule, or regulation (5 U.S.C. 3330a(e)(2)).

(b) An appellant who elects to appeal to the Board under another law, rule, or regulation must comply with the provisions of subparts B and C of 5 CFR part 1201, including the time of filing requirement of 5 CFR 1201.22(b)(1).

Dated: January 24, 2000.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 00–2339 Filed 2–3–00; 8:45 am]

BILLING CODE 7400–01–U

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department due to passage of the Agricultural Research, Extension, and Education Reform Act of 1998.

EFFECTIVE DATE: Effective February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Philip Schwab, Science Advisor and Legislative Affairs, Cooperative State Research, Education, and Extension Service, USDA, Room 305–A, Jamie L. Whitten Federal Bldg., Washington, DC 20250, telephone 202–720–4423.

SUPPLEMENTARY INFORMATION: On June 23, 1998, the Agricultural Research, Extension, and Education Reform Act of 1998, Pub. L. 105–185, was signed into law. With the enactment of this new law many existing authorities were either modified or extended and some new ones added. It is necessary for these authorities to be delegated to Agency Administrators. This document also delegates authority for the Census of Agriculture as provided for in the Census of Agriculture Act of 1997, Pub. L. 105–113 (7 U.S.C. 2204g). This document lays out these delegations of authority as they have been modified and expanded. This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**.

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Orders 12866 and 12988. Finally, this action is not a rule as defined by Pub. L. 96–354, the Regulatory Flexibility Act, and the Small Business Regulatory Fairness Enforcement Act, 5 U.S.C. 801 *et seq.*, and, thus, is exempt from their provisions.

List of Subjects in 7 CFR Part 2

Authority Delegations (Government agencies).

Accordingly, 7 CFR Part 2 is amended as set forth below.

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority for Part 2 continues to read as follows:

Authority: Sec. 212(a), Pub. L. 103–354, 108 Stat. 3210, 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953; 3 CFR 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2. Amend § 2.21 as follows:

a. Redesignate paragraphs (a)(1)(cxl) through (a)(1)(cxlix) as paragraphs (a)(1)(cxli) through (a)(1)(cl);

b. Add new paragraphs (a)(1)(cxl), and (a)(1)(cli) through (a)(1)(clxxi);

c. Remove and reserve paragraphs (a)(1)(lxxviii), (a)(1)(lxxxiii), (a)(1)(lxxxiv), (a)(1)(lxxxv), (a)(1)(lxxxvi), and (a)(1)(xc); and

d. Revise paragraphs (a)(1)(x), (a)(1)(xliv), (a)(1)(l), (a)(1)(liii), (a)(1)(lvii), (a)(1)(lix), (a)(1)(lxxix), and (b)(1)(i) and to add paragraphs (a)(1)(1iv), (a)(1)(lxxx), (a)(1)(lxxxi), and (a)(1)(lxxxvii) to read as follows:

§ 2.21 Under Secretary for Research, Education, and Economics.

(a) * * *

(1) * * *

(x) Evaluate, assess, and report to congressional agriculture committees on the merits of proposals for agricultural research facilities in the States; establish a task force on a 10-year strategic plan for agricultural research facilities; ensure that each research activity conducted by an Agricultural Research Service facility serves a national or multistate need; and review periodically

each operating agricultural research facility constructed in whole or in part with Federal funds, pursuant to criteria established, to ensure that a comprehensive research capacity is maintained (7 U.S.C. 390 *et seq.*).

* * * * *

(xx) Administer and direct a program of competitive grants for research, and special grants for research, education, or extension, to State agricultural experiment stations, colleges and universities, other research institutions and organizations, Federal agencies, national laboratories (competitive grants only), private organizations or corporations, and individuals, and of facilities grants to State agricultural experiment stations and other designated colleges and universities, to promote research, extension, or education, in food, agriculture and related areas (7 U.S.C. 450i).

* * * * *

(xliv) Formulate and administer programs to strengthen secondary education and two-year post secondary teaching programs; promote linkages between secondary, two-year post secondary, and higher education programs in the food and agricultural sciences; administer grants to secondary education and two-year post secondary teaching programs, and to colleges and universities; maintain a national food and agricultural education information system (7 U.S.C. 3152).

* * * * *

(l) Support continuing agricultural and forestry extension and research, at 1890 land-grant colleges, including Tuskegee University, and administer a grant program for five National Research and Training Centers (7 U.S.C. 3221, 3222, 3222c, 3222d).

* * * * *

(liii) Provide policy direction and coordinate the Department's work with national and international institutions and other persons throughout the world in the performance of agricultural research, extension, teaching, and development activities; administer a program of competitive grants for collaborative projects involving Federal scientists or scientists from colleges and universities working with scientists at international agricultural research centers in other nations focusing either on new technologies and programs for increasing the production of food and fiber or training scientists and a program of competitive grants to colleges and universities to strengthen United States economic competitiveness and to promote international market development; and provide a biennial report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on efforts of the Federal Government to coordinate international agricultural research within the Federal Government, and to more effectively link the activities of domestic and international agricultural researchers, particularly researchers of the Agricultural Research Service (7 U.S.C. 3291, 3292b).

* * * * *

(liv) Provide for an agricultural research and development program with the United States/Mexico Foundation for Science (7 U.S.C. 3292a).

* * * * *

(lvii) Enter into cost-reimbursable agreements with State cooperative institutions or other colleges and universities for the acquisition of goods or services in support of research, extension, or teaching activities in the food and agricultural sciences, including the furtherance of library and related information programs (7 U.S.C. 3319a).

* * * * *

(lix) Administer an Aquaculture Assistance Program, involving centers, by making grants to eligible institutions for research and extension to facilitate or expand production and marketing of aquacultural food species and products; making grants to States to formulate Aquaculture development plans for the production and marketing of aquacultural species and products; and conducting a program of research, extension and demonstration at aquacultural demonstration centers (7 U.S.C. 3321–22).

* * * * *

(lxxviii) [Removed and reserved]

* * * * *

(lxxix) Conduct a research initiative known as the Agricultural Genome Initiative, and make grants or enter into cooperative agreements on a competitive basis to carry out the Initiative (7 U.S.C. 5924).

(lxxx) Administer a competitive high priority research and extension grants program in specified subject areas (7 U.S.C. 5925).

(lxxxi) Administer a program of competitive grants to support research and extension activities in Nutrient Management Research and Extension (7 U.S.C. 5925a).

* * * * *

(lxxxiii)—(lxxxvi) [Removed and reserved]

(lxxxvii) Administer competitive grants to support research and extension activities regarding organically grown and processed agricultural commodities (7 U.S.C. 5925b).

* * * * *

(xc) [Removed and reserved]

* * * * *

(cxl) Make competitive grants to 1994 Land-Grant Institutions to conduct agricultural research that addresses high priority concerns of tribal, national, or multistate significance (Section 536 of the Equity in Educational Land-Grant Status Act of 1994, 7 U.S.C. 301 note).

* * * * *

(cli) Ensure that agricultural research conducted by the Agricultural Research Service, and agricultural research, extension, or education activities administered by the Cooperative State Research, Education, and Extension Service on a competitive basis address a concern that is a priority and has national, multistate, or regional significance (7 U.S.C. 7611).

(clii) Solicit and consider input and recommendations from persons who conduct or use agricultural research, extension, or education and, after consultation with appropriate subcabinet officials, establish priorities for agricultural research, extension, and education activities conducted or funded by the Department; promulgate regulations concerning implementation of a process for obtaining stakeholder input at 1862, 1890, and 1994 Institutions; and ensure that federally supported and conducted agricultural research, extension, and education activities are accomplished in accord with identified management principles (7 U.S.C. 7612).

(cliii) Establish procedures that provide for scientific peer review of each agricultural research grant administered on a competitive basis, and for merit review of each agricultural extension or education grant administered, on a competitive basis, by the Cooperative State Research, Education, and Extension Service (7 U.S.C. 7613(a)).

(cliv) Consider the results of the annual review performed by the Agricultural Research, Extension, Education, and Economics Advisory Board regarding the relevance to priorities of the funding of all agricultural research, extension, or education activities conducted or funded by the Department and the adequacy of funding, when formulating each request for proposals, and evaluating proposals, involving an agricultural research, extension, or education activity funded, on a competitive basis, by the Department; and solicit and consider input from persons who conduct or use agricultural

research, extension, or education regarding the prior year's request for proposals for each activity funded on a competitive basis (7 U.S.C. 7613(c)).

(clv) Establish, in consultation with appropriate subcabinet officials, procedures to ensure scientific peer review of all research activities conducted by the Department (7 U.S.C. 7613(d)).

(clvi) Require a procedure to be established by each 1862, 1890, and 1994 Institution, for merit review of each agricultural research and extension activity funded and review of the activity in accordance with the procedure (7 U.S.C. 7613(e)).

(clvii) Administer an Initiative for Future Agriculture and Food Systems (except with respect to funds provided by the Secretary to the Alternative Agricultural Research and Commercialization Corporation) (7 U.S.C. 7621).

(clviii) Administer a program of competitive grants to eligible partnerships to coordinate and manage research and extension activities to enhance the quality of high-value agricultural products (7 U.S.C. 7622).

(clix) Administer a program of competitive grants to eligible entities to conduct research, education, or information dissemination projects for the development and advancement of precision agriculture (7 U.S.C. 7623).

(clx) Coordinate the resources of the Department to develop, commercialize, and promote the use of biobased products, and enter into cooperative agreements with private entities to operate pilot plants and other large-scale preparation facilities under which the facilities and technical expertise of the Agricultural Research Service may be made available (7 U.S.C. 7624).

(clxi) Administer the Thomas Jefferson Initiative for Crop Diversification program of competitive grants and contracts for the purpose of conducting research and development, in cooperation with other public and private entities, on the production and marketing of new and nontraditional crops needed to strengthen and diversify the agricultural production base of the United States (7 U.S.C. 7625).

(clxii) Administer competitive grants for integrated, multifunctional agricultural research, education, and extension activities (7 U.S.C. 7626).

(clxiii) Administer a coordinated program of research, extension, and education to improve the competitiveness, viability, and sustainability of small and medium size dairy, livestock, and poultry operations (7 U.S.C. 7627).

(clxiv) Administer a grant to a consortium of land-grant colleges and universities to enhance the ability of the consortium to carry out a multi-State research project aimed at understanding and combating diseases of wheat and barley caused by Fusarium graminearum and related fungi (7 U.S.C. 7628).

(clxv) Operate and administer the Food Animal Residue Avoidance Database through contracts, grants, or cooperative agreements with appropriate colleges or universities (7 U.S.C. 7642).

(clxvi) Update on a periodic basis, nutrient composition data and report to Congress the method that will be used to update the data and the timing of the update (7 U.S.C. 7651).

(clxvii) Establish and maintain a Food Safety Research Information Office at the National Agricultural Library to provide to the research community and the general public information on publicly and privately funded food safety research initiatives (7 U.S.C. 7654(a)).

(clxviii) Develop a national program of safe food handling education for adults and young people to reduce the risk of food-borne illness (7 U.S.C. 7655).

(clxix) Conduct a performance evaluation to determine whether federally funded agricultural research, extension, and education programs result in public goods that have national or multistate significance, including through a contract with one or more entities to provide input and recommendations with respect to federally funded agricultural research, extension, and education programs (7 U.S.C. 7671).

(clxx) Request the National Academy of Sciences to conduct a study of the role and mission of federally funded agricultural research, extension, and education (7 U.S.C. 7672).

(clxxi) Take a census of agriculture in 1998 and every fifth year thereafter pursuant to the Census of Agriculture Act of 1997, Pub. L. No. 105–113 (7 U.S.C. 2204g).

(b) * * *

(1) * * *

(i) Withhold funds from States in accordance with section 1436 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3198).

* * * * *

Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

3. Amend § 2.65 to add new paragraphs (a)(28), (a)(99) through (a)(107), to remove and reserve paragraphs (a)(41), (a)(42), and (a)(43), and to revise paragraphs (a)(23), (a)(39), and (a)(71), to read as follows:

§ 2.65 Administrator, Agricultural Research Service.

(a) * * *

(23) Enter into cost-reimbursable agreements with State cooperative institutions or other colleges and universities for the acquisition of goods or services in support of research, extension, or teaching activities in the food and agricultural sciences, including the furtherance of library and related information programs (7 U.S.C. 3319a).

* * * * *

(28) Provide a biennial report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on efforts of the Federal Government to coordinate international agricultural research within the Federal Government, and to more effectively link the activities of domestic and international agricultural researchers, particularly researchers of the Agricultural Research Service (7 U.S.C. 3291(d)(2)).

* * * * *

(39) Conduct a research initiative known as the Agricultural Genome Initiative, and make grants or enter into cooperative agreements on a competitive basis to carry out the Initiative (7 U.S.C. 5924).

* * * * *

(41)—(43) [Removed and reserved]

* * * * *

(71) Establish and maintain a Food Safety Research Information Office at the National Agricultural Library to provide to the research community and the general public information on publicly and privately funded food safety research initiatives (7 U.S.C. 7654(a)).

* * * * *

(99) Ensure that agricultural research conducted by the Agricultural Research Service (ARS) addresses a concern that is a priority and has national, multistate, or regional significance (7 U.S.C. 7611).

(100) Solicit and consider input and recommendations from persons who conduct or use agricultural research, extension, or education (7 U.S.C. 7612(b)).

(101) Consider the results of the annual review performed by the

Agricultural Research, Extension, Education, and Economics Advisory Board regarding the relevance to priorities of the funding of all agricultural research, extension, or education activities conducted or funded by the Department and the adequacy of funding when formulating each request for proposals, and evaluating proposals, involving an agricultural research, extension, or education activity funded, on a competitive basis, by the Department; and solicit and consider input from persons who conduct or use agricultural research, extension, or education regarding the prior year's request for proposals for each activity funded on a competitive basis (7 U.S.C. 7613(c)).

(102) Establish procedures that ensure scientific peer review of all research activities conducted by the Agricultural Research Service (7 U.S.C. 7613(d)).

(103) Coordinate the resources of the Department to develop, commercialize, and promote the use of biobased products, and enter into cooperative agreements with private entities to operate pilot plants and other large-scale preparation facilities under which the facilities and technical expertise of the Agricultural Research Service may be made available (7 U.S.C. 7624).

(104) Administer a grant to a consortium of land-grant colleges and universities to enhance the ability of the consortium to carry out a multi-State research project aimed at understanding and combating diseases of wheat and barley caused by Fusarium graminearum and related fungi (7 U.S.C. 7628).

(105) Administer a program of fees to support the Patent Culture Collection maintained and operated by the Agricultural Research Service (7 U.S.C. 7641).

(106) Update on a periodic basis, nutrient composition data, and report to Congress the method that will be used to update the data and the timing of the update (7 U.S.C. 7651).

(107) Ensure that each research activity conducted by an Agricultural Research Service facility serves a national or multistate need (7 U.S.C. 390a(e)).

* * * * *

4. Amend § 2.66 to remove and reserve paragraphs (a)(27), (a)(38), (a)(41), (a)(47), and (a)(107), to revise paragraphs (a)(5), (a)(8), (a)(13), (a)(18), (a)(20), (a)(24), (a)(26), (a)(39), (a)(42), (a)(43), to redesignate paragraphs (a)(101) through (a)(117) as (a)(102) through (a)(118), and to add new paragraphs (a)(44), (a)(101) and (a)(119) through (a)(130), to read as follows:

§ 2.66 Administrator, Cooperative State Research, Education, and Extension Service.

(a) * * *

(5) Administer an agricultural research facilities proposal review process for submission to Congress (7 U.S.C. 390, 390a(a)–(d)).

* * * * *

(8) Administer a program of special grants to carry out research, extension, or education activities to facilitate or expand promising breakthroughs in areas of food and agricultural sciences and to facilitate or expand ongoing State-Federal food and agricultural research, extension, or education programs; and administer a program of facilities grants to renovate and refurbish research spaces (7 U.S.C. 450i (c) and (d)).

* * * * *

(13) Formulate and administer programs to strengthen secondary education and two-year post secondary teaching programs; promote linkages between secondary, two-year post-secondary, and higher education programs in the food and agricultural sciences; administer grants to secondary education and two-year post secondary teaching programs, and to colleges and universities; and maintain a national food and agricultural education information system (7 U.S.C. 3152).

* * * * *

(18) Support continuing agricultural and forestry extension and research, at 1890 land-grant colleges, including Tuskegee University, and administer a grant program for five National Research and Training Centennial Centers (7 U.S.C. 3221, 3222, 3222c, 3222d).

* * * * *

(20) Provide policy direction and coordinate the Department's work with national and international institutions and other persons throughout the world in the performance of agricultural research, extension, and teaching, and development activities; administer a program of competitive grants for collaborative projects involving Federal scientists or scientists from colleges and universities working with scientists at international agricultural research centers in other nations focusing on new technologies and programs for increasing the production of food and fiber or training scientists and a program of competitive grants to colleges and universities to strengthen United States economic competitiveness and to promote international market development (7 U.S.C. 3291, 3292b).

* * * * *

(24) Enter into cost-reimbursable agreements with State cooperative institutions or other colleges and universities for the acquisition of goods or services in support of research, extension, or teaching activities in the food and agricultural sciences, including the furtherance of library and related information programs (7 U.S.C. 3319a).

* * * * *

(26) Administer an Aquaculture Assistance Program, involving centers, by making grants to eligible institutions for research and extension to facilitate or expand production and marketing of aquacultural food species and products; making grants to States to formulate aquaculture development plans for the production and marketing of aquacultural species and products; conducting a program of research, extension and demonstration at aquacultural demonstration centers (7 U.S.C. 3321–3322).

(27) [Removed and reserved]

* * * * *

(38) [Removed and reserved]

(39) Conduct a research initiative known as the Agricultural Genome Initiative; and make grants or enter into cooperative agreements on a competitive basis with individuals and organizations to carry out the Initiative (7 U.S.C. 5924).

* * * * *

(41) [Removed and reserved]

(42) Administer a competitive high priority research and extension grants program in specified subject areas (7 U.S.C. 5925).

(43) Administer a program of competitive grants to support research and extension activities in Nutrient Management Research and Extension (7 U.S.C. 5925a).

(44) Administer competitive grants to support research and extension activities regarding organically grown and processed agricultural commodities (7 U.S.C. 5925b).

* * * * *

(47) [Removed and reserved]

* * * * *

(101) Make competitive grants to 1994 Land-Grant Institutions to conduct agricultural research that addresses high priority concerns of tribal, national, or multistate significance (Section 536 of the Equity in Educational Land-Grant Status Act of 1994, 7 U.S.C. 301 note).

* * * * *

(108) [Removed and reserved]

* * * * *

(119) Ensure that agricultural research, extension, or education activities administered, on a competitive basis, by the Cooperative State Research, Education, and

Extension Service address a concern that is a priority and has national, multistate, or regional significance (7 U.S.C. 7611).

(120) Solicit and consider input and recommendations from persons who conduct or use agricultural research, extension, or education; ensure that Federally supported and conducted agricultural research, extension, and education activities are accomplished in accord with identified management principles; and promulgate regulations concerning implementation of a process for obtaining stakeholder input at 1862, 1890, and 1994 Institutions (7 U.S.C. 7612 (b), (c)and (d)).

(121) Establish procedures that provide for scientific peer review of each agricultural research grant administered, on a competitive basis, and for merit review of each agricultural extension or education grant administered, on a competitive basis, by the Cooperative State Research, Education, and Extension Service (7 U.S.C. 7613(a)).

(122) Consider the results of the annual review performed by the Agricultural Research, Extension, Education, and Economics Advisory Board regarding the relevance to priorities of the funding of all agricultural research, extension, or education activities conducted or funded by the Department and the adequacy of funding, when formulating each request for proposals, and evaluating proposals, involving an agricultural research, extension, or education activity funded, on a competitive basis, by the Department; and solicit and consider input from persons who conduct or use agricultural research, extension, or education regarding the prior year's request for proposals for each activity funded on a competitive basis (7 U.S.C. 7613(c)).

(123) Require a procedure to be established by each 1862, 1890, and 1994 Institution, for merit review of each agricultural research and extension activity funded and review of the activity in accordance with the procedure (7 U.S.C. 7613(e)).

(124) Administer an Initiative for Future Agriculture and Food Systems (except with respect to funds provided by the Secretary to the Alternative Agricultural Research and Commercialization Corporation) (7 U.S.C. 7621).

(125) Administer a program of competitive grants to eligible partnerships to coordinate and manage research and extension activities to enhance the quality of high-value agricultural products (7 U.S.C. 7622).

(126) Administer a program of competitive grants to eligible entities to conduct research, education, or information dissemination projects for the development and advancement of precision agriculture (7 U.S.C. 7623).

(127) Administer the Thomas Jefferson Initiative for Crop Diversification program of competitive grants and contracts for the purpose of conducting research and development, in cooperation with other public and private entities, on the production and marketing of new and nontraditional crops needed to strengthen and diversify the agricultural production base of the United States (7 U.S.C. 7625).

(128) Administer competitive grants for integrated, multifunctional agricultural research, education, and extension activities (7 U.S.C. 7626).

(129) Operate and administer the Food Animal Residue Avoidance Database through contracts, grants, or cooperative agreements with appropriate colleges or universities (7 U.S.C. 7642).

(130) Develop a national program of safe food handling education for adults and young people to reduce the risk of food-borne illness (7 U.S.C. 7655).

* * * * *

5. Amend § 2.67 to add new paragraphs (a)(15), (a)(16), and (a)(17), to read as follows:

§ 2.67 Administrator, Economic Research Service.

(a) * * *

(15) Solicit and consider input and recommendations from persons who conduct or use agricultural research, extension, or education (7 U.S.C. 7612(b)).

(16) Consider the results of the annual review performed by the Agricultural Research, Extension, Education, and Economics Advisory Board regarding the relevance to priorities of the funding of all agricultural research, extension, or education activities conducted or funded by the Department and the adequacy of funding, when formulating each request for proposals, and evaluating proposals, involving an agricultural research, extension, or education activity funded, on a competitive basis, by the Department; and solicit and consider input from persons who conduct or use agricultural research, extension, or education regarding the prior year's request for proposals for each activity funded on a competitive basis (7 U.S.C. 7613(c)).

(17) Establish procedures that ensure scientific peer review of all research activities conducted by the Economic Research Service (7 U.S.C. 7613(d)).

* * * * *

6. Amend § 2.68 to add a new paragraph (a)(9), to read as follows:

§ 2.68 Administrator, National Agricultural Statistics Service.

(a) * * *

(9) Take a census of agriculture in 1998 and every fifth year thereafter pursuant to the Census of Agriculture Act of 1997, Pub. L. 105–113 (7 U.S.C. 2204g).

* * * * *

Done at Washington, DC.

For subpart C:

Dated: January 20, 2000.

Dan Glickman,

Secretary of Agriculture.

For Subpart K:

Dated: January 21, 2000.

Eileen Kennedy,

Acting Under Secretary for Research, Education, and Economics.

[FR Doc. 00–2396 Filed 2–3–00; 8:45 am]

BILLING CODE 3410–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 960

[No. 2000–05]

RIN 3069–AA93

Information Collection Approval; Technical Amendment to the Affordable Housing Program Rule

AGENCY: Federal Housing Finance Board.

ACTION: Final Rule.

SUMMARY: Under the Paperwork Reduction Act of 1995 (Act), the Office of Management and Budget (OMB) has approved a three-year extension of the information collection contained in the Federal Housing Finance Board (Finance Board) rule governing the Affordable Housing Program (AHP). The OMB control number approving the information collection now expires on January 31, 2003. In accordance with the requirements of the Act, the Finance Board is amending the AHP rule to reflect this new expiration date.

EFFECTIVE DATE: The final rule will become effective on February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Janet M. Fronckowiak, Acting Deputy Director, Program Assistance Division, Office of Policy, Research and Analysis, by telephone at 202/408–2575 or by electronic mail at fronckowiakj@fhfb.gov, or Melissa L.

Allen, Program Analyst, Program Assistance Division, Office of Policy, Research and Analysis, by telephone at 202/408–2524 or by electronic mail at *allenm@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

SUPPLEMENTARY INFORMATION:

I. Background

In order to extend the expiration date of the OMB control number approving the information collection contained in its AHP regulation, the Finance Board published requests for public comments regarding the information collection in the **Federal Register** on June 30 and October 28, 1999. *See* 64 FR 35158 (June 30, 1999) and 64 FR 58063 (Oct. 28, 1999). The Finance Board also submitted an analysis of the information collection, entitled ''Affordable Housing Program,'' to the OMB for review and approval. The OMB has approved a three-year extension of the information collection under OMB control number 3069–0006. The OMB control number now expires on January 31, 2003.

Under the Act and the OMB's implementing regulation, 44 U.S.C. 3507 and 5 CFR 1320.5, an agency may not sponsor or conduct, and a person is not required to respond to, an information collection unless the regulation collecting the information displays a currently valid OMB control number. Accordingly, the Finance Board is amending the AHP rule to reflect the new expiration date of the OMB control number.

II. Notice and Public Participation

Because the effectiveness of the information collection contained in the AHP rule must be maintained, the Finance Board for good cause finds that the notice and public procedure requirements of the Administrative Procedures Act are impracticable, unnecessary, or contrary to the public interest. *See* 5 U.S.C. 553(b)(3)(B).

III. Effective Date

For the reasons stated in part II above, the Finance Board for good cause finds that the final rule should become effective on February 4, 2000. *See* 5 U.S.C. 553(d)(3).

IV. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act do not apply since this technical amendment to the AHP rule does not require publication of a notice of proposed rulemaking. *See* 5 U.S.C. 601(2) and 603(a).

V. Paperwork Reduction Act

The rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 960

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Finance Board hereby amends 12 CFR part 960 as follows:

PART 960—AFFORDABLE HOUSING PROGRAM

1. The authority citation for part 960 continues to read as follows:

Authority: 12 U.S.C. 1430(j).

§§ 960.1, 960.3, 960.4, 960.6—960.11, 960.13, 960.15 [Amended]

2. Add a parenthetical statement immediately after §§ 960.1, 960.3, 960.4, 960.6 through 960.11, 960.13, and 960.15 to read as follows:

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0006 with an expiration date of January 31, 2003.)

By the Board of Directors of the Federal Housing Finance Board.

Dated: January 27, 2000.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–2543 Filed 2–3–00; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–41–AD; Amendment 39–11544; AD 2000–02–26]

RIN 2120–AA64

Airworthiness Directives; Harbin Aircraft Manufacturing Corporation Model Y12 IV Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new airworthiness directive (AD) that applies to all Harbin Aircraft Manufacturing Corporation (Harbin) Model Y12 IV airplanes. This AD requires you to revise the Airplane Flight Manual (AFM) to include requirements for activating the airframe pneumatic deicing boots. This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to assure that flightcrews have the information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. Without this information, flightcrews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Effective March 27, 2000.

ADDRESSES: You may examine related information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–41–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

What Caused This AD?

This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated.

What Is the Potential Impact If the FAA Took No Action?

The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Has the FAA Taken Any Action to This Point?

Yes. We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Harbin Model Y12 IV airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 8, 1999 (64 FR 54826). The NPRM proposed to require

revising the Limitations Section of the AFM to include requirements for activating the pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Was the Public Invited To Comment?

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

What Is the FAA's Final Determination on This Issue?

We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—Will not change the meaning of the AD; and
—Will not add any additional burden upon the public than was already proposed.

Cost Impact

How Many Airplanes Does This AD Impact?

None of the Harbin Y12 IV airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry, and are not directly affected by this AD action. However, the FAA considers this rule necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register.

What Is the Cost Impact If an Affected Airplane Is Imported and Placed on the U.S. Register?

There is no dollar cost impact. We estimate that to accomplish the AFM revision it will take you less than 1 workhour. You can accomplish this action if you hold at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7). You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this AD is the time it will take you to insert the information into the AFM.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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. The FAA has prepared a final evaluation and placed it in the Rules Docket. You can get a copy of this evaluation at the location listed 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 a new airworthiness directive (AD) to read as follows:

2000–02–26 Harbin Aircraft Manufacturing Corporation: Amendment 39–11544; Docket No. 99–CE–41–AD.

(a) *What airplanes are affected by this AD?* Model Y12 IV airplanes, all serial numbers, that are:

(1) Equipped with pneumatic deicing boots; and

(2) Certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register. The AD does not apply to your airplane if it is not equipped with pneumatic deicing boots.

(c) *What problem does this AD address?* The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

(d) *What must I do to address this problem?* To address this problem, you must revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. You must accomplish this action within the next 10 calendar days after the effective date of this AD, unless already accomplished. You may insert a copy of this AD in the AFM to accomplish this action:

• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (*e.g.,* takeoff, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and
—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice.''

(e) *Can the pilot accomplish the action?* Yes. Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the AFM revisions required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

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

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

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

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

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

(g) *Where can I get information about any already approved alternative methods of*

compliance? Contact the Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4091.

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

(i) *When does this amendment become effective?* This amendment becomes effective on March 27, 2000.

Issued in Kansas City, Missouri, on January 27, 2000.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2391 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–47–AD; Amendment 39–11546; AD 2000–02–28]

RIN 2120–AA64

Airworthiness Directives; AeroSpace Technologies of Australia Pty Ltd. Models N22B and N24A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new airworthiness directive (AD) that applies to all AeroSpace Technologies of Australia Pty Ltd. (AeroSpace Technologies) Models N22B and N24A airplanes. This AD requires you to revise the Airplane Flight Manual (AFM) to include requirements for activating the airframe pneumatic deicing boots. This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to assure that flightcrews have the information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. Without this information, flightcrews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATE: Effective March 27, 2000.

ADDRESSES: You may examine related information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–47–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

What Caused This AD?

This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated.

What Is the Potential Impact If the FAA Took no Action?

The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Has the FAA Taken Any Action to This Point?

Yes. We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all AeroSpace Technologies Models N22B and N24A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 12, 1999 (64 FR 55208). The NPRM proposed to require revising the Limitations Section of the AFM to include requirements for activating the pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Was the Public Invited To Comment?

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

What Is the FAA's Final Determination on This Issue?

We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—Will not change the meaning of the AD; and

—Will not add any additional burden upon the public than was already proposed.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that 10 airplanes in the U.S. registry will be affected.

What Is the Cost Impact of the Affected Airplanes on the U.S. Register?

There is no dollar cost impact. We estimate that to accomplish the AFM revision it will take you less than 1 workhour. You can accomplish this action if you hold at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7). You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this AD is the time it will take you to insert the information into the AFM.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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. The FAA has prepared a final evaluation and placed it in the Rules Docket. You can get a copy of this evaluation at the location listed 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 a new airworthiness directive (AD) to read as follows:

2000–02–28 Aerospace Technologies of Australia PTY LTD.: Amendment 39–11546; Docket No. 99–CE–47–AD.

(a) *What airplanes are affected by this AD?* Models N22B and N24A airplanes, all serial numbers, that are:

(1) Equipped with pneumatic deicing boots; and

(2) Certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register. The AD does not apply to your airplane if it is not equipped with pneumatic deicing boots.

(c) *What problem does this AD address?* The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

(d) *What must I do to address this problem?* To address this problem, you must revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. You must accomplish this action within the next 10 calendar days after the effective date of this AD, unless already accomplished. You may insert a copy of this AD in the AFM to accomplish this action:

• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (*e.g.,* take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

● The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice.''

(e) *Can the pilot accomplish the action?* Yes. Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the AFM revisions required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

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

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

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

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

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

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4091.

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

(i) *When does this amendment become effective?* This amendment becomes effective on March 27, 2000.

Issued in Kansas City, Missouri, on January 27, 2000.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2390 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–38–AD; Amendment 39–11543; AD 2000–02–25]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. Model MU–2B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new airworthiness directive (AD) that applies to all Mitsubishi Heavy Industries, Ltd. (Mitsubishi) Model MU–2B series airplanes. This AD requires you to revise the Airplane Flight Manual (AFM) to include requirements for activating the airframe pneumatic deicing boots. This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to assure that flightcrews have the information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. Without this information, flightcrews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATE: Effective March 24, 2000.

ADDRESSES: You may examine related information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–38–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 506, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

What Caused This AD?

This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated.

What Is the Potential Impact If the FAA Took No Action?

The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flightcrews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Has the FAA Taken Any Action to This Point?

Yes. We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Mitsubishi Model MU–2B series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 8, 1999 (64 FR 54822). The NPRM proposed to require revising the Limitations Section of the AFM to include requirements for activating the pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Was the Public Invited to Comment?

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

What Is the FAA's Final Determination on This Issue?

We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—Will not change the meaning of the AD; and

—Will not add any additional burden upon the public than was already proposed.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that 415 airplanes in the U.S. registry will be affected.

What Is the Cost Impact of the Affected Airplanes on the U.S. Register?

There is no dollar cost impact. We estimate that to accomplish the AFM revision it will take you less than 1 workhour. You can accomplish this action if you hold at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7). You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this AD is the time it will take you to insert the information into the AFM.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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. The FAA has prepared a final evaluation and placed it in the Rules Docket. You can get a copy of this evaluation at the location listed 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 a new airworthiness directive (AD) to read as follows:

2000–02–25 Mitsubishi Heavy Industries, LTD.: Amendment 39–11543; Docket No. 99–CE–38–AD.

(a) *What airplanes are affected by this AD?* The following Model MU–2B series airplanes, all serial numbers, that are:

(1) Equipped with pneumatic deicing boots; and

(2) Certificated in any category.

Models

MU–2B–10, MU–2B–15, MU–2B–20, MU–2B–25, MU–2B–26, MU–2B–30, MU–2B–35, MU–2B–36, MU–2B–26A, MU–2B–36A, MU–2B–40, MU–2B–60

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register. The AD does not apply to your airplane if it is not equipped with pneumatic deicing boots.

(c) *What problem does this AD address?* The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

(d) *What must I do to address this problem?* To address this problem, you must revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. You must accomplish this action within the next 10 calendar days after the effective date of this AD, unless already accomplished. You may insert a copy of this AD in the AFM to accomplish this action:

''• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (*e.g.*, takeoff, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice.''

(e) *Can the pilot accomplish the action?* Yes. Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the AFM revisions required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

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

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

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

(ii) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA

Principal Maintenance Inspector, who may add comments and then send it to the Manager.

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

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4091.

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

(i) *When does this amendment become effective?* This amendment becomes effective on March 24, 2000.

Issued in Kansas City, Missouri, on January 25, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2392 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–51–AD; Amendment 39–11548; AD 2000–0230]

RIN 2120–AA64

Airworthiness Directives; Twin Commander Aircraft Corporation 600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new airworthiness directive (AD) that applies to all Twin Commander Aircraft Corporation (Twin Commander) 600 series airplanes. This AD requires you to revise the Airplane Flight Manual (AFM) to include requirements for activating the airframe pneumatic deicing boots. This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to assure that flightcrews have the information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. Without this information, flightcrews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Effective March 24, 2000.

ADDRESSES: You may examine related information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–51–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 506, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

What Caused This AD?

This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated.

What is the Potential Impact if the FAA Took No Action?

The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Has the FAA Taken Any Action to This Point?

Yes. We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Twin Commander 600 series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 8, 1999 (64 FR 55191). The NPRM proposed to require revising the Limitations Section of the AFM to include requirements for activating the pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Was the Public Invited To Comment?

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

What Is the FAA's Final Determination on This Issue?

We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—Will not change the meaning of the AD; and

—Will not add any additional burden upon the public than was already proposed.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that 988 airplanes in the U.S. registry will be affected.

What Is the Cost Impact of the Affected Airplanes on the U.S. Register?

There is no dollar cost impact. We estimate that to accomplish the AFM revision it will take you less than 1 workhour. You can accomplish this action if you hold at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7). You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this AD is the time it will take you to insert the information into the AFM.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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. The FAA has prepared a final evaluation and placed it in the Rules Docket. You can get a copy of this evaluation at the location listed 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 a new airworthiness directive (AD) to read as follows:

2000–02–30 Twin Commander Aircraft Corporation: Amendment 39–11548; Docket No. 99–CE–51–AD.

(a) *What airplanes are affected by this AD?* The following Model 600 series airplanes, all serial numbers, that are:

(1) Equipped with pneumatic deicing boots; and

(2) Certificated in any category.

Models

680, 680E, 680F, 680FL, 680FL(P), 680T, 680V, 680W, 681, 690, 685, 690A, 690B, 690C, 690D, 695, 695A, and 695B

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register. The AD does not apply to your airplane if it is not equipped with pneumatic deicing boots.

(c) *What problem does this AD address?* The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

(d) *What must I do to address this problem?* To address this problem, you must revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. You must accomplish this action within the next 10 calendar days after the effective date of this AD, unless already accomplished. You may insert a copy of this AD in the AFM to accomplish this action:

''• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice.''

(e) *Can the pilot accomplish the action?* Yes. Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the AFM revisions required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

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

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

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

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

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

(g) *Where can I get information about any already approved alternative methods of compliance?* Contact the Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4091.

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

(i) *When does this amendment become effective?* This amendment becomes effective on March 24, 2000.

Issued in Kansas City, Missouri, on January 25, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2393 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–42–AD; Amendment 39–11545; 2000–02–27]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. Models EMB–110P1 and EMB–110P2 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new airworthiness directive (AD) that applies to all Empresa Brasileira de Aeronautica S.A. (Embraer) Models EMB–110P1 and EMB–110P2 airplanes. This AD requires you to revise the Airplane Flight Manual (AFM) to include requirements for activating the airframe pneumatic deicing boots. This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to assure that flightcrews have the information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. Without this information, flightcrews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Effective March 24, 2000.

ADDRESSES: You may examine related information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–42–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 506, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

What Caused This AD?

This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated.

What Is the Potential Impact if the FAA Took No Action?

The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Has the FAA Taken Any Action to This Point?

Yes. We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Embraer Models EMB–110P1 and EMB–110P2 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 8, 1999 (64 FR 54804). The NPRM proposed to require revising the Limitations Section of the AFM to include requirements for activating the pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Was the Public Invited To Comment?

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

What Is the FAA's Final Determination on This Issue?

We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—Will not change the meaning of the AD; and

—Will not add any additional burden upon the public than was already proposed.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that 42 airplanes in the U.S. registry will be affected.

What Is the Cost Impact of the Affected Airplanes on the U.S. Register?

There is no dollar cost impact. We estimate that to accomplish the AFM revision it will take you less than 1 workhour. You can accomplish this action if you hold at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7). You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this AD is the time it will take you to insert the information into the AFM.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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. The FAA has prepared a final evaluation and placed it in the Rules Docket. You can get a copy of this evaluation at the location listed 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 a new airworthiness directive (AD) to read as follows:

2000–02–27 Empresa Brasileira de Aeronautica S.A.: Amendment 39–11545; Docket No. 99–CE–42–AD.

(a) *What airplanes are affected by this AD?* Models EMB–110P1 and EMB–110P2 airplanes, all serial numbers, that are:

(1) Equipped with pneumatic deicing boots; and

(2) Certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register. The AD does not apply to your airplane if it is not equipped with pneumatic deicing boots.

(c) *What problem does this AD address?* The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

(d) *What must I do to address this problem?* To address this problem, you must revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. You must accomplish this action within the next 10 calendar days after the effective date of this AD, unless already accomplished. You may insert a copy of this AD in the AFM to accomplish this action:

• ''Except for certain phases of flight where the AFM specifies that deicing boots should not be used (*e.g.,* take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice.''

(e) *Can the pilot accomplish the action?* Yes. Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the AFM revisions required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

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

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

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

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

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

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4091.

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

(i) *When does this amendment become effective?* This amendment becomes effective on March 24, 2000.

Issued in Kansas City, Missouri, on January 25, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2394 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–50–AD; Amendment 39–11547; AD 2000–02–29]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new airworthiness directive (AD) that applies to all SOCATA—Groupe AEROSPATIALE (SOCATA) Model TBM 700 airplanes. This AD requires you to revise the Airplane Flight Manual (AFM) to include requirements for activating the airframe pneumatic deicing boots. This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to assure that flightcrews have the information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. Without this information, flightcrews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Effective March 27, 2000.

ADDRESSES: You may examine related information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–50–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

What Caused This AD?

This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated.

What Is the Potential Impact if the FAA Took No Action?

The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Has the FAA Taken Any Action to This Point?

Yes. We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all SOCATA Model TBM 700 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 12, 1999 (64 FR 55211). The NPRM proposed to require revising the Limitations Section of the AFM to include requirements for activating the pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Was the Public Invited To Comment?

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

What Is the FAA's Final Determination on This Issue?

We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—Will not change the meaning of the AD; and

—Will not add any additional burden upon the public than was already proposed.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that 72 airplanes in the U.S. registry will be affected.

What Is the Cost Impact of the Affected Airplanes on the U.S. Register?

There is no dollar cost impact. We estimate that to accomplish the AFM revision it will take you less than 1 workhour. You can accomplish this action if you hold at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7). You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this AD is the time it will take you to insert the information into the AFM.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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. The FAA has prepared a final evaluation and placed it in the Rules Docket. You can get a copy of this evaluation at the location listed 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 a new airworthiness directive (AD) to read as follows:

2000–02–29 Socata—Groupe Aerospatiale: Amendment 39–1547; Docket No. 99–CE–50–AD.

(a) *What airplanes are affected by this AD?* TBM 700 airplanes, all serial numbers, that are:

(1) Equipped with pneumatic deicing boots; and

(2) Certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register. The AD does not apply to your airplane if it is not equipped with pneumatic de-icing boots.

(c) *What problem does this AD address?* The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

(d) *What must I do to address this problem?* To address this problem, you must revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. You must accomplish this action within the next 10 calendar days after the effective date of this AD, unless already accomplished. You may insert a copy of this AD in the AFM to accomplish this action:

''• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (*e.g.*, take-off, final approach, and landing), compliance with the following is required.

•Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice.''

(e) *Can the pilot accomplish the action?* Yes. Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the AFM revisions required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

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

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

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

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

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

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4091.

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

(i) *When does this amendment become effective?* This amendment becomes effective on March 27, 2000.

Issued in Kansas City, Missouri, on January 27, 2000.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2395 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–64–AD; Amendment 39–11549; AD 2000–02–31]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires replacing the stick pusher capstan and the stick pusher servo with parts of improved design. The AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to prevent improper operation of the stick pusher system caused by the existing design configuration, which could result in loss of control of the airplane during a stall.

DATES: Effective March 27, 2000.

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 610 33 51. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–64–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4141; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Models PC–12 and PC12/45 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 23, 1999 (64 FR 65666). The NPRM proposed to require replacing the stick pusher capstan and the stick pusher servo with parts of improved design. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with the applicable maintenance manual, as specified in Pilatus Service Bulletin No. 22–003, dated June 24, 1999.

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

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

The FAA's Determination

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

Cost Impact

The FAA estimates that 69 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 8 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Pilatus will provide parts free of charge until March 2000. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $33,120, or $480 per airplane.

Regulatory Impact

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–02–31 Pilatus Aircraft Ltd.: Amendment 39–11549; Docket No. 99–CE–64–AD.

Applicability: Models PC–12 and PC–12/45 airplanes, all manufacturer serial numbers (MSN) up to and including MSN 180, certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent improper operation of the stick pusher system caused by the existing design configuration, which could result in the loss of control of the airplane during a stall, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, replace the stick pusher capstan and stick pusher servo with parts of improved design, in accordance with the applicable maintenance manual, as specified in Pilatus Service Bulletin No. 22–003, dated June 24, 1999. The new part numbers (P/N) are as follows:

(1) *Stick Pusher Capstan:* P/N 978.61.11.124 (or FAA-approved equivalent part number); and

(2) *Stick Pusher Servo:* P/N 978.61.11.103 (or FAA-approved equivalent part number).

(b) As of the effective date of this AD, no person may install, on any of the affected airplanes, a stick pusher capstan or stick pusher servo that is not of the part number specified in paragraphs (a)(1) and (a)(2) of this AD, respectively.

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Questions or technical information related to Pilatus Service Bulletin No. 22–003, dated June 24, 1999, should be directed to Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 610 33 51. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Swiss AD HB 99–406, dated August 16, 1999.

(f) This amendment becomes effective on March 27, 2000.

Issued in Kansas City, Missouri, on January 27, 2000.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2399 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 132 and 163

[T.D. 00–7]

RIN 1515–AC55

Export Certificates for Sugar-Containing Products Subject to Tariff-Rate Quota

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document amends the Customs Regulations on an interim basis to set forth the form and manner by which an importer establishes that a valid export certificate is in effect for certain sugar-containing products subject to a tariff-rate quota, that are products of a participating country, as defined in an interim rule of the United States Trade Representative (USTR). The export certificate is necessary to enable the importer to claim the in-quota rate of duty on the sugar-containing products.

DATES: Interim rule effective on February 4, 2000. The interim rule is applicable to products of a participating country as described in the USTR interim rule that are entered or withdrawn from warehouse for consumption on or after February 4, 2000. Comments must be received on or before April 4, 2000.

ADDRESS: Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Leon Hayward, Office of Field Operations, (202–927–9704).

SUPPLEMENTARY INFORMATION:

Background

As a result of the Uruguay Round Agreements, approved by Congress in section 101 of the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465), the President, by Presidential Proclamation No. 6763, established a tariff-rate quota for imported sugar-containing products.

Under a tariff-rate quota, the United States applies one tariff rate, known as the in-quota tariff rate, to imports of a product up to a particular amount, known as the in-quota quantity, and another, higher rate, known as the over-quota rate, to imports of a product in excess of the given amount. The preferential, in-quota tariff rate would be applicable only to the extent that the aggregate in-quota quantity of a product allocated to a country had not been exceeded.

Under Presidential Proclamation No. 7235, dated October 7, 1999, the United States Trade Representative (USTR) was given authority under section 404(a) of the URAA to implement the tariff-rate quota for sugar-containing products to ensure that they do not disrupt the orderly marketing of such products in the United States. The USTR has already assigned Canada an in-quota allocation of the sugar-containing products (64 FR 54719; October 7, 1999).

As part of the implementation of this tariff-rate quota, the USTR has established an export-certificate program under which exporting countries that have an allocation of the in-quota quantity and that wish to participate in the program may use export certificates for their sugar-containing products that are exported to the United States. The USTR has issued an interim rule establishing regulations for this export-certificate program (15 CFR part 2015) (64 FR 67152; December 1, 1999). The USTR interim rule has an effective date of January 31, 2000.

An exporting country wishing to participate in the export-certificate program must notify the USTR and provide the necessary supporting information. As defined in the USTR interim regulations (15 CFR 2015.2(e)), a participating country is a country that has received an allocation of the in-quota quantity of the tariff-rate quota, and that the USTR has determined, and has so informed Customs, is eligible to use export certificates for their sugar-containing products exported to the United States. The USTR has stated that it intends to publish a notice in the **Federal Register** whenever a country becomes, or ceases to be, a participating country.

The particular sugar-containing products subject to a tariff-rate quota for which the USTR has established the export-certificate program are described in additional U.S. Note 8 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically, unless excepted as provided in additional U.S. Note 3 to chapter 17, HTSUS, the imported sugar-containing products covered by the export-certificate program contain over 10 percent by dry weight of sugars derived from cane or sugar beets, whether or not mixed with other ingredients, and they are classified under one of the following HTSUS subheadings: 1701.91.54, 1704.90.74, 1806.20.75, 1806.20.95, 1806.90.55, 1901.90.56, 2101.12.54, 2101.20.54, 2106.90.78, or 2106.90.95.

While a country does not need to participate in the export-certificate program in order to receive the in-quota tariff rate for its share of the in-quota quantity, using export certificates assures the exporting country that only those exported sugar-containing products that it intends for the United States market are counted against its in-quota allocation. As already noted, this helps ensure that such products do not disrupt the orderly marketing of sugar-containing products in the United States.

On December 4, 1998, the Governments of the United States and Canada entered into a Record of Understanding regarding Areas of Agricultural Trade. In Annex 17 of this Record of Understanding, the United States agreed to require an export permit issued by the Government of Canada in order to enable an importer to claim the in-quota tariff rate for those sugar-containing products of Canadian origin described in additional U.S. Note 8 to chapter 17, HTSUS. Canada will thus be a participating country in this export-certificate program as of January 31, 2000, the effective date of the USTR interim rule, as indicated above.

In accordance with the interim rulemaking of the USTR, Customs is issuing this interim rule in order to set forth a new § 132.17, Customs Regulations (19 CFR 132.17), that prescribes the form and manner by which an importer establishes that a valid export certificate exists, including a unique number for the certificate that must be referenced on the entry or withdrawal from warehouse for consumption, whether filed in paper form or electronically. This will ensure that no imports of the specified sugar-containing products of a participating country are counted against the country's in-quota allocation unless the products are covered by a proper export certificate. The export certificate is necessary in this regard in order to enable the importer to claim the in-quota rate of duty on the sugar-containing products.

In addition, the Interim (a)(1)(A) List set forth as an Appendix to part 163, Customs Regulations (19 CFR part 163, Appendix), that lists the records required for the entry of merchandise, is revised to add a reference to the requirement in new § 132.17 that an importer possess a valid export certificate for sugar-containing products that are subject to a tariff-rate quota and that are products of a participating country, in order for the importer to be

able to claim the applicable in-quota rate of duty.

Also, § 132.15, Customs Regulations (19 CFR 132.15), is revised to make provision for electronic entry filing in the case of beef subject to a tariff-rate quota, for which the importer must similarly possess a valid export certificate in order to claim the in-quota rate of duty.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments that are timely submitted to Customs. Customs specifically requests comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington D.C.

Inapplicability of Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Pursuant to the provisions of 5 U.S.C. 553(a), public notice is inapplicable to this interim rule because it is within the foreign affairs function of the United States. Also, for the above reason, there is no need for a delayed effective date under 5 U.S.C. 553(d). Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply; and because this document involves a foreign affairs function of the United States and implements an international agreement, it is not subject to the provisions of E.O. 12866.

Paperwork Reduction Act

The collections of information involved in this interim rule have already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1515–0065 (Entry summary and continuation sheet) and 1515–0214 (General recordkeeping and record production requirements). This rule does not propose any substantive changes to the existing approved information collections.

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 control number assigned by OMB.

List of Subjects

19 CFR Part 132

Agriculture and agricultural products, Customs duties and inspection, Quotas, Reporting and recordkeeping requirements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

Amendment to the Regulations

Accordingly, parts 132 and 163, Customs Regulations (19 CFR parts 132 and 163), are amended as set forth below.

PART 132—QUOTAS

1. The general authority citation for part 132 continues to read as follows, and the specific sectional authority under this part is revised to read as follows :

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

§ 132.15 through 132.17 also issued under 19 U.S.C. 1202 (additional U.S. Note 3 to Chapter 2, HTSUS; subchapter III of Chapter 99, HTSUS; and additional U.S. Note 8 to Chapter 17, HTSUS, respectively), 1484, 1508.

2. Section 132.15 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 132.15 Export certificate for beef subject to tariff-rate quota.

(a) *Requirement.* * * * The importer must record the unique identifying number of the export certificate for the beef on the entry summary or warehouse withdrawal for consumption (Customs Form 7501, Column 34), or its electronic equivalent.

* * * * *

3. Part 132 is amended by adding a new § 132.17 to subpart B to read as follows:

§ 132.17 Export certificate for sugar-containing products subject to tariff-rate quota.

(a) *Requirement.* For sugar-containing products described in additional U.S. Note 8 to chapter 17, HTSUS, that are classified in HTSUS subheading 1701.91.54, 1704.90.74, 1806.20.75, 1806.20.95, 1806.90.55, 1901.90.56, 2101.12.54, 2101.20.54, 2106.90.78, or 2106.90.95, and that are products of a participating country, as defined in 15 CFR 2015.2(e), the importer must possess a valid export certificate in order to claim the in-quota tariff rate of duty on the products at the time they are entered or withdrawn from warehouse for consumption. The importer must record the unique identifier of the export certificate for these products on the entry summary or warehouse withdrawal for consumption (Customs Form 7501, column 34), or its electronic equivalent.

(b) *Validity of export certificate.* To be valid, the export certificate must meet the requirements of 15 CFR 2015.3(b), and with respect to the requirement of 15 CFR 2015.3(b)(3) that the certificate have a distinct and uniquely identifiable number, this unique identifier must consist of 8 characters in any alpha/numeric combination.

(c) *Retention and production of certificate to Customs.* The export certificate is subject to the recordkeeping requirements of part 163 of this chapter (19 CFR part 163). Specifically, the certificate must be retained for a period of 5 years in accordance with § 163.4(a) of this chapter, and must be made available to Customs upon request in accordance with § 163.6(a) of this chapter.

PART 163—RECORDKEEPING

1. The authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

Appendix to Part 163 [Amended]

2. In the Appendix to part 163, under heading ''IV.'', the list of documents/records or information required for entry of special categories of merchandise is amended by removing the listing, ''§ 132.15, 132.16 Export certificates, respectively, for beef or lamb meat subject to tariff-rate quota'', and by adding the following listing in its place:

''§§ 132.15 through 132.17 Export certificates, respectively, for beef, lamb meat, or sugar-containing products subject to tariff-rate quota''.

Raymond W. Kelly,

Commissioner of Customs.

Approved: January 19, 2000.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–2518 Filed 2–1–00; 3:31 Pm]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8871]

RIN 1545–AV22

Remedial Amendment Period

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations relating to the remedial amendment period, during which a sponsor of a qualified retirement plan or an employer that maintains a qualified retirement plan can make retroactive amendments to the plan to eliminate certain qualification defects for the entire period. These final regulations clarify the scope of the Commissioner's authority to provide relief from plan disqualification under the regulations. These clarifications confirm the Commissioner's authority to provide appropriate relief for plan amendments relating to changes to the plan qualification rules made in recent legislation. These final regulations affect sponsors of qualified retirement plans, employers that maintain qualified retirement plans, and qualified retirement plan participants.

EFFECTIVE DATES: These regulations are effective February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Linda S.F. Marshall at (202) 622–6030 or Lisa A. Tavares at (202) 622–6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 401(b). These regulations provide guidance to clarify the scope of the Commissioner's authority to provide relief from plan disqualification under section 401(b) and the regulations. On August 1, 1997, temporary regulations (TD 8727) under section 401(b) were published in the **Federal Register** (62 FR 41272). A notice of proposed rulemaking (REG–106043–97), cross-referencing the temporary regulations, was published in the **Federal Register** (62 FR 41322) on the same day. The temporary regulations enabled the Commissioner to provide appropriate relief concerning the timing of plan amendments relating to changes to the plan qualification rules made in recent legislation, as well as for other plan amendments that may be needed as a result of future changes to the Internal Revenue Code (Code).

No written comments responding to the notice of proposed rulemaking were received. No public hearing was requested or held. The proposed regulations under section 401(b) are adopted by this Treasury decision, and the corresponding temporary regulations are removed.

Explanation of Provisions

Section 401(b) provides that a plan is considered to satisfy the qualification requirements of section 401(a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which any amendment that caused the plan to fail to satisfy those requirements was adopted or put into effect, and ending with the time prescribed by law for filing the employer's return for the taxable year in which that plan or amendment was adopted (including extensions) or such later time as the Secretary may designate, if all provisions of the plan needed to satisfy the qualification requirements are in effect by the end of the specified period and have been made effective for all purposes for the entire period.

Section 1.401(b)–1(b) lists the plan provisions that may be amended retroactively pursuant to the rules of section 401(b). These plan provisions, termed *disqualifying provisions,* include the plan provisions described in section 401(b), as well as plan provisions that result in failure of a plan to satisfy the qualification requirements of the Code by reason of a change in those requirements effected by the legislation listed in § 1.401(b)–1(b)(2)(i) and (ii). Under § 1.401(b)–1(b)(2)(ii), a disqualifying provision also includes a plan provision that is integral to a qualification requirement changed by specified legislation. As in effect prior to the previously issued final and temporary regulations, § 1.401(b)–1(b)(2)(iii) provided that a disqualifying provision includes a plan provision that results in failure of the plan to satisfy the Code's qualification requirements by reason of a change in those requirements effected by amendments to the Code, that is designated by the Commissioner, at the Commissioner's discretion, as a disqualifying provision.

Section 1.401(b)–1(d) provides rules for determining the period for which the relief provided under section 401(b) applies (the ''remedial amendment period'').

Section 1.401(b)–1(d)(1) defines the beginning of the remedial amendment period for the disqualifying provisions listed in §§ 1.401(b)–(1)(b)(1) and 1.401(b)–1(b)(2)(i) and (ii).

The final regulations retain the rules set forth in the temporary regulations to clarify the scope of the Commissioner's authority to provide relief from plan disqualification under section 401(b). These changes are needed to clarify the rules relating to the plan provisions that may be designated by the Commissioner as disqualifying provisions based on amendments to the plan qualification requirements of the Internal Revenue Code. Section 1.401(b)–1(b)(3) retains the rule set forth in the temporary regulations to provide that a disqualifying provision includes a plan provision designated by the Commissioner, at the Commissioner's discretion, as a disqualifying provision that either (1) results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements; or (2) is integral to a qualification requirement of the Code that has been changed. Section 1.401(b)–1(c)(2) retains the rule set forth in the temporary regulations to provide the Commissioner with explicit authority to impose limits and provide additional rules regarding the amendments that may be made with respect to disqualifying provisions during the remedial amendment period. Section 1.401(b)–1(d)(1)(iv) and (v) provide conforming rules, as previously provided in the temporary regulations, regarding the beginning of the remedial amendment period for disqualifying provisions described in § 1.401(b)–1(b)(3).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal authors of these regulations are Linda S. F. Marshall and Lisa A. Tavares, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.401(b)–1 is amended by:

1. Revising paragraphs (b)(3), (c), and (d)(1)(iv).

2. Adding paragraph (d)(1)(v).

The addition and revisions read as follows:

§ 1.401(b)–1 Certain retroactive changes in plan.

* * * * *

(b) * * *

(3) A plan provision designated by the Commissioner, at the Commissioner's discretion, as a disqualifying provision that either—

(i) Results in the failure of the plan to satisfy the qualification requirements of the Internal Revenue Code by reason of a change in those requirements; or

(ii) Is integral to a qualification requirement of the Internal Revenue Code that has been changed.

(c) *Special rules applicable to disqualifying provisions*—(1) *Absence of plan provision.* For purposes of paragraphs (b)(2) and (3) of this section, a disqualifying provision includes the absence from a plan of a provision required by, or, if applicable, integral to the applicable change to the qualification requirements of the Internal Revenue Code, if the plan was in effect on the date the change became effective with respect to the plan.

(2) *Method of designating disqualifying provisions.* The Commissioner may designate a plan provision as a disqualifying provision pursuant to paragraph (b)(3) of this section only in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter.

(3) *Authority to impose limitations.* In the case of a provision that has been designated as a disqualifying provision by the Commissioner pursuant to paragraph (b)(3) of this section, the Commissioner may impose limits and provide additional rules regarding the amendments that may be made with respect to that disqualifying provision during the remedial amendment period. The Commissioner may provide guidance in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter.

(d) * * *

(1) * * *

(iv) In the case of a disqualifying provision described in paragraph (b)(3)(i) of this section, the date on which the change effected by an amendment to the Internal Revenue Code became effective with respect to the plan; or

(v) In the case of a disqualifying provision described in paragraph (b)(3)(ii) of this section, the first day on which the plan was operated in accordance with such provision, as amended, unless another time is specified by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter.

§ 1.401(b)–1T [Removed]

Par. 3. Section 1.401(b)–1T is removed.

John M. Dalrymple,

Acting Deputy Commissioner of Internal Revenue.

Approved: January 19, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–1893 Filed 2–3–00; 8:45 am]

BILLING CODE 4830–01–4

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA236–0204; FRL–6528–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern Rule 207 (Review of New or Modified Sources) from the Monterey Bay Unified Air Pollution Control District (MBUAPCD), which is being revised to add an emission offsets exemption for pollution control projects that are mandated by District, state, or federal regulation. This approval action will incorporate the revised rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions from stationary sources of air pollution subject to District new source review (NSR) regulation in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on April 4, 2000 without further notice, unless EPA receives adverse comments by March 6, 2000. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Roger Kohn at the Region IX office listed below. Copies of the rule revision and EPA's Technical Support Document (TSD) with the Agency's evaluation of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1238, E-mail: kohn.roger@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California SIP is MBUAPCD Rule 207, Review of New or Modified Sources.

II. Background

The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) and section 110(l) of the Act provide that each

implementation plan or revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of section 110(a)(2).

The rule was adopted by the District Board of Directors on September 15, 1999. The rule was subsequently submitted to EPA by the California Air Resources Board to EPA as a proposed revision to the California SIP on October 29, 1999.

III. EPA Evaluation and Action

MBUAPCD submitted Rule 207 for adoption into the applicable SIP. This rule is intended to replace the existing SIP rule of the same number and title. MBUAPCD's most recent submittal of Rule 207 contains the following changes from the current SIP:

- A new provision has been added that provides an exemption from the offset provisions of the rule for projects in which an emission increase results from the installation of control equipment pursuant to District, state, or federal regulations.
- The rule has been modified to require an opportunity for public comment on projects using the new exemption.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. In correspondence with the District, EPA informed MBUAPCD that this rule change would be an acceptable SIP revision, provided that the District made a commitment to revise its Maintenance Plan if new air quality data indicates that the District has violated or may violate the National Ambient Air Quality Standard (NAAQS). This correspondence, along with the rule adoption resolution in which the MBUAPCD board of directors makes this commitment, can be found in the docket for this rulemaking. Therefore, MBUAPCD Rule 207 is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and parts C and D.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13132

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

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

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

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

H. National Technology Transfer and Advancement Act

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

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 4, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: January 7, 2000.

Felicia Marcus,

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 (270)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(270) * * *

(i) * * *

(B) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 207, amended on September 15, 1999.

* * * * *

[FR Doc. 00–2183 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6532–7]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds 10 new sites to the NPL; all to the General Superfund Section of the NPL.

EFFECTIVE DATE: The effective date for this amendment to the NCP March 6, 2000.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see Section II, ''Availability of Information to the Public'' in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (mail code 5204G), U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue NW; Washington, DC 20460, or the Superfund Hotline, phone (800)

424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' (''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. § 9601(23).)

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR § 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR § 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. § 9605(a)(8)(B)); (3) The third mechanism for listing,

included in the NCP at 40 CFR § 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on October 22, 1999 (64 FR 56966).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR § 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions ***.'' 42 U.S.C. § 9601(24).) However, under 40 CFR § 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a remedial investigation/feasibility study (RI/FS) as more information is developed on site contamination (40 CFR § 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR § 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

As of January 19, 2000, the Agency has deleted 206 sites from the NPL.

H. Can Portions of Sites be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of January 19, 2000, EPA has deleted portions of 18 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL.

Of the 206 sites that have been deleted from the NPL, 197 sites were deleted because they have been cleaned up (the other 9 sites were deleted based on deferral to other authorities and are not considered cleaned up). As of January 19, 2000, there are a total of 676 sites on the CCL. This total includes the 197 deleted sites. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund.

II. Availability of Information to the Public

A. Can I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

B. What Documents Are Available for Review at the Headquarters Docket?

The Headquarters docket for this rule contains, for each proposed site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. The Headquarters docket also contains comments received, and the Agency's responses to those comments. The Agency's responses are contained in the ''Support Document for the Revised National Priorities List Final Rule—January 2000.''

C. What Documents Are Available for Review at the Regional Dockets?

The Regional dockets contain all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional dockets.

D. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this document. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA, 703/603–8917.

The contact information for the Regional dockets is as follows:

Barbara Callahan, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Records Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1356

Ben Conetta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4435

Dawn Shellenberger (GCI), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Joellen O'Neill, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8127.

Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7-J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7570.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Carole Long, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7224.

David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757.

Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/744–2343.

David Bennett, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–2103.

E. How Can I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at http://www.epa.gov/superfund/ (look under site information category) or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Addition to the NPL

This final rule adds 10 sites to the NPL; all to the General Superfund Section of the NPL. Table 1 presents the 10 sites in the General Superfund Section. Sites in the table are arranged alphabetically by State.

TABLE 1.—NATIONAL PRIORITIES LIST FINAL RULE, GENERAL SUPERFUND SECTION

State	Site name	City/county
FL	Trans Circuit, Inc	Lake Park
LA	Marion Pressure Treating.	Marion
NY	Jackson Steel	Mineola/North Hempstead
NY	Lawrence Aviation Industries, Inc.	Port Jefferson Station
NY	Peter Cooper Corporation (Markhams).	Dayton
PA	Old Wilmington Road Ground Water Contamination.	Sadsburyville
PR	Scorpio Recycling, Inc.	Candeleria Ward
RI	Centredale Manor Restoration Project.	North Providence
SC	Macalloy Corporation.	North Charleston
UT	Jacobs Smelter	Stockton

Number of Sites Added to the General Superfund Section: 10.

B. Status of NPL

With the 10 new sites added to the NPL in today's final rule; the NPL now contains 1,226 final sites; 1,067 in the General Superfund Section and 159 in the Federal Facilities Section. With a separate rule (published elsewhere in today's **Federal Register**) proposing to add 8 new sites to the NPL, there are now 55 sites proposed and awaiting final agency action, 48 in the General Superfund Section and 7 in the Federal Facilities Section. Final and proposed sites now total 1,281. (These numbers reflect the status of sites as of January 19, 2000. Sites deletions may affect these numbers at time of publication in the **Federal Register**.)

C. What Did EPA Do With the Public Comments It Received?

EPA reviewed all comments received on the sites in this rule. The following sites were proposed on October 22, 1999 (64 FR 56992): Trans Circuit, Inc., Marion Pressure Treating, Jackson Steel, Lawrence Aviation Industries, Scorpio Recycling, Inc., Centredale Manor Restoration Project, and Macalloy Corporation. The Old Wilmington Road Ground Water Contamination site and the Jacobs Smelter site were proposed on July 22, 1999 (64 FR 39886). The Peter Cooper Corporation (Markhams)

site was proposed on April 23, 1999 (64 FR 19968).

For Trans Circuit, Inc., Marion Pressure Treating, Jackson Steel, Lawrence Aviation Industries, Scorpio Recycling, Inc., Centredale Manor Restoration Project, and Macalloy Corporation, EPA received no comments affecting the HRS scoring of these sites and therefore, EPA is placing them on the final NPL at this time.

EPA responded to all relevant comments received on the other sites. EPA's responses to site-specific public comments are addressed in the ''Support Document for the Revised National Priorities List Final Rule—January 2000.''

IV. Executive Order 12866

A. What Is 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.

B. Is This Final Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

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 by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a 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.

B. Does UMRA Apply to This Final Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the 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.

B. Does the Regulatory Flexibility Act Apply to This Final Rule?

No. While this rule revises the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes

at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

VII. Possible Changes to the Effective Date of the Rule

A. Has This Rule Been Submitted to Congress and the General Accounting Office?

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the 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).

B. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. § 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

C. What Could Cause the Effective Date of This Rule to Change?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919,103 S. Ct. 2764 (1983) and Bd. of Regents of the University of *Washington* v. *EPA*, 86 F.3d 1214,1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

VIII. National Technology Transfer and Advancement Act

A. What Is the 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.

B. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

IX. Executive Order 12898

A. What is Executive Order 12898?

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. 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.

B. Does Executive Order 12898 Apply to this Final Rule?

No. While this rule revises the NPL, no action will result from this rule that will have disproportionately high and adverse human health and

environmental effects on any segment of the population.

X. Executive Order 13045

A. What Is 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.

B. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

XI. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. § 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Final Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XII. Executive Orders on Federalism

What Are The Executive Orders on Federalism and Are They Applicable to This Final Rule?

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.''

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, [64 FR 43255 (August 10, 1999),] which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 [52 FR 41685 (October 30, 1987),] on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. This rule will not result in the imposition of any additional requirements on any State, local governments or other political subdivisions within any State. Accordingly, the requirements of section 6(c) of Executive Order 12612 do not apply to this rule.

XIII. Executive Order 13084

What is Executive Order 13084 and Is It Applicable to this Final Rule?

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

This rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, penalties, Reporting and record keeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 28, 2000.

Timothy Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR,

1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Table 1 of Appendix B to Part 300 is amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes(a)
	* * * * *		
FL	Trans Circuit, Inc.	Lake Park.	
	* * * * *		
LA	Marion Pressure Treating	Marion.	
	* * * * *		
NY	Jackson Steel	Mineola/North Hempstead.	
	* * * * *		
NY	Lawrence Aviation Industries, Inc.	Port Jefferson Station.	
	* * * * *		
NY	Peter Cooper Corporation (Markhams)	Winslow Township.	
	* * * * *		
PA	Old Wilmington Road Ground Water Contamination.	Sadsburyville.	
	* * * * *		
PR	Scorpio Recycling, Inc.	Candeleria Ward.	
	* * * * *		
RI	Centredale Manor Restoration Project	North Providence.	
	* * * *		
SC	Macalloy Corporation	North Charleston.	
	* * * * *		
UT	Jacobs Smelter	Stockton.	
	* * * * *		

(a) A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (if scored, HRS score need not be ≤ 28.50).
C = Sites on Construction Completion list.
S = State top priority (included among the 100 top priority sites regardless of score).
P = Sites with partial deletion(s).

[FR Doc. 00–2474 Filed 2–3–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

Polychlorinated Biphenyls (PCBs), Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions

CFR Correction

In Title 40 of the Code of Federal Regulations, parts 700 to 789, revised as of July 1, 1999, page 537, part 761, § 761.30 is corrected by reinstating paragraph (j)(4) to read as follows:

§ 761.30 Authorizations.

* * * * *

(j) * * *

(4) No person may manufacture, process, or distribute in commerce PCBs for research and development unless they have been granted an exemption to do so under TSCA section 6(e)(3)(B).

* * * * *

[FR Doc. 00–55501 Filed 2–3–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991223349–9349–01; I.D. 122199A]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Area; Interim Harvest Specifications for Groundfish; Correction

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

ACTION: Correction.

SUMMARY: NMFS is correcting the Interim 2000 Harvest Specifications for groundfish of the Bering Sea and

Aleutian Islands management area (BSAI).

DATES: Effective 0001 hrs, Alaska local time, January 1, 2000, until the effective date of final 2000 harvest specifications for groundfish, which will be published in the **Federal Register**.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP at subpart H of 50 CFR part 600 and CFR part 679.

Correction

In the rule, Interim 2000 Harvest Specifications for Groundfish of the BSAI, published on January 3, 2000 (65 FR 60) FR DOC 99–34030, page 62, under Table 1 INTERIM 2000 TAC AMOUNTS FOR GROUNDFISH AND APPORTIONMENTS THEREOF FOR THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA, 3rd column ''Interim TAC,'' at the stub entry ''Atka mackerel,'' (1) remove the figure ''14,306'' assigned to Other gear, and add the figure ''7,153'' in its place, and (2) under 3rd column ''Interim TAC'' at the stub entry ''Total interim TAC,'' remove the figure ''635,888'' and add the figure ''628,735'' in its place.

Classification

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

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

Dated: January 31, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–2455 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 24
Friday, February 4, 2000

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

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 718

RIN 0560–AF36

Amendment to the Farm Reconstitution Regulations for Acreages, Allotments, and Quotas

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule with requests for comments.

SUMMARY: This proposed rule would amend regulations that are used to determine whether separate tracts of land will be considered separate farms for certain commodity programs. The regulations also set generic terms and definitions for those programs. This rule, if adopted, would modify several definitions, change the effective date for certain farm reconstitutions, and add new provisions governing farm divisions. These changes are expected to improve the administration of farm programs.

DATES: Comments must be received on or before March 6, 2000 to be assured of consideration.

ADDRESSES: Submit comments to: Loretta Baxa, Production, Emergencies and Compliance Division (PECD), Farm Service Agency (FSA), USDA, STOP 0517, 1400 Independence Avenue, SW, Washington, D.C. 20250–0517, telephone (202) 720–7602, e-mail loretta__baxa@wdc.fsa.usda.gov.

FOR FURTHER INFORMATION CONTACT: Loretta Baxa at (202) 720–7602.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule because FSA is not required by 5 U.S.C. 533 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988. The provisions of this proposed rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

Information collected in this rule has been approved by OMB and assigned OMB Control Number 0560–0025. This rule does not contain any new collection information requirements.

Executive Order 12612

It has been determined that this rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Discussion of the Proposed Rule

A number of commodity programs are administered on a farm-by-farm basis. Rules in 7 CFR part 718 govern what is considered to be a ''farm'' for certain commodity programs and sets out other generic definitions and rules for those programs. This proposed rule would amend part 718 in several respects. First, a number of definitions found at § 718.2 would be amended. Among these, the ''agricultural use'' definition in that section would be revised in its entirety. Under the rules in part 718 in certain instances the division of a farm's ''contract acreage'' (acreage enrolled in the Production Flexibility Contract program administered under 7 CFR part 1412) will be made on the basis of each separate tract's agricultural use acreage. Currently, the § 718.2 ''agricultural use'' definition refers to certain specific crop, forage and conserving uses. To avoid being unduly restrictive, the definition would, by this rule, be modified to more generally provide that it includes any agricultural activity. Also, § 718.2 would be amended to add a definition for ''common ownership unit''. That term and concept is used in connection with tobacco farm divisions under 7 CFR part 723 in which production histories may be assigned to those units. The added definition follows that which already appears in part 723. Further, the ''cropland'' definition in § 718.2 is important for a number of program matters including the establishment of how much land on the farm can be enrolled in the Production Flexibility Contract program and the Conservation Reserve Program. This rule would clarify the definition to specify that: (1) newly broken out land will be considered ''cropland'' for part 718 purposes so long as the land is capable of, and is intended to be harvested using normal harvesting and production techniques and (2) land devoted to ponds, tanks, or trees will not generally be considered ''cropland'' for part 718 purposes. In addition, the ''farm'' definition contained in § 718.2 will be modified. Currently, that term is defined to mean a unit operated by one producer

with equipment, labor, accounting system and management separate from other production units. To comport more plainly with current practice and more clearly incorporate the other conditions that apply to the constitution of a farm under part 718, the ''farm'' definition would be clarified to specify that a farm must (in addition to meeting other requirements) consist of tracts that: (1) Have both the same owner and operator or (2) have the same operator but have multiple owners who have agreed in writing to have the tracts treated as one farm. Also, as indicated, in the current definition it is provided that the farm's equipment, labor, accounting system and management must be separate from that of other units. That provision would, in the proposed rule be moved to § 718.201. Further, the current ''farmland'' definition specifies that ''farmland'' includes cropland, forest, and other land on the farm. That which is ''farmland'' and which is not ''farmland'', can be important for some program determinations. In this rule, the part 718 ''farmland'' definition will be clarified to match other definition changes proposed in this rule. Finally, with respect to the definitions, the term ''operator'' is currently defined in § 718.2 to mean the person who is determinated by the local Farm Service Agency (FSA) county committee to be the person in charge of the farm for the current year. Since those determinations (of who is the ''operator'' on the farm) are sometimes on-going determinations rather than determinations that are made every year, the new definition would remove the reference to the ''current year.''

Also, this rule would amend provisions of § 710.201 relating to those instances in which the combination of farms is prohibited. Under the current regulations, a PFC farm and non-PFC farm cannot be combined because to do so could unduly expand the eligibility of the producer for certain commodity loans which are, by statute, intended to be limited to PFC farms only. However, that concern may not come into play when the non-PFC farm has potential PFC eligibility because of an existing CRP contract and the entirety of that farm is enrolled in the CRP. Accordingly, the rule would allow such combinations to occur in those limited circumstances despite the fact that one farm is a PFC farm and the other is not. The rule contemplates, however, that if on the termination of the CRP contract the new PFC eligibility is not exercised, the two farms would have to be divided back into separate farms. Further, the rule would also amend § 718.204. Specifically, that section would be revised to add a provision that specifies for farms in the PFC program that a requested farm reconstitution will become effective for the current year only if initiated before the earlier of June 1 of the fiscal year or the date on which PFC payments for the farm for that year are issued. This will help avoid having a change in farm organization that may raise a dispute over the proper distribution of current PFC monies. Also, under the current provisions of § 718.204, the county FSA committee, with the concurrence of the State FSA committee, can allow extension of the deadlines otherwise provided for in § 718.204 so long as the extension would not serve to foster a scheme to avoid substantive program requirements. In this rule that allowance would no longer apply to the special deadline that applies to PFC contracts. This change would be made to further assure that there is no interference and confusion over the making of current PFC payments and to assure uniformity. That section also contains a provision with a special rule for farms with tobacco or peanuts which provides that the farm reconstitutions for those farms will be effective for the current year only if the reconstitution is initiated before the crop is planted or would have been planted. To assure clarity in the application of the rules, § 718.204 would be amended to add an additional provision which addresses the situation where the reconstitution involves both: (1) a PFC and (2) tobacco or peanut farms. In such case, the earlier of the two deadlines (the one for PFC farms and the one for tobacco and peanut farms) would establish the last date by which a farm reconstitution could be effective for the current year. Finally, there would be one additional provision added to § 718.204(e) to specify that the division of or combination of farm acreage would also include the division or combination of any potential PFC eligibility that may be associated with a current CRP contract. That is, when the PFC was initiated, farms with certain preexisting ''crop acreage bases'' were given a one-time opportunity to enroll in the PFC. Eligible farms had to have a ''crop acreage base'' under a preexisting program. Producers had to enroll their acreage in the program by a set date in 1996, the only exception being that a later sign-up was allowed for farms that had a crop acreage base in suspension under a CRP contract. Those farms, on a one-time only basis, can enroll acreage into the PFC upon termination of the CRP contract, subject to certain conditions.

Amendments are also proposed for § 718.205. That section sets out, in an order of priority, the various calculation methods that are used to divide up or reconstitute a farm. To improve program performance, amendments are proposed here to § 718.205. The current priority list calls for using the following division and reconstitution methods in the following order or priority as applicable: (1) Estate method; (2) designation by owner method; (3) contribution method; (4) agricultural use method; (5) cropland method and (6) history method. This rule would add a new method which is to be called the ''default method'' and which will, as a matter of priority, be added between the ''agricultural use'' and ''cropland'' methods. Under the ''default'' method the tracts would be divided away from the parent farm based on the attributes of the individual tracts at the time of the division. Also, because of the addition of this new method, other technical revisions have been needed so as to reorganize § 718.205. In addition, § 718.205 has been further revised to specify that the agency can adjust the results of any reconstitution when it believes that to do so would be more equitable or would further the purposes of the program which are impacted by decisions made under part 718. Still further, a provision is added to § 718.205 to specify that where the division of the farm is going to be made using the landowner designation method, those persons with a security interest in the land itself must agree to the disposition. This is designed to insure fairness and thus, in addition, avoid having the reconstitution regulations serve as an impediment to the ability of farmers to obtain financing. Also, the provision in § 718.205 regarding the contribution method have been changed as they regard the current provisions which provide that this method will be used to separate farms only if the contribution took place within the last 6 years or if there are adequate records to allow the determination to be made. In the end, that provision merely establishes that which would be implied anyway; namely, that the contribution method will only be used to the extent that the contribution can actually be determined. Even with the 6 year period mentioned in the current rule, the contribution method could not be used effectively unless there were sufficient records available to allow the determination to be made. Hence, that provision, in this rule, would be eliminated.

Further, the provisions dealing with the ''agricultural use'' method would be amended. Currently the regulations call for, when using that method, dividing the tract based on land involved in ''agricultural and related activity.'' Because of the expansive new definition of ''agricultural use'' which would be adopted in this rule, those references in this rule would be changed to references to land in ''agricultural use.'' That change would not be expected to change in a material way the application of the agricultural use method of proration. In addition, this part of the regulations is modified to make another clarifying change in its text.

Finally, it is proposed that the authority citation for part 718 be amended to add references to 7 U.S.C. 1375, 1378, and 1379. These are generic provisions of the Agricultural Adjustment Act of 1938 which generally provide for the Secretary to issue regulations governing the making available of quotas and allotments under that Act and other matters relating to that Act. Also those provisions deal with the disposition of allotments when there is an exercise of eminent domain over a farm and, 7 U.S.C. 1379 specifically provides the Secretary with the authority to undertake farm reconstitutions. Further, this rule would add a section that would set out in part 718 the control numbers assigned by the Office of Management and Budget for Paperwork Reduction Act purposes.

Comments are requested on all of these matters.

List of Subjects in 7 CFR Part 718

Acreage allotments, marketing quotas.

Accordingly, 7 CFR part 718 is proposed to be amended as follows:

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

1. Revise the authority citation for part 718 to read as follows:

Authority: 7 U.S.C. 1373, 1374, 1375, 1378, 1379, and 7201 *et seq.*; 15 U.S.C. 714a *et seq;* and 21 U.S.C. 889.

2. Amend § 718.2 by:

a. Removing the definition of ''Agricultural use'';

b. Adding new definitions of ''Agricultural use land'' and ''Common ownership unit'' in alphabetical order;

c. Revising paragraphs (1)(v), (1)(vi) and (2)(v) and adding paragraph (1)(vii) in the definition of ''Cropland''; and

d. Revising the definitions of ''Farm'', ''Farmland'' and ''Operator''.

The additions and revisions read as follows:

§ 718.2 Definitions.

* * * * *

Agricultural use land means land that was devoted to cropland at the time it was enrolled in a production flexibility contract in accordance with part 1412 of this title and continues to be used for agricultural purposes or land that met the definition of cropland on or after April 4, 1996, and continues to be used for agricultural purposes but not for nonagricultural commercial or industrial use.

* * * * *

Common ownership unit means a distinguishable parcel of land, consisting of one or more tracts of land with the same owners, as determined by FSA.

* * * * *

Cropland. (1) * * *

(v) Is in sod waterways or filter strips planted to a perennial cover;

(vi) Is preserved as cropland in accordance with 1410 of this title; or

(vii) Is land that has newly been broken out for purposes of being planted to a crop that the producer intends to, and is capable of, carrying through to harvest, using tillage and cultural practices that are consistent with normal practices in the area; provided further that, in the event that such practices are not utilized other than for reasons beyond the producer's control, the cropland determination shall be void retroactive to the time at which the land was broken out.

(2) * * *

(v) Converted to ponds, tanks or trees (other than those trees planted in compliance with a Conservation Reserve Program contract executed pursuant to parts 704 or 1410 of this title, or trees which are used in one- or two-row shelterbelt plantings, or are part of an orchard or vineyard).

* * * * *

Farm shall generally mean a tract, or tracts, of land which are considered to be a separate operation under the terms of this part provided further that where multiple tracts are to be treated as one farm, the tracts must have the same operator and must also have the same owner, or, if not the same owner, all owners must agree to the treatment of the multiple tracts as one farm for these purposes.

* * * * *

Farmland means the sum of the agricultural use land, forest, acreage planted to an eligible crop acreage as specified in 7 CFR 1437.3 (noninsured crop disaster assistance program) and other land on the farm.

* * * * *

Operator means an individual, entity, or joint operation who is determined by the county committee, or considered by the county committee, to be in general control of the farming operations on the farm.

* * * * *

3. Amend § 718.201 by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 718.201 Farm constitution.

(a) * * *

(1) After August 1, 1996, land subject, under 7 CFR part 1412, to a production flexibility contract with land not subject to a production flexibility contract unless the farm not subject to a production flexibility contract is a farm on which the entirety of the cropland is enrolled in the CRP and on which the cropland can, and will, become contract acreage for purposes of the production flexibility contract program upon the termination of the CRP contract;

(2) Land under separate ownership unless the owners agree in writing and the labor, equipment, accounting system, and management are operated in common by the operator but separate from that of any other tracts;

* * * * *

4. Amend § 718.204 by revising paragraphs (b) and (d) and adding paragraph (e) to read as follows:

§ 718.204 Reconstitution of allotments, quotas, and acreage.

* * * * *

(b) Reconstitutions of farms subject to a production flexibility contract under part 1412 of this title will be effective for the current year only if initiated before the earlier of June 1 of the fiscal year or prior to the issuance of production flexibility contract payments for the farm or farms being reconstituted.

* * * * *

(d) Notwithstanding the provisions of paragraph (c) of this section, a reconstitution may be effective for the current year if the county committee, with the concurrence of the State committee, determines that the purpose of the request for reconstitution is not to perpetrate a scheme or device the effect of which is to avoid the statutes and regulations governing commodity programs impacted by this part. Further, however, in the event that a farm is subject to both paragraphs (b) and (c) then the farm reconstitution will be effective for the current year only if the conditions of both paragraphs are met.

(e) Throughout this subpart, when referring to combining or dividing acreage, such acreages will include production flexibility contract acres and any conditional production flexibility contract eligibility that may be held under an existing CRP contract.

5. Amend § 718.205 by:
a. Revising paragraph (a);
b. Revising paragraph (b)(1); to
c. Revising paragraphs (b)(4), (c)(2), and (c)(3);
d. Redesignating paragraph (c)(4)(ii) as paragraph (c)(4)(iii);
e. Adding a new paragraph (c)(4)(ii);
f. Revising newly redesignated paragraph (c)(4)(iii);
g. Revising paragraph (d)(1);
h. Revising paragraph (e);
i. Redesignating paragraphs (f) through (i) as paragraphs (g) through (j);
j. Adding a new paragraph (f);
k. Revising newly redesignated paragraph (i)(1) introductory text; and
l. Revising newly redesignated paragraph (i)(2).

The revisions and additions read as follows:

§ 718.205 Rules for determining farms, allotments, quotas, and acreage when reconstitution is made by division.

(a) The methods for dividing farms, allotments, quotas, and acreages in order of precedence, when applicable, are estate, designation by landowner, contribution, agricultural use, default, cropland, and history. The proper method shall be determined on a crop-by-crop basis.

(b)(1) The estate method is the proration of allotments, quotas, and acreages for a parent farm among the heirs in settling an estate. If the estate sells a tract of land before the farm is divided among the heirs, the allotments, quotas, and acreages for that tract shall be determined by using one of the methods provided in paragraphs (c) through (h) of this section.

* * * * *

(4) If allotments, quotas, and acreages are not apportioned in accordance with the provisions of paragraph (b)(2) or (3) of this section, the allotments, quotas, and acreages shall be divided pursuant to paragraphs (d) through (h) of this section, as applicable.

(c)(1) * * *

(2) If the county committee determines that allotments, quotas, and acreages cannot be divided in the manner designated by the owner because of the conditions set forth in paragraph (c)(4) of this section, the owner shall be notified and permitted to revise the designation so as to meet the conditions in paragraph (c)(4) of this section. If the owner does not furnish a revised designation of allotments, quotas, and acreages within a reasonable time after such notification, or if the revised designation does not meet the conditions of paragraph (c)(4) of this section, the county committee will prorate the allotments, quotas, and acreages in accordance with paragraphs (d) through (h) of this section.

(3) If a parent farm is composed of tracts, under separate ownership, each separately owned tract being transferred in part shall be considered a separate farm and shall be constituted separately from the parent farm using the rules in paragraphs (d) through (h) of this section, as applicable, prior to application of the provisions of this paragraph.

(4) * * *

(ii) Where the land of the parent farm is subject to deed of trust, lien, or mortgage, the holder of the deed of trust, lien, or mortgage must agree to the division of allotments, quotas, or acreage.

(iii) Where the part of the farm from which the ownership is being transferred was owned for a period of less than 3 years, the designation by landowner method shall not be available with respect to the transfer unless the county committee determines that the primary purpose of the ownership transfer was other than to retain or sell allotments, quotas, or acreages. In the absence of such a determination, and if the farm contains land which has been owned for less than 3 years, that part of the farm which has been owned for less than 3 years shall be considered as a separate farm and the allotments, quotas or acreages shall be assigned to that part of the farm in accordance with paragraphs (d) through (h) of this section. Such apportionment shall be made prior to any designation of allotments, quotas or acreages with respect to the part of the farm which has been owned for 3 years or more.

* * * * *

(d) (1) The contribution method is the proration of a parent farm's allotments or quotas to each tract as the tract contributed to the allotments or quotas at the time of combination. The contribution method may be used when the provisions of paragraphs (b) and (c) of this section do not apply.

* * * * *

(e) The agricultural use method is the proration of the acreage to the resulting tracts in the same proportion that the agricultural use land for each resulting tract relates to the agricultural use land for the parent tract. This method of division shall be used if the provisions of paragraphs (b) and (c) of this section do not apply.

(f) The default method is the separation of tracts from a farm with each tract maintaining the acreage attributed to the tract when the reconstitution is initiated.

* * * * *

(i) (1) Allotments, quotas, and acreages apportioned among the divided tracts pursuant to paragraphs (d) through (h) of this section may be increased or decreased with respect to a tract by as much as 10 percent of the allotment, quota, or acreage determined under such subsections for the parent farm if:

* * * * *

(2) Farm program payment yields calculated for the resulting farms of a division may be increased or decreased if the county committee determines the method used did not provide an equitable distribution considering available land, cultural operations, and changes in the type of farming conducted on the farm. Any increase in a farm program payment yield on a resulting farm shall be offset by a corresponding decrease on another resulting farm of the division.

* * * * *

6. Add a new § 718.210, to read as follows:

§ 718.210 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0560–0025.

Signed at Washington, DC, on January 19, 2000.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 00–1967 Filed 2–3–00; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 951 and 997

[No. 2000–03]

RIN 3069–AA92

Determination of Appropriate Present-Value Factors Associated with Payments Made by the Federal Home Loan Banks to the Resolution Funding Corporation

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulations by adding a new part to implement provisions of the

Gramm-Leach-Bliley Act (Gramm-Leach-Bliley) related to the aggregate value of, and end date for, payments made by the Federal Home Loan Banks (Banks) to the Resolution Funding Corporation (REFCORP). These payments are used to pay a portion of the interest owed on bonds issued by REFCORP. Gramm-Leach-Bliley changed the method of assessing the Banks for mandated annual payments to REFCORP from a fixed payment of $300 million to a payment of 20 percent of the net earnings of the Banks. Gramm-Leach-Bliley also requires the Finance Board to adjust the final payment date for the Banks' obligation so that the value of the actual payments made under the new methodology will be equivalent to the value of a benchmark annuity, which corresponds to the payments that would have been made under the prior law. The relevant values are required to be discounted to reflect the time value of money, using appropriate present-value factors selected by the Finance Board in consultation with the Secretary of the Treasury.

The proposed rule establishes a method for making the required present value calculations and for adjusting the termination date for the Banks' payments to REFCORP. As described more completely in the Supplementary Information, when 20 percent of the Banks' quarterly net earnings exceeds or falls short of a specified benchmark annuity, the excess or shortage will be ''used'' to defease or to extend the Banks' future obligations by simulating the purchase or sale of zero-coupon Treasury securities. The Banks' REFCORP obligation would cease when their payments equal the value of the benchmark annuity.

DATES: The Finance Board will accept comments on the proposed rule in writing on or before March 6, 2000.

ADDRESSES: Send comments to Elaine L. Baker, Secretary to the Board, by electronic mail at *bakere@fhfb.gov,* or by regular mail to the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, Deputy Chief Economist, Office of Policy, Research, and Analysis, (202) 408–2845, *mckenziej@fhfb.gov;* Austin J. Kelly, Senior Financial Economist, Office of Policy, Research, and Analysis, (202) 408–2541, *kellya@fhfb.gov;* or Thomas E. Joseph, Attorney-Advisor, (202) 408–2512, *josepht@fhfb.gov.* Staff also can be reached by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. A telecommunication device for deaf persons (TDD) is available at (202) 408–2579.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

A. FIRREA

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law 101–73, 103 Stat. 183 (Aug. 9, 1989), established REFCORP to provide funds for the Resolution Trust Corporation (RTC). 12 U.S.C. 1441b. REFCORP was authorized to issue up to $30 billion in debt obligations; as of September 20, 1999, REFCORP had $29.9 billion in non-callable bonds outstanding with maturities ranging from October 15, 2019, to April 15, 2030. The RTC used the proceeds from the sale of these bonds to pay the costs of liquidating failed savings associations. FIRREA amended the Federal Home Loan Bank Act (Bank Act) to require the Banks to pay $300 million annually toward the interest on those bonds if REFCORP's income from other sources specified in the Bank Act was insufficient to pay the interest on the REFCORP bonds. Income from these other sources has always been insufficient to pay the interest on the REFCORP bonds, and the Banks have paid $300 million annually to REFCORP. To the extent amounts available from the other statutorily specified sources and the Banks' $300 million are insufficient to pay the interest on the REFCORP bonds, the Bank Act directs the United States Department of the Treasury (Treasury) to pay to REFCORP additional amounts that will be used by REFCORP to pay the interest. 12 U.S.C. 1441b(f)(2)(E).

It has been the practice of the Banks to make payments to REFCORP on a quarterly basis, typically on January 15, April 15, July 15, and October 15 of each year. These dates correspond to the dates on which REFCORP makes coupon payments on the outstanding bonds. The aggregate amount of the Banks' quarterly interest payments has been $75 million, which the Banks have accrued during the calendar-year quarter immediately preceding the payment. To date, the Banks have made all required REFCORP interest payments.[1] Prior to the enactment of Gramm-Leach-Bliley, Public Law 106–102, 113 Stat. 1338 (Nov. 12, 1999), the Banks' obligation to pay interest on the REFCORP bonds would have terminated upon payment of the $75 million due for the first quarter of 2030, which would have been paid on April 15, 2030, the final maturity date for the last REFCORP bond.

As previously noted, the Banks' REFCORP obligation prior to the enactment of Gramm-Leach-Bliley was a fixed dollar amount that bore no relationship to the net income of any Bank. As a result, in the years that the Banks experience reduced income, as occurred in the early 1990's, each Bank's REFCORP obligation, as a percent of its income, increases significantly. This historically has caused the Banks to seek ways to generate higher earnings to meet the statutorily mandated REFCORP and Affordable Housing Program [2] obligations and to continue to pay a dividend sufficient to retain members. The Banks' historical solution to the dilemma has been to amass large portfolios of investment securities and generate arbitrage earnings. While this strategy has been profitable and has posed no safety and soundness threat to the Bank System, the Finance Board, Congress, and the Treasury have noted and criticized the strategy because the investments do not advance the mission of the Banks, which are government sponsored enterprises with a public purpose. The fixed-dollar nature of the REFCORP obligation has been cited by critics as part of the cause of the problem.

B. Gramm-Leach-Bliley

Gramm-Leach-Bliley changed the Banks' REFCORP assessment from a fixed-dollar $300 million annual payment to an annual payment of 20 percent of each Bank's net earnings. *See* Public Law 106–102, sec. 607, 133 Stat. 1455–56 (*amending* 12 U.S.C. 1441b(f)(2)(C)). Gramm-Leach-Bliley also contains provisions intended to assure that the change in the method of assessing the Banks' REFCORP obligation does not increase or decrease

[1] REFCORP was capitalized through statutorily mandated contributions from the Banks that are held in the REFCORP principal fund. *See* 12 U.S.C. 1441b(g)(2). Those contributions, which the Bank Act required to be subtracted from the Banks' gross annual REFCORP interest obligation, ended in January 1991, and were sufficiently large so as to offset through January 1991 the Banks' annual obligations to pay a portion of the interest on the REFCORP bonds. The first Bank payment used exclusively to cover interest on the REFCORP bonds was that made for the first quarter of 1991, which was made on April 15, 1991.

[2] The Bank Act also requires each Bank to establish an Affordable Housing Program (AHP). *See* 12 U.S.C. 1430(j). In 1995 and subsequent years, each Bank annually must contribute 10 percent of its preceding year's net earnings (*i.e.,* after REFCORP) to its AHP, subject to a Bank System-wide minimum contribution of $100 million. *Id.* The actual aggregate Bank-System AHP contribution in 1999 exceeded $190 million.

the burden of paying interest on the REFCORP bonds either for the Banks or the Treasury. To accomplish this goal, the Gramm-Leach-Bliley amendments require the value of payments actually made by the Banks to REFCORP to equal the value of a $300 million annual annuity that commences on the issuance date of the first REFCORP bond (October 15, 1989) and ends on the maturity date of the last REFCORP bond (April 15, 2030), where the relevant values are properly discounted to account for the time value of money. This annuity exactly mimics the amounts that had been due from the Banks for interest on REFCORP bonds under the prior law.

Gramm-Leach-Bliley specifically requires the Finance Board to make an annual determination of the extent to which the value of the aggregate amounts paid by the Banks exceeds or falls short of the value of an annuity of $300 million per year that commences on the issuance date and ends on the final scheduled maturity date of the obligations and to select appropriate present-value factors for making such determinations, in consultation with the Secretary of the Treasury. *See* Public Law 106–102, sec. 607, 113 Stat. 1455–56 (*amending* 12 U.S.C. 1441b(f)(2)(C)(ii)). The Finance Board also is required to shorten or extend the term of the Banks' REFCORP obligation as necessary to ensure that the value of all payments made by the Banks is equivalent to the value of the referenced annuity. *See id.* (*amending* 12 U.S.C. 1441b(f)(2)(C)(iii)). The Finance Board may, if required, extend the term of the payment obligation beyond the final scheduled maturity date for the REFCORP bonds. *Id.* (*amending* 12 U.S.C. 1441b(f)(2)(C)(iii) and (iv)).

II. Analysis of the Proposed Rule

A. Overview of the Proposed Present-Value Calculation

In order to implement the provisions of Gramm-Leach-Bliley discussed above, the Finance Board is proposing a methodology for adjusting the date of the final REFCORP payment due from the Banks. The methodology entails the simulated purchase or sale each quarter of zero-coupon Treasury bonds.[3] The effect of the simulated purchase or sale of the zero-coupon bonds will be to defease the most distant outstanding quarterly benchmark annuity payment or, in the case of a sale, to extend the benchmark annuity payment schedule in quarterly increments. When all quarterly annuity payments have actually been covered through payment or defeasance, the Banks' REFCORP obligation would cease. While this explanation discusses benchmark annuity ''payments'' and the ''purchase'' and ''sale'' of zero coupon bonds, we emphasize that these payments, purchases, and sales are simulated and do not actually occur. They are used as a device to equate the cash flows, on a present-value basis, of the amounts paid by the Banks under the Gramm-Leach-Bliley provisions with the payments that would have been made under the prior law.

In theory, when an assessment of 20 percent of the Banks' net earnings exceeds the benchmark annuity value of $75 million, the excess amount would be used to simulate the purchase of zero-coupon Treasury bonds, the maturity dates of which correspond to the payment dates for the most-distant, non-defeased quarterly benchmark annuity and the par amount of which corresponds to the benchmark annuity payment due in that specific quarter. Because the purchased bonds ''mature'' on the ''payment'' date for the benchmark annuity and have a par amount equal to the benchmark amount, the amount ''received'' upon maturity of the bonds can be used to ''pay'' the benchmark annuity payment. The simulated purchase of the zero-coupon bonds will defease the future benchmark annuity obligations. The estimates for the applicable interest rates on zero-coupon Treasury bonds maturing on specific dates in the future are available from, and will be provided to, the Finance Board by the Treasury's Office of Market Finance.

For example, assume that on April 15, 2000, the date of the first REFCORP payment under the Gramm-Leach-Bliley provisions, 20 percent of the Banks' quarterly net earnings equals $86.3 million. Of that $86.3 million, $75 million would be used to ''cover'' the quarterly benchmark annuity due on April 15, 2000 and the amount in excess of $75 million, or $11.3 million, would be used to simulate the purchase of a 30-year zero-coupon Treasury bond with a par amount of $75 million and a maturity date of April 15, 2030, the date of the final benchmark annuity payment. (The cost of the purchase of a zero-coupon bond can be found by taking the present value of the par amount of the bond, discounted at current interest rates.) At current interest rates, the (estimated) cost of a zero-coupon Treasury bond that matures on April 15, 2030, has a par amount of $75 million, and is purchased on April 15, 2000, would be approximately $11.3 million. The available excess, therefore, could completely defease the benchmark annuity payment of $75 million due on April 15, 2030.

If 20 percent of net earnings for the first quarter of 2000 were greater than $86.3 million, then all or part of the penultimate benchmark annuity payment of $75 million due on January 15, 2030 also could be defeased. In this case, the ''cost' of the relevant 29-year, 9-month zero-coupon Treasury bond with a par amount of $75 million and maturity date of January 15, 2030 would be approximately $11.5 million. Thus, if 20 percent of net earnings for the first quarter of 2000 were $97.8 million, the $75 million payment due on January 15, 2030, could also be fully defeased. (A payment of $97.8 million on April 15, 2000 would be sufficient to cover the current $75 million quarterly benchmark annuity plus the $11.3 million required to defease the April 15, 2030 annuity payment plus the $11.5 million needed to defease the quarterly annuity payment for January 15, 2030.)

The reported net income for the Banks was $496 million in the second quarter of 1999 and $556 million in the third quarter of 1999. Twenty percent of these amounts would be $99.2 million and $111.2 million, respectively, which would have produced an available quarterly excess much larger than was used in the above examples if the new assessment methodology had been in effect in 1999.

The Finance Board is proposing that fractional parts of future payments can be defeased if the excess quarterly payment would defease less than a full payment. Using the previous example, if 20 percent of quarterly net income for the first quarter of 2000 were $80 million, only $5 million would be available to simulate the purchase of a zero-coupon Treasury bond. This excess would go towards defeasing about 44 percent of the April 15, 2030 payment (*i.e.,* $5.0 million divided by $11.3 million). Any ''excess'' above $75 million from the Banks REFCORP payment due on July 15, 2000, would then be put toward defeasing the remainder of the April 15, 2030, benchmark annuity payment. Specifically, the July excess payment would be first used to simulate the purchase of a 29-year and 9-month zero-coupon Treasury bond that matures on April 15, 2030.

[3] The use of zero-coupon Treasury bonds is consistent with Office of Management and Budget (OMB) Circular A–11, which implements the Federal Credit Reform Act of 1990 (FCRA). Under the FCRA, cash flows stemming from direct government loans and government loan guarantees are discounted by the interest rate nor zero-coupon Treasury securities with the same maturity as each quarter's projected cash flow. Thus, the recommended approach is consistent with the budgetary treatment of other government loan activities.

If 20 percent of quarterly net income were less than $75 million, the defeasance scheme would work in reverse. Instead of simulating the purchase of zero-coupon Treasury bonds, the calculation would simulate the sale of zero-coupon bonds with a maturity corresponding to the last non-defeased quarterly annuity payment or to the first quarter thereafter if the last non-defeased annuity payment already equaled $75 million. The interest rate would be the same as that for a zero-coupon Treasury bond with the same maturity date. In effect, the Banks are agreeing to pay back the deficit still owed on the quarterly benchmark annuity at a future date, and are being charged interest at the zero-coupon Treasury rate.

Because no quarterly benchmark annuity payment will be more than $75 million, if a payment deficit has a future value of more than $75 million (or raises the value of a partially defeased quarterly benchmark annuity payment to more than $75 million), another quarter will be added at the end of the annuity schedule and the amount in excess of $75 million will be owed in that newly added quarter. The interest rate for a zero-coupon Treasury maturing in the newly added quarter will be used to calculate the future value of such excess amount. The result of these calculations would be to lengthen the end date of the quarterly benchmark annuity payments and effectively extend the Banks' REFCORP obligation. To the extent that the Banks must make any payments beyond the final maturity date of the REFCORP bonds, those payments would be made to the Treasury.

The Finance Board believes the proposed methodology will be simple to implement. The only information needed to calculate the date of the Banks' last REFCORP payment is quarterly net income and the interest rate on zero-coupon Treasury bonds the maturities of which coincide with and bracket the date of the last non-defeased benchmark quarterly payment. The Treasury's Office of Market Finance has indicated that it will provide and certify these rates to the Finance Board, as it does for a number of other agencies. The Treasury uses information from market transactions when it estimates the interest rates on zero-coupon Treasury bonds.

The Finance Board solicits comments on all aspects of the proposed methodology.[4]

[1] Gramm-Leach-Bliley provides that the Finance Board shall select appropriate present-value factors for making the statutorily required determinations in ''consultation with the Secretary of the Treasury.'' Pub. L. 106–102, sec. 607,113 Stat. 1455–56 (*amending* 12 U.S.C. 1441b(f)(2)(C)(ii). Finance Board staff has met with staff from OMB and Treasury, and will provide a copy of the proposed rule to the Secretary of the Treasury for comment.

B. Definitions—Section 997.1.

Section 997.1 of the proposed rule sets forth the definitions for a number of terms used in new part 997.

The term ''actual quarterly payment'' is defined as the amounts that the Banks actually pay to REFCORP in accordance with a calendar-year quarterly assessment equal to 20 percent of each Bank's quarterly net earnings. The Finance Board understands from discussions with REFCORP that the Banks will continue to make quarterly payments to REFCORP as set forth in the now-existing payment schedule. Specifically, quarterly payments are proposed to be made, as they are now, on January 15, April 15, July 15, and October 15 of each year (or on the next business day if those dates fall on weekends or holidays).

The term ''benchmark quarterly payment'' is defined as $75 million, which equals one-quarter's payment on the benchmark annuity of $300 million per year prescribed in Gramm-Leach-Bliley, or such amounts that may result from adjustments required by the calculations made in accordance with part 997. The definition, therefore, recognizes that the value of certain benchmark quarterly payments will be adjusted in line with the calculations set forth in proposed §§ 997.2 and 997.3. Initially, the end date for all benchmark quarterly payments will be April 15, 2030, although that date will be adjusted by the calculations made under the proposed rule. The implicit assumption in the proposed rule is that the benchmark quarterly payments are due on the same date that the Banks' actual quarterly payments are due.

By dividing the annual annuity into quarterly payments, the annuity schedule exactly corresponds to the payment schedule of $75 million per quarter that existed prior to the enactment of Gramm-Leach-Bliley. Using a quarterly benchmark annuity payment, therefore, best assures that the Banks' RECORP payments made under Gramm-Leach-Bliley will be compared exactly to the payments that would have been made under the prior law.

The term ''current benchmark quarterly payment'' is defined in the proposed rule as the benchmark quarterly payment that corresponds to the actual quarterly payment. The current benchmark quarterly payment will almost always equal $75 million. The only exception may occur for the final remaining benchmark quarterly payment if that payment is less than $75 million because of adjustments made under § 997.2 or § 997.3.

The terms ''excess quarterly payment'' and ''deficit quarterly payments'' are defined in the proposed rule as the amounts by which the payments actually assessed and made by the Banks to REFCORP either exceed or fall short of the current quarterly benchmark annuity, respectively. These will be the amounts used to simulate the purchase of the zero-coupon Treasury bonds needed to defease future benchmark quarterly payments or used to simulate the sale of the zero-coupon bonds which will effectively extend the term of the Banks' REFCORP obligation.

The term ''quarterly present value determination'' is defined by the proposed rule to mean the calculation that will be performed under either § 997.2 or § 997.3. More importantly, the definition is designed to provide the method whereby the Finance Board can fulfill the requirement in Gramm-Leach-Bliley that ''the [Finance] Board annually shall determine the extent to which the value of the aggregate amounts paid by the Federal home loan banks exceeds or falls short of the value of [the benchmark] annuity.'' Public Law 106–102, sec. 607 113 Stat. 1456 (*amending* 12 U.S.C. 1441b(f)(2)(C)(ii)).

The proposed quarterly determination reflects the longstanding practice that the Banks pay REFCORP quarterly. More importantly, a calculation on other than a quarterly basis, for example on an annual basis, would not give the Banks credit for the time value of money associated with excess quarterly payments. Conversely, an annual calculation would not charge the Banks any interest during a year for a deficit quarterly payment. The Finance Board believes its proposal is consistent with the requirements of Gramm-Leach-Bliley. Further, the Finance Board believes that making its determination quarterly and at the same time when the Banks make their actual REFCORP payments will best serve Gramm-Leach-Bliley's goal of assuring that the change in the method of assessing the Banks' obligation will not increase or decrease the burden of paying interest on the REFCORP bonds either for the Banks or the Treasury. The Finance Board recognizes that, if the quarterly payment schedule for the Banks' REFCORP obligations changes, corresponding modifications to these rules may be necessary.

C. Reduction of the Payment Term—Section 997.2.

Section 997.2 sets forth the calculation that the Finance Board proposes to use to determine the amount by which the term of the Banks' REFCORP obligation will be reduced when the Banks actual quarterly payment results in an excess quarterly payment. Under § 997.2 of the proposed rule, the future value of any excess quarterly payment would be calculated using the interest rate on a zero-coupon Treasury bond rate that matures on the date of the last outstanding benchmark quarterly payment. The interest rate will be obtained from the Treasury and will be the spot interest rate for the relevant Treasury zero-coupon bond as of the day of the Banks' actual quarterly payment. The future value calculation set forth in § 997.2 of the proposed rule is the mathematical equivalent of the calculations discussed in the explanation in Part I above. Specifically, the calculation described in the proposed rule is equivalent to calculating the present value, or ''cost,'' of a zero-coupon Treasury bond with a par amount and maturity date that are the same as the amount and due date for the last non-defeased benchmark quarterly payment.

The applicable interest rate would always be for a zero-coupon Treasury bond maturing on the due date of the benchmark quarterly payment that is affected by the defeasance calculation. Therefore, where an excess quarterly payment is sufficiently large so that more than one benchmark quarterly payment can be defeased, additional calculations would be made with respect to the future value amount remaining after the last outstanding benchmark quarterly payment has been defeased. First, the future value calculation for this residual amount would be reversed. Then, a new future value for the resulting residual excess quarterly payment would be calculated using the interest rate for a zero-coupon Treasury bond maturing in the quarter immediately prior to the one for which the benchmark quarterly payment had just been defeased.

Given the proposed calculation, an excess quarterly payment would always result in removing from the benchmark annuity schedule both the current benchmark quarterly payment and all or part of the most-distant, outstanding quarterly benchmark payment(s) still remaining on the schedule.

D. Extension of the Payment Term—Section 997.3

Section 997.3 of the proposed rules sets forth the calculation that the Finance Board proposes to use to determine the amount by which the term of the Banks' REFCORP obligation will be extended if the Banks actual quarterly payment results in a deficit quarterly payment. The future value calculation under this section is proposed to be the same as the one described for proposed § 997.2, except that the amount resulting from the calculation will be added to the last outstanding partial quarterly benchmark payment. Where the last outstanding quarterly benchmark payment is $75 million, the future value of the deficit quarterly payment would be applied to a new quarterly payment extending the annuity schedule. In no case would a benchmark quarterly payment exceed $75 million.

The zero-coupon interest rate used in the proposed calculation would always correspond to a zero-coupon Treasury bond maturing in the quarter for which a new benchmark quarterly payment is being adjusted upward or which is being added to the annuity schedule. Given the proposed calculation, a deficit quarterly payment would always result in removing from the benchmark annuity schedule the current benchmark quarterly payment but adding amounts to the last outstanding benchmark quarterly payment or adding new benchmark quarterly payments to the schedule. The proposed rule makes clear that the Finance Board would act on its authority to extend the Banks REFCORP payment obligation beyond April 15, 2030, if required to do so based upon the calculations made under this section. *See* Public Law 106–102, sec. 607, 113 Stat. 1455–56 (*amending* 12 U.S.C. 1441b(f)(2)(C)(iii) and (iv)).

E. Calculation of the Quarterly Present-Value Determination—Section 997.4

Section 997.4 of the proposed rule is based upon the assumption that REFCORP will make the calculations required under §§ 997.2 and 997.3, and provide the results of the calculations to the Finance Board. The Finance Board understands that REFCORP is willing and able to perform this task. Moreover, the Finance Board believes that REFCORP is the best entity to calculate the quarterly present-value determination. A REFCORP model is currently used both to assess the Banks' actual quarterly payments and to calculate the Banks' required AHP payments. It would be relatively simple to adjust the existing REFCORP model to perform the calculations required under this part. Allowing REFCORP both to estimate the Banks' quarterly payment assessment and to calculate the quarterly present-value determination would also centralize the relevant calculations in one entity, and thus facilitate the supervision and auditing of the process set forth in this rule.

As proposed, § 997.4 requires the Finance Board to obtain from Treasury the zero-coupon Treasury bond interest rates needed to complete the calculations and provide those rates to REFCORP. REFCORP, itself, will know the value of the Banks' actual quarterly payments since REFCORP collects those payments from the Banks. The Finance Board would maintain the official record of the results of the calculations. Section 997.4 of the proposed rule also makes clear that the Finance Board will perform the calculations required under this part if the Banks' payment obligations extend beyond April 15, 2030 or if REFCORP is for any reason unable to perform the calculations or make the results known to the Finance Board. With respect to the date of April 15, 2030, REFCORP is to be dissolved ''as soon as practicable, after the maturity and full payment of all obligations issued by [it],'' 12 U.S.C. 1441b(j), which occurs on April 15, 2030, when the last REFCORP bond matures, and this contingency provision has been included in case the term of the Banks' payment obligation has been extended beyond that date.

F. Termination of the Obligation—Section 997.5.

Section 997.5 of the proposed rules establishes a method for determining when the Banks' obligation to pay REFCORP will terminate. Gramm-Leach-Bliley provides that the Finance Board must extend or shorten the Banks' payment obligation to REFCORP until such time as ''the value of all payments made by the Banks is equivalent to the value of [the benchmark] annuity [described therein].'' Public Law 106–102, sec. 607, 113 Stat. 1455–56 (*amending* 12 U.S.C. 1441b(f)(2)(C)(iii)). This will occur when the actual quarterly payment, after performing any calculation required by proposed § 997.2, equals the last outstanding quarterly benchmark payment(s). It should be noted that if the sole remaining outstanding quarterly benchmark payment is less than $75 million because of adjustments made under proposed §§ 997.2 and 997.3, the Banks will terminate their obligation as long as 20 percent of net earnings at least equals that outstanding amount,

even if 20 percent of net earnings is less than $75 million.

Gramm-Leach-Bliley requires the Banks' REFCORP obligation to terminate when the aggregate value of their payments equals the value of the benchmark annuity. To ensure that these values are equal, the final actual quarterly payment (after making any calculation required by proposed § 997.2) made by the Banks must not be more than any outstanding benchmark quarterly payment(s). This would require the final actual quarterly payment to be reduced if 20 percent of the Banks' quarterly net earnings exceeds the amounts needed to cover the outstanding benchmark quarterly payment(s). In fact, Gramm-Leach-Bliley specifically directs the Finance Board to pro rate the final REFCORP payment to assure the equivalence in the value of the Banks' aggregate payments and the benchmark annuity, if the final payment occurs after April 15, 2030. *See* Public Law 106–102, sec. 607, 113 Stat. 1455–56 (*amending* 12 U.S.C. 1441b(f)(2)(C)(iv)). However, if the Banks' final payment occurs before April 15, 2030, the authority to assess the Banks' quarterly payments will continue to rest with REFCORP, acting under the supervision of Treasury, *see* 12 U.S.C. 1441b and 12 CFR part 1510, and REFCORP would need to make any required adjustments.

The wording of § 997.5 also reflects the fact that Gramm-Leach-Bliley requires the Banks to make their payments to REFCORP until April 15, 2030 and directly to Treasury after that date. Public Law 106–102, sec. 607, 113 Stat. 1455–56 (*amending* 12 U.S.C. 1441b(f)(2)(C)(i) and (iv)).

G. Technical Amendment—Section 951.1.

The Finance Board is also proposing to amend the definition of the term ''net earnings of a Bank'' as used in the Finance Board's Affordable Housing Program regulation and set forth in recently proposed redesignated 12 CFR 951.1 (formerly 12 CFR 960.1) (64 FR 52148, September 27, 1999). The amendment is technical in nature and reflects the fact that under the Gramm-Leach-Bliley amendments, each Bank will pay to REFCORP an amount equal to 20 percent of its net earnings rather than a pro rata amount of the Bank System's fixed annual contribution of $300 million, as required under the prior law. Accordingly, the Finance Board is proposing to delete the words ''pro rata share of the'' from the definition of ''net earnings of a Bank'' in § 951.1.

III. Regulatory Flexibility Act

The proposed rule applies only to the Finance Board and to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic effect on a substantial number of small entities.

IV. Paperwork Reduction Act

The proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 33 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects

12 CFR Part 951

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

12 CFR Part 997

Federal home loan banks, Resolution funding corporation.

For the reasons set forth in the preamble, the Finance Board proposes to amend 12 CFR chapter IX as follows:

PART 951—AFFORDABLE HOUSING PROGRAM

1. The authority citation for part 951, as proposed to be redesignated at 64 FR 52150, continues to read as follows:

Authority: 12 U.S.C. 1430(j).

§ 951.1 [Amended]

2. Amend § 951.1, as proposed to be redesignated at 64 FR 52150, by removing the words ''pro rata share of the'' from the definition ''Net earnings of a Bank''.

3. Add part 997 to subchapter L, as proposed to be added at 64 FR 52150, to read as follows:

PART 997—RESOLUTION FUNDING CORPORATION OBLIGATIONS OF THE BANKS

Sec.

997.1 Definitions.
997.2 Reduction of the payment term.
997.3 Extension of the payment term.
997.4 Calculation of the quarterly present-value determination.
997.5 Termination of the obligation.

Authority: 12 U.S.C. 1422b(a) and 1441b(f).

§ 997.1 Definitions.

As used in this part:

Actual quarterly payment means the quarterly amount paid by the Banks to fulfill the Banks' obligation to pay toward interest owed on bonds issued by the REFCORP. The amount will equal 20 percent of the quarterly net earnings of the Banks, or such other amount assessed in accordance with the Act and the regulations adopted thereunder.

Benchmark quarterly payment means $75 million, or such amount that may result from adjustments required by calculations made in accordance with §§ 997.2 and 997.3.

Current benchmark quarterly payment means the benchmark quarterly payment that corresponds to the date of the actual quarterly payment.

Deficit quarterly payment means the amount by which the actual quarterly payment falls short of the current benchmark quarterly payment.

Excess quarterly payment means the amount by which the actual quarterly payment exceeds the current benchmark quarterly payment.

Quarterly present-value determination means the quarterly calculation that will determine the extent to which an excess quarterly payment or deficit quarterly payment alters the term of the Banks' obligation to the REFCORP. This determination will fulfill the requirements of 12 U.S.C 1441b(f)(2)(C)(ii), as amended by section 607, Public Law 106–102, 113 Stat. 1455–1456.

REFCORP means the Resolution Funding Corporation established in 12 U.S.C. 1441b.

§ 997.2 Reduction of the payment term.

(a) *Generally.* The Finance Board shall shorten the term of the obligation of the Banks to make payments toward the interest owed on bonds issued by the REFCORP each quarter in which there is an excess quarterly payment.

(b) *Excess quarterly payment.* Where there is an excess quarterly payment, the quarterly present-value determination shall be as follows:

(1) The future value of the excess quarterly payment shall be calculated using the estimated interest rate, as provided to the Finance Board by the Department of the Treasury, on a zero-coupon Treasury bond the maturity of which is the payment date of the last non-defeased benchmark quarterly payment.

(2) The future value calculated in paragraph (b)(1) of this section shall be subtracted from the amount of the last non-defeased quarterly benchmark payment.

(3) If the difference resulting from the calculation in paragraph (b)(2) of this

section is greater than zero, then the last non-defeased quarterly benchmark payment is reduced by the future value of the excess quarterly payment.

(4) If the difference resulting from the calculation in paragraph (b)(2) of this section is less than zero, then the last non-defeased quarterly benchmark payment shall be defeased and the payment term shall be shortened.

(5) The amount of the excess quarterly payment that is not already applied to defeasing the payment under paragraph (b)(4) of this section shall be applied toward defeasing the last non-defeased quarterly benchmark payment using the estimated interest rate, as provided to the Finance Board by the Department of the Treasury, on a zero-coupon Treasury bond the maturity of which is the date of the payment to be defeased.

§ 997.3 Extension of the payment term.

(a) *Generally.* The Finance Board will extend the term of the obligation of the Banks to make payments toward interest owed on bonds issued by the REFCORP each calendar quarter in which there is a deficit quarterly payment.

(b) *Deficit quarterly payment.* Where there is a deficit quarterly payment, the quarterly present-value determination shall be as follows:

(1) The future value of the deficit quarterly payment shall be calculated using the estimated interest rate, as provided to the Finance Board by the Department of the Treasury, on a zero-coupon Treasury bond the maturity of which is the payment date of the last non-defeased benchmark quarterly payment, or the first quarter thereafter if the last non-defeased benchmark quarterly payment already equals $75 million.

(2) The future value calculated in paragraph (b)(1) of this section shall be added to the amount of the last non-defeased quarterly benchmark payment if that sum is $75 million or less.

(3) If the sum calculated in paragraph (b)(2) of this section exceeds $75 million, the last non-defeased quarterly benchmark payment will become $75 million, and the quarterly benchmark payment term will be extended.

(4) The extended payment will equal the future value of the amount of the deficit quarterly payment that has not already been applied to raising the quarterly benchmark payment to $75 million under paragraph (b)(3) of this section, using the estimated interest rate, as provided to the Finance Board by the Department of the Treasury, on a zero-coupon Treasury bond whose maturity is the date of the extended payment.

(c) *Term beyond maturity.* The benchmark quarterly payment term may be extended beyond April 15, 2030, if such extension is necessary to ensure that the value of the aggregate amounts paid by the Banks exactly equals the present value of an annuity of $300 million per year that commences on the date on which the first obligation of the REFCORP was issued and ends on April 15, 2030.

§ 997.4 Calculation of the quarterly present-value determination.

(a) *Applicable interest rates.* The Finance Board shall obtain from the Department of the Treasury the applicable estimated zero-coupon bond interest rates and provide those rates to the REFCORP so that the REFCORP can perform the calculations required under §§ 997.2 and 997.3.

(b) *Calculation by the Finance Board.* If § 997.3 requires that the term for the Banks' actual quarterly payments extend beyond April 15, 2030 or if, for any reason, the REFCORP is unable to perform the calculations or provide to the Finance Board the results of the calculations, the Finance Board shall make all calculations required under this part.

(c) *Records.* The Finance Board will maintain the official record of the results of all quarterly present-value determinations made under this part by either the REFCORP or the Finance Board.

§ 997.5 Termination of the obligation.

(a) *Generally.* The Banks' obligation to the REFCORP, or to the Department of the Treasury if the term of that obligation extends beyond April 15, 2030, will terminate when the aggregate actual quarterly payments made by the Banks exactly equal the present value of an annuity that commences on the date on which the first obligation of the REFCORP was issued and ends on April 15, 2030.

(b) *Date of the final payment.* The aggregate actual quarterly payments made by the Banks exactly equal the present value of the annuity described in paragraph (a) of this section when the value of any remaining benchmark quarterly payment(s), after the benchmark quarterly payments have been adjusted as required by §§ 997.2 and 997.3, exactly equals the actual quarterly payment.

Dated: January 19, 2000.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–1852 Filed 2–3–00; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–73–AD]

Airworthiness Directives; Eurocopter Deutschland GMBH Model MBB-BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) applicable to Eurocopter Deutschland GMBH (ECD) Model MBB-BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters. This proposal would require modifying the engine and transmission cowling doors (cowling doors). This proposal is prompted by an emergency landing of an ECD Model MBB-BK 117 helicopter after the No. 1 engine cowling opened, separated from the helicopter, and struck the main and tail rotor blades resulting in a tail rotor imbalance and subsequent departure of the tail rotor gear box from the helicopter. The actions specified by the proposed AD are intended to prevent the cowling doors opening during flight, separating from the helicopter and impacting the main or tail rotor blades, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before April 4, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–73–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Richard A. Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–SW–73–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–73–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

Luftfahrt-Bundesamt (LBA), the airworthiness authority for the Federal Republic of Germany, notified the FAA that an unsafe condition may exist on ECD Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters. The LBA advises that the cowling doors should be modified to install a hook on each cowling door and install the respective hook retainers on the engine floor and on the transmission floor.

ECD has issued Service Bulletin No. MBB–BK 117–20–109, Revision 2, dated April 30, 1999 (SB), which specifies modifying the cowling doors by installing a hook on each cowling door and installing the respective hook retainers on the engine and transmission floor to prevent cowling doors opening fully during flight. The LBA has classified the ECD SB as mandatory and issued AD No. 1999–302, dated September 23, 1999, to ensure the continued airworthiness of these helicopters in the Federal Republic of Germany.

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

Since an unsafe condition has been identified that is likely to exist or develop on other ECD Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 of the same type designs registered in the United States, the proposed AD would require modifying the cowling doors to prevent the cowling doors from opening during flight. The actions would be required to be accomplished in accordance with the SB described previously.

The FAA estimates that 140 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 28 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1620 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $462,000.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eurocopter Deutschland GMBH: Docket No. 99–SW–73–AD.

Applicability: Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters, serial numbers 7001 through 7253 and 7500 through 7523, with transmission door cowling, left hand, part number (P/N) 117–23206–51 or 117–233731, right hand, P/N 117–23206–52 or 117–233741, and engine door cowling left hand, P/N 117–23303–51 or 117–23303–53, right hand, P/N 117–23303–52 or 117–23303–54, installed, certificated in any category.

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

Compliance: Required within 6 calendar months, unless accomplished previously.

To prevent the engine and transmission cowling doors (cowling doors) opening during flight, separating from the helicopter and impacting the main or tail rotor blades, and subsequent loss of control of the helicopter, accomplish the following:

(a) Modify the cowling doors in accordance with paragraph 2.B., Work Procedure, and

2.C., Conclusions, of Eurocopter Deutschland GMBH Service Bulletin SB–MBB–BK 117–20–109, Revision 2, dated April 30, 1999 (SB).

Note 2: Adjustment and functional testing of the hook system in accordance with paragraph 2.B.8 of the SB is critical after installation.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

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

Note 4: The subject of this AD is addressed in Luftfahrt-Bundesamt (the Federal Republic of Germany) AD No. 1999–302, dated September 23, 1999.

Issued in Fort Worth, Texas, on January 26, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–2402 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–374–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require modification of the canted pressure deck drain system in the wheel well of the main landing gear (MLG). This proposal is prompted by reports of ice accumulation on the aileron control cables and on the MLG door and door seal, during flight, due to fluid entering the canted pressure deck area, leaking into the MLG wheel well, and freezing. The actions specified by the proposed AD are intended to prevent such ice accumulation, which could render one of the aileron control systems and/or the MLG doors inoperative, resulting in reduced controllability of the airplane.

DATES: Comments must be received by March 20, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–374–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–374–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–374–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports indicating ice accumulation on the aileron control cables in the wheel well of the main landing gear (MLG) during flight on certain Model 767 series airplanes. The ice build-up was attributed to fluid from the sloping pressure deck leaking into the wheel well and freezing. One operator reported a large volume of fluid had leaked into the canted pressure deck area and ice had accumulated on the MLG door and door seal inside and outside the MLG wheel well. The ice caused the MLG door to jam and prevented extension of the MLG. Investigation revealed that fluid entered the canted pressure deck area through the sloping pressure deck seals and subsequently leaked into the wheel well and solidified. Such ice accumulation could render one of the aileron control systems and/or the MLG doors inoperative, resulting in reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–51A0020, Revision 1, dated July 22, 1999, which describes procedures for modification of the canted pressure deck drain system in the wheel well of the MLG. The modification includes, among other things, installation of canisters on the outboard pressure activated drain lines, re-routing of the existing drain lines, and installation of larger diameter drain lines to drain the water out through the underwing fairing thermal panel into the hot air stream from the ram outlets.

Accomplishment of the actions specified in the service bulletin described previously is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same

type design, the proposed AD would require modification of the canted pressure deck drain system in the wheel well of the MLG. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Difference Between Service Bulletin and This Proposed AD

Operators should note that, although the service bulletin recommends accomplishment of the modification at the first available maintenance period as soon as parts, manpower, and facilities are available, the FAA has determined that a 24-month compliance time would address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modification. In light of all of these factors, the FAA finds a 24-month compliance time for completion of the proposed modification to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 716 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 278 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 15 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $6,623 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $2,091,394, or $7,523 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 99–NM–374–AD.

Applicability: Model 767 series airplanes, line numbers 1 through 723 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent ice accumulation on the aileron control cables and/or main landing gear (MLG) door and door seal during flight, which could render one of the aileron control systems and/or the MLG doors inoperative, resulting in reduced controllability of the airplane, accomplish the following:

(a) Within 24 months after the effective date of this AD: Modify the canted pressure deck drain system in the wheel well of the MLG in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–51A0020, Revision 1, dated July 22, 1999.

Note 2: Modification of the canted pressure deck drain system accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 767–51A0020, dated November 19, 1998, is considered acceptable for compliance with the modification specified in this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

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

Issued in Renton, Washington, on January 28, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2414 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–369–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness

directive (AD) that is applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes. This proposal would require installation of new, improved bonding jumpers on the horizontal stabilizer. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to ensure adequate electrical bonding between the horizontal and vertical stabilizers. Inadequate electrical bonding, in the event of a lightning strike, could cause electrical arcing, and result in damage to the hydraulic lines and consequent failure of the hydraulic systems.

DATES: Comments must be received by March 6, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–369–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–369–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–369–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on all Fokker Model F.28 Mark 0070 and 0100 series airplanes. The RLD advises that in February 1988, during a routine scheduled flight, a Fokker Model F.28 Mark 0100 series airplane was struck by lightning. The report indicated that the No. 2 hydraulic system's ''Low Quantity Warning'' occurred; shortly thereafter, the same warning occurred on the No. 1 hydraulic system. Although only the hydraulic accumulator-driven systems remained available after the ''Total Hydraulic Failure'' procedure was accomplished, the flight crew was able to land the airplane safely. Investigation revealed that the lightning current penetrated the vertical stabilizer and bonding jumper of the horizontal stabilizer.

Bonding Jumper Design

At present, on Fokker Model F.28 Mark 0070 and 0100 series airplanes, only a single bonding jumper is installed between the vertical and horizontal stabilizer on the left-hand side. (Currently, no bonding jumper is installed on the right-hand side.) Reports indicate that a bonding jumper had melted, although it is unclear whether this was due to the lightning strike event preceding the hydraulic systems failure, or due to an earlier event. In either case, because the bonding jumper failed, the electrical arcing that resulted from the lightning strike damaged the hydraulic lines.

Further investigation revealed that the existing bonding jumper installation is not adequate to meet certain requirements, and the RLD advises that it is necessary to improve the electrical bonding of the horizontal stabilizer. Inadequate electrical bonding between the horizontal and vertical stabilizers, in the event of a lightning strike, could cause electrical arcing, and result in damage to the hydraulic lines and consequent failure of the hydraulic systems.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF100–23–032, dated September 22, 1999, which describes procedures for installing new, improved bonding jumpers on the horizontal stabilizer. On the left-hand side of the horizontal stabilizer, installation procedures include removing the existing bonding jumper of the horizontal stabilizer torsion box and replacing it with a new, improved bonding jumper; removing and discarding the existing fasteners; and ensuring that the fastener holes are in proper condition. On the right-hand side of the horizontal stabilizer, installation procedures include drilling new fastener holes in the horizontal stabilizer hinge fitting and in the lower skin of the horizontal stabilizer torsion box; deburring all drilled holes; and installing a new, improved bonding jumper. The Fokker service bulletin references Fokker 70/100 Aircraft Maintenance Manual (AMM), Chapter 20–13–05, as an additional source of service information to accomplish the installation of the new bonding jumpers.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive 1999–128(A), dated October 29, 1999, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

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

for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin recommends a compliance time of 24 months for accomplishment of the actions specified in the service bulletin, the RLD has mandated a compliance time of 18 months. The FAA concurs with the RLD and has determined that an 18-month compliance time would have a limited impact on the operators while ensuring the continued safety of the fleet. In determining the proposed compliance time, the FAA considered the safety implications, average utilization rate of the affected fleet, and availability of required modification parts. In light of this, the FAA considers that the proposed compliance time of 18 months is appropriate.

Cost Impact

The FAA estimates that 129 Fokker Model F.28 Mark 0070 and 0100 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $69 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $24,381, or $189 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket 99–NM–369–AD.

Applicability: All Model F.28 Mark 0070 and 0100 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure adequate electrical bonding between the horizontal and vertical stabilizers, accomplish the following:

(a) Within 18 months after the effective date of this AD, accomplish the actions required by paragraphs (a)(1) and (a)(2) of this AD, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–23–032, dated September 22, 1999.

(1) On the left-hand side of the horizontal stabilizer, replace the existing bonding jumper on the horizontal stabilizer torsion box with a new, improved bonding jumper.

(2) On the right-hand side of the horizontal stabilizer, install a new, improved bonding jumper.

Note 2: Fokker Service Bulletin SBF100–23–032, dated September 22, 1999, references Fokker 70/100 Aircraft Maintenance Manual (AMM), Chapter 20–13–05, as an additional source of service information to accomplish the installation of the new bonding jumpers.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 1999–128(A), dated October 29, 1999.

Issued in Renton, Washington, on January 31, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2470 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–65–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With Pratt & Whitney JT9D–70 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require inspections, tests, and certain modifications of the thrust reverser control and indication system and wiring on each engine, and corrective action, if necessary.

This proposal also would require installation of a terminating modification, and repetitive functional tests of that installation to detect discrepancies, and repair, if necessary. This proposal is prompted by the results of a safety review, which revealed that in-flight deployment of a thrust reverser could result in significant reduction in airplane controllability. The actions specified by the proposed AD are intended to ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes, which could result in inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane.

DATES: Comments must be received by March 20, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Larry Reising, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2683; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–65–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 26, 1991, a Boeing Model 767–300ER series airplane was involved in an accident as a result of an uncommanded in-flight deployment of a thrust reverser. Following that accident, a study was conducted to evaluate the potential effects of an uncommanded thrust reverser deployment throughout the flight regime of the Boeing Model 747 series airplane. The study included a re-evaluation of the thrust reverser control system fault analysis and airplane controllability. The results of the evaluation indicated that, in the event of thrust reverser deployment during high-speed climb using high engine power, these airplanes also could experience control problems. This condition, if not corrected, could result in possible failure modes in the thrust reverser control system, inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane.

The FAA has prioritized the issuance of AD's for corrective actions for the thrust reverser system on Boeing airplane models following the 1991 accident. Based on service experience, analyses, and flight simulator studies, it was determined that an in-flight deployment of a thrust reverser has more effect on controllability of twin-engine airplane models than of Model 747 series airplanes, which have four engines. For this reason, the highest priority was given to rulemaking that required corrective actions for the twin-engine airplane models. AD's correcting the same type of unsafe condition addressed by this AD have been previously issued for specific airplanes within the Boeing Model 737, 757 and 767 series.

Service experience has shown that in-flight thrust reverser deployments have occurred on Model 747 airplanes during certain flight conditions with no significant airplane controllability problems being reported. However, the manufacturer has been unable to establish that acceptable airplane controllability would be achieved following these deployments throughout the operating envelope of the airplane. Additionally, safety analyses performed by the manufacturer and reviewed by the FAA, has been unable to establish that the risks for uncommanded thrust reverser deployment during critical flight conditions is acceptably low.

Explanation of Relevant Service Information

The FAA has reviewed and approved the following Boeing Service Bulletins:

• 747–78A2159, dated May 18, 1995, which describes procedures for repetitive inspections and tests of the thrust reverser control and indication system to detect discrepancies, and corrective action, if necessary. The corrective action includes, among other things, repair or replacement of any discrepant parts with new parts.

• 747–78–2153, Revision 1, dated November 27, 1996, which describes procedures for installation of an additional locking system on the thrust reversers. This service bulletin references the following service bulletins:

1. Boeing Service Bulletin 747–78–2135, dated August 31, 1995, which describes procedures for the installation of provisional wiring for an additional thrust reverser locking device.

2. Boeing Service Bulletin 747–78A2149, Revision 1, dated May 9, 1996, and Revision 2, dated August 29, 1996, which describe procedures for inspection of the thrust reverser control system wiring to detect damaged wires; modification of certain wiring, and an operational test of the thrust reverser. This service bulletin references Boeing Standard Wiring Practices Manual, which describes procedures for repair or replacement of certain wire bundles, if necessary.

3. Rohr Service Bulletin TBC–CNS 78–33, Revision 1, dated August 20, 1996, which describes additional procedures for installation of an additional locking system on the thrust reversers.

Accomplishment of Boeing Service Bulletin 747–78–2153, Revision 1, requires prior or concurrent accomplishment of Boeing Service Bulletins 747–78–2135 and 747–78A2149, Revision 1 or Revision 2; and concurrent accomplishment of Rohr Service Bulletin TBC–CNS 78–33, Revision 1. Accomplishment of these actions would eliminate the need for certain repetitive inspections and tests.

The FAA also has reviewed and approved Rohr Service Bulletin TBC–CNS 78–32, Revision 1, dated August 20, 1996, which describes procedures for modification of the thrust reverser control system wiring concurrent with accomplishment of Boeing Service Bulletin 747–78A2149, Revision 1 or Revision 2.

The modification procedures described by Boeing Service Bulletins 747–78–2153, and 747–78–2135 were previously validated by the manufacturer, and the necessary changes have been incorporated into the latest revisions of the service bulletins. The FAA has determined that the procedures specified in Boeing Service Bulletins 747–78–2153, Revision 1, and 747–78–2135, as well as the other service bulletins referenced in this proposed AD, have been effectively validated and therefore proposes that this modification be required.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this proposed AD would require inspection of the thrust reverser control and indication system and wiring on each engine, and corrective action, if necessary; and eventual modification of the wiring. This proposal also would require installation of a terminating modification and repetitive functional tests of that installation to detect discrepancies, and repair, if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Repetitive functional tests to detect discrepancies of the actuation system lock on each thrust reverser would be required to be accomplished in accordance with the procedure included in Appendix 1 of this AD. Correction of any discrepancy detected would be required to be accomplished in accordance with the procedures described in the Boeing 747 Airplane Maintenance Manual.

Differences Between Service Bulletin and This Proposed AD

Operators should note that, although Boeing Service Bulletin 747–78–2153, Revision 1, does not recommend a specific compliance time for accomplishment of the actuation system lock installation, the FAA has determined that an unspecified compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the installation. In light of all of these factors, the FAA finds a 36-month compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators also should note that, although the service bulletin does not specify repetitive functional testing of the actuation system lock installation following accomplishment of that installation, the FAA has determined that repetitive functional tests of the actuation system lock on each thrust reverser will support continued operational safety of thrust reversers with actuation system locks.

Cost Impact

There are approximately 7 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 6 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 32 work hours (8 work hours per engine) per airplane, to accomplish the proposed thrust reverser inspection, modification, and test, described in 747–78A2149, Revision 1, or Revision 2, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $11,520, or $1,920 per airplane.

It would take approximately 8 work hours (2 work hours per engine) per airplane, to accomplish the proposed 1,000-flight-hour inspections described in Boeing Service Bulletin 747–78A2159, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $2,880, or $480 per airplane, per inspection cycle.

It would take approximately 20 work hours (5 work hours per engine) per airplane, to accomplish the proposed 18-month thrust reverser system checks described in Boeing Service Bulletin 747–78A2159, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the test proposed by this AD on U.S. operators is estimated to be $7,200, or $1,200 per airplane, per test cycle.

It would take approximately 544 work hours per airplane, to accomplish the proposed provisional wiring, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $195,840, or $32,640 per airplane.

It would take approximately 593 work hours per airplane, to accomplish the proposed sync lock installation, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the installation proposed by this AD on U.S. operators is estimated to be $213,480, or $35,580 per airplane.

It would take approximately 4 work hours per airplane, to accomplish the proposed functional test of the additional locking system, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the test proposed by this AD on U.S. operators is estimated to be $1,680, or $240 per airplane, per test cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would

accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 99–NM–65–AD.

Applicability: Model 747 series airplanes equipped with Pratt & Whitney JT9D–70 series engines; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent deployment of a thrust reverser during flight and consequent reduced controllability of the airplane, accomplish the following:

Inspection/Repair

(a) Within 200 flight hours or 50 flight cycles after the effective date of this AD, whichever occurs later: Inspect the thrust reverser wiring on each engine to detect discrepancies, in accordance with Boeing Service Bulletin 747–78A2149, Revision 1, dated May 9, 1996, or Revision 2, dated August 29, 1996. Prior to further flight, repair any discrepancy, in accordance with the service bulletin.

Modification and Tests

(b) Within 5,000 flight hours or 500 flight cycles after the effective date of this AD, whichever occurs later: Accomplish the thrust reverser wiring modification on each engine in accordance with Boeing Service Bulletin 747–78A2149, Revision 1, dated May 9, 1996, or Revision 2 dated August 29, 1996.

(1) Concurrent with accomplishment of Boeing Service Bulletin 747–78A2149, Revision 1 or Revision 2: Accomplish the modification of the thrust reverser control system wiring specified in Rohr Service Bulletin TBC–CNS 78–32, Revision 1, dated August 20, 1996.

(2) Prior to further flight following accomplishment of the modification specified in paragraphs (b) and (b)(1): Perform an operational test of the thrust reverser wiring on each engine to detect discrepancies in accordance with Boeing Service Bulletin 747–78A2149, Revision 1, dated May 9, 1996, or Revision 2 dated August 29, 1996. Prior to further flight, correct any discrepancy detected, in accordance with the service bulletin.

Repetitive Inspections and Tests

(c) Perform the inspections and tests of the thrust reverser control and indication system to detect discrepancies at the times specified in paragraphs (c)(1) and (c)(2) of this AD, in accordance with Boeing Alert Service Bulletin 747–78A2159, dated May 18, 1995.

(1) Within 90 days after the effective date of this AD, inspect in accordance with Part III, ''1,000 Flight Hour Inspections'' of the Accomplishment Instructions of the alert service bulletin. Repeat at intervals not to exceed 1,000 flight hours until accomplishment of paragraph (f) of this AD.

(2) Within 1,500 flight hours or 4 months after the effective date of this AD, whichever occurs later, inspect and test in accordance with Part III, ''18 Month Thrust Reverser System Checks'' of the Accomplishment Instructions of the alert service bulletin. Repeat at intervals not to exceed 18 months until accomplishment of paragraph (e) of this AD.

Corrective Actions

(d) If any inspection or test required by paragraph (c) of this AD cannot be successfully performed as specified in the referenced service bulletin, or if any discrepancy is detected during any inspection or test, prior to further flight, repair in accordance with Boeing Alert Service Bulletin 747–78A2159, dated May 18, 1995.

Additionally, prior to further flight, any failed inspection or test required by paragraph (c) of this AD must be repeated and successfully accomplished.

Terminating Action

(e) Accomplish the requirements of paragraphs (e)(1) and (e)(2) of this AD at the times specified in those paragraphs. Accomplishment of these actions constitutes terminating action for the repetitive inspections and tests required by paragraph (c) of this AD.

(1) Within 36 months after the effective date of this AD: Install an additional locking system on each engine thrust reverser in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2153, Revision 1, dated November 27, 1996.

(2) Prior to or concurrent with accomplishment of Boeing Service Bulletin 747–78–2153, Revision 1: Accomplish the installation of provisional wiring for the locking system on the thrust reversers in accordance with Boeing Service Bulletins 747–78–2135, dated August 31, 1995; and 747–78A2149, Revision 1, dated May 9, 1996, or Revision 2, dated August 29, 1996. Additionally, concurrent with accomplishment of Boeing Service Bulletin 747–78–2153, Revision 1, accomplish the installation of the provisional wiring described previously in accordance with Rohr Service Bulletin TBC–CNS 78–33, Revision 1, dated August 20, 1996.

Repetitive Functional Tests

(f) Within 4,000 hours time-in-service after accomplishment of paragraph (e) of this AD: Perform a functional test to detect discrepancies of the additional locking system on each thrust reverser, in accordance with Appendix 1 (including Figures 1 and 2) of this AD. Prior to further flight, correct any discrepancy detected, in accordance with the procedures described in the Boeing 747 Airplane Maintenance Manual. Repeat the functional test thereafter at intervals not to exceed 4,000 hours time-in-service.

Alternative Methods of Compliance

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

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

Special Flight Permit

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

Appendix 1

Thrust Reverser Sync-Lock Integrity Test

1. General

A. Equipment and Materials

(1) Thrust reverser flex drive adapter—196K8004–1 or 196K8004–3; Rohr Industries, Inc., Chula Vista, California 92012.

2. Thrust Reverser Sync-Lock Integrity Test

B. Prepare for the Thrust Reverser Sync Lock Test

(1) Open applicable T/R CONT & BLEED SYS circuit breaker on P12 circuit breaker panel.
(2) Open fan cowl doors (Ref 71–11–02, Maintenance Practices).
(3) Check that forward and aft circumferential latches and all tension latches are engaged and locked.
(4) Depress drive unit latch operating arm and retain by engaging latch arm (detail C).
(5) Disengage stow latch hook on left and right thrust reversers (detail D).
(6) On either lower slave actuator (detail B), either remove coverplate from forward drive pad or remove locking plug from lower drive pad.
(7) Move left-hand sync-lock lever to the unlocked position.
(8) Using appropriate drive adapter (196K8004–1 at forward drive pad or 196K8004–3 at lower drive pad), attempt to manually deploy sleeves.

CAUTION: DO NOT APPLY A TORQUE LOAD OF MORE THAN 75

POUND-INCHES TO THE ACTUATOR; A GREATER TORQUE LOAD CAN CAUSE DAMAGE TO THE MECHANISM.

(9) If sleeves move, replace the right-hand sync-lock.
(10) Move left-hand sync-lock lever to the locked position.
(11) Move right-hand sync-lock lever to the unlocked position.
(12) Repeat step (8) above.
(13) If sleeves move, replace the left-hand sync-lock.
(14) Move left-hand sync-lock lever to the unlocked position.
(15) Rotate actuator gearshaft to fully stow the sleeves.
(16) When translating sleeves reach stowed position, check that stow latch hooks have engaged fixed hooks on both sides (detail D).
(17) Depress latch operating arm and disengage latch arm (detail C); allow latch arm to raise.
(18) After releasing arm, verify latch engagement by attempting to rotate feedback gear on drive unit using 1/4-inch square drive; gear shall not rotate in excess of 0.1 of a turn.

CAUTION: DO NOT APPLY A TORQUE LOAD OF MORE THAN 25 POUND-INCHES ON FEEDBACK GEAR; A GREATER TORQUE LOAD CAN CAUSE DAMAGE TO THE MECHANISM.

(19) As applicable, install locking plug (with square section facing away from drive pad) or coverplate on actuator drive pad. Secure plug or plate with bolts tightened to 50–70 pound-inches.
(20) Move both left-and right-hand sync-lock levers to the locked position.
(21) Close fan cowl doors (Ref 71–11–02, Maintenance Practices).
(22) Close T/R CONT & BLEED SYS circuit breaker.
(23) Repeat the sync-lock integrity test on all remaining thrust reversers.

BILLING CODE 4910–13–P

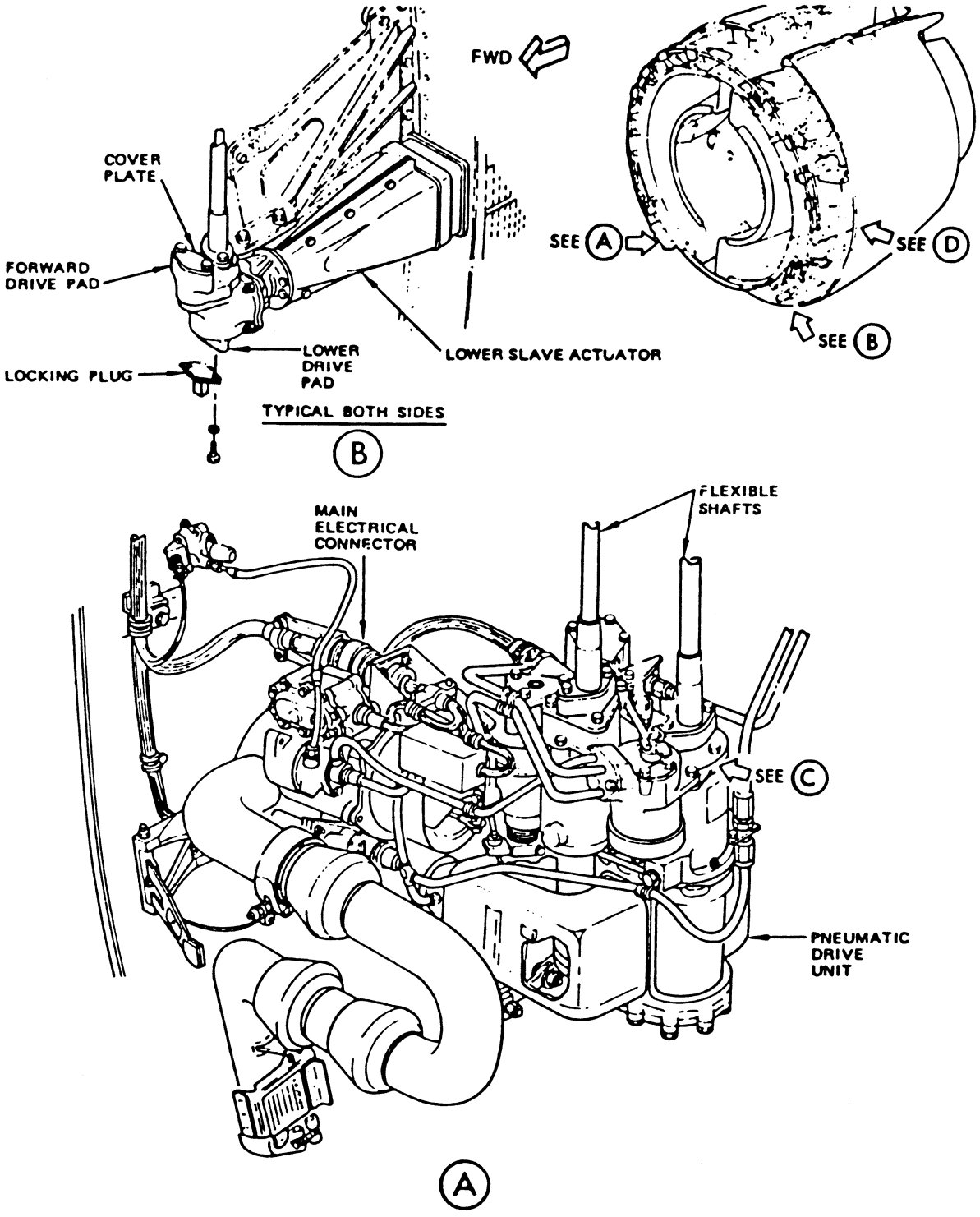
FWD
COVER PLATE
FORWARD DRIVE PAD
LOCKING PLUG
LOWER DRIVE PAD
LOWER SLAVE ACTUATOR
TYPICAL BOTH SIDES
B
SEE A
SEE D
SEE B
MAIN ELECTRICAL CONNECTOR
FLEXIBLE SHAFTS
SEE C
PNEUMATIC DRIVE UNIT
A

Figure 1

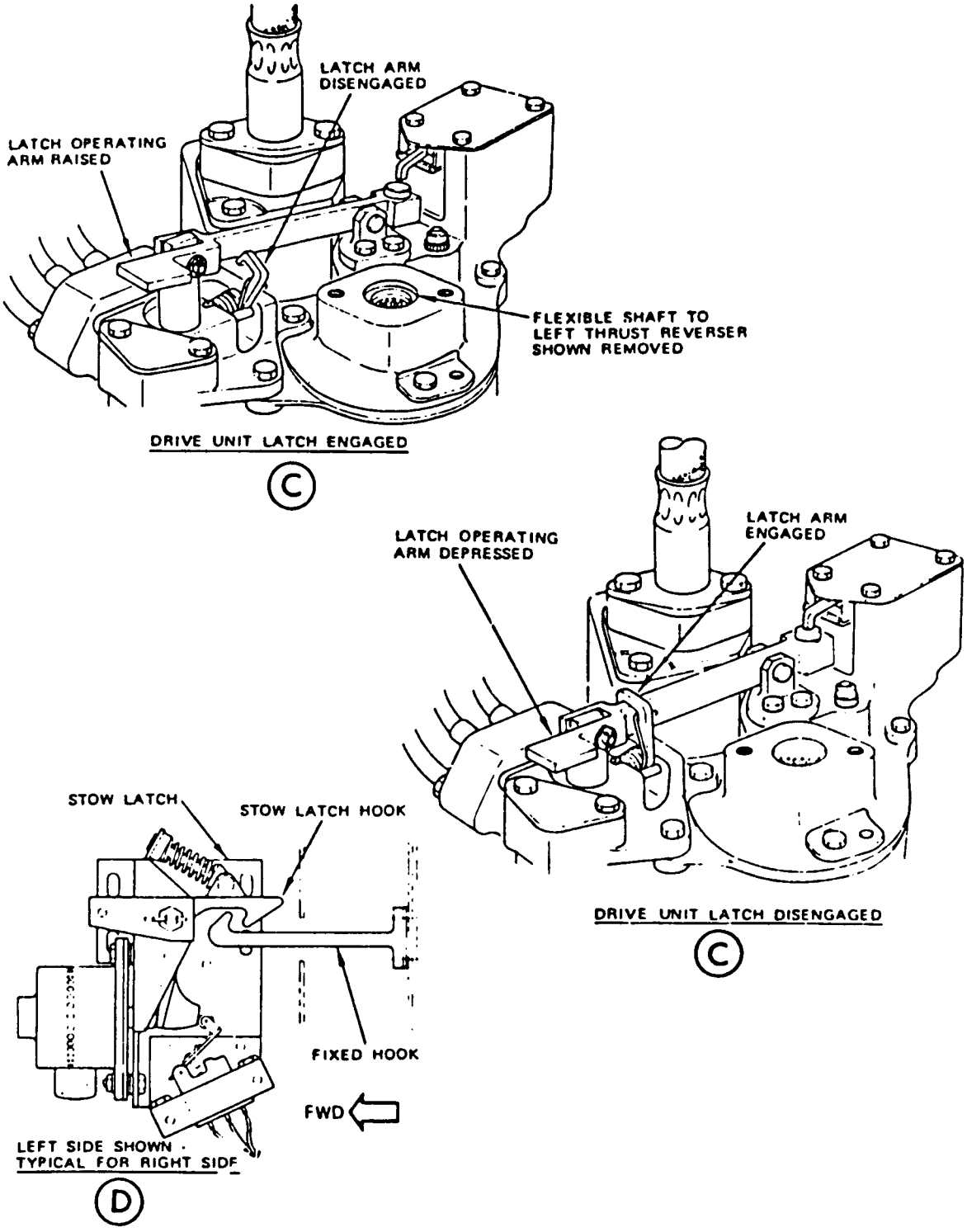
LATCH ARM DISENGAGED
LATCH OPERATING ARM RAISED
FLEXIBLE SHAFT TO LEFT THRUST REVERSER SHOWN REMOVED
DRIVE UNIT LATCH ENGAGED
C
LATCH OPERATING ARM DEPRESSED
LATCH ARM ENGAGED
DRIVE UNIT LATCH DISENGAGED
C
STOW LATCH
STOW LATCH HOOK
FIXED HOOK
FWD
LEFT SIDE SHOWN - TYPICAL FOR RIGHT SIDE
D

Figure 2

Issued in Renton, Washington, on January 28, 2000.

Donald L. Riggin,

Acting Manager Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2415 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 217 and 219

National Forest System Land and Resource Management Planning

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On October 5, 1999, the Forest Service published a proposed rule to guide land and resource management planning on national forests and grasslands (64 FR 54074). The agency extended the public comment period for this proposed rule, which is scheduled to end on February 3, 2000 (64 FR 70204). In response to Congressional requests and the need to provide the public more time to review and evaluate the proposed regulations, the Forest Service is extending the public comment period until February 10, 2000.

DATES: Comments must be submitted in writing and must be received by February 10, 2000.

ADDRESSES: Send written comments on the proposed planning rule to the CAET-USDA Team, Attn. Planning Rule, Forest Service, USDA, 200 East Broadway, Room 103, Post Office Box 7669, Missoula, MT 59807; or via email to planreg/wo__caet@fs.fed.us; or via facsimile to (406) 329–3021.

Comments, including names and addresses when provided, are subject to public inspection and copying. The public may inspect comments received on this proposed rule in the Office of Deputy Chief, National Forest Systems, Third Floor, Southwest Wing, Yates Building, 14th and Independence Ave., SW, Washington, DC between the hours of 8:30 AM and 4:00 PM.

FOR FURTHER INFORMATION CONTACT: Bob Cunningham, Ecosystem Management Coordination Staff, telephone: (202) 205–7820.

Dated: February 1, 2000.

Barbara C. Weber,

Acting Associate Chief for Natural Resources.

[FR Doc. 00–2597 Field 2–3–00; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA236–0204b; FRL–6533–7]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing revisions to the California State Implementation Plan (SIP) which concern an emission offsets exemption for pollution control projects that are mandated by District, state, or federal regulation.

The intended effect of this action is to regulate emissions from stationary sources of air pollution subject to District new source review (NSR) regulation in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by March 6, 2000.

ADDRESSES: Comments should be addressed to: Roger Kohn, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey CA 93940.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1238).

SUPPLEMENTARY INFORMATION: This document concerns Monterey Bay Unified Air Pollution Control District Rule 207, Review of New or Modified Sources, submitted to EPA on October 29, 1999 by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: January 21, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–2471 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 105–0201 FRL–6532–9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the California State Implementation Plan (SIP) for ozone. The revision concerns the control of oxides of nitrogen (NO_X) for the Kern County Air Pollution Control District (KCAPCD). The revision concerns KCAPCD Rule 425.1 for the control of oxides of nitrogen (NO_X) emissions from hot mix asphalt paving plants. The intended effect of proposing approval of this rule is to regulate emissions of (NO_X) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate this rule into the Federally approved SIP. EPA has evaluated this rule and is proposing to approve it under provisions of the CAA regarding EPA actions on SIP submittals, SIPs for national primary and secondary ambient air quality standards (NAAQS), and plan requirements for nonattainment areas.

DATES: Comments must be received on or before March 6, 2000.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office, AIR–4, Air Division, U.S.

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

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 95812

Kern County Air Pollution Control District, 2700 ''M'' Street, Suite 302, Bakersfield, CA 93301

FOR FURTHER INFORMATION CONTACT: Ed Addison, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1160.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for approval into the California SIP is Kern County Air Pollution Control District (KCAPCD) Rule 425.1, Hot Mix Asphalt Paving Plants (Oxides of Nitrogen). Rule 425.1 was submitted by the State of California to EPA on October 19, 1994.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182 (f) of the Clean Air Act.

On November 25, 1992, EPA published a proposed rule entitled, ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X supplement) which describes and provides preliminary guidance on the requirements of section 182(f). The NO_X Supplement should be referred to for further information on the NO_X requirements.

Section 182 (f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and sections 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compound (VOCs), in moderate or above ozone nonattainment areas. KCAPCD is classified as serious; [1] therefore this area is subject to the RACT requirements of section 182(b)(2) and the November 15, 1992 deadline cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rule covering NO_X sources and submitted as a SIP revision requires final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

This document addresses EPA's proposed action for Kern County Air Pollution Control District (KCAPCD) Rule 425.1, Hot Mix Asphalt Paving Plants (Oxides of Nitrogen), adopted by the KCAPCD on October 13, 1994. The State of California submitted Rule 425.1 to EPA October 19, 1994. Rule 425.1 was found to be complete on October 21, 1994, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V. [2]

NO_X emissions contribute to the production of ground level ozone and smog. KCAPCD Rule 425.1 specified exhaust emission standards for NO_X, and was originally adopted as part of KCAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone, and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for the rule.

III. EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). Among those provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions. The EPA interpretation of these requirements, which forms the basis for today's action, appears in the NO_X Supplement (57 FR 55620) and various other EPA policy guidance documents.[3]

For the purpose of assisting State and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble. In the NO_X Supplement, EPA provides preliminary guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources for NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X.

In addition, the California Air Resources Board (CARB) is developing a guidance document entitled, ''California Clean Air Act Guidance, Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Institutional, Industrial and Commercial Boilers, Steam Generators and Process Heaters,'' July 18, 1991. EPA has used CARB's RACT Determination, dated July 18, 1991, in evaluating Rule 425.1 for consistency with the CAA's RACT requirements. In general, EPA uses the guidance documents cited above, as well as other relevant and applicable guidance documents, to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

There is currently no version of Kern County Air Pollution Control District Rule 425.1, Hot Mix Asphalt Paving Plants (Oxides of Nitrogen), in the SIP. Submitted Rule 425 includes the following provisions:

- General provisions including applicability, exemptions, and definitions.
- Exhaust emmissions standards for oxides of nitrogen (NO_X).

[1] KCAPCD retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, Pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] ''Issues Relating to VOC regulation Cutpoints, Deficiencies, and Deviation, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

• Compliance and monitoring requirements including compliance schedule, reporting requirements, monitoring and record keeping, and test methods.

Rules submitted to EPA for approval as revisions to the SIP must be fully enforceable, must maintain or strengthen the SIP and must conform with EPA policy in order to be approved by EPA. When reviewing rules for SIP approvability, EPA evaluates enforceability elements such as test methods, record keeping, and compliance testing in addition to RACT guidance regarding emission limits. Rule 425.1 strengthens the SIP through the addition of enforceable measures such as emissions limits, record keeping, test methods, definitions, and more stringent compliance testing. Because there is no existing rule in the SIP, the incorporation of Rule 425.1 into the SIP would decrease the NO_X emissions allowed by the SIP. A more detailed discussion of the sources controlled, the controls required, and justification for why these controls represent RACT can be found in the Technical Support Document (TSD), dated December 1, 1999, which is available from the U.S. EPA, Region IX office.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations and EPA policy. Therefore, Kern County Air Pollution Control District Rule 425.1 is being proposed for approval under section 110(k)(3) of the CAA is meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO_X Supplement to the General Preamble.

IV. 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 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under 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.

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 and 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 (FRA) 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 costss 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen ozone, Reporting and record keeping requirements, Volatile organic compounds.

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

Dated: January 21, 2000.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 00–02476 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6532–6]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 31

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This proposed rule proposes to add 8 new sites to the NPL. Six of the sites are being proposed to the General Superfund Section of the NPL and 2 of the sites are being proposed to the Federal Facilities Section.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before April 4, 2000.

ADDRESSES: By Postal Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); Ariel Rios Building; 1200 Pennsylvania Avenue NW; Washington, DC 20460.

By Express Mail: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to superfund.docket@epa.gov. E-mailed comments must be followed up by an original and three copies sent by mail or express mail.

For additional Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the Supplementary Information portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G), U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue NW; Washington, DC 20460, or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Pub. L. 99–499, 100 Stat. 1613 et seq.

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as an appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on October 22, 1999 (64 FR 56966).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and

identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which contamination from that area has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a Remedial Investigation/Feasibility Study (''RI/FS'') as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. As of January 19, 2000, the Agency has deleted 206 sites from the NPL.

H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of January 19, 2000, EPA has deleted portions of 18 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) The site qualifies for deletion from the NPL.

Of the 206 sites that have been deleted from the NPL, 197 sites were deleted because they have been cleaned up (the other 9 sites were deleted based on deferral to other authorities and are not considered cleaned up). As of January 19, 2000, there are a total of 676 sites on the CCL. This total includes the 197 deleted sites. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund.

II. Public Review/Public Comment

A. Can I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this rule are contained in dockets located both at EPA Headquarters in Washington, DC and in the Regional offices.

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional dockets after the appearance of this proposed rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–9232. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional dockets is as follows:

Barbara Callahan, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Records Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1356

Ben Conetta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4435

Dawn Shellenberger (GCI), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Joellen O'Neill, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8127.

Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7-J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7570.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross

Avenue, Mailcode 6SF-RA, Dallas, TX 75202–2733; 214/665–7436.
Carole Long, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7224.
David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR-SA, Denver, CO 80202–2466; 303/312–6757.
Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/744–2343.
David Bennett, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–2103.

You may also request copies from EPA Headquarters or the Regional dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters docket for this rule contains: HRS score sheets for the proposed site; a Documentation Record for the site describing the information used to compute the score; information for any site affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Regional Dockets?

The Regional dockets for this rule contain all of the information in the Headquarters docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional dockets.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the ''Addresses'' section. Please note that the addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas,* 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. Can I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

I. Can I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes.

J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

With today's proposed rule, EPA is proposing to add 8 new sites to the NPL; 6 sites to the General Superfund Section of the NPL and 2 sites to the Federal Facilities Section. The sites are being proposed based on HRS scores of 28.50 or above. The sites being proposed in this rule are presented in Table 1 and Table 2 which both follow this preamble.

B. Status of NPL

A final rule published elsewhere in today's **Federal Register** finalizes 10 sites to the NPL; resulting in an NPL of 1,226 final sites; 1,067 in the General Superfund Section and 159 in the Federal Facilities Section. With this proposal of 8 new sites, there are now 55 sites proposed and awaiting final agency action, 48 in the General Superfund Section and 7 in the Federal Facilities Section. Final and proposed sites now total 1,281. (These numbers reflect the status of sites as of January 19, 2000. Sites deletions may affect these numbers at time of publication in the **Federal Register**.)

IV. Executive Order 12866

A. What Is 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.

B. Is This Proposed Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

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 by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a 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.

B. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the 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.

B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?

No. While this rule proposes to revise the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this proposed rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this proposed regulation does not require a regulatory flexibility analysis.

VII. National Technology Transfer and Advancement Act

A. What Is the 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.

B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

VIII. Executive Order 12898

A. What Is Executive Order 12898?

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice

Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. 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.

B. Does Executive Order 12898 Apply to this Proposed Rule?

No. While this rule proposes to revise the NPL, no action will result from this proposal that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

IX. Executive Order 13045

A. What Is 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.

B. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

X. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Proposed Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XI. Executive Orders on Federalism

What Are The Executive Orders on Federalism and Are They Applicable to This Proposed Rule?

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.''

This 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. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, [64 FR 43255 (August 10, 1999),] which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 [52 FR 41685 (October 30, 1987),] on federalism still applies. This proposed rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. This proposed rule will not result in the imposition of any additional requirements on any State, local governments or other political subdivisions within any State. Accordingly, the requirements of section 6(c) of Executive Order 12612 do not apply to this proposed rule.

XII. Executive Order 13084

What is Executive Order 13084 and Is It Applicable to this Proposed Rule?

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

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

TABLE 1.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 31, GENERAL SUPERFUND SECTION

State	Site name	City/county
AR	Ouachita Nevada Wood Treater	Reader.
FL	Alaric Area Ground Water Plume	Tampa.
FL	Callaway & Son Drum Service	Lake Alfred.
FL	Landia Chemical Company	Lakeland.
NY	Old Roosevelt Field Contaminated Ground Water Area	Garden City.
WV	Big John Salvage—Hoult Road	Fairmont.

Number of Sites Proposed to General Superfund Section: 6.

TABLE 2.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 31, FEDERAL FACILITIES SECTION

State	Site name	City/county
VA	St. Juliens Creek Annex (U.S. Navy)	Chesapeake.
VA	Naval Weapons Station Yorktown—Cheatham Annex	Williamsburg.

Number of Sites Proposed to Federal Facilities Section: 2.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: January 28, 2000.

Timothy Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 00–2475 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 96

RIN 0930–AA04

Application Deadline for SAPT Block Grant Program

AGENCY: HHS.

ACTION: Notice of proposed rule making.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) (formerly, the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA)) has permitted applicants for its Substance Abuse Prevention and Treatment (SAPT) Block Grant program to submit an application for a grant as late as March 31 of the fiscal year for which it is applying. Starting with the fiscal year 2001 applications, SAMHSA is proposing a new date for receipt of the applications for SAPT Block Grants of October 1 of the fiscal year for which Block Grant funding is being requested. However, the deadline for two application components required to be submitted by that due date may be extended for a limited period, not to extend beyond December 31 of the same fiscal year when good cause is demonstrated.

DATES: Written comments must be received on or before March 20, 2000.

ADDRESSES: Written comments on the proposed rule must be sent to Thomas M. Reynolds, Room 13C–20, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas M. Reynolds. (301) 443–0179.

SUPPLEMENTARY INFORMATION: When SAMHSA first implemented the SAPT Block Grant program, a primary concern was affording States sufficient time to develop the increased information required to apply for a grant under this program as compared to the generally less detailed application required under the predecessor ADMS Block Grant program administered by ADAMHA [1]. This was accomplished by affording States the opportunity to delay submitting their applications to as late as March 31, fully six months into the fiscal year for which funding is requested (See 45 CFR 96.122(d). This relatively late receipt date results in insufficient time to administer the SAPT Block Grant program in accordance with all the governing provisions of law. This is most noted under circumstances calling for the clarification of application data and, if necessary, the conduct of hearings related to certain adverse decisions needing resolution by the end of the fiscal year. A tentative adverse decision requires that the applicant be provided an opportunity for a hearing consistent with section 1945(e) of the Public Health Service (PHS) Act, and there remains, as a practical matter, insufficient time in the fiscal year to provide a hearing, reach a final decision, and possibly redistribute withheld funds to the remaining applicants as provided by law (see section 1944 of the PHS Act).

States are now fully aware of the application requirements and can reasonably be expected to respond to an earlier submission date. However, if a State determines that it will not be able to submit by October 1 either the report as required at 45 CFR 96.130(e) on Synar enforcement efforts and State success in reducing youth access to tobacco products during the preceding fiscal year, or the information on State expenditures during the preceding year as required at 45 CFR 96.134(d), the State may request an extension of the due date(s) for a limited period, not to extend past December 31 of the fiscal year for which application is made. The request for the extension must be signed by the official with the authority to apply for the grant or the Governor, and must be submitted no later than September 1 of the prior fiscal year. The extension request must state for which requirement the extension is requested; include an explanation of why the State is unable to comply with the due date of October 1; state the date of submission the State is requesting; and

[1] The ADAMHA Reorganization Act, Pub. L. 102–321 (July 10, 1992), established SAMHSA as a successor-in-interest to ADAMHA for the purpose, inter alia, of administering the services oriented functions previously the responsibility of ADAMHA and created two block grant programs including the SAPT program (now administered by SAMHSA) to replace the ADMS Block Grant program.

discuss whether there are steps the State can take to avoid requiring an extension in future years.

Due date extensions for these requirements shall be granted in writing by the SAMHSA official with delegated authority to grant the extension.

The Department considered several alternatives for addressing the issue of timely application submission including an inflexible deadline without provision for extension, and no change in the current due date in recognition of State indications that timely submission of these reports can be more difficult for some States than others. It is SAMHSA's intent to move the application date to October 1 as proposed by this notice unless comments provide compelling reasons to do otherwise. Therefore, States should be preparing to submit their applications by October 1, 2000 for fiscal year 2001 funding.

Economic Impact

This rule does not have cost implications for the economy of $100 million or otherwise meet the criteria for a major rule under Executive Order 12291, and therefore does not require a regulation impact analysis. Further, this regulation will not have a significant impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

Federalism Impact

This regulation would require States to submit their applications for Substance Abuse Prevention and Treatment Block Grant funds by October 1 of the fiscal year for which they are seeking funds. States in the past have had until March 31 to submit the application. This late due date (March 31) does not give the agency sufficient time to carry out its responsibilities under the law.

SAMHSA consulted with the State organizations in the development of legislative proposals concerning the application due date and in the crafting of this NPRM. Most States indicated that they have become familiar with the application and that it would not be an undue hardship on them to meet this new requirement if there can be an extension until December 31 with regard to both maintenance of effort and Synar information. Since proposed Section 96.122(d) allows for such an extension with regard to these elements of the applications, we do not believe that there is a significant Federalism impact.

Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f) of the Executive Order 12866 and does not require an assessment of the potential costs and benefits under Section 6(a)(3) of that Order and so has been exempted from review by the Office of Management and Budget under that Order.

Paperwork Reduction Act of 1995

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA)(44 U.S.C. 3507(d)). The title, description and respondent description of the information collections are shown in the following paragraphs with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Application Deadline for SAPT Block Grant Program

Description: The Secretary is proposing to issue regulations to change the receipt date of SAPT Block Grant applications starting with the Federal Fiscal Year (FY) 2001 from March 31 to October 1. All elements of the application reporting requirements would be due October 1. However, States may request an extension of time for reporting State expenditures necessary to determine compliance with the Maintenance of Effort (MOE) requirement and/or to submit required Synar information for a period up to December 31. This change will allow HHS to review grant applications and make grant awards to all States earlier in the fiscal year. It will also provide additional time for sufficient planning in the event of any penalty actions that may be required, while recognizing the inability of some States to report the MOE and Synar data prior to December 31.

Description of Respondents: State and tribal governments.

Response burden estimate: Information collection language for the current rule is approved by OMB under control number 0930–0165 (Synar reporting requirements on youth access to tobacco) and control number 0930–0162 (for all other aspects of the annual application). The Substance Abuse Prevention and Treatment Block Grant uniform application format for FY 2000–FY 2002 is approved by OMB under control number 0930–0080. None of the specifics of these reporting requirements are being changed. Only the due date of the uniform application is impacted by this proposed rule.

At present, approximately half of all eligible block grant applicants routinely submit their uniform application for block grant funds on or before September 30 of the fiscal year preceding the fiscal year for which they are applying for funds. Approximately one half of all eligible applicants submit their uniform applications between October 1 and March 31 of the fiscal year for which block grant funds are being made available.

SAMHSA recognizes that the earlier receipt date will have an impact on the applicants, particularly those that have typically submitted their uniform application after September 30. Since the contents of the uniform application are not changing, it is difficult to estimate the additional response burden and associated costs for the first year of this change of receipt date (no additional burden is estimated for this change for future years). Therefore, a nominal response burden for each applicant of one hour is provided. In addition, it is conservatively assumed that all applicants will request an extension of the MOE and Synar reporting, and one hour is estimated for preparation of such a request.

Thus, for the first year of implementation, total response burden is estimated at 120 hours. For subsequent years, the burden estimate is 60 hours. Comments on these estimates are invited.

ANNUAL REPORTING BURDEN

45 CFR Citation and Purpose	No. of respondents	Responses per respondent	Hours per response	Total hours
96.122(d) Due date for annual report	60	1	1	60
96.122(d) Extension requests associated with MOE and Synar	60	1	1	60
Total	60			120

As required by section 3507(d) of the PRA, the Secretary has submitted a copy of this proposed rule to OMB for its review. Comments on the information collection requirements are specifically solicited in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of HHS functions, including whether the information will have practical utility; (2) evaluate the accuracy of the HHS estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to HHS on the proposed regulations.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB. (address above).

List of Subjects in 45 CFR Part 96

Administrative practice and procedure, Grant programs—health, Health care.

Dated: January 31, 2000.

Donna E. Shalala,

Secretary.

For the reasons set forth in the preamble, the Department proposes to amend Subpart L of Part 96 of Title 45 of the Code of Federal Regulations as follows:

PART 96—BLOCK GRANTS

Subpart L—Substance Abuse Prevention and Treatment Block Grant

1. The authority citation for Subpart L of Part 96 continues to read as follows:

Authority: 42 U.S.C. 300x–21 to 300x–35 and 300x–51 to 300x–64.

2. Section 96.122 (d) is revised to read as follows:

§ 96.122 Application content and procedure.

* * * * *

(d) The application (in substantial compliance with the statutory and regulatory provisions for the Block Grant) shall for fiscal years through fiscal year 2000, be submitted no later than March 31 of the fiscal year for which the State is applying. Beginning with the fiscal year 2001 application, all required components for a complete application must be submitted no later than October 1 of the fiscal year for which Block Grant funding is being requested. The submission date for the report required by § 96.130(e) to be submitted with the application and/or the information required by § 96.134(b) may be extended for good cause shown in a request signed by the official authorized to apply for the Block Grant funding on behalf of the State, or the Governor. The State should request an extension for only the amount of time necessary. In no event will an extension be granted past December 31 of the fiscal year for which application is made. All requests to extend the due date must be submitted no later than September 1 of the prior fiscal year and addressed to the same address as specified for the grant application. Extension requests must state for which requirement an extension is sought, the date of submission sought, why the State is unable to meet the October 1 due date, and discuss if there are steps the State will be able to take to avoid requiring an extension in future years, or if not, why not. Extension requests complying with these requirements will be acted upon no later than September 20 of the fiscal year prior to the year for which application is to be made. Due date extensions regarding the § 96.130(e) report and regarding the § 96.134(d) information shall only be granted in writing. In order for an applicant to have complied with the requirements of section 1932(a)(1) of the Public Health Service Act (42 U.S.C. 300x-32(a)(2)), it is necessary that the components of the application have been submitted by the date indicated or as extended pursuant to the above.

* * * * *

[FR Doc. 00–2444 Filed 2–1–00; 10:25 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Black-Tailed Prairie Dog as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the Fish and Wildlife Service, announce a 12-month finding for a petition to list the black-tailed prairie dog (*Cynomys ludovicianus*) as threatened throughout its range under the Endangered Species Act of 1973, as amended (Act). After reviewing all available scientific and commercial information, we have determined that listing this species is warranted but precluded by other higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this notice of 12-month petition finding, the black-tailed prairie dog will be added to our candidate species list.

This decision is based on—the number, variety, and significance of threats affecting the species, especially sylvatic plague (an exotic disease to which the species has no resistance) and inadequate regulatory mechanisms (some areas mandate eradication); evidence of recent general population declines in a significant portion of the species' range; and cumulative rangewide population data indicating overall population declines since 1980.

DATES: The finding announced in this document was made on February 4, 2000.

ADDRESSES: You may submit data, information, comments, or questions concerning this finding to the Field Supervisor, U.S. Fish and Wildlife Service, 420 South Garfield, Suite 400, Pierre, South Dakota 57501. You may inspect the petition finding, supporting data, and comments by appointment during normal business hours at the above address. The petition finding also will be available at the Service's Region 6 website at <www.r6.fws.gov/btprairiedog>.

FOR FURTHER INFORMATION CONTACT: Pete Gober, Field Supervisor, South Dakota Field Office (see **ADDRESSES** section), telephone (605) 224–8693, extension 24, or facsimile (605) 224–9974.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1998, we received a petition dated July 30, 1998, from the National Wildlife Federation (National Wildlife Federation 1998). The Petitioner requested that we list the black-tailed prairie dog as threatened throughout its range. The Petitioner also requested that the species be afforded emergency listing. Section 4 of the Act and regulations at 50 CFR 424 do not provide for petitions to request the listing of species on an emergency basis. However, section (4)(b)(7) of the Act and the Service's Listing Priority Guidance (63 FR 25502) direct that all petitions are to be reviewed to determine if an emergency listing is appropriate. We determined and advised the Petitioner by letter dated August 27, 1998, that it would be inappropriate to list this species on an emergency basis given its then known status. On September 16, 1999, the Petitioner requested that we readdress this issue based on reports of increased control efforts (Graber, National Wildlife Federation, *in litt.* 1999). We have reevaluated information available regarding this subject and determined that emergency listing of the species is not appropriate at this time.

Section 4(b)(3)(A) of the Act requires that, for any petition to revise the List of Threatened and Endangered Species containing substantial scientific and commercial information that listing may be warranted, we make a positive 90-day finding and initiate a status review of the species. We published a notice of a positive 90-day finding on the subject petition in the **Federal Register** on March 25, 1999 (64 CFR 14425). Accordingly, the subject petition requires a 12-month administrative finding pursuant to section 4(b)(3)(B) on whether the petitioned action is—(I) not warranted, (ii) warranted, or (iii) warranted but precluded from immediate proposal by other higher priority efforts to revise the List of Threatened and Endangered Species. When we find a petition to list a species is warranted but precluded, the species is designated a candidate species.

We believe that sufficient information is currently available to support a finding that listing the black-tailed prairie dog as threatened is warranted, but that a proposed rule at this time is precluded by work on other higher priority listing actions. We will reevaluate the status of the species in 1 year. The information contained in this notice is a summary of the information in the 12-month finding.

The National Wildlife Federation petition presented extensive information regarding the biology of the black-tailed prairie dog. This information included a description of the species and its range, as well as comments related to its population biology and trend. The Petitioner noted that the species still occurs intermittently throughout most of its historic range, although much reduced in numbers and in the amount of habitat that it occupies. The Petitioner contrasted reports that the black-tailed prairie dog once occupied as much as 100–200 million acres (ac) (40–80 million hectares (ha)) of the western North American prairie with current estimates of occupied habitat and concluded that the species' habitat has been reduced by at least 99 percent. The Petitioner attributed reductions in occupied habitat to habitat loss and degradation related to the conversion of prairie grasslands to farmland, extensive control, disease, urban development, unregulated shooting, and other factors.

On August 26, 1998, we received another petition regarding the black-tailed prairie dog from the Biodiversity Legal Foundation, the Predator Project, and Jon C. Sharps (Biodiversity Legal Foundation *et al.* 1998). They requested that we list the black-tailed prairie dog as threatened throughout its known historic range in the contiguous United States. We accepted this second request as supplemental information to the National Wildlife Federation petition. The Biodiversity Legal Foundation *et al.* (1998) provided estimates of historic and current distribution of the black-tailed prairie dog, both regionally and by State. They noted that the species' populations are impacted by eradication programs, sylvatic plague, recreational shooting, land conversion, and natural predation. The Biodiversity Legal Foundation (1999) also developed and submitted a potential plan for black-tailed prairie dog conservation.

The notice of a 90-day finding that a petition to list the black-tailed prairie dog presented substantial information that appeared in the **Federal Register** on March 25, 1999 (64 FR 14424). In this notice, we requested that any additional scientific information relevant to a proposed 12-month administrative finding be submitted to us by May 24, 1999. We published a notice in the **Federal Register** on June 4, 1999 (64 FR 29983), that reopened this period for an additional 45 days, through July 19, 1999. On October 4, 1999, we again published a notice that we would accept additional information, especially pertaining to a draft black-tailed prairie dog Conservation Assessment and Strategy (Strategy) developed by various States and its effect on the status of the species (64 FR 53655). This information collection period closed November 3, 1999.

We received approximately 14,500 comment letters during the development of this finding. The following summarizes the sources and general content of information we received.

All State wildlife agencies within the historic range of the black-tailed prairie dog provided written comments on the petition. Two State agriculture departments (New Mexico and Wyoming) and two State Legislatures (North Dakota and Wyoming) also provided comments. In general, the States opposed listing the black-tailed prairie dog but supported the development of conservation measures for the species. Most information provided by the States focused on policy and jurisdictional concerns rather than on information related to the biological status of the species.

State wildlife agencies and other interested parties also developed a Strategy for conservation of the black-tailed prairie dog (Van Pelt in prep.). The actions identified in the current draft of this Strategy remain tentative and do not at this time confer any improved status for the species. Eight of the 11 participating State wildlife agencies have signed a Memorandum of Understanding for the purpose of implementing the States' Strategy for the black-tailed prairie dog. At this time, the strategy does not include participation by the States of New Mexico, North Dakota, and Colorado, other State (non-wildlife) agencies, Federal agencies, Tribal agencies, or any private interests. We recognize the significant effort that went into the development of this strategy, and we believe that the strategy is a positive step in addressing the conservation needs of the black-tailed prairie dog. At this early stage in development of the strategy, the document lacks commitments to specific immediate actions that would affect the status of the species. We will continue working with the States and other interested parties to support the coordinated conservation efforts of the States.

Three Tribes in South Dakota provided written comments on the petition—the Cheyenne River Sioux Tribe, the Crow Creek Sioux Tribe, and the Rosebud Sioux Tribe. Information was provided by these Tribes regarding distribution and abundance and existing regulatory mechanisms on and adjoining their respective Tribal lands.

Several Federal agencies provided written comments on the petition. The Bureau of Indian Affairs (BIA) supported conservation measures and

acknowledged a possible need to list the species. The U.S. Forest Service provided supplemental information regarding the current status of black-tailed prairie dogs on National Grasslands (Sidle, U.S. Forest Service, *in litt.* 1999). The National Park Service provided information on its control efforts and noted its preference for the development and implementation of cooperative management strategies among State, Tribal, and Federal agencies rather than a listing of the species. The Corps of Engineers Omaha District also reviewed information provided in the petition, but had no specific comments.

Twenty-three county agencies (county commissions and weed/pest councils) in Colorado, Montana, Nebraska, South Dakota, and Wyoming provided written comments on the petition. All county agencies were opposed to listing the species. Economic considerations were a common concern in these comment letters. Because the Act directs that only biological considerations are to be addressed in the listing process, we cannot address economic considerations in review of this petition.

One hundred forty-four organizations (wildlife/conservation or livestock/land management organizations) provided written comments on the petition. Forty-two wildlife/conservation organizations supported listing of the black-tailed prairie dogs. Eighty-seven livestock/land management organizations were opposed to listing the species. Fifteen organizations provided recommendations but did not indicate a position.

Over 14,300 individuals provided written comments on the petition. Approximately 90 percent of all individuals supported listing the black-tailed prairie dog as threatened. The issues most frequently noted in these letters were impacts from the loss of 99 percent of the species' habitat, recreational shooting, control, and disease. Individuals opposed to listing the species most frequently expressed the view that adequate numbers of the species exist, the species is able to reproduce rapidly in response to adverse impacts, sport shooting does not impact the species, and adverse economic impacts can occur if the species is not controlled.

We received approximately 9,000 letters during the third comment period (October 4 to November 3, 1999). Of these, 84 mentioned the States' Strategy, 25 of which opposed the States' Strategy, mostly due to a perceived lack of specific conservation measures and reliance on future, voluntary actions. Fifty-six letters supported the States' Strategy, most expressing the view that the proposed measures were sufficient to avoid listing and that State management was preferable to Federal management. The remaining 3 of the 84 commenters did not express a position.

Taxonomy

Five species of prairie dogs occur in North America. Prairie dogs are rodents within the squirrel family (*Sciuridae*) and include the black-tailed prairie dog, the white-tailed prairie dog (*Cynomys leucurus*), the Gunnison's prairie dog (*C. gunnisoni*), the Utah prairie dog (*C. parvidens*), and the Mexican prairie dog (*C. mexicanus*) (Pizzimenti 1975). The Utah and Mexican prairie dogs are currently listed as threatened (49 FR 22339) and endangered (35 FR 8495), respectively. Generally the black-tailed prairie dog occurs east and north of the other four species in less arid habitat.

Some scientific literature describes a subspecies (*Cynomys ludovicianus arizonensis*) of the black-tailed prairie dog. This subspecies, found in northeastern Mexico (Ceballos *et al.* 1993), is extirpated in Arizona (Alexander 1932; Bureau of Sport Fisheries and Wildlife 1961; Van Pelt, Arizona Game and Fish Department, *in litt.* 1998) and has a remnant population in southwestern New Mexico (Hall and Kelson 1959) and in the Trans-Pecos region of Texas (Davis 1974, Hall and Kelson 1959). A complex of this subspecies in Chihuahua, Mexico, comprises the largest remaining prairie dog complex of any prairie dog species (Ceballos and Pacheco 1997).

The remainder of the species is found in eastern Montana, eastern Wyoming, eastern Colorado, eastern New Mexico, southwestern North Dakota, western and central South Dakota, western and central Nebraska, western and central Kansas, western and central Oklahoma, northwestern Texas, and southwestern Canada. Although some literature describes a subspecies, the research that has focused on evolutionary divergence (genetic segregation and differentiation within a taxon) supports categorizing the black-tailed prairie dog as a monotypic species. Based on this research we do not consider this subspecies separation to be valid. We consider the species as being monotypic. For the remainder of this notice, the use of the common name ''black-tailed prairie dog'' includes both varieties discussed above.

Biology

Prairie dogs are small, stout ground squirrels. The total length of an adult black-tailed prairie dog is approximately 14–17 inches. The weight of an individual ranges from 1 to 3 pounds. Individual appearances within the species vary in mixed colors of brown, black, gray, and white. The black-tipped tail is characteristic (Hoogland 1995). Black-tailed prairie dogs are diurnal, burrowing animals and spend most of the day above ground. They do not hibernate as do white-tailed, Gunnison's, and Utah prairie dogs (Hoogland 1995, Tileston and Lechleitner 1966). The species is very social, living in population aggregations called colonies, towns, or villages (King 1955). Groups of colonies comprise a complex. Historically, they generally occurred in large colonies that contained thousands of individuals, covered hundreds of thousands of acres, and extended for miles (Bailey 1905). This description is no longer accurate for existing black-tailed prairie dog populations; most colonies are now much smaller.

The colonial behavior of prairie dogs, especially the black-tailed prairie dog, is a significant characteristic of the species. Colonial behavior offers an effective defense mechanism by aiding in the detection of predators and deterring predators through mobbing behavior. It increases reproductive success through cooperative rearing of juveniles and aids parasite removal via shared grooming. However, it also has been noted that this behavior promotes the transmission of disease, which can significantly suppress populations (Olsen 1981, Hoogland 1995).

Several biological factors determine the reproductive potential of the black-tailed prairie dog. Females usually do not breed until their second year and live 3–4 years (Hoogland 1995, King 1955, Knowles and Knowles 1994). Females of the species produce a single litter, usually 4–5 pups, annually (Hoogland 1995, Knowles and Knowles 1994). Prairie dog dispersal is usually limited to approximately 3 miles (5 kilometers) or less, and individuals dispersing from home colonies generally move into an established colony rather than attempting to initiate a new colony (Garrett and Franklin 1988, Hoogland 1995). These limitations could restrict recruitment of animals into small and declining isolated populations and favor the reestablishment of individuals in nearby, recently abandoned colonies over the establishment of new, more distantly located colonies.

Ecology

The extent to which the black-tailed prairie dog is affected by other species, particularly ungulates, is largely unknown. The black-footed ferret (*Mustela nigripes*), swift fox (*Vulpes*

velox), mountain plover (*Charadrius montanus*), ferruginous hawk (*Buteo regalis*), burrowing owl (*Athene cunicularia*), and numerous other species are dependent upon prairie dogs to varying degrees. Although reports vary as to those species that require prairie dogs for their survival, at least 9 species depend directly on prairie dogs or their activities to some extent, and another 137 species are associated opportunistically (Kotliar *et al.* 1999). The most obligatory species of this group is the endangered black-footed ferret. Probably no other species has a more clearly documented dependence on another species than does the black-footed ferret on the prairie dog (Anderson *et al.* 1986, Biggins *et al.* 1986, Clark 1989, Forrest *et al.* 1988, Henderson *et al.* 1974, Hillman 1968, Miller *et al.* 1996).

Rangewide Distribution

The historic range of the black-tailed prairie dog included portions of 11 States, Canada, and Mexico. Today it occurs from extreme southern Canada to northeastern Mexico and from approximately the 100th meridian west to the Rocky Mountains. The species is currently present in 10 States including Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming. It has been extirpated in Arizona since as early as 1932 (Alexander 1932). We believe that significant range contractions have occurred in the southwestern portion of the species' historic range in Arizona, western New Mexico and western Texas, and in the eastern portion of the species' historic range in Kansas, Nebraska, Oklahoma, South Dakota, and Texas. These range contractions represent approximately 20 percent of the species' original range. Only a few individuals or none remain in these areas. Approximately 37 percent of the species' potential habitat in the United States has been converted to cropland (Black-footed Ferret Recovery Foundation, *in litt.* 1999). This habitat loss is essentially permanent and not considered a range contraction in the usual sense occurring at the periphery of a species' range. Although the species will occupy abandoned tilled ground, these lands are generally unavailable for use by the species because the land is continuously disturbed and thus the habitat is lost permanently.

Rangewide Abundance

Historically, black-tailed prairie dogs were one of the most conspicuous and characteristic residents of the short-grass and mixed-grass prairies of the United States. Seton (1953) estimated that, in the late 1800s, 5 billion black-tailed prairie dogs existed over their entire range of 600,000 square miles (384 million ac or 155.5 million ha). Miller *et al.* (1996) and Mulhern and Knowles (1995) provided a range for historic occupied habitat by all species of prairie dogs of 99 million-247 million ac (40 million-100 million ha). Anderson *et al.* (1986) noted that, as a conservative estimate for the early 1900s, 104 million ac (42 million ha) of rangeland may have been occupied by all species of prairie dogs. Black-tailed prairie dogs had the most extensive range of all the species of prairie dogs and probably occupied more area than all other species combined (Hoogland 1995). Estimates of historic black-tailed prairie dog occupied habitat of approximately 79 million ac (32 million ha) in the United States by the Black-footed Ferret Recovery Foundation (*in litt.* 1999) and of approximately 111 million ac (45 million ha) by Knowles (1998) provide a reasonable historic range for black-tailed prairie dog occupied habitat. It is apparent that regardless of which estimate is considered, tens of millions of acres of occupied habitat once existed in the United States.

At present, the black-tailed prairie dog may be found scattered in remnant populations throughout much of the range that it once occupied. A significant portion of existing occupied habitat rangewide occurs in a few large complexes. Approximately 36 percent of the remaining occupied habitat for the species in North America occurs in seven complexes, each larger than 10,000 ac (4,000 ha). We believe that approximately 768,000 ac (311,000 ha) of occupied habitat currently exists rangewide. This estimate is based on the sum of Service estimates from various States, from Canada, and from Mexico, as discussed under the ''Statewide Distribution, Trends, and Abundance'' section of this document.

Rangewide Trends

Most estimates of prairie dog population trends are not based on numbers of individuals, but on the amount of occupied habitat for the species. The actual number of animals present depends upon the density of animals in that locality. Estimates of black-tailed prairie dog density across the species' range vary seasonally, but range from 2 to 18 individuals per ac (5 to 45 individuals per ha) (Fagerstone and Ramey 1996, Hoogland 1995, King 1955, Koford 1958, Miller 1996). Most prairie dog surveys do not estimate density because of the high effort and cost involved. We believe that a review of various estimates of occupied habitat area provides the best available and most reasonable means of determining population trends for the species.

The U.S. Geological Survey estimated that the black-tailed prairie dog may occupy less than 0.5 percent of its original range and has experienced an estimated 98 percent decline in population abundance throughout North America (Mac *et al.* 1998). It notes that the amount of occupied habitat has declined from approximately 100 million ac (40.5 million ha) in the late 1800s to less than 1 million ac (0.4 million ha) at present; a decline of over 99 percent. Barko (1997), Fagerstone and Ramey (1996), Knowles (1998), Mulhern and Knowles (1995), and Wuerthner (1997) concluded that a reduction of approximately 94–99 percent in the amount of occupied habitat within this range has occurred since about 1900. State wildlife agencies generally confirm this decline, but some point out that disproportionately more occupied habitat remains in some areas than in others.

Some increases in the amount of occupied habitat in some areas occurred subsequent to the Executive Order banning the use of compound 1080 (a toxicant) in 1972. These increases appear to have been limited in later years by the use of other toxicants such as zinc phosphide, the continuing spread of sylvatic plague, and other factors (Knowles 1998). Moreover, the majority of these increases (approximately 85 percent) occurred in areas (Montana, South Dakota, and Wyoming) where significant impacts due to disease had not yet occurred.

Survey efforts in some areas have noted significant declines in the amount of black-tailed prairie dog occupied habitat over the last few decades. For example, the U.S. Forest Service has mapped black-tailed prairie dog colonies within the Northern Great Plains National Grasslands in North Dakota, South Dakota, Wyoming, and Nebraska. These grasslands, covering approximately 3.7 million ac (1.5 million ha), included a maximum of 86,220 ac (34,890 ha) of black-tailed prairie dog occupied habitat in the 1970s to the 1990s. In 1997, the U.S. Forest Service mapped 39,420 ac (15,965 ha) of occupied habitat in the same areas, indicating a 54 percent decline (U.S. Forest Service 1998). Data provided by the U.S. Forest Service in 1999 confirmed losses in occupied habitat for the National Grasslands with a 58 percent decline from the 1970s to the present (Sidle, U.S. Forest Service, *in litt.* 1999).

Lockhart (U.S. Fish and Wildlife Service, *in litt.* 1998) reported that the recovery program for the black-footed ferret has identified large prairie dog complexes potentially useful for reintroduction of the ferret. Both black-tailed and other prairie dog species are considered. One necessary criteria for these sites is that they contain approximately 10,000 ac (4,000 ha) of occupied habitat. In the late 1980s, the Black-footed Ferret Interstate Coordinating Committee identified dozens of potential sites that may have qualified as suitable for ferret recovery. Black-tailed prairie dog populations at these sites appear to have been reduced by as much as 90 percent within the last 15 years. By 1994 only 16 sites were identified, and by 1998 this number was reduced to 10 sites (7 being black-tailed prairie dog sites). Although the overall trend is a large-scale reduction, population increases have been observed at some locales. These declines have occurred largely in the western portion of the species' range and are generally attributed to sylvatic plague. These declines may be representative of the overall population dynamics of the species in many areas. However, populations in some other areas in the eastern portion of the species' range where plague is mostly absent have increased marginally or remained generally constant during the same period.

Approximately 66 percent, or 300 million ac (122 million ha), of the black-tailed prairie dog range in the United States is affected by sylvatic plague (Black-footed Ferret Recovery Foundation, *in litt.* 1999). This area includes the western portions of the species' range. Another important factor that has affected the species is the conversion of rangeland to cropland, especially in the eastern portion of the species' range. Conversion of native prairie to cropland has largely progressed across the species' range from east to west with more cropland occurring in the eastern portion of the species' range. In the plague-free portion of the species' range, less than 33 percent of the species' historic range is available to the species (Black-footed Ferret Recovery Foundation, *in litt.* 1999). Therefore, only approximately 10 percent of the black-tailed prairie dog historic range is both plague-free and available (not cropland) to the species. The majority of plague-free, suitable range occurs in South Dakota.

Statewide Distribution, Abundance, and Trends

In some parts of the species' range, statewide population increases were noted after 1972. However, in most western States, populations have declined since the 1980s, most likely due to sylvatic plague. In the eastern part of the range, where plague has not yet occurred, similar declines have not been observed. These trends are discussed below by State. We have evaluated all historic and current data and information available on the species' abundance and trends. Several estimates of black-tailed prairie dog occupied habitat were available for each State. The dates, methodologies, and ultimately the reliability of these estimates varied. Generally, our estimate of current occupied habitat for each State is the most recently reported estimate with the most reliable methodology (Arizona, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Canada, and Mexico). For States where a range (Wyoming) or two reliable estimates were available (Kansas), we used the midpoint. For States where no recent estimate with adequate methodology was available (Colorado, New Mexico, and Texas), we extrapolated from older estimates. We rounded all our estimates to the nearest 1,000 ac.

In Arizona, black-tailed prairie dogs existed in the southeastern portion of the State prior to eradication efforts (Hall and Kelson 1959). The species is extirpated at present in the State. Approximately 2 percent of occupied habitat in the United States may have existed in Arizona historically. We believe that intensive grazing at the turn of the last century may have caused occupied habitat to expand in Arizona and that control may have been the principal factor that subsequently suppressed populations. Shrub invasion also may have limited recovery. The species largely disappeared from the State prior to the documented occurrence of sylvatic plague in the State (Shroufe, Arizona Game and Fish Department, *in litt.* 1999). However, plague is an additional factor that could affect the future viability of the species in Arizona.

In Colorado, black-tailed prairie dogs historically occurred on suitable habitat east of the Rocky Mountain foothills (Hall and Kelson 1959, Torres 1973). Presently, the species appears to be scattered in remnant populations throughout the same area. Statewide estimates of occupied habitat noted for Colorado range from 7 million ac (2.8 million ha) historically to 44,000 ac (18,000 ha) in 1998 (Knowles 1998).

We believe that occupied habitat in Colorado has declined significantly from historic estimates. There is a large disparity in recent statewide estimates of remnant occupied habitat. However, we believe that trends at specific locations within the State (a 50 percent decline in Denver Metropolitan Area from 1994 to 1998 (Seery, U.S. Fish and Wildlife Service, pers. comm. 1998), a 70 percent decline at Rocky Mountain Arsenal National Wildlife Refuge from 1988–1999 (Seery and Matiatos, in press), and a 90 percent decline at Comanche National Grasslands from 1995 to 1998 (Cully 1998), indicate that there has likely been a statewide decline in recent years (despite periodic limited recovery) and that these declines may continue. These declines have largely been attributed to sylvatic plague. We estimate that 93,000 ac (43,000 ha) of black-tailed prairie dog occupied habitat currently exist statewide.

In Kansas, black-tailed prairie dogs historically occurred on suitable habitat throughout the western two-thirds of the State (Hall and Kelson 1959, Smith 1958). Presently, the species appears to be scattered throughout generally the same area, except that the eastern limit of the range appears to have shifted westward approximately 30–50 miles (50–80 kilometers) (Vanderhoof and Robel 1992). Statewide estimates of occupied habitat for Kansas range from 2.5 million ac (1 million ha) historically to 36,000 ac (15,000 ha) in 1998 (Knowles 1998). We estimate that 42,000 ac (17,000 ha) of black-tailed prairie dog occupied habitat currently exist statewide.

We believe that occupied habitat in Kansas has declined significantly from historic estimates, but has likely been stable to slightly declining in recent years. The most recent statewide survey is from 1992 (Vanderhoof and Robel 1992). However, in 1996 sylvatic plague was documented in Kansas on the Cimarron National Grasslands (Cully, U.S. Geological Survey, Biological Resources Division, pers. comm. 1998). Therefore, occupied habitat may decline if sylvatic plague impacts continue and/or spread to other areas of the State.

In Montana, black-tailed prairie dogs historically occurred on suitable habitat in the eastern two-thirds of the State (Flath and Clark 1986), with the exception of the northeastern corner of the State (Hall and Kelson 1959). One of the seven large remaining black-tailed prairie dog complexes occurs in Montana. Statewide estimates of occupied habitat for Montana range from 6 million ac (2.4 million ha) historically (Knowles 1998) to 28,286 ac (11,456 ha) in 1961 (Bureau of Sport Fisheries and Wildlife 1961). The Montana Department of Fish, Wildlife, and Parks believes that historic estimates are inaccurate (Graham,

Montana Department of Fish, Wildlife, and Parks, in litt. 1998). The most recent estimate of occupied habitat is 66,000 ac (26,000 ha) (Montana Department of Fish, Wildlife and Parks in prep.). We estimate that 65,000 ac (26,000 ha) of black-tailed prairie dog occupied habitat currently exist statewide.

We believe that occupied habitat in Montana has declined significantly from historic estimates. Following a major reduction in occupied habitat from approximately 1900 to 1961, black-tailed prairie dog populations in the State apparently expanded from 1961 to 1986 and then experienced significant declines due to sylvatic plague. The Montana Department of Fish, Wildlife, and Parks (1998) noted that occupied habitat declined by approximately 50 percent from the estimates of the late 1980s, largely due to sylvatic plague.

In Nebraska, black-tailed prairie dogs historically occurred on suitable habitat throughout most of the State west of the 97th meridian (Hall and Kelson 1959, Knowles 1995). Presently, the species appears to be scattered throughout the same area, but at much reduced numbers, especially east of the 99th meridian. Statewide estimates of occupied habitat noted for Nebraska range from 6 million ac (2.4 million ha) historically (Knowles 1998) to 30,000 ac (12,000 ha) in 1961 (Bureau of Sport Fisheries and Wildlife 1961). The most recent estimate of occupied habitat is 60,000 ac (24,000 ha) (Knowles 1998). We estimate that 60,000 ac (24,000 ha) of black-tailed prairie dog occupied habitat currently exist statewide.

We believe that occupied habitat in Nebraska has declined significantly from historic estimates and has likely been stable to slightly declining in recent years (Amack, Nebraska Game and Parks Commission, *in litt.* 1999). This stability may be due to the fact that sylvatic plague does not appear to be widespread in the State, although it has been documented in the northwestern portion of the State where it has impacted some black-tailed prairie dog populations (Virchow *et al.* 1992).

In New Mexico, black-tailed prairie dogs historically occurred on suitable habitat throughout the southern and eastern two-thirds of the State (Bailey 1932, Hall and Kelson 1959). Presently, the species appears to exist in remnant populations in scattered locations, generally east of the Pecos River (Findley *et al.* 1975). Statewide estimates of occupied habitat noted for New Mexico range from over 6,640,000 ac (2,690,000 ha) historically (Bailey 1932) to 15,000 ac (6,000 ha) in 1998 (Knowles 1998). We estimate that 39,000 ac (16,000 ha) of black-tailed prairie dog occupied habitat currently exist statewide.

We believe that occupied habitat in New Mexico has declined significantly from historic estimates. Following the toxicant ban in 1972, increases in occupied habitat appear to have occurred. However, declines in occupied habitat have likely occurred in more recent years (Maracchini, New Mexico Department of Game and Fish, *in litt.* 1998).

In North Dakota, black-tailed prairie dogs historically occurred on suitable habitat in the southwestern third of the State, west of the Missouri River (Hall and Kelson 1959). Presently, the species appears to be scattered throughout the same area. Statewide estimates of occupied habitat for North Dakota range from 2 million ac (810,000 ha) historically (Knowles 1998) to approximately 7,000 ac (2,800 ha) as a conservative estimate in 1973 (Grondahl 1973). The most recent estimate of occupied habitat is a preliminary estimate of approximately 25,000 ac (10,000 ha), based on aerial surveys (Sidle, U.S. Forest Service, pers. comm. 1999). We estimate that 25,000 ac (10,000 ha) of black-tailed prairie dog occupied habitat currently exist Statewide.

We believe that occupied habitat in North Dakota has declined significantly from historic estimates, but has likely been fairly stable to increasing (McKenna, North Dakota Game and Fish Department, *in litt.* 1999) in recent years. The amount of occupied habitat in North Dakota is relatively small compared to other States in the northern Great Plains.

In Oklahoma, black-tailed prairie dogs historically occurred on suitable habitat in the western two-thirds of the State (Hall and Kelson 1959). Presently, the species is largely limited to the panhandle (Shaw *et al.* 1993, Tyler 1968, Wuerthner 1997), although scattered remnant populations occur in the western half of the State outside of the panhandle (Shackford *et al.* 1990). Statewide estimates of occupied habitat noted for Oklahoma range from 950,000 ac (385,000 ha) historically (Knowles 1998) to less than 8,600 ac (3,500 ha) in 1998 (Lomolino, University of Oklahoma, *in litt.* 1999). We estimate that 9,000 ac (3,600 ha) of black-tailed prairie dog occupied habitat currently exist Statewide.

Populations in the panhandle have experienced significant declines in the past 10 years, although with limited recovery (Lomolino, University of Oklahoma, *in litt.* 1999). These declines were likely due to plague. The amount of occupied habitat in the remainder of the State has experienced a slow, steady decline (Shackford *et al.* 1990). Statewide, populations have been reduced by 50 percent in the last 10 years (Lomolino, *in litt.* 1999).

In South Dakota, black-tailed prairie dogs historically were found throughout all but the eastern one-fourth of the State (Hall and Kelson 1959, Linder *et al.* 1972). Presently the species appears to be scattered throughout the same area, with the majority of occupied habitat on Tribal or Federal lands west of the Missouri River and small scattered populations elsewhere. Four of the seven remaining large black-tailed prairie dog complexes occur in South Dakota. Statewide estimates of occupied habitat for South Dakota range from more than 1,757,000 ac (712,000 ha) historically, following the initiation of intensive control efforts in 1918 (Linder *et al.* 1972), to 33,000 ac (13,000 ha) in 1961 (Bureau of Sport Fisheries and Wildlife 1961). The most recent estimate of occupied habitat in the State is a preliminary estimate of 147,000 ac (60,000 ha), based on aerial surveys (Sidle, U.S. Forest Service, pers. comm. 1999). We estimate that 147,000 ac (60,000 ha) of black-tailed prairie dog occupied habitat currently exist Statewide.

We believe that occupied habitat in South Dakota has declined significantly from historic estimates, with notable recovery from 1961–1980 (Bureau of Sport Fisheries and Wildlife 1961, Tschetter 1988). Thereafter, extensive control efforts at Pine Ridge Reservation and elsewhere in the 1980s resulted in a significant decline in occupied habitat. Subsequently, occupied habitat has remained fairly stable. More unoccupied, but available, habitat appears to remain in South Dakota than in other States.

In Texas, black-tailed prairie dogs historically occurred on suitable habitat throughout the northwestern one-third of the State (Bailey 1905, Hall and Kelson 1959). Presently, the species occurs largely in the western portion of the panhandle. Some scattered remnant populations exist in the Trans-Pecos Region of western Texas. Statewide estimates of occupied habitat range from 58 million ac (23 million ha) historically to 23,000 ac (9,000 ha) in 1998 (Knowles 1998). We estimate that 71,000 ac (29,000 ha) of black-tailed prairie dog occupied habitat currently exist Statewide.

We believe that occupied habitat in Texas has declined significantly from historic estimates. However, based upon the limited amount of information available, we believe that occupied habitat increased following the toxicant

ban in 1972 and that populations may have remained fairly stable since the late 1970s (Cheatheam 1977, Lair and Mecham 1991).

In Wyoming, black-tailed prairie dogs historically occurred on suitable habitat east of the Rocky Mountain foothills (Clark 1973, Hall and Kelson 1959) below approximately 5,500 feet (1,676 meters) elevation (Van Pelt in prep.). Presently, the species appears to be scattered throughout the same area. One of the seven remaining large black-tailed prairie dog complexes occurs in Wyoming. Statewide estimates of occupied habitat for Wyoming range from 16 million ac (6.5 million ha) historically (Knowles 1998) to 49,000 ac (20,000 ha) in 1961 (Bureau of Sport Fisheries and Wildlife 1961). The most recent estimate is 70,000–180,000 ac (28,000–73,000 ha) in 1998 (Knowles 1998). We estimate that 125,000 ac (51,000 ha) of black-tailed prairie dog occupied habitat currently exist Statewide.

We believe that occupied habitat in Wyoming has declined significantly from historic estimates. Increases in occupied habitat occurred following the toxicant ban in 1972. However, we believe that recent declines, largely due to impacts from sylvatic plague, are likely to continue.

Canada Distribution, Abundance, and Trends

Historically, black-tailed prairie dogs occurred on suitable habitat in southernmost Saskatchewan (Hall and Kelson 1959). Presently the species is found in a small area along the Frenchman River Valley. Many of these colonies are in Canada's Grasslands National Park (Laing 1986). Canada represents a very small percentage (approximately 0.3 percent) of the rangewide population. Estimates of occupied habitat in Canada range from 1,244 ac (503 ha) in 1970 (Millson 1976) to 2,318 ac (938 ha) in 1996 (Fargey, Grasslands National Park, pers. comm. 1998). We estimate that 2,000 ac (800 ha) of black-tailed prairie dog occupied habitat currently exists in Canada.

We believe that occupied habitat in Canada has remained at approximately 2,000 ac (800 ha) and, in the absence of sylvatic plague, will likely remain stable.

Mexico Distribution, Abundance, and Trends

Historically, black-tailed prairie dogs occurred on suitable habitat throughout the northern portion of the Mexican States of Chihuahua and Sonora (Hall and Kelson 1959). Presently, most individuals appear to be limited to a small region in northern Chihuahua. The largest remaining black-tailed prairie dog complex occurs in Mexico. Estimates of occupied habitat in Mexico range from 1,384,000 ac (560,000 ha) historically (Mearns 1907 as cited in Ceballos *et al.* 1993) to 90,000 ac (36,000 ha) in 1996 (List *et al.* 1997). We believe that the List *et al.* (1997) estimate of 90,000 ac (36,000 ha) of currently existing black-tailed prairie dog occupied habitat in Mexico is accurate.

We believe that occupied habitat in Mexico has declined significantly from historic estimates and that this decline continues. Decline appears to be due primarily to cropland conversion. From 1988 to 1996, the geographic range of the species in Mexico contracted 80 percent and the amount of occupied habitat decreased by 34 percent (List *et al.* 1997). Colony fragmentation has occurred in previously surveyed black-tailed prairie dog colonies, reducing the size of towns and increasing their isolation.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the black-tailed prairie dog are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

We believe that habitat loss due to cropland conversion, urbanization, habitat modification, and fragmentation is a factor adversely affecting black-tailed prairie dog populations rangewide.

In the United States, approximately 37 percent of the suitable habitat within the range of the black-tailed prairie dog has been converted to cropland (Black-footed Ferret Recovery Foundation, *in litt.* 1999). This land use change resulted in significant destruction of black-tailed prairie dog habitat, particularly in eastern portions of the species' range where adequate precipitation favors farming. Cropland conversion continues, but the amount of occupied habitat converted annually is unknown. In some areas cropland conversion occurs due to continuing improvements in intensive agricultural techniques, for example, dryland wheat farming in Montana (Knowles *et al.* 1996, Lessica 1995) and irrigated croplands in Mexico (List *et al.* 1997). List *et al.* (1997) reported that occupied habitat in Mexico declined by 34 percent between 1988 and 1996, in part due to conversion to cropland.

Habitat loss also has occurred due to urbanization. One example of the present and threatened destruction of black-tailed prairie dog occupied habitat due to urban development is apparent along the Front Range of Colorado near Denver. In 1994, 42,500 ac (17,200 ha) of occupied habitat were mapped in the Denver/Boulder/Fort Collins metropolitan area (Skiba, Colorado Division of Wildlife, pers. comm. 1999). Knowles (1998) estimated that occupied habitat has declined by approximately 8,000 ac (3,200 ha) since the initial mapping effort, due to urbanization. An evaluation of the specific impact of urbanization is difficult because sylvatic plague also has significantly affected populations in this area in recent years (Weber, Colorado Division of Wildlife, pers. comm. 1998).

Habitat modification and loss due to the absence of black-tailed prairie dogs can be anticipated in the prairie ecosystem where populations have been extirpated or significantly reduced in number. Weltzin *et al.* (1997) determined that black-tailed prairie dogs, and the herbivores and granivores associated with their colonies, probably maintained grassland and savanna historically by preventing woody species such as mesquite from establishing or attaining dominance. List *et al.* (1997) reported that control of black-tailed prairie dogs in Mexico resulted in the invasion of mesquite shrubs that rendered the landscape unsuitable for reoccupation by the species. Davis (1974) also noted that the removal of the species from some sites in Texas resulted in the invasion of brush. The fragmented nature of remaining prairie dog colonies, barriers to immigration and emigration, and the lack of fire and native ungulate herds that historically denuded the landscape and provided opportunities for prairie dog colonies to expand (Miller *et al.* 1994) accentuate habitat loss due to vegetative succession. The degree to which this type of grassland change and other landscape alterations affect black-tailed prairie dog populations across their range is unknown. Nevertheless, these subtle habitat changes may be a major factor in precluding the utilization of habitat or recolonization of former habitat by the species.

North American grasslands have suffered among the most extensive fragmentation and transformation of any

biome on the continent (Groombridge 1992). More fragmented, more isolated, and less connected populations usually have higher extinction rates (Clark 1989, Gilpin and Soule 1986, MacArthur and Wilson 1967, Shaffer 1981, Wilcove *et al.* 1986, Wilcox and Murphy 1985). List *et al.* (1997) suggested that fragmented black-tailed prairie dog colonies in Mexico were prone to extirpation. Miller *et al.* (1996) described existing prairie dog populations as small, disjunct, and geographically isolated. Dispersal has been limited by barriers created by human development that preclude immigration or emigration. Fragmentation and extirpation of small, isolated colonies will result in the loss of additional genotypes, as occurred with the complete extirpation of the species in portions of the eastern and southwestern areas of its historic range. Lost genetic diversity will inherently be detrimental to the long-term survival of the species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We believe that overutilization of the black-tailed prairie dog via the pet trade is not a significant factor affecting black-tailed prairie dog populations rangewide. Herron (Texas Parks and Wildlife Department, pers. comm. 1999) and others have reported that black-tailed prairie dogs are removed from the wild for sale as pets. Herron was aware of 3 commercial operators who collectively removed approximately 5,000 individuals from the Texas panhandle and other States annually in recent years. Miscellaneous reports indicate that this practice occurs elsewhere in the species' range, but the extent of removal of individuals from the wild for use as pets is unknown.

Recreational (sport or varmint) shooting is impacting black-tailed prairie dog populations in some local areas. At present, we do not believe that this factor is responsible for significant rangewide declines in the species' population; however, it may be important locally. The popularity of shooting has increased appreciably in recent years. Many States do not require hunting licenses and have no bag limits or seasonal restrictions for taking prairie dogs. Some areas administered by the Bureau of Land Management and the U. S. Forest Service have been closed to recreational shooting over the past two years, but recreational shooting is still allowed on other areas administered by these agencies. Recreational shooting is not allowed on on lands administered by the National Park Service or the Fish and Wildlife Service. Knowles (1988) reported that shooting on two black-tailed prairie dog colonies removed 69 percent of the adults. He thought that the reduction of prairie dog populations below a certain threshold number might have a further negative consequence because fewer prairie dogs were available to watch for predators and keep the vegetation clipped around burrows to improve detection of predators. Vosburgh (1996) reported that intensive shooting can have a statistically significant impact on the density of local black-tailed prairie dog colonies. He observed that during the summer, species density declined 33 percent on colonies with shooting and 15 percent on colonies without shooting. Prairie dogs also spent more time in alert postures and less time foraging on colonies where shooting occurred.

Large, healthy populations appear to be able to withstand considerable removal by shooting and remain viable (Bourland and Dupris, Cheyenne River Sioux Tribe, *in litt.* 1998; Finnegan *et al.*, Rosebud Sioux Tribe, *in litt.* 1998). Accordingly, the shooting of hundreds of thousands of individuals across the extensive range of the black-tailed prairie dog where millions of individuals occur will not likely adversely impact the overall population of a species where each female can produce an average of four young annually. Conversely, small local populations already depressed by disease and other adverse influences may suffer additive losses from shooting impacts. Shooting impacts also may contribute to population fragmentation and preclude or delay recovery of colonies reduced by other factors, such as sylvatic plague.

C. Disease or Predation

We believe that sylvatic plague is likely the most important factor in recent reductions of many black-tailed prairie dog populations throughout a significant portion of the range of the species. Approximately 66 percent of the species' range has been affected by plague (Black-footed Ferret Recovery Foundation, *in litt.* 1999). Plague is an exotic disease foreign to the evolutionary history of North American species (Gage, Center for Disease Control, pers. comm. 1999). Plague was first observed in wild rodents in North America near San Francisco, California, in 1908 (Eskey and Haas 1940). It spread eastward across the continent in subsequent years and still appears to be expanding its range, although not as rapidly as in its early years. The first reported incidences of plague in black-tailed prairie dogs occurred in the 1940s (Gage, Center for Disease Control, pers. comm. 1999, Miles *et al.* 1952). Black-tailed prairie dogs show neither effective antibodies nor immunity to the disease. This disease is caused by the bacterium *Yersinia pestis*, which fleas acquire from biting infected rodents and other species and then transmit via a bite. Plague also can be transmitted directly between animals. Cully (1989) summarized plague reports in 76 species of 5 mammalian orders in the United States, although plague is primarily a rodent disease. It can seriously affect humans, although it responds well to modern treatment (Center for Disease Control 1997). Rodent species vary in their susceptibility to plague, with some species acting as hosts or carriers of the disease or infected fleas and showing little or no symptoms. Black-tailed and Gunnison's prairie dog populations demonstrate nearly 100 percent mortality when exposed to plague (Barnes 1993, Cully 1993) and cannot be considered carriers.

Plague, once established in an area, becomes persistent and periodically erupts, with the potential to extirpate local black-tailed prairie dog populations. After several epizootics (an eruption of the disease that attacks a large number of animals at the same time), black-tailed prairie dogs at the Rocky Mountain Arsenal National Wildlife Refuge have neared extirpation (Seery, U.S. Fish and Wildlife Service, pers. comm. 1998). This phenomenon may be occurring at other formerly large black-tailed prairie dog complexes across much of the western portion of the species' range. At Northern Cheyenne Reservation in southeastern Montana, a plague epizootic started in 1991 and continued through 1996 (Young 1997), removing 97 percent of the black-tailed prairie dog population (Fourstar, Bureau of Indian Affairs, pers. comm. 1998). The population has begun to recover and has increased from a low of 378 ac (153 ha) of occupied habitat to 963 ac (390 ha). However, Young (University of Arizona, pers. comm. 1998) does not believe that this complex will recover to its former status. The effects of plague on prairie dogs may be exacerbated in smaller, isolated colonies where populations are not buffered by large numbers (where some individuals may escape infection by chance) and where recovery may be hampered by limited immigration from other colonies.

We believe that predation is not likely a major factor affecting overall black-tailed prairie dog populations, but it may be important locally or contribute to the effects of other factors. Little

information is available to quantify the impact of predators on prairie dog populations.

D. The Inadequacy of Existing Regulatory Mechanisms

We believe that inadequate regulatory mechanisms are a contributing factor affecting overall black-tailed prairie dog populations. Many States, Tribes, and Federal agencies recognize the historic decline and ecological significance of the black-tailed prairie dog, but few use available regulatory mechanisms to conserve the species. At least one government entity in most States promotes their reduction. However, some limited regulatory mechanisms exist for conservation of the species.

States

In Arizona, the Game and Fish Department classifies all prairie dogs native to the State as nongame mammals. Although the species has been extirpated in Arizona, a hunting season was open until 1999, when it was closed (Shroufe, Arizona Game and Fish Department, *in litt.* 1999). Arizona does not require the eradication of prairie dogs for agricultural purposes or promote recreational shooting of prairie dogs (Shroufe, Arizona Game and Fish Department, *in litt.* 1998). The black-tailed prairie dog is listed as endangered on the Arizona Game and Fish Department ''Threatened Native Wildlife'' list (Arizona Game and Fish Department 1988).

In Colorado, the Division of Wildlife requires a resident or nonresident hunting license for prairie dog shooting unless the animals are on land owned by the shooter. The season is year-round, with no bag or possession limit. However, for hunt contests, no participant may take more than five prairie dogs during the contest. In 1999, the Colorado State Legislature passed a bill prohibiting the translocation of prairie dogs and other species into a county without the consent of the county's commissioners (Van Pelt in prep.).

The State of Kansas considers black-tailed prairie dogs as agricultural pests and mandates control if an adjoining landowner files a complaint (Knowles 1995). In recent years, some counties have invoked ''Home Rule'' to take over authority for prairie dog control from the townships and impose mandatory control requirements on landowners. The landowner is given the opportunity to control prairie dogs on his land and if he fails to do so it is done by the county at the landowner's expense (Van Pelt in prep.). Shooting of prairie dogs in Kansas is somewhat restricted since a resident or nonresident hunting license is required and established methods of take are listed (Williams, Kansas Department of Wildlife and Parks, *in litt.* 1998).

In Montana, the Department of Fish, Wildlife, and Parks requires no license to shoot prairie dogs, and no limits on take or season exist. Prairie dogs are protected on two State parks as important features of those parks (Graham, Montana Department of Fish, Wildlife and Parks, *in litt.* 1998). The Department of Fish, Wildlife, and Parks identifies the black-tailed prairie dog as a State ''species of special concern'' (Flath 1998). The Department of Fish, Wildlife, and Parks is developing a species conservation plan for black- and white-tailed prairie dogs in Montana (Montana Department of Fish, Wildlife and Parks in prep.). However, the Montana Department of Agriculture classifies prairie dogs as ''rodents'' and ''vertebrate pests.'' The Montana Department of Agriculture assists landowners in control of prairie dogs if requested, but such assistance is not mandated (Sullins, Montana Department of Agriculture, pers. comm. 1999).

In Nebraska, the Game and Parks Commission currently considers the black-tailed prairie dog an unprotected nongame species that can be taken in any manner, without restrictions on shooting or control activities. Permits are not required for residents; nonresidents must have a small-game hunting permit. The Game and Parks Commission recognizes prairie dog shooting as an acceptable recreational activity, but suggests that shooting be avoided when prairie dogs have dependent young and that shooters take responsible measures to avoid disturbance of other wildlife species that use prairie dog colonies (Amack, Nebraska Game and Parks Commission, *in litt.* 1998).

In New Mexico, the Department of Game and Fish requires a license to shoot prairie dogs, but there are no bag limits or restrictions (Knowles 1998). The Petitioner reports that New Mexico considers the prairie dog as a ''rodent pest'' and mandates that landowners destroy prairie dogs on notice (National Wildlife Federation 1998).

In North Dakota, the Game and Fish Department classifies the black-tailed prairie dog as a nongame wildlife species. A resident is not required to purchase a hunting license to shoot prairie dogs; however, nonresidents are required to purchase one. The State sets no bag limits or seasons for prairie dogs. The North Dakota Game and Fish Department has published a guidebook to aid prairie dog shooters in finding colonies (North Dakota Game and Fish Department undated). The State of North Dakota considers the black-tailed prairie dog a pest, although the Game and Fish Department considers it a nongame species. The North Dakota Department of Agriculture and the county weed boards have regulatory authority over control efforts (Van Pelt in prep.).

In Oklahoma, the Department of Wildlife Conservation classifies the black-tailed prairie dog as a Category II Mammal Species of Special Concern. Prairie dog eradication is no longer mandatory in Oklahoma but is assisted by some State agencies and local governments. Control and recreational shooting of the species can occur on private land, but the Department of Wildlife Conservation does not promote either activity (Duffy, Oklahoma Department of Wildlife Conservation, *in litt.* 1998). A license for recreational shooting is required by residents and nonresidents. The Department of Wildlife Conservation requires that a permit be obtained prior to any control. Prairie dogs cannot be reduced in any county to fewer than 1,000 individuals, and control is not permitted on public lands (Van Pelt in prep.).

In South Dakota, the Department of Game, Fish, and Parks classifies the black-tailed prairie dog as a predator/varmint and requires that a resident or nonresident acquire a license to shoot prairie dogs. No seasons or bag limits have been established. The South Dakota Weed and Pest Control Statute designates the species as a statewide declared pest. Therefore, the existence of prairie dogs constitutes an infestation, giving the State authority to enter private land and exterminate the animals. If a county declares an infestation, landowners are responsible for the costs to control prairie dogs on their land whether they want control or not (Van Pelt in prep.).

In Texas, the Parks and Wildlife Department designates black-tailed prairie dogs as a nongame species and is prohibited by State statute from listing them as a State endangered species. A license is required to hunt prairie dogs, but no season or bag limits have been established. In 1999, the State established a regulation that requires a nongame collection or dealer's permit to possess more than 10 live prairie dogs or to sell prairie dogs (Van Pelt in prep.). This law does not regulate the killing of prairie dogs for recreational, agricultural, or nuisance purposes (Sansom, Texas Parks and Wildlife Department, *in litt.* 1998). The Texas Health and Safety Code authorizes

counties to control prairie dogs and gives the Texas Department of Agriculture responsibility for providing information regarding control to requesting counties (Van Pelt in prep.).

The Wyoming Game and Fish Department regards the black-tailed prairie dog as a nongame wildlife species and has listed it as a Species of Special Concern. No license is required to hunt prairie dogs, and no seasons, bag limits, or restrictions on method of take have been established (Van Pelt in prep.). The Game and Fish Department supports development of seasons and bag limits for the black-tailed prairie dog (Wichers, Wyoming Game and Fish Department, *in litt.* 1998). The Wyoming Department of Agriculture lists the species as a pest. The Wyoming Weed and Pest Control Act of 1973 authorizes counties to enter private property to control prairie dogs if damage has been documented to neighboring landowners (Knowles 1995).

Tribal

Mulhern and Knowles (1995) estimated that 30 percent of black-tailed prairie dog colonies occur on Tribal lands. Four of the seven remaining large complexes (those with 10,000 acres or more) (Cheyenne River, Fort Belknap, Pine Ridge, and Rosebud) occur on Tribal lands. Two Tribes (Cheyenne River Sioux Tribe in South Dakota and Fort Belknap in Montana) have prairie dog management plans in place (Knowles 1995). No extensive control of prairie dogs has occurred on Cheyenne River Sioux Tribe, Fort Belknap, or Rosebud Sioux Tribe (in South Dakota) in recent years due to concerns related to the conservation of black-footed ferrets. However, active recreational shooting programs on these and other Tribal lands exist. The Cheyenne River Sioux Tribe does not classify the prairie dog as a pest and does not require or encourage their eradication; however, shooting of black-tailed prairie dogs occurs year-round and without limits (Bourland and Dupris, Cheyenne River Sioux Tribe, *in litt.* 1998). Recreational shooting is also allowed on the Crow Creek Sioux Tribe in South Dakota, but chemical control is not allowed. The Tribe states that shooting appears to have no effect on black-tailed prairie dog numbers, and they report the species as abundant (Miller, Crow Creek Sioux Tribe, *in litt.* 1998). In 1998, the Rosebud Sioux Tribe Department of Natural Resources implemented a new licensing system for black-tailed prairie dogs in an attempt to reduce the number of shooters. License sales were reduced by approximately 50 percent from approximately 4,000 licenses in 1997 to 2,000 licenses in 1998 (Finnegan, Rosebud Sioux Tribe, pers. comm. 1999).

Federal Agencies

The BIA has a trust responsibility to oversee management of Tribal lands. The BIA's involvement in prairie dog control efforts has been principally through management of funding for prairie dog control programs on Tribal lands. In the northern Great Plains, from 1978–1992, BIA funding was responsible for the control of more prairie dog habitat than any other Federal agency in the country (Roemer and Forrest 1996).

The Bureau of Land Management (BLM) manages prairie dogs to meet multiple-use resource objectives including production of livestock forage and preventing prairie dog movement to adjacent State or private lands. Although BLM no longer actively conducts control, it still allows control to occur by other agencies on its lands and it still allows significant levels of unregulated sport shooting (Knowles 1995). In a memorandum dated June 23, 1999, and expiring September 30, 2000, the BLM instructed all of its State Directors within the range of the black-tailed prairie dog to ''ensure that all actions authorized, funded or carried out by their respective field offices do not contribute to the need to list this species'' (Colby, Bureau of Land Management, *in litt.* 1999). The BLM also anticipates implementing a mandatory restriction on prairie dog hunting in portions of south Phillips County, Montana, due to the lack of success of current voluntary closures in the area (October 18, 1999; 64 FR 56213).

We manage over 500 National Wildlife Refuges and their satellites, but only about 15 refuges, satellites, or Waterfowl Production Areas have black-tailed prairie dogs. Only two refuges have any significant amount of occupied habitat. On the Charles M. Russell and UL Bend National Wildlife Refuges in Montana, we manage 5,150 ac (2,090 ha) of black-tailed prairie dog occupied habitat. We have treated burrows with insecticide in an attempt to reduce fleas and disease transmission, and we have moved prairie dogs to recolonize vacant or low-density towns (Matchett 1997). The Rocky Mountain Arsenal National Wildlife Refuge in Colorado is attempting to recover its populations subsequent to repeated plague epizootics (U.S. Fish and Wildlife Service 1998). Shooting of prairie dogs is currently prohibited on all National Wildlife Refuges and satellites. Limited control has occurred on a few wildlife refuges, primarily as a measure to prevent the spread of prairie dogs onto adjacent private lands. At this time, all control efforts regarding the species have been suspended on Service lands (Clark, U.S. Fish and Wildlife Service, *in litt.* 1999).

The U.S. Forest Service manages approximately 3.7 million ac (1.5 million ha) of National Grasslands, which support approximately 42,460 ac (17,200 ha) of black-tailed prairie dog occupied habitat, approximately 1.1 percent of the National Grasslands (Sidle, U.S. Forest Service, *in litt.* 1999). In response to a request from the National Wildlife Federation and the positive 90-day finding, the U.S. Forest Service issued a moratorium on control of black-tailed prairie dogs during the current status review period on all lands administered by the U.S. Forest Service. The U.S. Forest Service also noted their intention to manage for larger prairie dog populations via new planning efforts subject to completion and approval (Manning, U.S. Forest Service, *in litt.* 1999).

The National Park Service is involved with prairie dog control programs through integrated pest management guidelines. During 1982–1992, four National Parks in the northern Great Plains were involved in prairie dog control—Badlands National Park, South Dakota; Wind Cave National Park, South Dakota; Theodore Roosevelt National Park, North Dakota; and Devils Tower National Monument, Wyoming (Roemer and Forrest 1996). In a memorandum dated January 14, 1999, the National Park Service instructed Superintendents of National Parks within the Midwest Region where prairie dogs occur (Badlands, Fort Larned, Scotts Bluff, Theodore Roosevelt, and Wind Cave units) to suspend further treatment of prairie dog colonies (with few exceptions) until a final determination is made on their status (Schenk, National Park Service, *in litt.* 1999).

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service-Wildlife Services influences prairie dog control programs through its grant-in-aid program to States, which provides technical assistance to other State, Tribal, and Federal agencies, and private landowners, and its distribution of prairie dog toxicants. Roemer (1997) reported that during 1990–1994, the Animal and Plant Health Inspection Service-Wildlife Services was involved in control of prairie dogs over 101,660 ac (41,140 ha). Additionally, they were involved in control programs in the early 1980s at the Pine Ridge Indian Reservation (Oglala Sioux Tribe), South

Dakota. The Animal and Plant Health Inspection Service-Wildlife Services has directed and conducted research related to the efficiency of prairie dog and other rodent control.

The Environmental Protection Agency deals indirectly with prairie dog control through pesticide labeling programs including restrictions to protect wildlife. Presently, labeling does not restrict prairie dog control, but does address concerns for the endangered black-footed ferret.

In Canada, the black-tailed prairie dog is designated as vulnerable by the Committee on the Status of Endangered Wildlife in Canada. Control is prohibited, and only private landowners are permitted to shoot prairie dogs (Fargey, Grasslands National Park, pers. comm. 1998).

In Mexico, the black-tailed prairie dog is listed as threatened by the Lista de las Especies Amerzadas, the official threatened and endangered species list of the Mexican Government (SEMARNAP 1994). List *et al.* (1997) reported that in Mexico, laws exist to stop control, but are often not enforced, and extensive control occurs. There are no protected areas for the black-tailed prairie dog in Mexico (Ceballos *et al. 1993).*

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Control Effort

We believe that control efforts have limited black-tailed prairie dog populations, especially large-scale, well-organized efforts conducted early in the century. These control programs were conducted in response to concerns regarding potential forage competition with domestic livestock. Current control efforts are limited compared to historic efforts, but still impact a significant portion of occupied habitat annually. A well-documented control effort has occurred over most of the range of the black-tailed prairie dog (Anderson *et al.* 1986, Bell 1921, Cain *et al.* 1972, Forrest and Proctor in prep., Hanson 1993, Hubbard and Schmitt 1983, Lantz 1903, Lewis and Hassien 1973, Linder *et al.* 1972, Merriam 1902, Roemer and Forrest 1996, Shriver 1965). Control efforts resulted in extirpation of the black-tailed prairie dog in Arizona (Alexander 1932). Similar control efforts in Texas resulted in the persistence of only remnant populations in areas where, historically, the largest known populations of the species occurred (Bureau of Sport Fisheries and Wildlife 1961, Cheatheam 1977, Cottam and Caroline 1965).

Prairie dog control occurred repeatedly in most areas, and figures cited for acreage controlled may include retreatment of the same areas in subsequent years. Therefore, annual estimates of lands treated do not always equate to total loss of habitat. However, control (usually in conjunction with other factors) has led to the complete loss of occupied habitat in many areas. Organized prairie dog control gained momentum from 1916 to 1920 when prairie dogs were controlled on tens of millions of acres of western rangeland (Bell 1921). Federal programs were responsible for much of this effort (Cain *et al.* 1972). From 1937 to 1968, 30,447,355 ac (12,331,178 ha) of prairie dog occupied habitat were controlled (Cain *et al.* 1972). In the 1960s, several States reached their lowest estimates of occupied habitat (Bureau of Sport Fisheries and Wildlife 1961). In 1972, Compound 1080, which was used extensively in prairie dog control efforts, was banned by Presidential Executive Order II 11643. Although prairie dog control continued via other toxicants, it was at a reduced rate.

The most extensive control efforts in recent years have been conducted in the Northern Great Plains (U.S. Forest Service 1998). Roemer and Forrest (1996) summarized recent Federal and State control efforts on approximately 1,045,524 ac (423,437 ha) in South Dakota, Montana, and Wyoming. From 1978 to 1992, an average of 69,701 ac (28,229 ha) were treated annually in these three States. These estimates did not include estimates for private control or control involving indirect State or Federal assistance. Forrest and Proctor (in prep.) estimated that in recent years control conducted at the local level probably affected ''tens of thousands'' of black-tailed prairie dog occupied habitat on an annual basis. The BIA administered the last large-scale control effort for black-tailed prairie dogs on the Pine Ridge Reservation in South Dakota in the early 1980s. This effort resulted in the eradication of most prairie dogs on approximately 458,618 ac (185,740 ha) from 1980 to 1984. From 1985 to 1986, 240,000 ac (97,000 ha) were retreated (Roemer and Forrest 1996). In 1987, after these efforts, 57,281 ac (23,199 ha) of occupied habitat remained (Tschetter 1988). Current estimates of occupied habitat range from 20,000 to 30,000 ac (8,000 to 12,000 ha) (Yellowhair, Pine Ridge Sioux Tribe, pers. comm. 1999). Following control efforts on Pine Ridge, three additional extensive control efforts targeted for the Cheyenne River and Rosebud Reservations in South Dakota and Fort Belknap Reservation in Montana were halted due to concerns regarding the lack of available black-footed ferret reintroduction sites.

Vulnerability of the Species in Perspective

Three major impacts have had a substantial influence on black-tailed prairie dog populations. The first major impact on the species was the initial conversion of prairie grasslands to cropland in the eastern portion of its range from approximately the 1880s–1920s. The conversion of native prairie to cropland likely reduced black-tailed prairie dog occupied habitat in the United States from about 80 million ac (32 million ha) to about 50 million ac (20 million ha) or less. The second major impact on the species was large-scale control efforts conducted from approximately 1918–1972 in efforts to reduce competition between prairie dogs and domestic livestock. Repeated control efforts likely reduced black-tailed prairie dog occupied habitat in the United States from about 50 million ac (20 million ha) to approximately 364,000 ac (147,000 ha) by 1961 (Bureau of Sport Fisheries and Wildlife 1961). Some limited recovery and subsequent declines have since occurred in these remnant populations. The third major impact on the species was the inadvertent introduction of an exotic disease from the Old World, sylvatic plague, into North American ecosystems in 1908, with the first recorded impacts on the black-tailed prairie dog in the 1940s. These three factors, as well as other additional factors impacting the species, are discussed below.

We believe that many factors, alone, in combination with each other, and synergistically, have influenced and continue to influence black-tailed prairie dog populations. Historically, large black-tailed prairie dog populations successfully coped with various depressant factors, except plague, on a different scale; populations were large and robust, while threats were few with only short-term effects. Presently, most populations are significantly reduced and must cope with many persistent influences that depress populations, both temporally and permanently. Based upon our review of the available information, we conclude that a general long-term, rangewide decline has occurred, in addition to more recent population declines in some areas.

The persistence of the black-tailed prairie dog as a species may appear secure to some observers because it is relatively abundant in absolute numbers when compared with many other

species with smaller populations that are not thought to be vulnerable. Many wildlife species in North America that have experienced significant population declines remain viable (e.g., various game species such as the pronghorn (*Antilocapra americana*)). However, the black-tailed prairie dog is a highly social species that, for the most part, responds to major factors causing population reductions (e.g., plague and control) on the basis of entire colonies rather than on an individual basis. Additionally, adequate regulatory mechanisms are not in place to protect or manage populations of the black-tailed prairie dog, as they are with most game species. Therefore, populations are likely not as viable as their absolute numbers might suggest.

A significant portion of existing black-tailed prairie dog occupied habitat rangewide occurs in a few large complexes. Approximately 36 percent of the remaining occupied habitat for the species in North America occurs in seven complexes, each larger than 10,000 ac (4,000 ha). These complexes include—Buffalo Gap National Grassland/Conata Basin, South Dakota; Cheyenne River Reservation, South Dakota; Fort Belknap Reservation, Montana; Janos Nuevo Casas Grandes, Mexico; Pine Ridge Reservation, South Dakota; Rosebud Reservation, South Dakota; and Thunder Basin National Grassland, Wyoming. These complexes are potentially vulnerable to control efforts or plague.

Extant populations of black-tailed prairie dogs may or may not be large enough to be resilient to ongoing or future environmental challenges and related potential declines. Quammen (1996) provided examples of species that were abundant, but suddenly became very rare. For example, he reported that the passenger pigeon (*Ectopistes migratorius*) numbered in the billions around 1810 and in the low millions by the 1880s, yet was extinct in the wild by 1900. Habitat destruction and over-harvesting depressed passenger pigeon numbers to a few million, a level too low for a highly social and colonial species to function (Halliday 1980). The black-tailed prairie dog numbered in the billions around 1900, exists as a few million at present, and appears to be declining in a significant portion of its range. The advantages of sociality (e.g., breeding, feeding, predator defense) may no longer offset its modern disadvantages (e.g., vulnerability to an exotic disease and control efforts). Accordingly, the vulnerability of the black-tailed prairie dog to population reductions is likely related less to its absolute numbers than to the number of colonies in which it exists, their size, their geospatial relationship, existing barriers to immigration and emigration, and ultimately the number and nature of the remaining direct threats to the species.

Finding

After a thorough review of the best available scientific and commercial information, we find that sufficient information is currently available to support a determination that listing the black-tailed prairie dog as threatened is warranted. This action is appropriate because of the number and variety of threats that act in concert to adversely affect the species. A significant recent decline in occupied habitat has occurred due to several factors, the most influential of which is the widespread occurrence of plague, an exotic and lethal disease to the species. In concert with plague, the loss of suitable habitat and inadequate regulatory mechanisms have adversely affected remnant fragmented populations. The available information indicates that the species is likely to become endangered throughout all or a significant portion of its range in the foreseeable future.

A major decline in historic black-tailed prairie dog occupied habitat has occurred (perhaps as much as 99 percent). Sixty percent of the species' remnant occupied habitat is vulnerable or very vulnerable to the effects of habitat loss or modification, disease, inadequate regulatory mechanisms, and other factors (Black-footed Ferret Recovery Foundation, *in litt.* 1999). Based on our review of the available distribution data, we estimate that approximately 30 percent of the historic range no longer supports any appreciable number of black-tailed prairie dogs, and that these reductions occurred at the periphery of the historic range. However, reductions in occupied habitat have also occurred throughout the historic range; approximately 37 percent of the suitable habitat within the historic range in the United States has been fundamentally modified via conversion to cropland and is not available for use by the species (Black-footed Ferret Recovery Foundation, *in litt.* 1999). Additionally, habitat in approximately 66 percent of the historic range of the species has been degraded by the occurrence of plague (Black-footed Ferret Recovery Foundation, *in litt.* 1999). These estimates are not additive inasmuch as several factors can affect any given portion of the range.

Recent, widely separated, site-specific declines across the area where 60 percent of the current occupied black-tailed prairie dog habitat now exists appear to be indicative of a general population decline. The overall decline may be similar to the specific decline observed across the State of Montana from 1986 to 1998 when approximately 50 percent of all occupied habitat was lost, largely due to plague (Montana Department of Fish, Wildlife, and Parks 1998). Plague has incrementally extended its range and impacts on black-tailed prairie dogs since it was first documented in the species. It may likely continue to expand into the eastern portions of the species' range in the immediate future, as evidenced by recent reports of predator species' exposure to plague in previously unaffected portions of the black-tailed prairie dog range. A decline of similar magnitude has occurred with populations in Mexico (12 percent of current occupied habitat); however, the decline in Mexico is due to cropland conversion, not plague.

At present, occupied habitat has decreased over the past century by two orders of magnitude (or 99 percent, from approximately 100 million ac to less than 1 million ac). If the magnitude of decline that we have observed due to plague or cropland conversion persists in western portions of the species' range, and manifests itself in eastern portions of the species' range, over the next 30 years existing occupied habitat could decline another order of magnitude to as low as approximately 10 percent of current estimates, or approximately 0.1 percent of historic estimates.

We have evaluated the magnitude and immediacy of threats to the black-tailed prairie dog. The following provides a summary of these evaluations.

Habitat loss and fragmentation are considered a threat of moderate magnitude. The species has lost an estimated 99 percent of its historic occupied habitat, much of it through cropland conversion, largely in the eastern portion of the species' range. However, a considerable amount of potential unoccupied habitat remains, especially in the western portion of the species' range. This unoccupied habitat could be utilized if other factors such as disease and control efforts were not present or were carefully managed via adequate regulatory mechanisms. This threat is considered imminent because habitat loss continues at present in various parts of the species' range from a variety of activities, including cropland conversion, urbanization, change in vegetative communities, and fragmentation.

Overutilization via commercial use of the species as a pet is not considered a threat because of the apparent low

number of individuals utilized. Overutilization via recreational shooting is considered a threat of low magnitude. Local populations may be impacted by shooting; however, significant rangewide population declines due to this factor are not likely. This threat is considered imminent because it is ongoing.

Disease is considered a threat of moderate magnitude. Plague has markedly reduced some populations, but has not affected all populations at once. Some population recovery may occur, largely via unaffected adjacent populations, before plague reoccurrence. Plague has impacted the species and its conspecifics throughout a significant portion of their ranges. Black-tailed prairie dog populations demonstrate nearly 100 percent mortality when exposed to plague. An epizootic may affect an entire complex similar to a pathogen affecting an individual animal. The spread of plague in black-tailed prairie dog populations underscores the likelihood that areas as yet unaffected may experience outbreaks in the future. This threat is considered imminent because it is ongoing. Predation is not considered a threat.

Existing regulatory mechanisms are inadequate and considered a threat of moderate magnitude. All States within the current range of the black-tailed prairie dog classify the species as a pest for agricultural purposes and either allow or require its eradication (Mulhern and Knowles 1995). Few regulatory mechanisms exist to aid in conserving the species. This threat is considered imminent because it is ongoing. State wildlife agencies and other interested parties are developing a conservation plan for the species. While we support the States' efforts and will cooperate in conservation actions for the black-tailed prairie dog, at this early stage of development, the conservation assessment and strategy document lacks commitments to specific immediate actions that would affect the status of the species.

Control programs conducted largely in response to concerns related to potential forage competition with domestic livestock are considered a threat of moderate magnitude. Control programs have had significant impacts on population levels in the past. Control efforts resulted in extirpation of the black-tailed prairie dog from Arizona and significant reductions in other States. Current control efforts may impact 10–20 percent of the species' overall population annually (Forrest and Proctor, in prep.). This threat is considered imminent because it is ongoing. Control efforts in some areas could likely be accommodated if adequate regulatory mechanisms were in place that balanced agricultural and wildlife conservation interests.

We conclude that the overall magnitude of threats to the black-tailed prairie dog throughout its range is moderate and the overall immediacy of these threats is imminent. The black-tailed prairie dog is considered a species without subspecies classification. Pursuant to the Service's Listing Priority Guidance (48 FR 43098), a species for which threats are moderate and imminent is assigned a Listing Priority Number of 8. Region 6 currently has nine Candidate species or subspecies that have lower Listing Priority Numbers and, therefore, are in more immediate need of protection. Region 6 also has four species proposed as endangered or threatened, and two species for which proposed rules are under review. Therefore, while we have concluded that the listing of the black-tailed prairie dog as threatened is warranted, an immediate proposal to list is precluded by other, higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants.

References Cited

A complete list of references cited in this notice is available upon request from the South Dakota Field Office (see **ADDRESSES** section).

Author: The primary author of this document is Pete Gober (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 as amended (16 U.S.C. 1532 *et seq.*).

Dated: February 1, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–2593 Filed 2–3–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 012400B]

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery

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

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement (SEIS) and notice of scoping process; request for comments.

SUMMARY: The New England Fishery Management Council (Council) announces its intention to prepare Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (FMP) to develop an area based management system that would, among other things, close areas with high concentrations of small scallops and open them later when the scallops are bigger. The Council also announces its intent to prepare an SEIS for the Atlantic Sea Scallop FMP in accordance with the National Environmental Policy Act of 1969 to analyze the impacts of any management alternatives. The Council will hold public scoping meetings in Fairhaven, MA; Virginia Beach, VA; and Cape May, NJ; to determine the scope of issues to be addressed and for identifying the significant issues related to the management alternatives.

DATES: Written comments on the intent to prepare the SEIS must be received on or before 5:00 p.m., local time, March 1, 2000. The meetings will held between Tuesday, February 15, 2000, and Thursday, February 18, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Written comments should be sent to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Comments may also be sent via fax to (978) 465–0492. The meetings will be held in Fairhaven, MA; Virginia Beach, VA; and Cape May, NJ. See **SUPPLEMENTARY INFORMATION** for specific locations. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water St., Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Background

Amendment 4 to the Atlantic Sea Scallop FMP established a limited access program and a schedule of annual day-at-sea (DAS) allocations for full-time, part-time, and occasional vessels with limited access permits. Although Amendment 4 changed the restrictions on fishing gear and limited the number of crew aboard limited

access vessels, the primary management measure to control fishing mortality was the annual DAS allocation. The initial annual allocations in 1994 were 201 days for full-time vessels, 81 days for part-time vessels, and 17 days for occasional vessels. Amendment 4 furthermore established a schedule to reduce by 2000 the annual DAS allocations and fishing mortality. Overfishing was then defined to occur whenever fishing mortality exceeded 0.97. Amendment 4 also established the fishing year, when vessels receive new DAS allocations, as March 1 through February 28/29, and established the annual framework adjustment procedure.

Since 1994, NMFS has implemented several framework adjustments which, among other actions, reduced the crew limit from 9 to 7 persons and adjusted the annual DAS allocations. Closed Area I, Closed Area II, and the Nantucket Lightship Area were closed for scallop fishing through an action promulgated under the Northeast Multispecies FMP to protect groundfish and reduce groundfish bycatch.

Amendment 7 to the Atlantic Sea Scallop FMP changed the overfishing definition to comply with new mandates of the Sustainable Fisheries Act and extended the DAS reduction schedule through 2008 to achieve a 10-year biomass rebuilding objective. To comply with the new overfishing definition and implement the rebuilding schedule, Amendment 7 revised the DAS schedule beginning March 1, 1999. To allow time for industry adjustment to the new regulations, the initial DAS allocations in 1999 were 120 days for full-time vessels, 48 days for part-time vessels, and 10 days for occasional vessels. According to Amendment 7, the DAS allocations in 2000 would be reduced to 51 days for full-time vessels, 20 days for part-time vessels, and 4 days for occasional vessels and would remain below these levels until 2007 when the FMP met the biomass rebuilding targets. The SEIS for Amendment 7 indicated that the 2000 DAS allocations would have negative impacts on the economic viability of the vessels and the scallop fleet. Amendment 7 also modified the framework adjustment process to allow the Council to consider closing and re-opening areas as well as closing two areas in the Mid-Atlantic to protect small scallops that were prevalent there and promote rebuilding.

The Council is considering development of Amendment 10 to develop an area based management system that would, among other things, close areas with high concentrations of small scallops and open them later when the scallops are bigger. The Council believes that shifting fishing effort in this manner could promote rebuilding, improve yield, and reduce the economic impacts of the low DAS allocations. Another purpose of Amendment 10 would be to change the fishing year to allow timelier use of the adjustment mechanism, taking into account when the results of the annual resource abundance survey and other data become available. Other management measures, including individual fishery quotas and transferability, could be considered during the development of Amendment 10 in place of or in addition to DAS allocations and area based management. More details of the issues and problems to be addressed by Amendment 10 are available in a document from the Council office. See **ADDRESSES** for details.

Public Meeting Schedule

Tuesday, *February 15, 2000*, at 7:30 p.m.

Location: Seaport Inn, 110 Middle Street, Fairhaven, MA 02719; telephone (508) 997–1281.

Wednesday, *February 16, 2000*, at 7:30 p.m.

Location: Holiday Inn, Executive Center, 5655 Greenwich Road, Virginia Beach, VA 23462; telephone (757) 499–4400.

Thursday, *February 17, 2000*, at 7:30 p.m.

Location: Grand Hotel, 1045 Beach Drive, Cape May, NJ 08204; telephone (609) 884–5611.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

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

Dated: January 31, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–2573 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 24
Friday, February 4, 2000

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

SUPPLEMENTARY INFORMATION: The National Agricultural Research, Extension, Education, and Economics Advisory Board, which represents 30 constituent categories, as specified in section 802 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127), has scheduled a National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting, March 13–15, 2000.

On Monday, March 13, the Advisory Board will sponsor its 4th National Stakeholder Symposium, focusing on the Integrated Authority for Research, Education, and Extension, as announced in Press Release No. 7.99, Secretary of Agriculture, USDA. The Symposium will begin promptly at 9 a.m. and use a panel format as in previous years. Each panelist will be permitted to make a presentation, with time limits to be announced, and will receive questions from the Advisory Board members. If you wish to be considered as a panelist or would like to nominate a panelist, please forward speaker names, phone numbers, and a brief summary, outline, or similar indication of the intended remarks regarding the topic area to the contact person below for Board consideration. Names for panelists will be reviewed and selections will be made by the Advisory Board and its Executive Committee. The general Advisory Board meeting will begin at 9 a.m. on Tuesday, March 14, and continue until approximately noon on Wednesday, March 15. During this time, the Advisory Board will (1) incorporate input of stakeholders for use in recommendations for the FY 2002 priorities and the integrated authority; (2) hear a report on the progress of REE programs and projects with regard to relevance to research priorities and adequacy of funding; (3) hear progress reports on Advisory Board working group activities; (4) conduct a focus session on ''Changing Pricing and Marketing Structures in the Food and Fiber System;'' (5) discuss plans for a summer regional listening session; (6) and conduct other business as needed.

Dates: March 13—9:00 a.m. to 5:00 p.m. 4th National Stakeholder Symposium; March 14—9:00 a.m. to 5:00 p.m.; March—15 9:00 a.m. to Noon.

Place: Crown Plaza Hotel (Crystal City), Grand Ballroom, 1489 Jefferson Davis Highway, Arlington, VA 22202.

Type of Meeting: Open to the public.

Comments: The public may file written comments before or after the meeting with the contact person. All statements will become a part of the official records of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Office of the Advisory Board; Research, Education, and Economics; U.S. Department of Agriculture; Washington, DC 20250–2255.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 344A Jamie L. Whitten Building, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW, Washington, DC 20250–2255. Telephone: 202–720–3684. Fax: 202–720–6199, or e-mail: lshea@reeusda.gov.

Done at Washington, DC this 20th day of January 2000.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 00–2571 Filed 2–3–00; 8:45 am]

BILLING CODE 3410 22 P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Appointment of the Advisory Committee on Agricultural Biotechnology

AGENCY: Office of the Under Secretary, Research, Education, and Economics, USDA.

ACTION: Notification of Appointment of the Advisory Committee on Agricultural Biotechnology.

SUMMARY: The Office of the Under Secretary, Research, Education, and Economics of the Department of Agriculture, in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, announces members appointed to the Advisory Committee on Agricultural Biotechnology. Thirty-eight members were appointed from nominations of more than 220 well-qualified individuals, representing the biotechnology industry, conventional, sustainable, and organic farmers, food manufacturers, commodity processors and shippers, environmental and consumer groups, along with academic researchers as well as experts on consumer attitudes, bioethics, and legal issues. Equal opportunity practices were followed in appointing committee members. To assure that recommendations of the advisory committee take into account the needs of diverse groups served by the Department, membership includes, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The following appointments to the Advisory Committee on Agricultural Biotechnology have been made:

Dennis E. Eckart will serve as Chair of the Committee. He is an attorney at Baker and Hostetler, LLP, in Washington, DC, and a former member of Congress from Ohio;

Dale E. Bauman, Liberty Hyde Bailey Professor and Professor of Nutritional Biochemistry in the Department of Animal Science and the Division of Nutritional Sciences at Cornell University in Ithaca, New York;

Daniel R. Botkin, Research Professor, Department of Ecology, Evolution and Marine Biology, University of California, in Santa Barbara, California;

Carolyn Brickey, Executive Director, National Campaign for Pesticide Policy Reform, in San Francisco, California, and member, National Organic Standards Board;

R. Jeffrey Burkhardt, Professor of Food and Resource Economics, Food and Resource Economics Department, University of Florida in Gainesville, Florida, and member, US/EU Committee on Ethics and Food Biotechnology;

R. James Cook, R. James Cook Endowed Chair in Wheat Research, Department of Plant Pathology, Washington State University, in Pullman, Washington;

James F. Dodson, Farmer and seed sales representative for Pioneer Hi-Bred International, Inc., in Robstown, Texas and Chairman, Environmental Task Force, National Cotton Council;

Linda J. Fisher, Vice President for Government and Public Affairs, Monsanto Company, in Washington, DC;

Carol T. Foreman, Distinguished Fellow and Director, the Food Policy Institute, Consumer Federation of America, in Chevy Chase, Maryland, and member, USDA Meat and Poultry Inspection Advisory Committee;

David J. Frederickson, President, Minnesota Farmers Union, in St. Paul, Minnesota;

Rebecca J. Goldburg, Senior Scientist, Environmental Defense Fund, in New York, New York;

Michael K. Hansen, Research Associate, Consumer Policy Institute, Consumers Union, in Yonkers, New York;

Neil E. Harl, Professor of Economics and Charles F. Curtiss Distinguished Professor in Agriculture, Iowa State University, in Ames, Iowa;

Thomas J. Hoban, Professor, Department of Sociology and Anthropology, North Carolina State University, in Raleigh, North Carolina;

Marjorie A. Hoy, Eminent Scholar and Davies, Fischer, and Eckes Professor of Biological Control, Department of Entomology and Nematology, University of Florida, in Gainesville, Florida;

Charles S. Johnson, Chairman, President and Chief Executive Officer, Pioneer Hi-Bred International, Inc., and member, USDA-Foreign Agricultural Service Emerging Market Committee, in Des Moines, Iowa;

Anne R. Kapuscinski, Professor and Extension Specialist, Department of Fisheries and Wildlife, University of Minnesota, in St. Paul, Minnesota;

Edward L. Korwek, Attorney at Hogan and Hartson, LLP, in Washington, DC;

Sharan A. Lanini, Farmer and Sales/Marketing Manager for Growers Transplanting, Inc./Rocket Farms, and member, California Department of Food and Agriculture Organic Food Act Advisory Committee, in Salinas, California;

Mark Lipson, Organic Farmer and Policy Program Director, Organic Farming Research Foundation, in Davenport, California;

Marshall A. Martin, Professor, Department of Agricultural Economics, Purdue University, in West Lafayette, Indiana, and member, National Agricultural Biotechnology Council;

Mary-Howell Martens, Organic Farmer and Adjunct Biology Instructor, Finger Lakes Community College, in Penn Yan, New York;

J. Calman McCastlain, Attorney at Pender, McCastlain, and Ptak, P.A., Farmer and Grain Elevator Operator, and Director, Arkansas Wheat Promotion Board, in Little Rock, Arkansas;

E. Bruce McEvoy, Chief Executive Officer, Seald Sweet Growers, Inc., in Vero Beach, Florida;

Margaret G. Mellon, Director, Agriculture and Biotechnology Program, Union of Concerned Scientists, in Washington, DC;

Lorraine D. Nakai, Entomologist and Farmer, Navajo Agricultural Products Industry, in Farmington, New Mexico;

Philip T. Nelson, Farmer, Chairman, Livestock and Dairy GRITS Committee, Illinois Farm Bureau, and Chairman, American Farm Bureau Federation Swine Advisory Committee, in Seneca, Illinois;

Carol Nottenburg, Attorney and Director of Intellectual Property and Principal Scientist, Center for the Application of Molecular Biology to International Agriculture, in Red Hill, Australia;

Roger C. Pine, Farmer and President, National Corn Growers Association, in Lawrence, Kansas;

Channapatna S. Prakash, Professor of Plant Molecular Genetics, College of Agriculture, Tuskegee University, in Auburn, Alabama, and member of the U.S. Sweetpotato Crop Advisory Committee;

Frank L. Sims, President, North American Grain, Cargill, Inc., in Minnetonka, Minnesota, and member, Chicago Board of Trade;

J. Michael Sligh, Director for Sustainable Agriculture, Rural Advancement Foundation International—U.S.A., in Chapel Hill, North Carolina;

Jerome B. Slocum, Farmer and President, North Mississippi Grain Company, in Biloxi, Mississippi;

Austin P. Sullivan, Jr., Senior Vice President for Corporate Relations, General Mills, Inc., in Plymouth, Minnesota, and Chairman, Biotechnology Task Force, Grocery Manufacturers of America;

Virginia V. Weldon, Physician and Director, Center for the Study of American Business, Washington University, in St. Louis, Missouri, and member, President's Committee of Advisors on Science and Technology;

David M. Winkles, Jr., Farmer and President, South Carolina Farm Bureau, in Sumter, South Carolina, and member, United Soybean Board;

Margaret M. Wittenberg, Vice-President of Government and Public Affairs, Whole Foods Market, Inc., in Dripping Springs, Texas, and member, National Organic Standards Board;

Michael W. Yost, Farmer and President, American Soybean Association, in Murdock, Minnesota.

Committee members will serve two-year terms. In the event of a vacancy, the Secretary will appoint a new member as appropriate and subject to the provisions of the Federal Advisory Committee Act. The duties of the Committee are solely advisory. The Committee will advise the Secretary of Agriculture on a broad array of issues related to the expanding dimensions of agricultural biotechnology. These issues may include: effects of industry concentration and consolidation on farmers and consumers; effects of changing intellectual property right status of agricultural materials on farmers; ways to maximize or encourage potential benefits of biotechnology and minimize potential adverse effects in different sectors of the agricultural economy; guidance on priorities and resource allocations for research, and for other activities to help the functioning of the agricultural marketplace; recommendations for scientific studies that might be conducted by the new USDA-sponsored Standing Committee on Biotechnology at the National Research Council; ways to improve public understanding and input into USDA's regulatory process; and USDA's role in assuring that farmers have an array of choices for future agricultural technology and practices.

The Committee will advise the Secretary through an annual report and other means as necessary and appropriate.

The Committee will meet in Washington, DC, up to four (4) times per year.

Committee members will serve without pay. Reimbursement of travel expenses and per diem costs shall be made to Committee members who would be unable to attend Committee meetings without such reimbursement.

FOR FURTHER INFORMATION CONTACT: Questions should be e-mailed to michael.g.schechtman@usda.gov, faxed to 202–690–4265, or telephoned to Michael Schechtman, 202–720–3817; all mailed correspondence should be sent to Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 14th and Independence Avenue, SW, Washington, DC 20250.

Dated: January 21, 2000.

I. Miley Gonzalez,

Under Secretary, Reserach, Education, and Economics.

[FR Doc. 00–2570 Filed 2–3–00; 8:45 am]

BILLING CODE 3410–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 6, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Leon A. Wilson, Jr. (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Line, Multi-Loop
1670–01–062–6305
NPA: Industrial Opportunities, Inc., Marble, North Carolina
Thumbtacks, Maptacks and Pushpins
7510–00–272–6886 (Thumbtacks)
7510–00–272–6887 (Thumbtacks)
7510–00–272–3099 (Maptacks)
7510–00–285–5844 (Maptacks)
7510–00–940–0935 (Pushpins)
NPA: Delaware County Chapter, NYSARC, Walton, New York

Services

Base Supply Center, Operation of Individual Equipment Element Store and HAZMART, McConnell Air Force Base, Kansas
NPA: Envision, Inc.,Wichita, Kansas
Commissary Shelf Stocking, Custodial and Warehousing, Fort Hamilton Commissary, Brooklyn, New York
NPA: Goodwill Industries of Greater New York, Astoria, New York
Food Service Attendant, Air National Guard Base, 50 Sabre Street, Battle Creek, Michigan
NPA: Calhoun County Community Mental Health Services Board, Battle Creek, Michigan
Grounds Maintenance, U.S. Army Reserve Center, Worcester, Massachusetts
NPA: Seven Hills Occupational & Rehabilitation Services, Inc., Worcester, Massachusetts
Janitorial/Custodial, 126th Air Refueling Wing, Scott Air Force Base, Illinois
NPA: St. Clair Associated Vocational Enterprises, Inc., Belleville, Illinois
Janitorial/Custodial, U.S. Army Reserve Center, OMS, Kittanning, Kittanning, Pennsylvania
NPA: ICW Vocational Services, Inc., Indiana, Pennsylvania
Office Supply Store, Main Interior Building, 1849 C Street, NW, Washington, DC
NPA: Blind Industries & Services of Maryland, Baltimore, Maryland
Operation of Individual Equipment Element Store, Eielson Air Force Base, Alaska
NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina
Operation of Individual Equipment Element Store, Youngstown Air Reserve Station, 910th Air Lift Wing, Vienna, Ohio
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania
Telephone Switchboard Operations, Dyess Air Force Base, Texas
NPA: San Antonio Lighthouse, San Antonio, Texas

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for deletion from the Procurement List.

The following commodities and services have been proposed for deletion from the Procurement List:

Commodities

Amplifier Subassembly
5831–00–087–3408
Kit, Shaving, Surgical Preparation
6530–00–676–7372
Specimen Kit, Urine
6530–00–075–6636
Pillowcase, Disposable
6532–01–125–3269
Aerosol Paint, Lacquer
8010–00–721–9483
Enamel, Lacquer
8010–00–852–9034
8010–00–616–9144
8010–00–878–5761
8010–00–764–8434
8010–00–782–9356
Enamel, Aerosol, Waterbase
8010–01–363–1632

Services

Commissary Shelf Stocking, Naval Training Center, San Diego, California

Commissary Shelf Stocking & Custodial, Oakland Army Base, Oakland, California
Food Service, McClellan Air Force Base, California
Grounds Maintenance, Oakland Fleet Industrial Supply Center, Oakland, California
Grounds Maintenance, Naval Station, Treasure Island, California
Grounds Maintenance, Mare Island Naval Complex and Roosevelt Terrence, (except the Combat Systems Technical School Command), Mare Island Naval Shipyard, Vallejo, California
Janitorial/Custodial, Naval Supply Center, for the following locations in Alameda, California: DRMO Bldgs 4 & 5 (Floor 1), Defense Subsistence Region Pacific, Warehouse 1, Building 6 (Floors 1 & 2), Building 7
Naval Regional Contracting Center, Building 6 (Floor 2)
Janitorial/Custodial, Naval Air Reserve, Moffett Field, California
Janitorial/Grounds Maintenance, U.S. Federal Building, 823 Marin Street, Vallejo, California
Painting Service, McClellan Air Force Base, California
Vehicle Maintenance, McClellan Air Force Base, California

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–2490 Filed 2–3–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities and a service previously furnished by such agencies.

EFFECTIVE DATE: March 6, 2000.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Leon A. Wilson, Jr. (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 29, November 5, and December 10, 17, and 27, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 F.R. 58378, 60407, 69225, 70694 and 72312) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Base Supply Center and Operation of Individual Equipment Element StoreLangley Air Force Base, Virginia
Grounds Maintenance, U.S. Dept. of the Interior, National Park Service, Golden Gate National Recreation Area, Fort Mason, San Francisco, California
Janitorial/Custodial, U.S. Coast Guard, Vessel Traffic Service San Francisco, Yerba Buena Island, Building 278, San Francisco, California
Janitorial/Custodial for the following locations in Washington, DC:U.S. Customs Service, 1301 Constitution Avenue, NW; Interstate Commerce Commission, 12th & Constitution Avenue, NW; Departmental Auditorium & Connecting Wing, 1201 Constitution Avenue, NW
Janitorial/Custodial, U.S. Merchant Marine Academy, Kings Point, New York
Mailing Services, Centers for Disease Control and Prevention, National Center for Infectious Diseases, Atlanta, Georgia
Operation of Individual Equipment Element Store, Altus Air Force Base, Oklahoma
Operation of Individual Equipment Element Store, Goodfellow Air Force Base, Texas

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities and service.

3. The action may result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities and service listed below are no longer suitable for procurement by the FederalGovernment under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities and service are hereby deleted from the Procurement List:

Commodities

Penetrating Fluid 6850–00–985–7180
6850–00–508–0076
Water-Displacing Compound
6850–00–142–9389
6850–00–142–9409
Cleaning Compound, Rug and Upholstery
7930–01–393–6760
Detergent, General Purpose
7930–00–531–9715
7930–00–531–9716
Dishwashing Compound, Hand
7930–01–055–6136

Service

Base Supply Center, Fort McClellan, Alabama

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–2491 Filed 2–3–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Addition to Procurement List: Correction

In the document appearing on page 58379, FR document 99–28359, in the issue of October 29, 1999, in the first column, the listing for Food Service, Marine Corps, Mess Hall #569 and 1620, San Diego, California should have been listed as Food Service, Marine Corps, Mess Halls #569 and 620, San Diego, California.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–2492 Filed 2–3–00; 8:45 am]

BILLING CODE 6353–01–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

The United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 10:00 a.m. local time on February 10, 2000, at the Defense Nuclear Facilities Safety Board (DNFSB), Suite 300, 625 Indiana Ave. NW, Washington, DC. This announcement replaces the incorrect announcement published on February 2, 2000 (65 FR 4945). Topics to be discussed at the meeting will include:

1. Resignation of the Board Chairperson.
2. Interim Board Governance.
3. Proposed Federal Regulations regarding CSB Quorum, Voting Procedures and compliance with the Government Under the Sunshine Act.
4. Review and Adoption of CSB Mission Statement.
5. Major CSB Initiatives for remainder of FY 2000.
6. Review and Discussion of FY 2001 Budget Proposal.

The meeting will be open to the public. The DNFSB office is a secure federal building and photo identification may be required for admission. For more information, please contact the Chemical Safety and Hazard Investigation Board's Office of External Relations, (202)–261–7600, or visit our website at: *www.csb.gov.*

Christopher W. Warner,

General Counsel.

[FR Doc. 00–2681 Filed 2–2–00; 1:37 pm]

BILLING CODE 6350–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m. on Friday, February 18, 2000, at the Ramada Hotel, Meeting Room Maricopa C, 401 North First Street, Phoenix, Arizona 85004. The purpose of the meeting is to discuss current projects and plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 27, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–2508 Filed 2–3–00; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 5:30 p.m. on February 24, 2000, at the Four Points Hotel Manchester, 55 John E. Divine Drive, Manchester, New Hampshire 03103. The Committee will discuss plans for their next briefing to be held in Manchester on the status of civil rights in New Hampshire as part of its project, A Biennial Report on the Status of Civil Rights in New Hampshire. The Committee will also be briefed on current civil rights issues by invited guests.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 27, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–2509 Filed 2–3–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 11/30/99–01/19/00

Firm name	Address	Date/Petition accepted	Product
Sunshine Cap Company	1142 W. Main Street, Lakeland, FL 33815.	12/01/99	Caps, visors, and hats of cotton.
Pinnacle Plastics, Inc	2301 West 21st St., Erie, PA 16506.	12/09/99	Plastic injection molds.
Craig Blanchard d.b.a., Biagaanas Jewelers.	4404 Menaul, Albuquerque, NM 87110.	12/09/99	Silver jewelry.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 11/30/99–01/19/00—Continued

Firm name	Address	Date/Petition accepted	Product
Fabricated Plastics, Inc., d.b.a., FPI Thermoplastic Technologies.	178 Hanover Avenue, Morristown, NJ 07962.	12/09/99	Plastic injection molds.
Felley, Inc	2400 Washington St. NE, Albuquerque, NM 87110.	12/10/99	Silver and gold jewelry.
Custom Tool & Die, LLC	240 Corporate Drive, Sibley, LA 71073.	12/10/99	Injection molds for rubber or plastic.
Contrax Technology, Inc	7509 Connelly Drive, Hanover, MD 21076.	12/13/99	Printed circuit boards.
Dexall Biomedical Labs., Inc	18904 Bonanza Way, Gaithersburg, MD 20879.	12/13/99	Diagnostic medical kits for human infectious diseases and autoimmune diseases.
Altek, Inc	22819 E. Appleway Ave., Liberty Lake, WA 99019.	12/15/99	Injection molded temperature sensor parts.
Mathews Wire, Inc	654 West Morrison St., Frankfort, IN 46041.	12/20/99	Metal candle holders.
Sturdy Oak Wood Crafts	213 S. Jefferson, Elk City, OK 73648.	12/20/99	Tableware and kitchenware of wood.
Kirks Folly, Inc	236 Chapman Street, Providence, RI 02905.	12/20/99	Theme oriented fashion jewelry, watches, and picture frames.
Robinson Foundry, Inc	505 Robinson Court, Alexander City, AL 35011.	12/21/99	Motors and generator housings of cast iron and tractor parts for agricultural use.
DSA Precision Machining, Inc	5845 Big Tree Road, Lakeville, NY 14480.	01/03/00	Metal gears for the transportation industry.
Best Carbide Cutting Tools, Inc	1454 West 135th Street, Gardena, CA 90249.	01/03/00	Carbide cutting tools for industrial machinery and semiconductor manufacturing equipment.
Model Die Casting, Inc	5070 Sigstrom Drive, Carson City, NV 89706.	01/03/00	Model trains.
Douglas Snyder d.b.a., Snyder Systems.	6006 Egret Court, Benicia, CA 94510.	01/03/00	Precision machined parts and metal stamped parts of semiconductor manufacturing equipment.
Tops Malibu, Inc	5555 West 11th Avenue, Eugene, OR 97402.	01/03/00	Candles and other gift items including soaps, games, and party favors.
OK Investment Casting Corp. d.b.a., N. American Precision Casting Co.	708 North 29th Street, Blackwell, OK 74631.	01/03/00	Couplings for hoses, and production tools and chemical static mixers.
Kelson Precision Machine, Inc	808 S. 8th Street, Broken Arrow, OK 74012.	01/05/00	Valve parts.
Dexter Research Center, Inc	7300 Huron River Drive, Dexter, MI 48130.	01/05/00	Metal thermal analysis detectors using optical radiation.
William Ellyn Douglas, L.L.C. d.b.a., Warren Industries, L.L.C.	6401 Falco Road, Rockford, IL 61109.	01/05/00	Thread rolling machinery.
BBC Industries, Inc	1526 Fenpark Drive, Fenton, MO 63026.	01/19/00	Industrial ovens, screen printing dryers, heaters, and shrink-wrap packaging equipment.
Ro-An Jewelry, Inc	1 Industrial Lane, Johnston, RI 01919.	01/19/00	Jewelry.
Micro Industries, Inc	200 West Second St., Rock Falls, IL 61071.	01/19/00	Die cast zinc components.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

(The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.)

Dated: January 21, 2000.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 00–2460 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1074]

Expansion of Foreign-Trade Zone 143, Sacramento, California

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, Sacramento-Yolo Port District, grantee of Foreign-Trade Zone 143, submitted an application to the Board for authority to expand FTZ 143 to include a new site, located at the Chico Municipal Airport, in Chico,

California, some 90 miles north of the San Francisco Consolidated Customs port of entry limits (FTZ Docket 37–99; filed July 16, 1999);

Whereas, Section 2422 of the Miscellaneous Trade and Technical Corrections Act of 1999 (Pub.L. 106–36) directs the Foreign-Trade Zones Board to approve the expansion of FTZ 143 to include the proposed site in Chico, California;

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 41374, July 30, 1999) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to expand FTZ 143 is approved, subject to the Act and the Board's regulations, including § 400.28 and further subject to the Board's standard 2,000 acre activation limit.

Signed at Washington, DC, this 18th day of January, 2000.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–2589 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1072]

Grant of Authority for Subzone Status, Alfa Laval Distribution, Inc., (Separator and Decanter Centrifuge Equipment/ Parts), Indianapolis, IN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for '' * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Indianapolis Airport Authority, grantee of Foreign-Trade Zone 72, has made application to the Board for authority to establish special-purpose subzone status at the separator and decanter centrifuge equipment parts warehousing/distribution (non-manufacturing) facility of Alfa Laval Distribution, Inc., located in Indianapolis, Indiana (FTZ Docket 50–98, filed November 5, 1998);

Whereas, notice inviting public comment has been given in the **Federal Register** (63 FR 63451, November 13, 1998); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the separator and decanter centrifuge equipment parts warehousing/ distribution facility of Alfa Laval Distribution, Inc., located in Indianapolis, Indiana (Subzone 72N), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28. The scope of authority does not include activity conducted under FTZ procedures that would result in a change in tariff classification.

Signed at Washington, DC, this 18th day of January 2000 .

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–2587 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign Trade Zones Board

[Order No. 1073]

Disapproval of Subzone Status, Mani Can Corp. (Steel Cans), Mayaguez, Puerto Rico

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''the establishment * * * of * * * foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Puerto Rico Industrial Development Company, grantee of Foreign-Trade Zone 7, has made application for authority to establish special-purpose subzone status at the steel can processing facilities of Mani Can Corporation (Inc.), located in Mayaguez, Puerto Rico (FTZ Docket 36–96, filed May 7, 1996);

Whereas, notice inviting public comment was given in the **Federal Register** (61 FR 24271, May 14, 1996); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations have not been satisfied, and that approval of the application is not in the public interest;

Now, therefore, the Board hereby disapproves the application for subzone status at the easy-open steel can processing facilities of Mani Can Corporation (Inc.), located in Mayaguez, Puerto Rico.

Signed at Washington, DC, this 18th day of January 2000.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–2588 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803, A–570–803]

Final Results of Expedited Sunset Reviews: Axes and Adzes and Picks and Mattocks From the People's Republic of China

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

ACTION: Notice of final results of expedited sunset reviews: Axes and adzes and picks and mattocks from the People's Republic of China.

SUMMARY: On July 1, 1999, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping duty orders on axes and adzes and on picks and mattocks from the People's Republic of China (''PRC'') (64 FR 35588) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of notices of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate responses from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping orders would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Reviews section of this notice.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*'') and 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope

Although we provide the full scope language for the order on heavy forged hand tools (''HFHTs'') below, this determination applies only to the types of HFHTs which fall under the orders (A–570–803) on axes and adzes and picks and mattocks from the PRC. HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wool splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to the required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing, and painting, and the insertion of handles for handled products. HFHTs are currently classifiable under the following Harmonized Tariff Schedule (''HTS'') item numbers 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kilograms (3.33 pounds) in weight and under, and hoes and rakes, and bars 18 inches in length and under. The HTS item numbers are provided for convenience and customs purposes only. The written description of the scope remains dispositive.

There has been one scope ruling with respect to the order on HFHTs from the PRC in which the Forrest Tool Company's Max Multipurpose Tool was determined to be within the scope of the order (58 FR 59991; November 12, 1993).

These reviews cover imports from all manufacturers and exporters of axes and adzes and picks and mattocks from the PRC.

History of the Orders

The Department published its final affirmative determination of sales at less than fair value (''LTFV'') with respect to imports of HFHTs from the PRC on January 3, 1991 (56 FR 241). In this determination, the Department published four country-wide weighted-average dumping margins, one each for hammers/sledges, bars/wedges, picks/mattocks and axes/adzes. The Department subsequently issued the antidumping duty orders on HFHTs from the PRC on February 19, 1991 (56 FR 6622). Since the imposition of the orders, the Department has conducted several administrative reviews.[1] The orders remain in effect for all manufacturers and exporters of the subject merchandise from the PRC.

To date, the Department has not issued any duty absorption findings in these cases.

Background

On July 1, 1999, the Department initiated sunset reviews of the antidumping duty orders on axes and adzes and picks and mattocks from the PRC (64 FR 35588), pursuant to section 751(c) of the Act. For both of the reviews, the Department received notices of intent to participate on behalf of O. Ames Co. and its division, Woodings-Verona (collectively, ''domestic interested parties'') on July 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations.* Pursuant to section 771(9)(C) of the Act, the domestic interested parties claimed interested

[1] *See Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews,* 60 FR 49251 (September 22, 1995); *Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 61 FR 15028 (April 4, 1996); as amended, *Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China; Amendment of Final Results of Antidumping Duty Administrative Review,* 61 FR 24285 (May 14, 1996); *Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 61 FR 51269 (October 1, 1996); as amended, *Heavy Forged Hand Tools from the People's Republic of China; Notice of Amendment of Final Results of Antidumping Duty Administrative Review,* 62 FR 24416 (May 5, 1997); *Heavy Forged Hand Tools from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews,* 62 FR 11813 (March 13, 1997); *Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews,* 63 FR 16758 (April 6, 1998); as amended, *Amended Final Results of Antidumping Duty Administrative Reviews Pursuant to Remand from the Court of International Trade: Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China,* 63 FR 55577 (October 16, 1998) and *Amended Final Results of Antidumping Duty Administrative Reviews Pursuant to Remand from the Court of International Trade: Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China: Correction,* 64 FR 851 (January 6, 1999); *Heavy Forged Hand Tools, Finished and Unfinished, With or Without Handles, from the People's Republic of China; Final Results and Partial Recission of Antidumping Duty Administrative Reviews,* 64 FR 43659 (August 11, 1999).

party status as domestic manufacturers of the subject merchandise. The Department received complete substantive responses from the domestic interested parties on August 2, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). In addition, we received substantive responses on behalf of Fujian Machinery and Equipment Import and Export Corp., Shandong Huarong General Group Corp., Shandong Machinery Import and Export Corp., and Tianjin Machinery Import and Export Corp. (collectively, ''respondents''). The respondents claimed interested party status under section 771(9)(A) as exporters of the subject merchandise.

Using information on the value of exports submitted by the respondents and the value of imports as reported in U.S. Census Bureau IM146 Reports, the Department determined that respondents' exports to the United States accounted for significantly less than fifty percent of the total volume of subject merchandise to the U.S. over the five calendar years preceeding the initiation of these sunset reviews. Therefore, respondents provided inadequate response to the notice of initiation and, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct expedited, 120-day reviews of the orders.[2]

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.,* an order in effect on January 1, 1995). On November 16, 1999, the Department determined that the sunset reviews of the antidumping duty orders on axes/adzes and picks/mattocks from the PRC are extraordinarily complicated and extended the time limit for completion of the final results of these reviews until not later than January 27, 2000, in accordance with section 751(c)(5)(B) of the Act.[3]

Although the deadline for this determination was originally January 27, 2000, due to the Federal Government shutdown on January 25 and 26, 2000, resulting from inclement weather, the time-frame for issuing this determination has been extended by one day.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making these determinations, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission (''the Commission'') the magnitude of the margins of dumping likely to prevail if the order were revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margins are discussed below. In addition, domestic interested parties' and respondents' comments with respect to continuation or recurrence of dumping and the magnitude of the margins are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin,* the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that it normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In their substantive responses, the domestic interested parties argue that revocation of the orders would likely lead to continuation or recurrence of dumping. They base their conclusion on the combined facts that dumping has continued over the life of the orders at levels well above *de minimis* and that import volumes, in the case of axes/adzes, declined significantly after the issuance of the orders. The domestic interested parties maintain that imports of axes/adzes from the PRC declined significantly from approximately $1.9 million worth of subject merchandise in 1989 to approximately $1.5 million worth of merchandise in 1997 and to roughly $1.2 million in 1998. They argue that although import quantities are not publicly available, the decline in total value of imports indicates that volume also declined substantially. The domestic interested parties, however, do not discuss import volumes for picks/mattocks in their substantive response. They conclude that it is reasonable to assume that the PRC exporters could not sell in the United States without dumping and that, to reenter to U.S. market, they would have to increase or continue dumping (*see* August 2, 1999, substantive response of the domestic interested parties at 3–4).

The respondents argue that if the orders were revoked, shipments would likely continue at average levels as seen in 1996 through 1998. They maintain that there is greater competition from other supplying countries and that demand in the U.S. is fairly inelastic, indicating that even with lower prices (without dumping duties), demand for imports of the subject merchandise from the PRC is not likely to change much (*see* July 30, 1999, substantive response of the respondents at 2).

As discussed in section II.A.3 of the *Sunset Policy Bulletin,* the SAA at 890, and the House Report at 63–64, if companies continue to dump with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. As pointed out above, dumping margins above de minimis continue to exist for shipments of the subject merchandise from China.

Consistent with section 752(c) of the Act, the Department also considers the volume of imports before and after issuance of the order. As mentioned before, the domestic interested parties maintain that imports of axes/adzes from the PRC declined significantly from approximately $1.9 million worth of subject merchandise in 1989 to approximately $1.5 million worth of merchandise in 1997 and roughly $1.2 million in 1998.

Using the Department's statistics, including IM146 reports, on imports of the subject merchandise from the PRC, the Department concludes that imports of axes/adzes and picks/mattocks from the PRC have fluctuated over the life of the orders, showing no overall trend.

[2] *See* memoranda concerning adequacy of respondent response dated October 19, 1999.

[3] *See Extension of Time Limit for Final Results of Five-Year Reviews,* 64 FR 62167 (November 16, 1999).

As noted above, in conducting its sunset reviews, the Department considers the weighted-average dumping margins and volume of imports when determining whether revocation of an antidumping duty order would lead to the continuation or recurrence of dumping. Based on this analysis, the Department finds that the existence of dumping margins above de minimis levels is highly probative of the likelihood of continuation or recurrence of dumping. A deposit rate above a de minimis level continues in effect for exports of the subject merchandise by at least one Chinese manufacturer/exporter. Therefore, given that dumping has continued over the life of the orders, the Department determines that dumping is likely to continue if the orders were revoked. Because we are basing our determination on the fact that dumping has continued throughout the life of the orders, it is not necessary to address respondent's arguments concerning demand.

Magnitude of the Margin

In the *Sunset Policy Bulletin,* the Department stated that it normally will provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin.*) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin.*) We note that, to date, the Department has not issued any duty absorption findings in either of these cases.

In their substantive responses, the domestic interested parties recommend that the Department deviate from its normal practice of using margins from the original investigation and instead use margins from a more recent administrative review. In the case of axes/adzes, the domestic interested parties recommend using the PRC-wide margin of 21.92 calculated in the fourth administrative review. For picks/mattocks, the domestic interested parties argue that the dumping margins likely to prevail if the orders were revoked would be 98.77 percent for Fujian Machinery & Equipment Import & Export Corp., as calculated in the fifth administrative review; 70.31 percent for Shandong Machinery Import & Export Corp., as calculated in the fourth administrative review; and 50.81 percent for Tianjin Machinery Import & Export Corp., Liaoning Machinery Import & Export Corp. and Shandong Huarong General Group Corp., as calculated in the original investigation. The domestic interested parties argue further that, in the case of picks/mattocks, while the dumping margins calculated by the Department have fluctuated, the margins have increased for most of the PRC producers.

The respondents argue that the dumping margin likely to prevail if the orders were revoked would be zero, but no higher than the average margin for the latest reviews.

The Department disagrees with both domestic and respondent interested parties. As noted in the *Sunset Regulations* and *Sunset Policy Bulletin,* the Department may provide to the Commission a more recently calculated margin for a particular company where dumping margins increased after the issuance of the order where that particular company increased dumping to maintain or increase market share. In these cases, the domestic interested parties do not provide any company-specific argument or evidence that any Chinese companies have increased dumping in order to maintain or gain market share or increase import volumes. Moreover, while it is true that dumping margins have increased for some Chinese companies, we have no company-specific information demonstrating that imports of the subject merchandise have increased over the life of the orders. Since we have no company-specific information correlating an increase in exports for one company with an increase in the dumping margin for that particular company, we cannot conclude that the use of more recently calculated margins is warranted in this case. Further, we do not agree with the respondents that a more recently calculated margin is appropriate, because we have no company-specific information demonstrating that the lower, more recent rates are associated with steady or increasing imports.

Therefore, consistent with the *Sunset Policy Bulletin,* the Department finds that the margins calculated in the original investigation are probative of the behavior of Chinese producers/exporters if the orders were revoked as they are the only margins which reflect their behavior absent the discipline of the orders. As such, the Department will report to the Commission the PRC-wide rates from the original investigations as contained in the Final Results of Reviews section of this notice.

Final Results of Reviews

As a result of these reviews, the Department finds that revocation of the antidumping orders would likely lead to continuation or recurrence of dumping at the margins listed below:

PRC-wide	Margin (percent)
Axes/adzes	15.02
Picks/mattocks	50.81

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These five-year (''sunset'') reviews and notices are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 28, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2581 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–815]

Postponement of Final Determination of Antidumping Duty Investigation of Cold-Rolled Flat-Rolled Carbon-Quality Steel From Venezuela

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

ACTION: Notice of postponement of final determination of antidumping investigation of cold-rolled steel from Venezuela.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the final determination of the antidumping investigation of cold-rolled flat-rolled carbon-quality steel from Venezuela.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International

Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0193 or (202) 482–3833, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (the Act), as amended, 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, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (April 1999).

Postponement of Final Determinations and Extension of Provisional Measures

Pursuant to Section 735(a)(2) of the Tariff Act, on January 6, 2000, Siderurgica del Orinoco, C.A. (Sidor) requested that the Department postpone the final determination in this case for the full sixty days permitted by the statute. Sidor's request meets the requirements of section 735(a)(2)(A) because Sidor is the only Venezuelan exporter of the subject merchandise to the United States, and the preliminary determination in this investigation was affirmative. Further, pursuant to section 733(d) and 19 CFR 351.210(e)(2), Sidor requested that the Department extend the period that provisional measures may remain in effect from four months to not more than six months (*i.e.*, suspension of liquidation). This notice serves to postpone this final determination for 60 days (*i.e.*, until no later than 135 days after the date of publication of the preliminary determination). Suspension of liquidation will be extended accordingly.

This notice of postponement is published pursuant to 19 CFR 351.210(g).

Dated: January 18, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–1844 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–821–810

Suspension of Antidumping Duty Investigation: Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation

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

SUMMARY: The Department of Commerce (''the Department'') has suspended the antidumping duty investigation involving cold-rolled flat-rolled carbon-quality steel products (''cold-rolled steel'') from the Russian Federation (''Russia''). The basis for this action is an agreement between the Department and the Ministry of Trade of the Russian Federation (''MOT'') accounting for substantially all imports of cold-rolled steel from Russia, wherein the MOT has agreed to restrict exports of cold-rolled steel from all Russian producers/exporters to the United States and to ensure that such exports are sold at or above the agreed reference price.

EFFECTIVE DATE: January 13, 2000.

FOR FURTHER INFORMATION CONTACT: Jean Kemp or Maria Dybczak at (202) 482–4037 and (202) 482–5811, 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.

SUPPLEMENTARY INFORMATION:

Background

On June 21, 1999, the Department initiated an antidumping duty investigation under section 732 of the Tariff Act of 1930 (''the Act''), as amended, to determine whether imports of cold-rolled steel from Russia are being, or are likely to be, sold in the United States at less than fair value (64 FR 34194). On July 16, 1999, the United States International Trade Commission (''ITC'') notified the Department of its affirmative preliminary finding of threat of material injury in this case (*see* ITC Investigation Nos. 701–TA–393–396 and 731–TA–829–840). On November 10, 1999, the Department published its preliminary determination that cold-rolled steel is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act (64 FR 61261).

The Department and MOT initialed a proposed agreement suspending this investigation on December 10, 1999, at which time we invited interested parties to provide written comments on the agreement. We received comments from petitioners (Bethlehem Steel Corp., Gulf States Steel Inc., Ispat Inland Inc., LTV Steel Company, Inc., National Steel Corp., Steel Dynamics Inc., U.S. Steel Group (a Unit of USX Corp.), Weirton Steel Corporation, and Independent Steelworkers Union) on December 29, 1999. We have taken these comments into account in the final version of the suspension agreement.

The Department and MOT signed the final suspension agreement on January 13, 2000.

Scope of Investigation

For a complete description of the scope of the investigation, *see Agreement Suspending the Antidumping Investigation on Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the Russian Federation,* Appendix III, signed January 13, 2000, attached hereto.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with section 734(l) of the Act, we have determined that the agreement will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation (*see Price Suppression Memorandum,* dated January 13, 2000), that the agreement is in the public interest, and that the agreement can be monitored effectively (*see Public Interest Memorandum,* dated January 13, 2000). We find, therefore, that the criteria for suspension of an investigation pursuant to section 734(l) of the Act have been met. The terms and conditions of this agreement, signed January 13, 2000, are set forth in Appendix 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, the suspension of liquidation of all entries of cold-rolled steel from Russia entered, or withdrawn from warehouse, for consumption, as directed in our notice of *Preliminary Determination of Sales at Less than Fair Value: Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the Russian Federation* (64 FR 61261 (November 10, 1999)), is hereby terminated.

Any cash deposits on entries of cold-rolled steel from Russia pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: January 18, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix 1—Agreement Suspending the Antidumping Investigation on Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation

For the purpose of encouraging free and fair trade in certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products (''Cold-Rolled Steel'') from the Russian Federation (''Russia''), establishing more normal market relations, and preventing the suppression or undercutting of price levels of the like product in the United States, the United States Department of Commerce (''DOC'') and the Ministry of Trade of the Russian Federation (''MOT'') of Russia enter into this suspension agreement (''the Agreement'').

MOT will restrict exports of Cold-Rolled Steel from all Russian producers and exporters to the United States, as provided below. DOC, pursuant to the U.S. antidumping law (see Appendix II), on the Effective Date of this Agreement, will suspend its antidumping investigation of Cold-Rolled Steel from Russia and instruct the U.S. Customs Service (''Customs'') immediately to terminate the suspension of liquidation and release any cash deposit or bond posted for entries of Cold-Rolled Steel covered by this Agreement.

Accordingly, DOC and MOT agree as follows:

I. Definitions

For purposes of this Agreement, the following definitions apply:

A. ''Apparent U.S. Domestic Consumption'' means apparent U.S. domestic consumption determined using official statistics of the U.S. Bureau of the Census regarding imports and exports, and data from the American Iron and Steel Institute regarding domestic shipments, based on the methodology described in Appendix IV of this Agreement.

B. ''Date of Export'' of Cold-Rolled Steel into the United States shall be the date on which MOT issued the Export License.

C. ''Date of Sale'' means the date on which price and quantity become firm, *e.g.,* the date the contract is signed or the specification date if the price and quantity become firm on that date, as reflected in Russian producers' records kept in the ordinary course of business.

D. ''Effective Date'' of this Agreement means [Signature Date].

E. ''Export License'' is the document issued by MOT that serves as both an export limit certificate and a certificate of origin.

F. ''Cold-Rolled Steel'' means the certain cold-rolled, flat-rolled, carbon quality steel products from Russia described in Appendix III.

G. ''Indirect Exports'' means exports of Cold-Rolled Steel from Russia to the United States through one or more third countries, whether or not such exports are further processed, provided that the further processing does not result in a substantial transformation or a change in the country of origin.

H. ''Party to the Proceeding'' means any producer, exporter, or importer of Cold-Rolled Steel, union of workers engaged in the production of Cold-Rolled Steel, association of such parties, or the government of any country from which such merchandise is exported, that actively participated in the antidumping investigation, through written submission of factual information or written argument, as described in more detail in Appendix II.

I. ''Export Limit Period'' means one of the following periods:

Initial Export Limit Period—The Initial Export Limit Period shall begin on January 1, 2000, and end on December 31, 2000.

Subsequent Export Limit Periods—The Subsequent Export Limit Periods shall consist of each subsequent one-year period, the first of which will begin the day after the Initial Export Limit Period ends and end one year later.

J. ''Reference Price'' means the floor price calculated by DOC for sales of Cold-Rolled Steel for export to the United States, as described in Article III.

K. ''United States'' means the customs territory of the United States of America (the 50 States, the District of Columbia and Puerto Rico) and foreign trade zones located within the territory of the United States.

L. ''U.S. Purchaser'' means the first purchaser in the United States that is not affiliated with the Russian producer or exporter and all subsequent purchasers, from trading companies to consumers.

M. ''Violation'' means noncompliance with the terms of this Agreement, whether through an act or omission, except for noncompliance that is inconsequential, inadvertent, or does not substantially frustrate the purposes of this Agreement.

II. Export Limits

A. No Cold-Rolled Steel covered by this Agreement, whether exported directly or indirectly from Russia, shall be entered into the United States unless, when cumulated with all prior entries of Cold-Rolled Steel exported from Russia during the Export Limit Period in which that Cold-Rolled Steel was exported, it does not exceed the export limits set forth below.

1. The export limit for the Initial Export Limit Period (January 1, 2000, to December 31, 2000) shall be 340,000 metric tons of Cold-Rolled Steel.

2. The export limit for each subsequent Export Limit Period will be adjusted by:

(a) First, the export limit for the previous Export Limit Period shall be increased by three per cent of that export limit;

(b) Second, the number obtained under paragraph (a) shall be increased or decreased by the result of multiplying the export limit for the previous Export Limit Period by the percent change (up to three percent) in apparent U.S. domestic consumption of Cold-Rolled Steel during the most recent 12 months for which data are available at the time the DOC makes this calculation, compared to the previous 12 months (as described in Appendix IV).

3. DOC shall determine export limits for each Subsequent Export Limit Period no later than 60 days prior to the beginning of that Export Limit Period.

B. When Cold-Rolled Steel is imported into the United States and is subsequently re-exported, or re-packaged and re-exported, or further processed (but still covered by this Agreement) and re-exported, the amount re-exported shall be deducted from the amounts of exports that have been counted against the export limit for the Export Limit Period in which the re-export takes place. The deduction will be applied only after DOC has received, and has had the opportunity to verify, evidence demonstrating the original importation, any repackaging or further processing, and subsequent exportation.

C. MOT will not issue Export Licenses authorizing the exportation to the United States of Cold-Rolled Steel covered by this Agreement in any half of any Export Limit Period that exceeds 60 percent of the export limit for that Export Limit Period.

D. Notwithstanding any other provision of this Agreement, except Paragraph IV.B., up to 15 per cent of the export limit for any Export Limit Period may be carried over to the Subsequent Export Limit Period and up to 15 per cent of the export limit for any Export Limit Period may be carried back to the last 60 days of the previous Export Limit Period. Any carried over or carried back allowance shall be counted against the export limit for the previous or subsequent Export Limit Period, respectively.

E. If DOC receives information indicating that Cold-Rolled Steel from Russia may have entered into the United States in excess of the export limits established in Paragraph II.A or below the reference price established in Paragraph III.C, DOC shall notify MOT of those entries and provide to MOT all of the information concerning those entries that DOC is able to disclose consistent with U.S. law. MOT shall respond within 15 days. If the information continues to indicate that these entries were in excess of the export limits or below the reference price, DOC shall provide MOT with an opportunity for prompt consultations, which shall be completed within 60 days after DOC's initial notification. Once the consultations have been completed, unless DOC concludes that the entries were not in excess of the export limits or below the reference price, DOC shall count against the export limit for either the current or subsequent Export Limit Period, as appropriate, 125 percent of the volume of the entries in excess of the export limits or below the reference price. When a Russian producer or exporter was responsible for the entries in excess of the export limits or below the reference price, MOT shall deny that producer or exporter Export Licenses for six months following the last date of entry. When any other entity was involved with the entries in excess of the export limits or below the reference price, MOT shall, for one year after the last date of entry, deny Export Licenses for the distribution of any Cold-Rolled Steel involving that entity. The provisions of this section do not supercede the provisions of Article IX of this Agreement if DOC determines that the entries were in excess of the export limits or below the reference price.

III. Reference Price

A. MOT will ensure that Cold-Rolled Steel covered by this Agreement will not be sold

at a price below the reference price in effect on the Date of Sale.

B. DOC shall issue Reference Prices for each quarter of each calendar year 30 days before the beginning of that quarter.

C. The Reference Prices for the first quarter of the Initial Export Limit Period shall be as follows:

Grade(s)	Price per metric ton
A611 (full-hard material only) [1]	$340
A366, A691	345
A619, A620	352

[1] The Reference Price for A611 material is for Grade E full-hard carbon cold-rolled sheet meeting this specification. All other Cold-Rolled Steel meeting this specification may not be exported until such time as DOC and MOT agree, after consultations, upon a Reference Price for such material.

D. Until such time as DOC and MOT agree, after consultations, upon Reference Prices for other grades of Cold-Rolled Steel, only the above grades may be exported to the United States. Consultations regarding Reference Prices for other grades of Cold-Rolled Steel shall be held within 30 days of a request and shall be completed within 15 days.

E. Thirty days before the start of each quarter of each Export Limit Period (beginning with the second quarter of 2000) the Reference Price will be increased or decreased to reflect the change in the weighted-average unit import values for Cold-Rolled Steel from all countries not subject to antidumping duty orders or investigations over the most recent three months for which data is available, as compared to the previous three months. If the weighted-average unit import value for such Cold-Rolled Steel during the last of those three months has risen or fallen by more than six percent from the average of the first two of those months, the Reference Price will be adjusted on the basis of the last month, but that adjustment may not raise or lower the Reference Price by more than 10 percent. The source of the unit import values will be publicly available import statistics from the U.S. Bureau of the Census. DOC will provide MOT with the worksheets supporting its calculation of each quarterly Reference Price at the time it provides the Reference Price to MOT.

F. Reference Prices are F.O.B. port of export. If the sale for export is on terms other than F.O.B. port of export, MOT will ensure that the F.O.B. port of export price is not lower than the Reference Price.

IV. Implementation

A. The United States shall require presentation of an original stamped Export License as a condition for entry into the United States of Cold-Rolled Steel covered by this Agreement, except where there are multiple shipments under a single license. For multiple shipments at multiple ports or multiple entries at one port, the original license shall be presented with the first entry and the volume entered at that time will be noted on the original license. Customs will provide the importer with a certified copy for presentation to Customs with the importer's next entry under that license. Subsequent entries at that port can be made from copies of the original which reflect all of the deductions made from the original license.

B. Export Licenses must contain, for each grade of Cold-Rolled Steel covered by the license, the quantity in metric tons, dimensions (gauge, width, and length (in the case of coils, length, if appropriate)) unit price, and F.O.B. sales value. If necessary, additional information may be included on the Export License or, if necessary, a separate page attached to the Export License. DOC will deduct the quantity listed on each Export License from the export limit for the Export Limit Period in which the Date of Export falls. However, if the bills of lading for all of the shipments under an Export License establish that the actual imports into the United States under that license were less than the total volume listed on the license, DOC will reflect the actual amount as having been deducted from the volume listed on the export license, but, notwithstanding the carry-over and carry-back limitations in Paragraph II.D, will authorize MOT to issue a new Export License in the same or Subsequent Export Licensing Period authorizing additional exports equal in volume to the volume of the undershipment. Exports under such additional licenses will be counted against the export limit for the Export Limit Period containing the Date of Export of the undershipment. Prior to utilizing any such undershipment, MOT shall notify DOC of the Export License(s) under which the undershipment occurred, the Date of Export recorded on the License(s), the amount of the undershipment, and provide DOC with no less than 30 days to confirm the undershipment volume. The United States will prohibit the entry of any Cold-Rolled Steel from Russia not accompanied by an original stamped Export License, except as provided in Paragraph IV.A.[2]

C. MOT will ensure compliance with all of the provisions of this Agreement. In order to ensure such compliance, MOT will take at least the following measures:

1. Ensure that no steel subject to this Agreement is exported from Russia for entry into the United States during any Export Limit Period that exceeds the export limit for that Export Limit Period or that is priced below the Reference Price in effect on the date of sale.

2. Establish an export limit licensing and enforcement program for all direct and indirect exports of Cold-Rolled Steel to the United States no later than 30 days after the Effective Date.

3. Require that applications for Export Licenses be accompanied by a report containing all of the information listed in part A of Appendix I (Exports to the United States).

4. Refuse to issue an Export License to any applicant that does not permit full verification and reporting under this Agreement of all of the information in the application.

5. Issue Export Licenses sequentially, endorsed against the export limit for the relevant Export Limit Period, and reference any notice of export limit allocation results for the relevant Export Limit Period. Export Licenses shall remain valid for entry into the United States for six months. DOC and MOT may agree to an extension of the validity of the Export License in extraordinary circumstances.

6. Issue Export Licenses in the English language and, at the discretion of MOT, also in the Russian language.

7. Issue Export Licenses no earlier than 90 days before the day on which the Cold-Rolled Steel is accepted by a transportation company, as indicated in the bill of lading or a comparable transportation document, for export.

8. Collect all existing information from all Russian producers, exporters, brokers, if applicable, traders of Cold-Rolled Steel, and their relevant affiliated parties, as well as relevant trading companies/resellers utilized by Russian producers, on the sale of Cold-Rolled Steel, and report such information pursuant to Article VI of this Agreement.

9. Permit full verification of all information related to the administration of this Agreement on an annual basis or more frequently, as DOC deems necessary, to ensure that MOT is in full compliance with this Agreement and that all Russian producers and exporters are in compliance with the requirements that MOT has placed upon them under this Agreement. This requirement applies to both Russian State documents and non-State documents, such as sales contracts. In the course of verification, DOC will examine documents that record the description of products exported to the United States, including dimensions (gauge, width, and length) and heat numbers. Such verifications will take place in association with scheduled consultations whenever possible.

10. Ensure compliance with all procedures established in order to effectuate this Agreement by any official Russian institution, chamber, or other authorized Russian entity, and any Russian producer, exporter, broker, and trader of Cold-Rolled Steel, their relevant affiliated parties, and any relevant trading company or reseller utilized by a Russian producer to make sales to the United States.

11. Impose strict measures, such as prohibition from participation in the export limits allowed by the Agreement, in the event that any Russian entity does not comply in full with the requirements established by MOT pursuant to this Agreement.

V. Anticircumvention

A. MOT will take all necessary measures to prevent circumvention of this Agreement, including at least the following:

1. Require that all Russian exporters of Cold-Rolled Steel agree, as a condition of being permitted to export any Cold-Rolled Steel, regardless of destination, not to engage in any of the following activities:

a. Exporting to the United States Cold-Rolled Steel subject to this Agreement that is not accompanied by an Export License issued pursuant to this Agreement.

b. Transshipping Cold-Rolled Steel that is subject to this Agreement to the United States

[2] The validity of an Export License will not be affected by a subsequent change of an HTS number.

through third countries unaccompanied by an Export License.

c. Arranging for processing of Cold-Rolled Steel subject to this Agreement either in Russia or in any third country for exportation to the United States not accompanied by an Export License, but only if such processing is covered by the definition of ''indirect exports'' in Paragraph I.G.

d. Exchanging (''swapping'') Cold-Rolled Steel subject to this Agreement for non-subject Cold-Rolled Steel, so as to cause the non-subject steel to be entered into the United States in place of the subject Cold-Rolled Steel, thereby evading the export limits under this Agreement. ''Swaps'' include, but are not limited to:

i. Ownership swaps—involve the exchange of ownership of Cold-Rolled Steel without physical transfer. These may include exchange of ownership of Cold-Rolled Steel in different countries, so that the parties obtain ownership of products located in different countries, or exchange of ownership of Cold-Rolled Steel produced in different countries, so that the parties obtain ownership of products of different national origin.

ii. Flag swaps—involve the exchange of indicia of national origin of Cold-Rolled Steel, without any exchange of ownership.

iii. Displacement Swaps—involve the sale or delivery of Cold-Rolled Steel from Russia to an intermediary country (or countries) which, regardless of the sequence of events, results in the ultimate sale or delivery into the United States of displaced cold-rolled steel, where the Russian exporter knew or had reason to know that the export sale would have that result.

2. Require that all Russian exporters of Cold-Rolled Steel agree, as a condition of being permitted to export any Cold-Rolled Steel, regardless of destination, to require all of their customers to agree, as part of the contract for sale:

a. Not to engage in any of the activities listed in Paragraph V.A.1 of this Agreement. This requirement does not apply to exports to the United States that are accompanied by a valid Export License.

b. To include that same requirement in any subsequent contracts for the sale or transfer of such steel, and to report to MOT subsequent arrangements entered into for the sale, transfer exchange, or loan to the United States of Cold-Rolled Steel covered by this Agreement.

3. When MOT has received an allegation that circumvention has occurred, including an allegation from DOC, MOT shall promptly initiate an inquiry, normally complete the inquiry within 45 days and notify DOC of the results of the inquiry within 15 days after the conclusion of the inquiry.

4. If MOT determines that a Russian entity has participated in a transaction circumventing this Agreement, MOT shall impose penalties upon such company including, but not limited to, denial of access to export certificates for Cold-Rolled Steel under this Agreement.

5. If MOT determines that a Russian entity has participated in the circumvention of this Agreement, MOT shall count against the export limit for the Export Limit Period in which the circumvention took place an amount of Cold-Rolled Steel equivalent to the amount involved in such circumvention and shall immediately notify DOC of the amount deducted. If sufficient tonnage is not available in the current Export Limit Period, then the remaining amount shall be deducted from the subsequent Export Limit Period or Periods.

6. If MOT determines that a company from a third country has circumvented the Agreement and DOC and MOT agree that no Russian entity participated in or had knowledge of such activities, then the Parties shall hold consultations for the purpose of sharing information regarding such circumvention and reaching mutual agreement on the appropriate measures to be taken to eliminate such circumvention. If the Parties are unable to reach mutual agreement within 45 days, then DOC may take appropriate measures, such as deducting the amount of Cold-Rolled Steel involved in such circumvention from the export limit for the then-current Export Limit Period or a subsequent Period. Before taking such measures, DOC will notify MOT of the facts and reasons constituting the basis for DOC's intended action and will afford MOT 15 days in which to comment.

B. DOC will direct the U.S. Customs Service to require all importers of Cold-Rolled Steel into the United States, regardless of the stated country of origin of those imports, to submit a written statement, on the last day of every quarter, listing all entries of such merchandise and certifying that the Cold-Rolled Steel imported during that quarter was not obtained under any arrangement in circumvention of this Agreement. Where DOC has reason to believe that such a certification has been made falsely, DOC will refer the matter to the U.S. Customs Service or U.S. Department of Justice for further action.

C. DOC will investigate any allegations of circumvention which are brought to its attention, both by asking MOT to investigate such allegations and by itself gathering relevant information. MOT will respond to requests from DOC for information relating to the allegations under Paragraph VI.A.4. In distinguishing normal arrangements, swaps, or other exchanges in the Cold-Rolled Steel market from arrangements, swaps, or other exchanges which would result in the circumvention of the export limits established by this Agreement, DOC will take the following factors into account:

1. Existence of any verbal or written arrangement leading to circumvention of this Agreement;

2. Existence and function of any subsidiaries or affiliates of the parties involved;

3. Existence and function of any historical and traditional patterns of production and trade among the parties involved, and any deviation from such patterns;

4. Existence of any payments unaccounted for by previous or subsequent deliveries, or any payments to one party for Cold-Rolled Steel delivered or swapped by another party;

5. Sequence and timing of the arrangements; and

6. Any other information relevant to the transaction or circumstances.

D. In the event that DOC determines that a Russian entity has participated in circumvention of this Agreement, DOC and MOT shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on an appropriate resolution of the problem. If DOC and MOT are unable to reach mutual agreement within 60 days, DOC may take appropriate measures, such as deducting the amount of Cold-Rolled Steel involved in such circumvention from the export limit for the current Export Limit Period (or, if necessary, the Subsequent Export Limit Period) or instructing the U.S. Customs Service to deny entry to any Russian Cold-Rolled Steel sold by the entity found to be circumventing the Agreement. Before taking such measures, DOC will notify MOT of the basis for DOC's intended action and will afford MOT 30 days in which to comment. DOC will enter its determinations regarding circumvention into the record of the Agreement. MOT may request an extension of up to15 days for any of the deadlines mentioned in this Article.

VI. Monitoring and Notifications

A. MOT will collect and provide to DOC such information as is necessary and appropriate to monitor the implementation of, and compliance with, this Agreement, including the following:

1. Thirty days following the allocation of export rights for any Export Limit Period, MOT shall notify DOC of each allocation recipient and the volume granted to each recipient. MOT also shall inform DOC of any changes in the volume allocated to individual quota recipients within 60 days of the date on which such changes become effective.

2. MOT shall collect and provide to DOC information on exports to the United States in the format in Appendix I to this Agreement, and on the aggregate quantity and value of exports of Cold-Rolled Steel to all other countries. In addition to this information, upon request by DOC, MOT will also provide a list of heat numbers for each shipment to the United States. This information will be subject to verification. This information will be based on semi-annual periods (January 1 through June 30 and July 1 through December 31), and will be provided no later than 90 days following the end of each half-year period, beginning on September 30, 2000.

3. Upon request by DOC, and subject to the provisions of Paragraph VII.A, MOT shall also collect and provide to DOC, within 45 days of the request, transaction-specific data for sales of Cold-Rolled Steel within the Russian home market or to any third country or countries, in the format provided in Appendix I.

4. Within 15 days of a request from DOC for information concerning alleged circumvention or other violation of this Agreement, MOT shall share with DOC all information received or collected by MOT regarding its inquiries, its analysis of such information, and the results of such inquiries.

5. MOT will inform DOC of any violations of any provisions of this Agreement that

come to its attention and of the measures taken with respect thereto.

6. MOT and DOC recognize that the effective monitoring of this Agreement may require that MOT provide information additional to that identified above. Accordingly, after consulting with MOT, DOC may establish additional reporting requirements consistent with the U.S. antidumping law, as appropriate, during the course of this Agreement. MOT shall also collect and provide to DOC, within 45 days of the request, any such additional information requested by DOC.

B. MOT may request an extension of up to 30 days of any deadline in this Article.

C. DOC may disregard any information submitted after the deadlines set forth in this Article or any information which it is unable to verify to its satisfaction.

D. DOC shall provide MOT with the following information relating to implementation and enforcement of this Agreement.

1. Semi-annual reports indicating the volume of U.S. imports of Cold-Rolled Steel subject to this Agreement, together with such additional information as is necessary and appropriate to monitor compliance with the export limits. Such reports and information shall be provided within 120 days after the end of the last semi-annual period.

2. Notice of any violations of any term of this Agreement.

E. DOC will also monitor the following information relevant to this Agreement, and provide such information that is public to MOT upon request.

1. Publicly available data as well as U.S. Customs entry summaries and other official import data from the U.S. Bureau of the Census, on a monthly basis, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

2. U.S. Bureau of the Census computerized records, which include the quantity and value of each entry. Because these records do not provide other specific entry information, such as the identity of the producer/exporter which may be responsible for such sales, DOC may request the U.S. Customs Service to provide such information. DOC may request other additional documentation from the U.S. Customs Service.

F. DOC may also request the U.S. Customs Service to direct ports of entry to forward an Antidumping Report of Importations for entries of Cold-Rolled Steel during the period this Agreement is in effect.

VII. Disclosure and Comment

A. DOC shall make available to representatives of each Party to the Proceeding, under appropriately-drawn administrative protective orders consistent with U.S. laws and regulations, business proprietary information submitted to DOC semi-annually or upon request pursuant to this Agreement, and in any administrative review of this Agreement.

B. Not later than 45 days after the date of disclosure under Paragraph VII.A, the Parties to the Proceeding may submit written comments to DOC, not to exceed 30 pages.

C. At the end of each Export Limit Period, each Party to the Proceeding may request a hearing on issues raised during the preceding Export Limit Period. If such a hearing is requested, it will be conducted in accordance with U.S. laws and regulations.

VIII. Consultations

A. If, in response to a request by MOT at any time, DOC determines that the Reference Price calculated under Article III prevents Russian producers from participating in the U.S. market, MOT and DOC will promptly enter into consultations in order to review the market situation and the appropriateness of the Reference Price level.

B. MOT and DOC shall hold consultations concerning the implementation, operation (including the calculation of Reference Prices) and enforcement of this Agreement each year during the anniversary month of this Agreement.

C. Additional consultations on any aspect of this Agreement shall be held as soon as possible, but no later than 30 days, after a request by either MOT or DOC.

D. If DOC receives information indicating that there has been a violation of this Agreement, DOC shall promptly request special consultations with MOT. Such consultations shall begin no later than 21 days after the day of DOC's request, and must be completed within 40 days after commencement. After completion of the consultations, DOC will provide MOT 20 days within which to provide comments.

E. Two years after the effective date of this Agreement, DOC and MOT shall enter into additional consultations to review the extent to which this Agreement is accomplishing the purposes set forth in the preamble and make any revisions consistent with U.S. law that are appropriate in light of their mutual conclusions.

IX. Violations

A. DOC will investigate any information relating to circumvention or other violations of this Agreement which is brought to its attention, both by asking MOT to investigate such allegations and by itself gathering relevant information. Prior to making a determination that a violation has occurred, DOC will engage in consultations with MOT, pursuant to Paragraphs V.D or VIII.D. of this Agreement.

B. DOC will determine whether a violation has occurred within 30 days after the date for submission of comments by MOT upon the allegation under Paragraph VIII.D.

C. If DOC determines that this Agreement is being or has been violated, DOC will take such action as it determines is appropriate under U.S. law and regulations.

X. Duration

A. This Agreement will remain in force until the underlying antidumping proceeding is terminated in accordance with U.S. antidumping law.

B. DOC will, upon receiving a proper request made by MOT, conduct an administrative review of this Agreement under U.S. laws and regulations.

C. MOT or DOC may terminate this Agreement at any time upon written notice to the other party. Termination shall be effective 60 days after such notice is given. Upon termination of this Agreement, the provisions of U.S. antidumping law and regulations shall apply. In addition, DOC shall terminate this agreement if MOT withdraws from ''The Agreement Concerning Trade In Certain Steel Products From The Russian Federation.'' Termination shall be effective 60 days after the written notice of MOT's withdrawal.

XI. Other Provisions

A. DOC finds that this Agreement is in the public interest, that effective monitoring of this Agreement by the United States is practicable, and that this Agreement will prevent the suppression or undercutting of price levels of United States domestic Cold-Rolled Steel products by imports of the Cold-Rolled Steel subject to this Agreement.

B. DOC does not consider any of the obligations concerning exports of Cold-Rolled Steel to the United States undertaken by MOT pursuant to this Agreement relevant to the question of whether firms in the underlying investigation would be entitled to separate rates, should the investigation be resumed for any reason.

C. The English and Russian language versions of this Agreement shall be authentic, with the English version being controlling for purposes of interpreting and implementing the terms and conditions of this Agreement.

D. All provisions of this Agreement, including the provisions of the Preamble, shall have equal force.

E. For all purposes hereunder, the signatory Parties shall be represented by, and all communications and notices shall be given and addressed to:

DOC: U.S. Department of Commerce, Assistant Secretary for Import Administration, International Trade Administration, Washington, D.C. 20230

MOT: Department for State Regulation of External Economic Activities, Ministry of Trade of the Russian Federation, 18/1 Ovchinnikovskaya naberezhnaya, Moscow, 1 13324, Russia

Signed on this 13th day of January, 2000.

For DOC:

Robert S. LaRussa,

Assistant Secretary for Import Administration.

For MOT:

Yuri V. Akhremenko,

Trade Representative of the Russian Federation to the United States,Minister-Counsellor Commercial.

Appendix I

In accordance with the established format, MOT shall collect and provide to DOC all information necessary to ensure compliance with this Agreement. This information will be provided to DOC on a semi-annual basis.

MOT will collect and maintain data on exports to the United States on a continuous basis. Sales data for the home market, and data for exports to countries other than the United States, will be reported upon request.

MOT will provide a narrative explanation to substantiate all data collected in accordance with the following formats:

A. Exports to the United States

MOT will provide all Export Licenses issued to Russian entities, which shall contain the following information with the exception that information requested in item #9, date of entry, item #10, importer of record, item #16, final destination, and item #17, other, may be omitted if unknown to MOT and the licensee.

1. Export License/Temporary Document: Indicate the number(s) relating to each sale and or entry.
2. Description of Merchandise: Include the 10 digit HTS category, the ASTM or equivalent grade, and the width and thickness of merchandise.
3. Quantity: Indicate in metric tons.
4. F.O.B. Sales Value: Indicate value and currency used.
5. Unit Price: Indicate unit price per metric ton and currency used.
6. Date of Sale: The date all essential terms of the order (i.e, price and quantity) become fixed.
7. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
8. Date of Export: Date the Export License/ Temporary Document is Issued.
9. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.
10. Importer of Record: Name and address.
11. Trading Company: Name and address of trading company involved in sale.
12. Customer: Name and address of the first unaffiliated party purchasing from the Russian exporter.
13. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated to the Russian exporter.
14. Allocation to Exporter: Indicate the total amount of quota allocated to the individual exporter during the Relevant Period.
15. Allocation Remaining: Indicate the remaining export limit allocation available to the individual exporter during the export limit period.
16. Final Destination: The complete name and address of the U.S. purchaser.
17. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination/U.S. purchaser.

B. Exports Other Than to the United States

Pursuant to Paragraph VI.A, MOT will provide country-specific volume and value information for exports of Cold-Rolled Steel to third countries, upon request, regardless of whether MOT licenses exports of Cold-Rolled Steel to such country(ies). The following information shall be provided except that information requested in item #6, date of entry, #7, importer of record, and item #10, other, may be omitted if unknown to MOT and the Russian licensee.

1. Export License/Temporary Document: Indicate the number(s) relating to each sale and/or entry, if any.
2. Quantity: Indicate in original units of measure sold and/or entered in metric tons.
3. Date of Sale: The date all essential terms of the order (i.e., price and quantity) become fixed.
4. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
5. Date of Export: Date Export License/ Temporary Document is issued, if any.
6. Date of Entry: Date the merchandise entered the third country or the date a book transfer took place.
7. Importer of Record: Name and address.
8. Customer: Name and address of the first unaffiliated party purchasing from the Russian exporter.
9. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated.
10. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination.

C. Home Market Sales

Pursuant to Paragraph VII.A, the MOT will provide home market volume and value information for sales of Cold-Rolled Steel, upon request. The following information shall be provided with the exception of item #6, other, if unknown to MOT and the Russian producer/exporter.

1. Quantity: Indicate in original units of measure sold and/or entered in metric tons.
2. Date of Sale: The date all essential terms of order (i.e., price and quantity) become fixed.
3. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
4. Customer: Name and address of the first unaffiliated party purchasing from the Russian exporter.
5. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated.
6. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination.

Appendix II

Section 734 (1) of the Tariff Act of 1930 as amended, provides, in part, as follows:

(1) Special Rule for Non-Market Economy Countries.

(I) In General.—The administering authority may suspend an investigation under this subtitle upon acceptance of an agreement with a non-market economy country to restrict the volume of imports into the United States of the merchandise under investigation only if the administering authority determines that

(A)—Such agreement satisfies the requirements of subsection (d), and

(B)—Will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.

(2) Failure of Agreements—If the administering authority determines that the agreement accepted under this subsection no longer prevents the suppression or undercutting of domestic prices of merchandise manufactured in the United States, the provisions of subsection (I) shall apply.

Section 771(9) of the Tariff Act of 1930, as amended, provides in part, as follows:

(9) Interested Party—The term ''interested party'' means—

(A) A foreign manufacturer, producer, or exporter, or the United States importer, of subject merchandise under this title or a trade or business association a majority of the members of which are producers, exporters, or importers of such merchandise,

(B) The government of a country in which such merchandise is produced or manufactured or from which such merchandise is exported,

(C) A manufacturer, producer, or wholesaler in the United States of a domestic like product,

(D) A certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product,

(E) A trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States,

(F) An association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) with respect to a domestic like product.

Appendix III

For purposes of this Agreement, Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products are defined as the following:

Certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'') '' for example, products which have been beveled or rounded at the edges.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this Agreement, regardless of definitions in the Harmonized Tariff Schedules of the United States (''HTSUS''), are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or

1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this Agreement unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this Agreement:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and
  (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (.001 inches), or
  (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (.001 inches);
- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:
  Thickness: 0.001 to 0.010 inches.
  Width: 15 to 32 inches.

CHEMICAL COMPOSITION

Element	C
Weight %	<0.002%

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:
  Thickness: ≤1.0 mm
  Width: ≤152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight	0.90–1.05	0.15–0.35	0.30–0.50	≤ 0.03	≤ 0.006

MECHANICAL PROPERTIES

Tensile Strength	≥ 162 Kgf/mm^2
Hardness	≥ 475 Vickers hardness number

PHYSICAL PROPERTIES

Flatness	< 0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area percentage
Sulfide Inclusion	≤ 0.04%
Oxide Inclusion	≤ 0.05%

Compressive Stress: 10 to 40 Kgf/mm^2

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μm)
t ≤ 0.209	Rz ≤ 0.5
0.209 < t ≤ 0.310	Rz ≤ 0.6
0.310 < t ≤ 0.440	Rz ≤ 0.7
0.440 < t ≤ 0.560	Rz ≤ 0.8
0.560 < t	Rz ≤ 1.0

• Certain ultra thin gauge steel strip, which meets the following characteristics:
Thickness: ≤ 0.100 mm ±7%
Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤ 0.07	0.2–0.5	≤ 0.05	≤ 0.05	≤ 0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%
Tensile Strength	600 to 850 N/mm^2

PHYSICAL PROPERTIES

Surface Finish	≤0.3 micron
Camber (in 2.0 m)	<3.0 mm
Flatness (in 2.0 m)	≤0.5 mm
Edge Burr	<0.01 mm greater than thickness
Coil Set (in 1.0 m)	<75.0 mm

• Certain silicon steel, which meets the following characteristics:
Thickness: 0.024 inches ± .0015 inches
Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches)
Gamma Crown (in 5 inches)	0.0005 inches, start measuring ¼ inch from slit edge
Flatness	20 I–UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable)
Camber (in any 10 feet)	1/16 inch
Coil Size I.D.	20 inches

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical 1500 minimum

• Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:
Thickness: 0.025 to 0.245 mm
Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	<0.01	0.004 to 0.007	<0.007

- Certain tin mill black plate, annealed and temper-rolled, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > 1 micron (0.000039 inches) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inches) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, *etc.*) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	.5 (0.1)	0 (0)	7 (0.2)

Certain full hard tin mill black plate, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > 1 micron (0.000039 inches) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inches) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Stone Finish	16 (0.4)	8 (0.2)	24 (0.6)

Certain ''blued steel'' coil (also know as ''steamed blue steel'' or ''blue oxide'') with a thickness and size of 0.38 mm × 940 mm × coil, and with a bright finish;

Certain cold-rolled steel sheet, which meets the following characteristics:

Thickness (nominal): ≤ 0.019 inches

Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004	.....	.....
Min. Weight %	.....	0.010	0.012

Certain band saw steel, which meets the following characteristics:Thickness: ≤ 1.31 mmWidth: ≤ 80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤ 0.03	≤ 0.007	0.3 to 0.5	≤ 0.25

Other properties:

Carbide: fully spheroidized having > 80% of carbides, which are ≤ 0.003 mm and uniformly dispersed

Surface finish: bright finish free from pits, scratches, rust, cracks, or seams

Smooth edges

Edge camber (in each 300 mm of length): ≤ 7 mm arc heightCross bow (per inch of width): 0.015 mm max.

The merchandise subject to this Agreement is typically classified in the HTSUS at subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000. 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (''U.S. Customs'') purposes, the written description of the merchandise under this Agreement is dispositive.

Appendix IV

For purposes of this Agreement, Apparent U.S. Domestic Consumption will be estimated as follows, using data provided by the American Iron and Steel Institute and the U.S. Bureau of the Census in the following manner:

Apparent Consumption =

Domestic Shipments of Cold-Rolled Steel [3]
+ Imports of Cold-Rolled Steel [4]
− Exports of Cold-Rolled Steel [5]

The definition of shipments used here, while as close as practically possible, is not identical to the imports as defined in Paragraph I.F and Appendix III of this Agreement.

A–122–047
ARP: 12/01/97–11/30/98
Public Document
IA/III/IX: BF

Petrosul International, c/o Bill Turner, 3380 150 6th Avenue, S.W., Calgary, Alberta, Canada T2P 3Y7

Re: *Antidumping Duty Review of Elemental Sulphur from Canada*

Dear Mr. Turner: This concerns the antidumping review Elemental Sulphur from Canada and Petrosul International (''Petrosul''). We have reviewed Petrosul's March 10, 1999, response letter to the Department's original questionnaire, and have identified certain areas which require additional information (*see* enclosure). Enclosed is a supplemental questionnaire addressing certain deficiencies in your response letter (*See* Attachment I). Please submit your response to: The Department of Commerce, International Trade Administration, Central Records Room B–099, Washington, D.C. 20230, Attn: Brandon Farlander, AD/CVD Enforcement, Office 9.

In responding to this supplemental questionnaire, please follow the ''Instructions for Filing the Response'' and ''Instructions for Preparing the Response'' sections of the antidumping questionnaire.

Please submit your response no later than February 2, 2000. This investigation is on a schedule dictated by law. If you fail to provide accurately the information requested within the time provided, the Department may be required to base its findings on the facts available. Upon receipt of a response that is incomplete or deficient to the extent the Department considers it non-responsive, the Department will not issue additional supplemental questionnaires, but will use facts available. If you fail to cooperate with the Department by not acting to the best of your ability to comply with a request for information, the Department may use information that is adverse to your interest in conducting its analysis.

The information which you submit is subject to verification. Failure to allow verification of any item may affect the consideration which we will accord to that item or to any other material, whether or not we verify the latter.

If you have any questions on this matter, please contact Brandon Farlander at (202) 482–0182.

Sincerely,

Rick Johnson,

Program Manager, AD/CVD Enforcement, Office 9.

Enclosure.

Attachment I—Elemental Sulphur From Canada; Supplemental Questionnaire Petrosul International (''Petrosul'')

In your March 10, 1999, letter response to the Department, you stated that Petrosul did not ship any sulphur to the United States during the period of review (''POR''). However, you stated that Petrosul did purchase sulphur from Husky Oil, Ltd. (''Husky''), which was resold to other parties in Canada, some of which was exported by other parties to the United States. Based on this information, please answer the following questions.

1. As noted above, you state that you purchased suplhur from Husky, some of which was eventually exported to the United States by other parties. Please provide your sulphur contract(s) with Husky in effect during the POR for these transactions, including an explanation of your shipment process. Also, please provide the name and address to whom you sold Husky-produced sulfur to and identify who had knowledge or should have had knowledge that the sulphur was exported to the United States. For the Husky-produced sulphur that you bought and then resold to other parties in Canada, please provide the U.S. customer name(s) and address(es).

2. Also, please state whether you purchased sulphur from other Canadian producers for which either you or another reseller had knowledge or should have had knowledge that it was exported to the United States. If yes, please provide the name(s), address(es), and the contract(s) in effect during the POR, for all parties involved (*i.e.,* Canadian sulphur producers, Canadian resellers, and U.S. customers). Please state whether, for each party you sold sulphur to for which you knew or should have known that this sulphur was destined for the United States, the party knew who produced the sulphur. Finally, please explain your sulphur selling activities, including the shipment process and the substance of your oral and written communications, with respect to these parties.

[FR Doc. 00–1845 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

[3] Cold-Rolled Steel = Black Plate (AISI Data) + Cold-Rolled Sheets (AISI Data) + Cold-Rolled Strip (AISI Data).

[4] Imports of Cold-Rolled Steel = Black Plates (AISI Data) + Cold-Rolled Sheets (AISI Data) + Cold-Rolled Strip (AISI Data) + Imports of HTS Numbers 7210.90.9000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7226.19.1000, and 7226.19.9000 (Data from the U.S. Bureau of the Census on Imports for Consumption, as reported by the International Trade Commission's Trade DataWeb).

[5] Exports of Cold-Rolled Steel = Black Plates (AISI Data) + Cold-Rolled Sheets (AISI Data) + Cold-Rolled Strip (AISI Data).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–810]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation

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

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0172 and (202) 482–3818, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references to the Department's regulations are to the provisions codified at 19 CFR Part 351 (1998).

Final Determination

We determine that certain cold-rolled flat-rolled carbon-quality steel products (''cold-rolled steel products'') from the Russian Federation (''Russia'') 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 Act. The estimated margins of sales at LTFV are shown in the ''Final LTFV Margin'' section of this notice.

Case History

Petitioners in this investigation are Bethlehem Steel Corporation, Gulf States Steel, Ispat Inland Steel, LTV Steel Company Inc., National Steel Corporation, Steel Dynamics, U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, United Steelworkers of America, and the Independent Steelworkers Union (collectively ''petitioners'').

Respondents in this investigation are JSC Severstal (''Severstal'') and Novolipetsk Iron & Steel Corporation (''NISCO'').

The preliminary determination in this investigation was published on November 10, 1999. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation,* 64 FR 61261 (November 10, 1999) (''*Preliminary Determination*'').

The Department received comments from a number of parties including importers, respondents, consumers, and the petitioners, aimed at clarifying the scope of these investigations. *See Memorandum to Joseph A. Spetrini* (''*Scope Memorandum*''), January 18, 2000, for a list of all persons submitting comments and a discussion of all scope comments including those exclusion requests under consideration at the time of the preliminary determination in these investigations.

On November 12 and December 1, 1999, respectively, respondents NISCO and Severstal submitted letters informing the Department of their withdrawal from further participation in the proceeding. On December 29, 1999, petitioners filed their case brief in this investigation. No further comments were received by any party. On November 29, 1999 petitioners requested a hearing. However, on January 5, 2000, petitioners withdrew their hearing request.

On January 13, 2000, the Department signed an agreement suspending this antidumping investigation (''the Suspension Agreement'') with the Ministry of Trade of the Russian Federation. On December 22, 1999, we received a request from petitioners that, if we concluded a suspension agreement in this case, we continue the investigation. Pursuant to this request, we have continued and completed the investigation in accordance with section 734(g) of the Act. If the United States International Trade Commission (''ITC'') determines that material injury exists, the Suspension Agreement shall remain in force but the Department shall not issue an antidumping order so long as the Suspension Agreement remains in force, the Suspension Agreement continues to meet the requirements of subsections (d) and (l) of section 734 of the Act, and the parties to the Suspension Agreement carry out their obligations under the Suspension Agreement in accordance with its terms.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States (''HTSUS''), are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and

(a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (.001 inch), or

(b) semi-processed, with core loss of less than 0.085 watts/pound per mil (.001 inch);

- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

Thickness: 0.001 to 0.010 inch
Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight %	< 0.002%

● Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:
Thickness: ≤1.0 mm
Width: ≤152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤0.03	≤0.006

MECHANICAL PROPERTIES

Tensile Strength	≧162 Kgf/mm²
Hardness	≧475 Vickers hardness number

PHYSICAL PROPERTIES

Flatness	less than 0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area percentage
Sulfide Inclusion	≦0.04%
Oxide Inclusion	≦0.05%

Compressive Stress: 10 to 40 Kgf/mm².

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μm)
t≤0.209	Rz0.5
0.209t less than 0.310	Rz≤0.6
0.310t less than 0.440	Rz≤0.7
0.440t less than 0.560	Rz≤0.8
0.560 less than	Rz≤1.0

● Certain ultra thin gauge steel strip, which meets the following characteristics:
Thickness: ≤ 0.100 mm ±7%
Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	less than 3%
Tensile Strength	600 to 850 N/mm²

PHYSICAL PROPERTIES

Surface Finish	≤0.3 micron
Camber (in 2.0 m)	less than 3.0 mm
Flatness (in 2.0 m)	≤0.5 mm
Edge Burr	less than 0.01 mm greater than thickness
Coil Set (in 1.0 m)	less than 75.0 mm

- Certain silicon steel, which meets the following characteristics:
- Thickness: 0.024 inch ±.0015 inch
- Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches)
Gamma Crown (in 5 inches)	0.0005 inch, start measuring ¼ inch from slit edge
Flatness	20 I–UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable)
Camber (in any 10 feet)	1/16 inch
Coil Size I.D.	20 inches

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical 1500 minimum

- Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:

Thickness: 0.025 to 0.245 mm

Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	less than 0.01	0.004 to 0.007	less than 0.007

- Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	5(0.1)	0(0)	7(0.2)

- Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Al	N
Weight %	0.08	0.04	0.40	0.03	0.03	0.010—0.025	0.0025

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Tolerance: Guaranteed inside of 15 mm from mill edges	+5 percent (aim ±4 percent)
Width Tolerance	−0/+7 mm
Hardness (Hv)	Hv 85–110
Annealing	Annealed
Surface	Matte
Tensile Strength	>275N/mm_2
Elongation	>36%

• Certain annealed and temper-rolled cold-rolled continuously cast steel, in coils, with a certificate of analysis per Cable System International (''CSI'') Specification 96012, with the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Base Weight	55 pounds
Theoretical Thickness	0.0061 inch (+10 percent of theoretical thickness)
Width	31 inches
Tensile Strength	45,000—55,000 psi
Elongation	minimum of 15 percent in 2 inches

• Certain full hard tin mill black plate, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Stone Finish	16 (0.4)	8 (0.2)	24 (0.6)

• Certain ultra-bright tin mill black plate meeting ASTM 7A specifications for surface finish and RA of seven micro-inches or lower.

• Concast cold-rolled drawing quality sheet steel, ASTM a–620–97, Type B, or single reduced black plate, ASTM A–625–92, Type D, T–1, ASTM A–625–76 and ASTM A–366–96, T1–T2–T3 Commercial bright/luster 7a both sides, RMS 12 maximum. Thickness range of 0.0088 to 0.038 inches, width of 23.0 inches to 36.875 inches.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 53 pound base weight (0.0058 inch thick) with a Temper classification of T–2 (49–57 hardness using the Rockwell 30 T scale).

• Certain single reduced black plate, meeting ASTM A–625–76 specifications, 55 pound base weight, MR type matte finish, TH basic tolerance as per A263 trimmed.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 65 pound base weight (0.0072 inch thick) with a Temper classification of T–3 (53–61 hardness using the Rockwell 30 T scale).

• Certain cold-rolled black plate bare steel strip, meeting ASTM A–625 specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0058 inch ±0.0003 inch

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Hardness	T2/HR 30T 50–60 aiming
Elongation	≥15%
Tensile Strength	51,000 psi ±4.0 aiming

• Certain cold-rolled black plate bare steel strip, in coils, meeting ASTM A–623, Table II, Type MR specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.04	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0060 inch (±0.0005 inch)
Width	≤10 inches (+1/4 to 3/8 inch/−0)
Tensile strength	55,000 psi max.
Elongation	minimum of 15 percent in 2 inches

• Certain ''blued steel'' coil (also know as ''steamed blue steel'' or ''blue oxide'') with a thickness of 0.30 mm to 0.42 mm and width of 609 mm to 1219 mm, in coil form;

• Certain cold-rolled steel sheet, whether coated or not coated with porcelain enameling prior to importation, which meets the following characteristics:

Thickness (nominal): ≤0.019 inch

Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004		
Min. Weight %		0.010	0.012

• Certain cold-rolled steel, which meets the following characteristics:

Width: >66 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	Si
Max. Weight %	0.07	0.67	0.14	0.03

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–2.000
Min. Yield Point (MPa)	265
Max. Yield Point (MPa)	365
Min. Tensile Strength (MPa)	440
Min. Elongation %	26

• Certain band saw steel, which meets the following characteristics:

Thickness: ≤1.31 mm

Width: ≤80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight%	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤0.03	≤0.007	0.3 to 0.5	≤0.25

Other properties:

Carbide: fully spheroidized having > 80% of carbides, which are ≤ 0.003 mm and uniformly dispersed

Surface finish: bright finish free from pits, scratches, rust, cracks, or seams

Smooth edges

Edge camber (in each 300 mm of length): ≤ 7 mm arc height

Cross bow (per inch of width): 0.015 mm max.

• Certain transformation-induced plasticity (TRIP) steel, which meets the following characteristics:

Variety 1

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.09	1.0	0.90
Max. Weight %	0.13	2.1	1.7

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yield Point (MPa)	320
Max Yield Point (MPa)	480
Min. Tensile Strength (MPa)	590
Min. Elongation %	24 (if 1.000–1.199 thickness range) 25 (if 1.200–1.599 thickness range) 26 (if 1.600–1.999 thickness range) 27 (if 2.000–2.300 thickness range)

Variety 2

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.12	1.5	1.1
Max. Weight %	0.16	2.1	1.9

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yield Point (MPa)	340
Max Yield Point (MPa)	520
Min. Tensile Strength (MPa)	690
Min. Elongation %	21 (if 1.000–1.199 thickness range) 22 (if 1.200–1.599 thickness range) 23 (if 1.600–1.999 thickness range) 24 (if 2.000–2.300 thickness range)

Variety 3

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.13	1.3	1.5
Max. Weight %	0.21	2.0	2.0

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.200–2.300 (inclusive)
Min. Yield Point (MPa)	370
Max Yield Point (MPa)	570
Min. Tensile Strength (MPa)	780
Min. Elongation %	18 (if 1.200–1.599 thickness range) 19 (if 1.600–1.999 thickness range) 20 (if 2.000–2.300 thickness range)

- Certain corrosion-resistant cold-rolled steel, which meets the following characteristics:

Variety 1

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.10	0.40	0.10	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.600–0.800

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Min. Yield Point (MPa)	185
Max Yield Point (MPa)	285
Min. Tensile Strength (MPa)	340
Min. Elongation %	31 (ASTM standard 31% = JIS standard 35%)

Variety 2

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.05	0.40	0.08	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–1.000
Min. Yield Point (MPa)	145
Max Yield Point (MPa)	245
Min. Tensile Strength (MPa)	295
Min. Elongation %	31 (ASTM standard 31% = JIS standard 35%)

Variety 3

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cu	Ni	Al	Nb, Ti, V, B	Mo
Max. Weight %	0.01	0.05	0.40	0.10	0.023	0.15–.35	0.35	0.10	0.10	0.30

PHYSICAL AND MECHANICAL PROPERTIES

Thickness (mm)	0.7
Elongation %	≥35

• Porcelain enameling sheet, drawing quality, in coils, 0.014 inch in thickness, +0.002, −0.000, meeting ASTM A–424–96 Type 1 specifications, and suitable for two coats.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000. 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (''U.S. Customs'') purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation is October 1, 1998 through March 31, 1999.

Nonmarket Economy Country Status

The Department has treated Russia as a nonmarket economy (''NME'') country in all past antidumping duty investigations and administrative reviews (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 64 FR 38626 (July 19, 1999) (''*Hot-Rolled Steel*''); *Titanium Sponge from the Russian Federation: Final Results of Antidumping Administrative Review*, 64 FR 1599 (January 11, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 62 FR 61787 (November 19, 1997); and *Notice of Final Determination of Sale at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation*, 60 FR 16440 (March 30, 1995)). A designation as an NME country remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act). Therefore, for this final determination, the Department is continuing to treat Russia as an NME country.

Separate Rates

The Department presumes that a single dumping margin is appropriate for all exporters in an NME country. *See Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). The Department may, however, consider requests for a separate rate from individual exporters.

Severstal and NISCO have each requested a separate, company-specific rate. However, because NISCO and Severstal withdrew from this proceeding, we were not able to verify information provided by these respondents and thus, as adverse facts available, we have not granted Severstal's or NISCO's request for a separate rate for this final determination. *See* ''Application of Facts Available'' below.

Russia-Wide Rate

After sending questionnaires to the nine companies identified as potential respondents in the petition, we received complete Section A responses from two producers—Severstal and NISCO. However, as noted above in the ''Case History'' section, these two companies (Severstal and NISCO) subsequently withdrew from the investigation. Accordingly, we are applying a single antidumping rate—the Russia-wide rate—to all exporters in Russia based on our presumption that those respondents who failed to respond to the initial questionnaire or withdrew from the investigation (*i.e.*, Severstal and NISCO) constitute a single enterprise under common control by the Russian government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996). As discussed below, the Russia-wide rate is based on adverse facts available, and applies to all entries of subject merchandise.

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.

Russia-Wide Rate

Section 776(a)(2)(A) of the Act requires the Department to use facts available when a party withholds information which has been requested by the Department. Additionally, section 782(i)(1) of the Act provides that the Department must rely on verified information for making a final determination in an antidumping duty investigation. In this case, some exporters of the single enterprise failed to respond to the Department's request for information and Severstal and NISCO withdrew from the investigation prior to verification of their questionnaire responses. Thus, consistent with section 782(e)(2) of the Act, we have declined to consider information submitted by either Severstal or NISCO (including information regarding their eligibility for separate rates) because it could not be verified. As a result, pursuant to section 776(a) of the Act, in reaching our final determination, we have used total facts available for the Russia-wide rate because certain entities did not respond and we could not verify Severstal's and NISCO's questionnaire responses.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences when an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See* also ''Statement of Administrative Action'' accompanying the URAA, H.R. Rep. No. 103–316, 870 (''SAA''). The statute and SAA provide that such an adverse inference may be based on secondary information, including information drawn from the petition.

Because certain exporters in the single entity did not respond to our questionnaire and others (*i.e.*, Severstal and NISCO) withdrew from this proceeding, we consider the single entity to be uncooperative. In this regard, we note that while Severstal and NISCO did submit responses to the Department's information requests, their withdrawal from this investigation rendered the submitted information unverifiable and, hence, unusable in determining a final Russia-wide rate. Therefore, we also conclude that Severstal and NISCO (which, as noted above in the ''Russia-wide Rate'' section of this notice, are part of the single enterprise) have not cooperated to the best of their ability in this investigation. Therefore, the Department has determined that, in selecting from among the facts available, an adverse inference is appropriate. Consistent with Department practice in cases in which a respondent has been uncooperative, as adverse facts available, we have applied a margin based on information in the petition (*see* Comment below and *Initiation Checklist: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Argentina, Brazil, the People's Republic of China (''China''), Indonesia, Japan, the Russian Federation (''Russia''), Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela, Attachment: Revised NVs and Margins for Russia* (July 21, 1999) (''*Initiation Checklist*'')).

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 for corroboration may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see id.*).

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 (''NV'') calculations on which the petition margin was based. In corroborating U.S. price, we compared the data used in the petition and found that the price quote used in calculating the highest margin in the petition is within the range of the U.S. Customs' average unit value data for imports of cold-rolled steel from Russia. For NV information, we note that the surrogate value information used in the petition is public information, and therefore does not require further corroboration. With regard to the factor utilizations used in the petition, which were based on petitioner's own production experience (adjusted for known differences), the Department is aware of no other independent sources of information that would enable us to further corroborate this information. However, we note that the SAA (at 870) specifically states that

where ''corroboration may not be practicable in a given circumstance,'' the Department may nonetheless apply an adverse inference. Therefore, based on this analysis, and mindful of the legislative history discussing facts available and corroboration, we consider the highest petition margin to be corroborated to the extent practicable and are assigning it to the single enterprise as adverse facts available. *See Facts Available Corroboration Memorandum,* dated January 18, 2000. The revised highest petition rate, which we have used as the Russia-wide rate, is 73.98 percent.

Interested Party Comment

Comment: Petitioners contend that, since both Severstal and NISCO have withdrawn their participation in this investigation, the Department is prevented from verifying their data. Petitioners argue that the statute provides for application of total facts available under such circumstances. Moreover, because respondents have not fully cooperated with the Department, petitioners assert that they should be assigned a margin based on an adverse inference, citing *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Venezuela,* 63 FR 8946, 8947 (February 23, 1998).

In selecting an adverse inference, petitioners argue that the Department's practice is to use the highest of: The highest margin in the petition (or initiation); the highest margin calculated for any other respondent; or the estimated margin found in the preliminary determination. Petitioners contend that respondents withdrew from further participation after realizing that the results of the investigation would be more favorable to them if based on something other than verification results. Therefore, petitioners argue, the Department should select the margin calculated for the *Preliminary Determination* to prevent respondents from benefitting from their own lack of cooperation.

Petitioners contend that the Department has the ability to use, as facts otherwise available, a margin based on respondent's data even though that data is unverified. Petitioners cite to *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 (October 2, 1996) (''*Foam''*) and *Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada,* 64 FR 56738 (October 21, 1999) (''*Cattle*'') as examples of the Department using a respondent's calculated margin from the preliminary determination as the basis for an adverse inference in selecting facts available when the respondent has withdrawn from participation in the investigation subsequent to the preliminary determination and the data is therefore unverified. Petitioners argue that in the instant case, as was the case in *Foam* and *Cattle,* the respondent Severstal voluntarily submitted data and certified to its accuracy, and there is no evidence on the record to suggest that the data is aberrational.

Department's Position: As discussed in the ''Application of Facts Available'' section, we agree that respondents should be assigned a margin based on adverse facts available. However, we disagree with petitioners that we should select the margin calculated for Severstal in the preliminary determination.

The Act and the SAA allow for wide latitude in choosing among the facts available. Moreover, we make the determination of the most appropriate facts available on a case-by-case basis. Here, we are following our recent practice as articulated in *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation,* 64 FR 38626 (July 19, 1999) (''*Hot-Rolled Steel*''). In that case, as here, respondents withdrew from the investigation after the preliminary determination, precluding verification of their submitted data pursuant to section 782(i)(1) of the Act. We stated:

> Under section 782(i)(1) of the Act, the Department must rely on verified information for making a final determination in an antidumping duty investigation. MMK's and NISCO's withdrawal prior to verification of their questionnaire responses prevents the Department from using their information to calculate a weighted-average margin for our final determination.

Id. at 38630.

We acknowledge our decisions in *Foam* and in *Cattle* to use, as adverse facts available, information submitted by respondents that subsequently withdrew from the proceedings and refused to authorize on-site verification. However, the facts of *Cattle* differ from the present case to the extent that the information of the respondents who withdrew was found to be consistent with verified information otherwise on the record. Moreover, we disagree with petitioners that this indicates that our policy is to select unverified information for purposes of facts available simply because it is the highest rate on the record.

Finally, we disagree that Severstal will benefit from the Department's use of the highest petition rate as adverse facts available. While it is true that the highest petition margin is lower than the margin calculated for Severstal in the preliminary determination, we note that Severstal in fact submitted a revised database which the Department was not able to use in issuing its preliminary determination due to time constraints. Thus, it would be premature to conclude that Severstal benefitted through its withdrawal from this investigation, relative to what its final calculated margin may have been. As we stated in *Hot-Rolled Steel* at 38630, use of a company's ''unverified information as the basis for the final margin could potentially benefit [it] by assigning a margin lower than what would have been calculated using verified information.''

For these reasons, we find that it is appropriate to apply, as adverse facts available, the highest margin alleged in the petition.

Final LTFV Margin

As stated above, the Department entered into a Suspension Agreement in this case on January 13, 2000. Pursuant to that Suspension Agreement, we have instructed Customs to terminate the suspension of liquidation of all entries of cold-rolled steel from Russia. Any cash deposits of entries of cold-rolled steel from Russia shall be refunded and any bonds shall be released.

As noted above, we received a request from petitioners to continue the investigation. Pursuant to this request, we have continued and completed the investigation in accordance with section 734(g) of the Act. We have found the following weighted-average dumping margin:

Exporter/manufacturer	Margin percentage
Russia-Wide Rate	73.98

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 threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the Agreement will have no force or effect, and the investigation shall be terminated. *See* section 734(f)(3)(A) of the Act. If the ITC determines that such injury does exist, the Agreement shall remain in force but

the Department shall not issue an antidumping order so long as: (1) The Agreement remains in force, (2) the Agreement continues to meet the requirements of subsections (d) and (l) of section 734 of the Act, and (3) the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms. *See* section 734(f)(3)(B) of the Act.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: January 18, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–1846 Filed 2–3–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–811, A–588–849, A–549–814]

Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand

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

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Abdelali Elouaradia at (202) 482–0498 or Gabriel Adler at (202) 482–1442, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce ('' the Department'') regulations refer to the regulations codified at 19 CFR Part 351 (April 1999).

Final Determinations

We determine that cold-rolled flat-rolled carbon-quality steel products (''cold-rolled steel products'') from Argentina, Japan and Thailand are being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins are shown in the *Suspension of Liquidation* section of this notice.

Case History

The preliminary determinations in these investigations were issued on November 1, 1999. *See Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand,* 64 FR 60410 (November 5, 1999) (''*Preliminary Determinations*''). On December 23, the petitioners [1] submitted a case brief regarding the Thailand investigation in which they stated that they agreed fully with the Department's use of the highest margin from the petition as adverse facts available for that final determination. An analysis of the other comment made by the petitioners in their Thailand case brief is set forth in the *Interested Parties Comments* section below. NKK Corporation (''NKK'') filed a case brief with the Department regarding the Japan investigation on December 27, 1999. No case briefs were filed in the Argentina investigation, no rebuttal briefs were filed in any of the investigations, and no requests for a hearing in any of the investigations were received by the Department.

Scope of Investigations

For purposes of these investigations, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'') '' for example, products which have been beveled or rounded at the edges.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States (''HTSUS''), are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM

[1] The petitioners include Bethlehem Steel Corporation, Gulf States Steel, Inc., The Independent Steelworkers Union, Ispat Inland Inc., LTV Steel Company, Inc., National Steel Corporation, Steel Dynamics, Inc., U.S. Steel Group, a unit of USX Corporation, United Steelworkers of America, and Weirton Steel Corporation. National Steel Corporation is not a petitioner in the case regarding Japan.

specification (sample specifications: ASTM A506, A507);

- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and
- (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (.001 inch), or
- (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (.001 inch);
- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

Thickness: 0.001 to 0.010 inch

Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight %	<0.002

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:

Thickness: ≤1.0 mm Width: ≤152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤0.03	≤0.006

MECHANICAL PROPERTIES

Tensile Strength	≧162 Kgf/mm^2
Hardness	≧475 Vickers hardness number

PHYSICAL PROPERTIES

Flatness	<0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area percentage
Sulfide Inclusion	≤0.04
Oxide Inclusion	≤0.05

Compressive Stress: 10 to 40 Kgf/mm^2

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μm)
t≤0.209	Rz≤0.5
0.209<t≤0.310	Rz≤0.6
0.310<t≤0.440	Rz≤0.7
0.440<t≤0.560	Rz≤0.8
0.560<t	Rz≤1.0

- Certain ultra thin gauge steel strip, which meets the following characteristics:

Thickness: ≤0.100 7% Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%
Tensile Strength	600 to 850 N/mm^2

PHYSICAL PROPERTIES

Surface Finish	≤0.3 micron
Camber (in 2.0 m)	<3.0 mm
Flatness (in 2.0 m)	≤0.5 mm
Edge Burr	<0.01 mm greater than thickness
Coil Set (in 1.0 m)	<75.0 mm

• Certain silicon steel, which meets the following characteristics:

Thickness: 0.024 inch +.0015 inch

Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %						
Max. Weight %	0.004	0.4	0.09	0.009	0.65	0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches)
Gamma Crown (in 5 inches)	0.0005 inch, start measuring ¼ inch from slit edge
Flatness	20 I–UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable)
Camber (in any 10 feet)	1/16 inch
Coil Size I.D.	20 inches

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical 1500 minimum.

• Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:

Thickness: 0.025 to 0.245 mm

Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	<0.01	0.004 to 0.007	<0.007

• Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-Metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.

Surface Treatment as follows: The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

• Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Al	N
Weight %	<0.08	<0.04	<0.40	<0.03	<0.03	0.010–0.025	<0.0025

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Tolerance: Guaranteed inside of 15 mm from mill edges	+/−5 percent (aim +/−4 percent)
Width Tolerance:	−0/+7 mm
Hardness (Hv):	Hv 85–110
Annealing:	Annealed
Surface:	Matte
Tensile Strength:	>275N/mm^2
Elongation:	>36%

• Certain annealed and temper-rolled cold-rolled continuously cast steel, in coils, with a certificate of analysis per Cable System International (''CSI'') Specification 96012, with the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Base Weight	55 pounds
Theoretical Thickness:	0.0061 inch (+/−10 percent of theoretical thickness)
Width:	31 inches
Tensile Strength:	45,000–55,000 psi
Elongation:	minimum of 15 percent in 2 inches

• Certain full hard tin mill black plate, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-Metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.

Surface Treatment as follows: The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, *etc.*) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Stone Finish	16 (0.4)	8 (0.2)	24 (0.6)

• Certain ultra-bright tin mill black plate meeting ASTM 7A specifications for surface finish and RA of seven micro-inches or lower.

• Concast cold-rolled drawing quality sheet steel, ASTM a–620–97, Type B, or single reduced black plate, ASTM A–625–92, Type D, T–1, ASTM A–625–76 and ASTM A–366–96, T1–T2–T3 Commercial bright/luster 7a both sides, RMS 12 maximum. Thickness range of 0.0088 to 0.038 inches, width of 23.0 inches to 36.875 inches.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 53 pound base weight (0.0058 inch thick) with a Temper classification of T–2 (49–57 hardness using the Rockwell 30 T scale).

• Certain single reduced black plate, meeting ASTM A–625–76 specifications, 55 pound base weight, MR type matte finish, TH basic tolerance as per A263 trimmed.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 65 pound base weight (0.0072 inch thick) with a Temper classification of T–3 (53–61 hardness using the Rockwell 30 T scale).

• Certain cold-rolled black plate bare steel strip, meeting ASTM A–625 specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness:	0.0058 inch +/−0.0003 inch
Hardness	T2/HR 30T 50–60 aiming
Elongation	≥ 15%
Tensile Strength	51,000 psi +/−4.0 aiming

• Certain cold-rolled black plate bare steel strip, in coils, meeting ASTM A–623, Table II, Type MR specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.04	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0060 inch (+/−0.0005 inch)
Width	≥ 10 inches (+ ¼ to ⅜ inch/−0)
Tensile strength	55,000 psi max.
Elongation	minimum of 15 percent in 2 inches

• Certain ''blued steel'' coil (also know as ''steamed blue steel'' or ''blue oxide'') with a thickness of 0.30 mm to 0.42 mm and width of 609 mm to 1219 mm, in coil form;

• Certain cold-rolled steel sheet, whether coated or not coated with porcelain enameling prior to importation, which meets the following characteristics:

Thickness (nominal): ≥ 0.019 inch

Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004		
Min. Weight %		0.010	0.012

• Certain cold-rolled steel, which meets the following characteristics: Width: >66 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	Si
Max. Weight %	0.07	0.67	0.14	0.03

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm):	0.800–2.000
Min. Yield Point (MPa):	265

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Max Yield Point (MPa):	365
Min. Tensile Strength (MPa):	440

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Min. Elongation %:	26

• Certain band saw steel, which meets the following characteristics:

Thickness: ≥1.31 mm

Width: ≥80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤ 0.03	≤ 0.007	0.3 to 0.5	≤ 0.25

Other properties:
Carbide: fully spheroidized having >80% of carbides, which are ≤0.003 mm and uniformly dispersed
Surface finish: bright finish free from pits, scratches, rust, cracks, or seams
Smooth edges
Edge camber (in each 300 mm of length): ≤7 mm arc height
Cross bow (per inch of width): 0.015 mm max.

• Certain transformation-induced plasticity (TRIP) steel, which meets the following characteristics:

Variety 1:

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.09	1.0	0.90
Max. Weight %	0.13	2.1	1.7

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yield Point (MPa)	320
Max Yield Point (MPa)	480
Min. Tensile Strength (MPa)	590
Min. Elongation %	24 (if 1.000–1.199 thickness range) 25 (if 1.200–1.599 thickness range) 26 (if 1.600–1.999 thickness range) 27 (if 2.000–2.300 thickness range)

Variety 2:

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.12	1.5	1.1
Max. Weight %	0.16	2.1	1.9

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm):	1.000–2.300 (inclusive)
Min. Yield Point (MPa):	340
Max Yield Point (MPa):	520
Min. Tensile Strength (MPa):	690
Min. Elongation %:	21 (if 1.000–1.199 thickness range) 22 (if 1.200–1.599 thickness range) 23 (if 1.600–1.999 thickness range) 24 (if 2.000–2.300 thickness range)

Variety 3:

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.13	1.3	1.5
Max. Weight %	0.21	2.0	2.0

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm):	1.200–2.300 (inclusive)
Min. Yield Point (MPa):	370
Max Yield Point (MPa):	570
Min. Tensile Strength (MPa):	780

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Min. Elongation %:	18 (if 1.200–1.599 thickness range) 19 (if 1.600–1.999 thickness range) 20 (if 2.000–2.300 thickness range)

• Certain corrosion-resistant cold-rolled steel, which meets the following characteristics:

Variety 1:

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.10	0.40	0.10	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm):	0.600–0.800
Min. Yield Point (MPa):	185
Max Yield Point (MPa):	285
Min. Tensile Strength (MPa):	340
Min. Elongation %:	31 (ASTM standard 31% = JIS standard 35%)

Variety 2:

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.05	0.40	0.08	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm):	0.800–1.000
Min. Yield Point (MPa):	145
Max Yield Point (MPa):	245
Min. Tensile Strength (MPa):	295
Min. Elongation %:	31 (ASTM standard 31% = JIS standard 35%)

Variety 3:

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cu	Ni	Al	Nb, Ti, V, B	Mo
Max. Weight %	0.01	0.05	0.40	0.10	0.023	0.15–.35	0.35	0.10	0.10	0.30

PHYSICAL AND MECHANICAL PROPERTIES

Thickness (mm)	0.7
Elongation %	≥35

• Porcelain enameling sheet, drawing quality, in coils, 0.014 inch in thickness, +0.002, -0.000, meeting ASTM A–424–96 Type 1 specifications, and suitable for two coats.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000. 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (''U.S. Customs'') purposes, the written description of the merchandise under investigation is dispositive.

The Department received comments from a number of parties including importers, respondents, consumers, and the petitioners, aimed at clarifying the scope of these investigations. *See Memorandum to Joseph A. Spetrini (''Scope Memorandum'')*, January 18, 2000, for a list of all persons submitting comments and a discussion of all scope comments including those exclusion

requests under consideration at the time of the preliminary determination in these investigations.

Period of Investigations

The period of the investigations (''POI'') is April 1, 1998, through March 31, 1999.

Facts Available

In the preliminary determinations, the Department based the dumping margins for the mandatory respondents, Siderar Limited, in the Argentina investigation, Nippon Steel Corporation (''NSC''), Kawasaki Steel Corporation (''KSC''), Kobe Steel Ltd. (''Kobe''), and Nisshin Steel Co., Ltd. (''Nisshin''), in the Japan investigation, and Thai Cold Rolled Steel and Sheet Company (''TCRSSC''), an affiliate of Sahaviriya Steel Industries Public Co., Ltd., collectively ''TCRSSC/Sahaviriya,'' in the Thailand investigation, on facts otherwise available pursuant to section 776(a)(2)(A) of the Act. The use of facts otherwise available is necessary because the record does not contain company-specific information due to the fact that each of these respondents failed to respond to the Department's questionnaire, nor did they provide any indication that they were unable to do so. Therefore, the Department found that they failed to cooperate by not acting to the best of their ability. As a result, pursuant to section 776(b), the Department used an adverse inference in selecting from the facts available. Specifically, the Department assigned to the Argentine and Thai mandatory respondents the highest margins alleged in the amendments to the respective petitions. Similarly, the Japanese mandatory respondents were assigned the highest margin alleged in the petition. We continue to find these margins corroborated, pursuant to section 776(c) of the Act, for the reasons discussed in the *Preliminary Determinations.* No interested parties have objected to the use of adverse facts available for the mandatory respondents in these investigations, nor to the Department's choice of facts available. Furthermore, no request for a hearing in any of these investigations was received by the Department. For its final determinations, the Department is continuing to use the highest margins alleged by the petitioners for all non-responding mandatory respondents in these proceedings. *See Preliminary Determinations.* In addition, the Department has left unchanged from the preliminary determinations the ''All Others Rate'' in each investigation. *See Comments 1 and 2.*

Critical Circumstances

No comments were received regarding the Department's preliminary critical circumstances determinations, and the Department has not made any changes to those determinations. For the reasons given in the preliminary determinations, the Department continues to find that critical circumstances exist with respect to cold-rolled steel products imported from NSC, KSC, Kobe, and Nisshin, in accordance with section 733(e)(1) of the Act.

As set forth in our preliminary determinations, because the massive imports criterion necessary to find critical circumstances has not been met with respect to firms other than NSC, KSC, Kobe, and Nisshin, the Department continues to find, for the purposes of these final determinations, that critical circumstances do not exist for imports of cold-rolled steel products from Thailand imported from TCRSSC/Sahaviriya or for the ''all others'' category in both the Japan and Thailand investigations.

There was no allegation of critical circumstances in the Argentina case.

Interested Party Comments

Comment 1: Calculation of the ''All Others'' Antidumping Duty Margin in the Case of Thailand

The petitioners assert that the Department, in its simple average calculation of the ''all others'' antidumping duty margin, incorrectly included two figures that were themselves averages of the minimum and maximum dumping margins presented in the amended petition. The petitioners allege that using the simple average of the minimum and maximum margins presented in the amended petition should have yielded a margin of 69.17 percent.

DOC Position: We disagree with the petitioners. The dumping margin for the ''all others'' category assigned by the Department in our preliminary determination was based on the simple average of all five of the margins [2] presented in the amended petition. Contrary to the petitioners' allegation, we did not include any figures in our calculation that were averages of the minimum and maximum alleged dumping margins. Therefore, we have not changed the dumping margin for the ''all others'' category in the case of Thailand.

Comment 2: Calculation of the ''All Others'' Dumping Margin in the Case of Japan

NKK asserts that the Department effectively applied adverse facts available to the ''all others'' companies by calculating an ''all others'' rate based on the simple average of all of the dumping margins in the petition, including margins based on constructed value. NKK states that the Department's calculated margin of 39.28 percent was significantly more adverse than a margin calculated based on the simple average of only the price-to-price comparisons contained within the petition (28.09 percent). By basing the preliminary margin calculation applied to NKK's entries in part on the constructed value comparisons from the petition, NKK argues, the Department effectively assumed that NKK made home market sales of the subject merchandise at prices below cost of production. NKK argues that the Department had no basis to assume that its home market sales of the subject merchandise were made at prices below the cost of production, and that the Department needs specific evidence to justify a finding of below cost sales. NKK states that no such NKK-specific evidence exists and that the facts used to support the below cost allegation in the petition were not specific to NKK.

NKK also argues that the Department had no reason to apply adverse facts available to it, because NKK fully cooperated with all of the Department's requests for information. In support of this argument, NKK states that it is the Department's long-standing policy not to apply the same harsh adverse inferences it may have applied to mandatory respondents to other producers who did not respond. NKK argues that this practice is evident in the Department's decision to not adversely assume that NKK's shipments were massive, when making its preliminary critical circumstances determination for the ''all others'' group. Because the Department did not apply adverse inferences in regard to critical circumstances, NKK concludes that the Department should not apply adverse inferences when calculating the antidumping margin for NKK.

Finally, NKK asserts that, because the Department expressly excluded NKK from participating as a voluntary respondent, company specific prices and costs are not available on the record. As a result, the Department must operate under section 776(a)(1) of the Act and apply facts available in a

[2] Of the five margins presented in the amended petition and used in the Department's simple average calculation, three of the margins were based on a comparison of import average unit values (''AUV'') to constructed value while the remaining two margins were based on comparisons of price quotes to constructed values.

manner that recognizes the fact that the nonparticipating parties have no culpability for the lack of company-specific information on the record. NKK concludes that the Department should exclude the constructed value margins set forth in the petition when deriving an antidumping duty rate for NKK. NKK further suggests that data in the *hot-rolled* steel investigation [3] is evidence that NKK did not sell *cold-rolled* steel below cost.

DOC Position: Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-averaged dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated ''all others'' rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign, as the ''all others'' rate, the simple average of the margins in the petition. *See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Finding of Critical Circumstances: Elastic Rubber Tape From India,* 64 FR 19123 (April 19, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Italy,* 64 FR 15458, 15459 (March 21, 1999). The Department, in following its recent practice, did not assume that NKK made sales below cost and did not apply ''adverse'' facts available to NKK in calculating the ''all others'' rate in this case. In fact, lacking data for these companies, the Department made no assumptions with respect to whether individual companies within the ''all others'' group made sales below cost,[4] for this very reason it considered *both* price-to-price and constructed value margins from the petition. This methodology allows the Department to calculate a margin based on facts available. The use of constructed value in the petition was, in this case, an appropriate means of estimating normal value based on sales in the ordinary course of trade. There is no reason to assume that NKK's normal values—and margins—would be lower even if it did not sell the foreign like product at below-cost prices. In this respect, the ''all-others'' margin is a generic margin, not based on data specific to any of the companies to which it is applied. Moreover, with respect to NKK's argument that record evidence in the hot-rolled steel case supports the conclusion that NKK did not sell cold-rolled steel below cost in the home market, we note that the hot-rolled information is not on the record of this proceeding.

Furthermore, contrary to NKK's assertions, the fact that the Department declined to make the adverse assumption that the ''all others'' companies had ''massive imports'' for purposes of its critical circumstances determination does not require the Department to exclude the constructed value margins from the ''all others'' rate calculation. As explained above, the use of a simple average of *all* petition margins involves *no* assumptions (adverse or favorable) with respect to whether a given company or the ''all others'' group as a whole makes sales below cost. Thus there is no conflict between this position and the Department's decision not to make an adverse assumption with regard to massive imports. Had the Department wished to apply an adverse inference, it would have selected the highest margin in the petition, as it did for the uncooperative mandatory respondents. Instead, as stated previously, the Department used non-adverse facts available to determine the ''all others'' rate for all companies not fully investigated by calculating the margin based on a simple average of all of the margins contained within the petition.

The Department also disagrees with NKK's allegation that it expressly excluded NKK from participating as a voluntary respondent. In the Department's July 9, 1999, respondent selection memo, the Department stated that voluntary respondents would not be investigated unless mandatory respondents failed to cooperate or unless additional resources became available. The Department further noted that, should some mandatory respondents fail to respond, resources would be reallocated to voluntary respondents on a first-come, first-served basis. Thus, the Department expressly indicated that, although it was unable to accept voluntary respondents at that time, it would be willing to do so at a later date if, as happened in these cases, the voluntary respondents' company-specific data had already been placed on the record and some mandatory respondents did not respond to the questionnaires. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Taiwan,* 65 FR 1095 (January 7, 2000). NKK's company-specific data was not placed on the record. Nonetheless, the Department recognizes the fact that NKK did fully cooperate with its requests prior to the respondent selection in this investigation. As a result, we are not applying the adverse 53.04 percent rate to NKK's entries, but rather are applying the ''all others'' rate of 39.28 percent. The Department has acted in accordance with section 776(a)(1) of the Act by applying facts available in a manner that recognizes the fact that the nonparticipating parties have no culpability for the absence of their company-specific information on the record. Based on the above reasons, we have not changed the dumping margin for the ''all others'' category in the case of Japan.

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 cold-rolled steel products exported from Japan by KSC, NSC, Kobe and Nisshin that are entered, or withdrawn from warehouse, for consumption on or after August 7, 1999 (90 days prior to the date of publication of the preliminary determinations in the **Federal Register**). In addition, we will direct the Customs Service to continue to suspend liquidation of cold-rolled steel products exported from Argentina, Japan (by companies other than those specifically mentioned above) and Thailand that are entered, or withdrawn from warehouse, for consumption on or after November 5, 1999, the date of publication of our preliminary determinations in the **Federal Register**. The Customs Service shall require a cash or bond deposit equal to the dumping margin, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice. The dumping margins are provided below:

Manufacturer/exporter	Margin (percent)
Argentina:	
Siderar Limited	24.53
All others	24.53
Japan:	
Nippon Steel Corporation	53.04
Kawasaki Steel Corporation	53.04
Kobe Steel, Ltd	53.04

[3] *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)

[4] We note, in addition, that the Department does not use constructed value only when there are sales below cost. For example, constructed value margins are utilized whenever there are insufficient matches for price-to-price comparisons, for whatever reasons. Furthermore, the Department also routinely includes constructed value margins in the all-others rate when it uses margins calculated during an investigation for such purposes.

Manufacturer/exporter	Margin (percent)
Nisshin Steel Co., Ltd	53.04
All others	39.28
Thailand:	
TCRSSC/Sahaviriya	80.67
All others	67.97

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determinations. As our final determinations are 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 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.

These determinations are published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: January 18, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–1847 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–807]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From South Africa

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

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0165.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references to the Department's regulations are to the provisions codified at 19 CFR Part 351 (1998).

Final Determination

We determine that certain cold-rolled flat-rolled carbon-quality steel products (''cold-rolled steel products'') from South Africa 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 Act. The estimated margins of sales at LTFV are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

Case History

The preliminary determination in this investigation was published on November 10, 1999. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From South Africa,* 64 FR 61270 (November 10, 1999) (''*Preliminary Determination''*). No interested parties have provided comments on the *Preliminary Determination* and no request for a hearing has been received by the Department.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') for example, products which have been beveled or rounded at the edges.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States (''HTSUS''), are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;

• Silico-manganese steel, as defined in the HTSUS;
• Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
• Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
• All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
• Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.
• Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and
(a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (.001 inch), or
(b) semi-processed, with core loss of less than 0.085 watts/pound per mil (.001 inch);
• Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:
Thickness: 0.001 to 0.010 inch
Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight %	< 0.002%

• Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:
Thickness: ≤1.0 mm
Width: ≤152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤0.03	≤0.006

MECHANICAL PROPERTIES

Tensile Strength	≥162 Kgf/mm ^{2}
Hardness	≥475 Vickers hardness number

PHYSICAL PROPERTIES

Flatness	<0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area percentage
Sulfide Inclusion	≤ 0.04%
Oxide Inclusion	≤0.05%

Compressive Stress: 10 to 40 Kgf/mm ^{2}

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μm)
t ≤ 0.209	Rz ≤ 0.50
0.209 < t ≤0.310	Rz ≤ 0.6
0.310 < t ≤0.440	Rz ≤ 0.7
0.440 < t ≤ 0.560	Rz ≤ 0.8
0.560 < t	Rz ≤ 1.0

• Certain ultra thin gauge steel strip, which meets the following characteristics:
Thickness: ≤ 0.100 mm ±7%
Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤ 0.07	0.2–0.5	≤ 0.05	≤ 0.05	≤ 0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	< 3%
Tensile Strength	600 to 850 N/mm^2

PHYSICAL PROPERTIES

Surface Finish	≤ 0.3 micron
Camber (in 2.0 m)	< 3.0 mm
Flatness (in 2.0 m)	≤ 0.5 mm
Edge Burr	< 0.01 mm greater than thickness
Coil Set (in 1.0 m)	< 75.0 mm

• Certain silicon steel, which meets the following characteristics:
Thickness: 0.024 inch ± .0015 inch
Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches)
Gamma Crown (in five inches)	0.0005 inch, start measuring ¼ inch from slit edge
Flatness	20 I–UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable)
Camber (in any 10 feet)	1/16 inch
Coil Size I.D.	20 inches

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical 1500 minimum

• Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:
Thickness: 0.025 to 0.245 mm
Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	< 0.01	0.004 to 0.007	< 0.007

• Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N

CHEMICAL COMPOSITION—Continued

Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > 1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

• Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Al	N
Weight %	less than 0.08	less than 0.04	less than 0.40	less than 0.03	less than 0.03	0.010–0.025	less than 0.0025

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Tolerance: Guaranteed inside of 15 mm from mill edges	±5 percent (aim ±4 percent)
Width Tolerance	-0/+7 mm
Hardness (Hv)	Hv 85–110
Annealing	Annealed
Surface	Matte
Tensile Strength	>275N/mm^2
Elongation	> 36%

• Certain annealed and temper-rolled cold-rolled continuously cast steel, in coils, with a certificate of analysis per Cable System International (''CSI'') Specification 96012, with the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Base Weight	55 pounds
Theoretical Thickness	0.0061 inch (±10 percent of theoretical thickness)
Width	31 inches
Tensile Strength	45,000–55,000 psi
Elongation	minimum of 15 percent in 2 inches

• Certain full hard tin mill black plate, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %.	0.02	0.20				0.03				0.003
Max. Weight %.	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08	—	0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > 1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Stone Finish	16 (0.4)	8 (0.2)	24 (0.6)

• Certain ultra-bright tin mill black plate meeting ASTM 7A specifications for surface finish and RA of seven micro-inches or lower.

• Concast cold-rolled drawing quality sheet steel, ASTM a–620–97, Type B, or single reduced black plate, ASTM A–625–92, Type D, T–1, ASTM A–625–76 and ASTM A–366–96, T1–T2–T3 Commercial bright/luster 7a both sides, RMS 12 maximum. Thickness range of 0.0088 to 0.038 inches, width of 23.0 inches to 36.875 inches.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 53 pound base weight (0.0058 inch thick) with a Temper classification of T–2 (49–57 hardness using the Rockwell 30 T scale).

• Certain single reduced black plate, meeting ASTM A–625–76 specifications, 55 pound base weight, MR type matte finish, TH basic tolerance as per A263 trimmed.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 65 pound base weight (0.0072 inch thick) with a Temper classification of T–3 (53–61 hardness using the Rockwell 30 T scale).

• Certain cold-rolled black plate bare steel strip, meeting ASTM A–625 specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness:	0.0058 inch +/−0.0003 inch
Hardness	T2/HR 30T 50–60 aiming
Elongation	≥ 15%
Tensile Strength	51,000 psi +/−4.0 aiming

• Certain cold-rolled black plate bare steel strip, in coils, meeting ASTM A–623, Table II, Type MR specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.04	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness:	0.0060 inch (+/−0.0005 inch).
Width:	≥10 inches (+¼ to ⅜ inch/−0).
Tensile strength:	55,000 psi max.
Elongation:	minimum of 15 percent in 2 inches.

• Certain ''blued steel'' coil (also know as ''steamed blue steel'' or ''blue oxide'') with a thickness of 0.30 mm to 0.42 mm and width of 609 mm to 1219 mm, in coil form;

• Certain cold-rolled steel sheet, whether coated or not coated with porcelain enameling prior to importation, which meets the following characteristics:

Thickness (nominal): ≥0.019 inch

Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004		
Min. Weight %	0.010	0.012	

• Certain cold-rolled steel, which meets the following characteristics:

Width:> 66 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	Si
Max. Weight %	0.07	0.67	0.14	0.03

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm):	0.800–2.000
Min. Yield Point (MPa):	265
Max Yield Point (MPa):	365
Min. Tensile Strength (MPa):	440
Min. Elongation %:	26

• Certain band saw steel, which meets the following characteristics:
Thickness: ≥ 1.31 mm
Width: ≥ 80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≥ 0.03	≥ 0.007	0.3 to 0.5	≥ 0.25

Other properties:

Carbide: fully spheroidized having > 80% of carbides, which are ≥ 0.003 mm and uniformly dispersed

Surface finish: bright finish free from pits, scratches, rust, cracks, or seams

Smooth edges

Edge camber (in each 300 mm of length): ≤7 mm arc height

Cross bow (per inch of width): 0.015 mm max.

• Certain transformation-induced plasticity (TRIP) steel, which meets the following characteristics:

Variety 1

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.09	1.0	0.90
Max. Weight %	0.13	2.1	1.7

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yield Point (MPa)	320
Max Yield Point (MPa)	480
Min. Tensile Strength (MPa)	590
Min. Elongation %:	24 (if 1.000–1.199 thickness range) 25 (if 1.200–1.599 thickness range) 26 (if 1.600–1.999 thickness range) 27 (if 2.000–2.300 thickness range)

Variety 2

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.12	1.5	1.1
Max. Weight %	0.16	2.1	1.9

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yield Point (MPa)	340
Max Yield Point (MPa)	520
Min. Tensile Strength (MPa)	690
Min. Elongation %	21 (if 1.000–1.199 thickness range) 22 (if 1.200–1.599 thickness range) 23 (if 1.600–1.999 thickness range)24 (if 2.000–2.300 thickness range)

Variety 3

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.13	1.3	1.5
Max. Weight %	0.21	2.0	2.0

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.200–2.300 (inclusive)
Min. Yield Point (MPa)	370
Max Yield Point (MPa)	570
Min. Tensile Strength (MPa)	780
Min. Elongation %	18 (if 1.200–1.599 thickness range) 19 (if 1.600–1.999 thickness range)20 (if 2.000–2.300 thickness range)

• Certain corrosion-resistant cold-rolled steel, which meets the following characteristics:

Variety 1

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.10	0.40	0.10	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.600–0.800.
Min. Yield Point (MPa)	185.
Max Yield Point (MPa)	285.
Min. Tensile Strength (MPa)	340.
Min. Elongation %	31(ASTM standard 31% = JIS standard 35%).

Variety 2

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.05	0.40	0.08	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–1.000
Min. Yield Point (MPa)	145
Max Yield Point (MPa)	245
Min. Tensile Strength (MPa)	295
Min. Elongation %	31 (ASTM standard 31% = JIS standard 35%)

Variety 3

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cu	Ni	Al	Nb, Ti, V, B	Mo
Max. Weight %	0.01	0.05	0.40	0.10	0.023	0.15–.35	0.35	0.10	0.10	0.30

PHYSICAL AND MECHANICAL PROPERTIES

Thickness (mm)	0.7
Elongation %	≥35

• Porcelain enameling sheet, drawing quality, in coils, 0.014 inch in thickness, +0.002, −0.000, meeting ASTM A–424–96 Type 1 specifications, and suitable for two coats.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000,

7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (''U.S. Customs'') purposes, the written description of the merchandise under investigation is dispositive.

The Department received comments from a number of parties including importers, respondents, consumers, and the petitioners, aimed at clarifying the scope of these investigations. *See Memorandum to Joseph A. Spetrini* (*''Scope Memorandum''*), January 18, 2000, for a list of all persons submitting comments and a discussion of all scope comments including those exclusion requests under consideration at the time of the preliminary determination in these investigations.

Period of Investigation

The period of investigation is April 1, 1998 through March 31, 1999.

Facts Available

In the *Preliminary Determination,* the Department based the margin on facts otherwise available under sections 776(a)(2)(A) and (C) because Iscor Limited (''Iscor''), the only known South African exporter of subject merchandise, failed to respond to our questionnaire and significantly impeded the investigation, and because the relevant subsections of section 782 of the Act therefore do not apply.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences when an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* also ''Statement of Administrative Action'' accompanying the URAA, H.R. Rep. No. 103–316, 870 (1994) (''SAA''). Based on Iscor's failure to respond to the Department's antidumping questionnaire, we have determined that Iscor has not acted to the best of its ability to comply with the Department's information requests. Therefore, pursuant to 776(b) of the Act, we used an adverse inference in selecting a margin from the facts available. As facts available, the Department applied a margin of 16.65 percent, the only alleged margin in the petition. As discussed in the *Preliminary Determination,* the Department has, to the extent practicable, corroborated the information used as adverse facts available. Since then, no interested parties have provided comments on the *Preliminary Determination* and no request for a hearing has been received by the Department. Therefore, we are continuing to use as adverse facts available the rate alleged by petitioners.

The All-Others Rate

All foreign manufacturers/exporters in this investigation are being assigned dumping margins on the basis of facts otherwise available. Section 735(c)(5)(B) of the Act provides that, where the dumping margins established for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including weight-averaging the facts available margins. In this case, the margin assigned to the only company investigated is based on adverse facts available. Therefore, consistent with the statute and the SAA at 873, we are using an alternative method. In the *Preliminary Determination,* as an alternative, we based the all-others rate on the margin alleged in the petition. We received no comments on this issue, and therefore continue to use this basis for the final determination. As a result, the all-others rate is 16.65 percent.

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 South Africa, that are entered, or withdrawn from warehouse, for consumption on or after November 10, 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	Margin percentage
Iscor	16.65
All Others	16.65

ITC Notification

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

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: January 18, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–1848 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–831]

Final Affirmative Countervailing Duty Determination: Certain Cold Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil

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

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Javier Barrientos, Office of CVD/AD Enforcement VII, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3208 and (202) 482–2243, respectively.

FINAL DETERMINATION: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and/or exporters of certain cold-rolled flat-rolled carbon-quality steel products from Brazil. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition in this investigation was filed by Bethlehem Steel Corporation,

Gulf States Steel Inc., Ispat Inland, Inc., LTV Steel Company, Inc., National Steel Corporation, Steel Dynamics Inc., U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, the Independent Steelworkers of America and the United Steelworkers of America (collectively, ''the petitioners'').

Case History

Since the publication of our preliminary determination in this investigation on October 1, 1999 (*Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Cold Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 53332) (*Preliminary Determination*), the following events have occurred:

We conducted verification of the countervailing duty questionnaire responses from October 21 through October 26, 1999. The final determination of this countervailing duty investigation was aligned with the final antidumping duty determination (*see* 64 FR at 53334). On December 2, 1999, and December 7, 1999, the Department released its verification reports to all interested parties. Respondents submitted a case brief on December 15, 1999; petitioners submitted a rebuttal brief on December 21, 1999.

Scope of Investigations

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States (''HTSUS''), are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (.001 inch), or (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (.001 inch);
- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

Thickness: 0.001 to 0.010 inch
Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight %	< 0.002%

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:

Thickness: 1.0 mm
Width: 152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	0.03	0.006

MECHANICAL PROPERTIES

Tensile Strength	162 Kgf/mm^2
Hardness	475 Vickers hardness number

PHYSICAL PROPERTIES

Flatness	0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area percentage
Sulfide Inclusion	≤0.04%
Oxide Inclusion	≤0.05%

Compressive Stress: 10 to 40 Kgf/mm ^{2}

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μm)
t≤0.209	Rz≤0.5
0.209<t≤0.310	Rz≤0.6
0.310<t≤0.440	Rz≤0.7
0.440<t≤0.560	Rz≤0.8
0.560<t	Rz≤1.0

• Certain ultra thin gauge steel strip, which meets the following characteristics:
Thickness: ≤0.100 mm ±7%
Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%
Tensile Strength	600 to 850 N/mm^2

PHYSICAL PROPERTIES

Surface Finish	≤0.3 micron
Camber (in 2.0 m)	<3.0 mm
Flatness (in 2.0 m)	≤0.5 mm
Edge Burr	<0.01 mm greater than thickness
Coil Set (in 1.0 m)	<75.0 mm

• Certain silicon steel, which meets the following characteristics:
Thickness: 0.024 inch ±.0015 inch
Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches)
Gamma Crown (in 5 inches)	0.0005 inch, start measuring **inch from slit edge**
Flatness	20 I–UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable)
Camber (in any 10 feet)	1/16 inch
Coil Size I.D.	20 inches

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical. 1500 minimum.

• Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:
Thickness: 0.025 to 0.245 mm
Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	< 0.01	0.004 to 0.007	< 0.007

• Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.
Surface Treatment as follows:
The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

• Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Al	N
Weight %	<0.08	<0.04	<0.40	<0.03	<0.030.0	0.010–0.025	<0.0025

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Tolerance	±5 percent
Guaranteed inside of 15 mm from mill edges	(aim ±4 percent)
Width Tolerance	-0/+7 mm
Hardness (Hv)	Hv 85–110
Annealing	Annealed
Surface	Matte
Tensile Strength	<275N/mm^2
Elongation	<36%

• Certain annealed and temper-rolled cold-rolled continuously cast steel, in coils, with a certificate of analysis per Cable System International (''CSI'') Specification 96012, with the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S

CHEMICAL COMPOSITION—Continued

Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Base Weight	55 pounds
Theoretical Thickness	0.0061 inch (+/−10 percent of theoretical thickness)
Width	31 inches
Tensile Strength	45,000–55,000 psi
Elongation	minimum of 15 percent in 2 inches

• Certain full hard tin mill black plate, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Stone Finish	16 (0.4)	8 (0.2)	24 (0.6)

• Certain ultra-bright tin mill black plate meeting ASTM 7A specifications for surface finish and RA of seven micro-inches or lower.

• Concast cold-rolled drawing quality sheet steel, ASTM a–620–97, Type B, or single reduced black plate, ASTM A–625–92, Type D, T–1, ASTM A–625–76 and ASTM A–366–96, T1–T2–T3 Commercial bright/luster 7a both sides, RMS 12 maximum. Thickness range of 0.0088 to 0.038 inches, width of 23.0 inches to 36.875 inches.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 53 pound base weight (0.0058 inch thick) with a Temper classification of T–2 (49–57 hardness using the Rockwell 30 T scale).

• Certain single reduced black plate, meeting ASTM A–625–76 specifications, 55 pound base weight, MR type matte finish, TH basic tolerance as per A263 trimmed.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 65 pound base weight (0.0072 inch thick) with a Temper classification of T–3 (53–61 hardness using the Rockwell 30 T scale).

• Certain cold-rolled black plate bare steel strip, meeting ASTM A–625 specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0058 inch ±0.0003 inch
Hardness	T2/HR 30T 50–60 aiming
Elongation	≥15%
Tensile Strength	51,000.0 psi ±4.0 aiming

• Certain cold-rolled black plate bare steel strip, in coils, meeting ASTM A–623, Table II, Type MR specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.04	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0060 inch (±0.0005 inch)

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Width	≤10 inches (+ ¼ to ⅜ inch/-0)
Tensile strength	55,000 psi max.
Elongation	Minimum of 15 percent in 2 inches

• Certain ''blued steel'' coil (also know as ''steamed blue steel'' or ''blue oxide'') with a thickness of 0.30 mm to 0.42 mm and width of 609 mm to 1219 mm, in coil form;

• Certain cold-rolled steel sheet, whether coated or not coated with porcelain enameling prior to importation, which meets the following characteristics:

Thickness (nominal): ≦0.019 inch

Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004	.....	.....
Min. Weight %	.....	0.010	0.012

• Certain cold-rolled steel, which meets the following characteristics:

• Width: >66 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	Si
Max. Weight %	0.07	0.67	0.14	0.03

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–2.000
Min. Yield Point (MPa)	265
Max Yield Point (MPa)	365
Min. Tensile Strength (MPa)	440
Min. Elongation %	26

• Certain band saw steel, which meets the following characteristics:

Thickness: ≤ 1.31 mm Width: ≤ 80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤ 0.03	0.007	0.3 to 0.5	≤ 0.25

Other properties:

Carbide: Fully spheroidized having > 80% of carbides, which are ≤ 0.003 mm and uniformly dispersed

Surface finish: Bright finish free from pits, scratches, rust, cracks, or seams

Smooth edges.

Edge camber (in each 300 mm of length): ≤ 7 mm arc height

Cross bow (per inch of width): 0.015 mm max.

• Certain transformation-induced plasticity (TRIP) steel, which meets the following characteristics:

Variety 1:

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.09	1.0	0.90
Max. Weight %	0.13	2.1	1.7

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yield Point (MPa)	320
Max Yield Point (MPa)	480
Min. Tensile Strength (MPa)	590

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Min. Elongation %	24 (if 1.000–1.199 thickness range) 25 (if 1.200–1.599 thickness range) 26 (if 1.600–1.999 thickness range) 27 (if 2.000–2.300 thickness range)

Variety 2

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.12	1.5	1.1
Max. Weight %	0.16	2.1	1.9

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yield Point (MPa)	340
Max Yield Point (MPa)	520
Min. Tensile Strength (MPa)	690
Min. Elongation %	21 (if 1.000–1.199 thickness range) 22 (if 1.200–1.599 thickness range) 23 (if 1.600–1.999 thickness range) 24 (if 2.000–2.300 thickness range)

Variety 3

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.13	1.3	1.5
Max. Weight %	0.21	2.0	2.0

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.200–2.300 (inclusive)
Min. Yield Point (MPa)	370
Max Yield Point (MPa)	570
Min. Tensile Strength (MPa)	780
Min. Elongation %	18 (if 1.200–1.599 thickness range) 19 (if 1.600–1.999 thickness range) 20 (if 2.000–2.300 thickness range)

- Certain corrosion-resistant cold-rolled steel, which meets the following characteristics:

Variety 1

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight%				0.15
Max. Weight %	0.10	0.40	0.10	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.600–0.800
Min. Yield Point (MPa)	185
Max Yield Point (MPa)	285
Min. Tensile Strength (MPa)	340
Min. Elongation	31 (ASTM standard 31% = JIS standard 35%)

Variety 2

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.05	0.40	0.08	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–1.000
Min. Yield Point (MPa)	145
Max Yield Point (MPa)	245
Min. Tensile Strength (MPa)	295
Min. Elongation %	31 (ASTM standard 31%=JIS standard 35%)

Variety 3

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cu	Ni	Al	Nb, Ti, V, B	Mo
Max. Weight %	0.01	0.05	0.40	0.10	0.023	0.15–.35	0.35	0.10	0.10	0.30

PHYSICAL AND MECHANICAL PROPERTIES

Thickness (mm):	0.7
Elongation %:≥	35

- Porcelain enameling sheet, drawing quality, in coils, 0.014 inch in thickness, +0.002, −0.000, meeting ASTM A–424–96 Type 1 specifications, and suitable for two coats.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (''U.S. Customs'') purposes, the written description of the merchandise under investigation is dispositive.

The Department received comments from a number of parties including importers, respondents, consumers, and the petitioners, aimed at clarifying the scope of these investigations. *See Memorandum to Joseph A. Spetrini* (''*Scope Memorandum*''), January 18, 2000, for a list of all persons submitting comments and a discussion of all scope comments including those exclusion requests under consideration at the time of the preliminary determination in these investigations.

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 (1999) and to the substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65348)(CVD Regulations).

Injury Test

Because Brazil 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 Brazil materially injure, or threaten material injury to, a U.S. industry. On July 30, 1999, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Brazil of the subject merchandise (64 FR 41458). The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 19, 1999. The views of the Commission are contained in USITC Publication 3214 (July 1999), entitled Certain Cold-Rolled Steel Products from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela: Investigations Nos. 701–TA–393–396 and 731–TA–829–840 (Preliminary).

Period of Investigation

The period of investigation (the POI) for which we are measuring subsidies is calendar year 1998.

Company Histories

USIMINAS was founded in 1956 as a venture between the Brazilian Government, various stockholders and Nippon Usiminas. In 1974, the majority interest in USIMINAS was transferred to SIDERBRAS, the government holding company for steel interests. The company underwent several expansions of capacity throughout the 1980s. In 1990, SIDERBRAS was put into liquidation and the Government of Brazil (GOB) decided to include its operating companies, including

USIMINAS, in its National Privatization Program (NPP). In 1991, USIMINAS was partially privatized; as a result of the initial auction, Companhia do Vale do Rio Doce (CVRD), a majority government-owned iron ore producer, acquired 15 percent of USIMINAS's common shares. In 1994, the Government disposed of additional holdings, amounting to 16.2 percent of the company's equity. USIMINAS is now owned by CVRD and a consortium of private investors, including Nippon Usiminas, Caixa de Previdencia dos Funcionarios do Banco do Brasil (Previ) and the USIMINAS Employee Investment Club. CVRD was partially privatized in 1997, when 31 percent of the company's shares were sold.

COSIPA was established in 1953 as a government-owned steel production company. In 1974, COSIPA was transferred to SIDERBRAS. Like USIMINAS, COSIPA was included in the NPP after SIDERBRAS was put into liquidation. In 1993, COSIPA was partially privatized, with the GOB retaining a minority of the preferred shares. Control of the company was acquired by a consortium of investors led by USIMINAS. In 1994, additional government-held shares were sold, but the GOB still maintained approximately 25 percent of COSIPA's preferred shares. During the POI, USIMINAS owned 49.8 percent of the voting capital stock of the company. Other principal owners include Bozano Simonsen Asset Management Ltd., the COSIPA Employee Investment Club, and COSIPA's Pension Fund (FEMCO).

CSN was established in 1941 and commenced operations in 1946 as a government-owned steel company. In 1974, CSN was transferred to SIDERBRAS. In 1990, when SIDERBRAS was put into liquidation, the GOB included CSN in its NPP. In 1991, 12 percent of the equity of the company was transferred to the CSN employee pension fund. In 1993, CSN was partially privatized; CVRD, through its subsidiary Vale do Rio Doce Navegacao S.A. (Docenave), acquired 9.4 percent of the common shares. The GOB's remaining share of the firm was sold in 1994. CSN is now owned by Docenave/CVRD and a consortium of private investors, including Uniao Comercio e Partipacoes Ltda., Textilia S.A., Previ, the CSN Employee Investment Club, and the CSN employee pension fund. As discussed above, CVRD was partially privatized in 1997; CSN was part of the consortium that acquired control of CVRD through this partial privatization.

Attribution of Subsidies

There are three producers/exporters of the subject merchandise in this investigation: USIMINAS, COSIPA, and CSN. As discussed above, USIMINAS owns 49.8 percent of COSIPA. The CVD Regulations, at section 351.525(b)(6)(ii), provide guidance with respect to the attribution of subsidies between or among companies which have cross-ownership. Specifically, with respect to two or more corporations producing the subject merchandise which have cross-ownership, the regulations direct us to attribute the subsidies received by either or both corporations to the products produced by both corporations. Further, section 351.525(b)(6)(vi) defines cross-ownership as existing ''between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. Normally, this standard will be met where there is a majority voting ownership interest between two corporations through common ownership of two (or more) corporations.'' The preamble to the CVD Regulations identifies situations where cross-ownership may exist even though there is less than a majority voting interest between two corporations: ''In certain circumstances, a large minority interest (for example, 40 percent) or a 'golden share' may also result in cross-ownership'' (63 FR at 65401).

In this investigation, we preliminarily determined that USIMINAS's 49.8 percent ownership interest in COSIPA is sufficient to establish cross-ownership between the two companies because USIMINAS is capable of using or directing the individual assets of COSIPA in essentially the same ways it can use its own assets. We based this determination on the following: (1) USIMINAS has virtually a majority share in COSIPA; and (2) the remaining shareholdings are divided among numerous shareholders (more than ten), with no one shareholder controlling even one-quarter of the shares which USIMINAS controls. *See Preliminary Determination,* 64 FR 53332, 53334–35. We did not learn anything at verification which would lead us to change our preliminary determination nor did we receive any comments on this issue. Thus, for purposes of this final determination, we have continued to calculate one subsidy rate for USIMINAS/COSIPA, by adding together their countervailable subsidies during the POI and dividing that amount by the sum of the two companies' sales during the POI.

We have also examined the ownership of CSN. We note that during the POI, two entities, CVRD and Previ (the pension fund of the Bank of Brasil), had meaningful holdings in both USIMINAS and CSN. As these entities both have ownership interests in and elect members to the Boards of Directors of both companies, we examined whether CSN and USIMINAS could, notwithstanding the absence of direct cross-ownership between them, have cross-ownership such that their interests are merged, and one company could have the ability to use or direct the assets of the other through their common investors. CVRD holds 15.48 percent of USIMINAS and 10.3 percent of CSN (through Docenave); Previ holds 15 percent of the common shares of USIMINAS and 13 percent of CSN. Both USIMINAS and CSN are controlled through shareholders' agreements, which require that the participating shareholders (who together account for more than 50 percent of the shares of the company) pre-vote issues before the Board of Directors and vote as a block. While CVRD and Previ both participate in the CSN shareholders' agreement, and thus exercise considerable influence over the use of CSN's assets, neither CVRD nor Previ participates in the USIMINAS shareholders' agreement and neither CVRD nor Previ has any appreciable influence (beyond their respective 15.48 and 15 percent USIMINAS shareholdings) over the use of USIMINAS's assets. Therefore, CVRD's and Previ's shareholdings in both USIMINAS and CSN are not sufficient to establish cross-ownership between those two companies under our regulatory standard. This absence of common majority or significant minority shareholders led us to preliminarily determine that USIMINAS's and CSN's interests have not merged, *i.e.,* one company is not able to use or direct the individual assets of the other as though the assets were their own. Moreover, we found no other evidence such as golden shares or close supplier relationships to lead us to conclude that there is indirect cross-ownership. *See Preliminary Determination* at 53335. We did not learn anything at verification which would lead us to change our preliminary determination nor did we receive any comments on this issue. Thus, for the purposes of this final determination, we have calculated a separate countervailing duty rate for CSN.

Changes in Ownership

In the *General Issues Appendix* (*GIA*), attached to the *Final Affirmative*

Countervailing Duty Determination; Certain Steel Products from Austria, 58 FR 37217, 37226 (July 9, 1993), we applied a new methodology with respect to the treatment of subsidies received prior to the sale of the company (privatization).

Under this methodology, we estimate the portion of the company's purchase price which is attributable to prior subsidies. We compute this estimate by first dividing the face value of the company's subsidies by the company's net worth for each of the years corresponding to the company's allocation period, ending one year prior to the privatization. We then take the simple average of these ratios, which serves as a reasonable surrogate for the percentage that subsidies constitute of the overall value, *i.e.,* net worth, of the company. Next, we multiply the purchase price of the company by this average ratio to derive the portion of the purchase price that we estimate to reflect the repayment of prior subsidies. Then, we reduce the benefit streams of the prior subsidies by the ratio of the repayment/reallocation amount to the net present value of all remaining benefits at the time of the change in ownership. For this final determination, we have conformed our net present value calculation with the methodology outlined in the *GIA. See GIA* 58 FR at 37263.

In the current investigation, we are analyzing the privatizations of USIMINAS, COSIPA and CSN, including the various partial privatizations. In conducting these analyses, to the extent that government-owned or controlled companies purchased shares, we have not applied our methodology to that percentage of the acquired shares equal to the percentage of government ownership in the partially government-owned purchaser (notwithstanding respondents' arguments on this issue which are discussed below in Comment 6). We have also adjusted certain figures included in the privatization calculations to account for inflationary accounting practices. Further, we accounted for CVRD's 1997 partial privatization by making the same adjustments to USIMINAS and CSN's calculations described in *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil (Brazil Hot-Rolled Final)* 64 FR 38742, 38745, 38752 (Department's Position on Comment 3).

In *Brazil Hot-Rolled Final,* we also noted the use of privatization currencies, *i.e.,* certain existing government bonds, privatization certificates and frozen currencies, and examined them in the context of our privatization methodology. We obtained information about the use and valuation of the privatization currencies that were used in the NPP, and we learned about how privatization currencies were valued in the context of the privatization auctions. Specifically, we found that the GOB accepted most of these currencies at their full redeemable value (face value discounted according to the time remaining until maturity). Additionally, foreign debt and restructuring bonds (MYDFAs) were accepted at 75 percent of their redeemable value. Many of the government bonds that were accepted as privatization currencies were routinely trading at a discount on secondary markets. However, no data or estimation of the applicable discounts was provided for the record in that investigation. *See Brazil Hot-Rolled Final* at 38745. Further, it was common knowledge that these bonds traded at a significant discount in these markets, and that investors actively traded to obtain the cheapest bonds in order to maximize their positions in the privatization auctions. The value of the bonds varied depending on the instrument's yield and length to maturity and traded within a range of 40 percent to 90 percent of the redeemable value, *i.e.,* with a discount ranging from 10 percent to 60 percent. Because various issues of bonds were accepted as privatization currencies, with different yields and terms, precise valuation data was not available. However, public information from the record of the hot-rolled investigation, subsequently placed on the record of this investigation, indicates that during the period 1991 through 1994 most bonds traded with discounts ranging from 40 to 60 percent on average. Privatization Certificates (CPs), which banks were forced to purchase and could only be used in the privatization auctions, traded at a discount of approximately 60 percent on average; MYDFAs traded at 30 percent of their face value, *i.e.,* at a discount of 70 percent. *See Brazil Hot-Rolled Final,* 64 FR at 38745.

In the hot-rolled investigation, we concluded that some adjustment to the purchase price of the companies was warranted because of the use of privatization currencies in the auctions. *See Brazil Hot-Rolled Final,* at 38745, 38752 (the Department's Position on Comment 3). Although this issue is discussed further in Comments 6 and 7 below, no further information has been provided in the record of this investigation which would enable us to refine or otherwise cause us to change the approach we developed in the hot-rolled investigation. Thus, we have followed the same approach and have applied a 30 percent discount to the MYDFAs. In addition, as we did in the hot-rolled investigation, we have applied a 60 percent discount to the CPs. *See Id.* For the remaining privatization currencies, in the *Brazil Hot-Rolled Final,* we applied a 50 percent discount as facts available, which reflected an average of the range of discounts estimated. Because no information has been provided in this investigation which accurately indicates the relevant secondary market discounts for these instruments, and in accordance with section 776(a) of the Act, we are again applying, as facts available, the 50 percent discount to the remaining privatization currencies.

Subsidies Valuation Information

Allocation Period

Section 351.524(d)(2) of the CVD Regulations states that we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System and updated by the Department of Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant.

In this investigation, no party to the proceeding has claimed that the AUL listed in the IRS tables does not reasonably reflect the AUL of the renewable physical assets for the firm or industry under investigation. Therefore, in accordance with section 351.524(d)(2) of the CVD Regulations, and for the purposes of this final determination, we are using the 15-year AUL as reported for the steel industry in the IRS tables to allocate the non-recurring subsidies under investigation.

Equityworthiness

In accordance with section 351.507 (a)(1) of the Department's CVD Regulations, a government-provided equity infusion confers a benefit to the extent that the investment decision is inconsistent with the usual investment practice of private investors, including

the practice regarding the provision of risk capital, in the country in which the equity infusion is made. *See also* section 771(5)(E)(i) of the Act. In *Preliminary Determination,* we determined that there was no reason to change our findings from prior investigations, *i.e.,* that the respondent companies were unequityworthy (in the relevant years) as follows: (1) COSIPA was unequityworthy from 1977 through 1989, and 1992 through 1993; (2) USIMINAS was unequityworthy from 1980 through 1988; and (3) CSN was unequityworthy from 1977 through 1992. *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil,* 58 FR 37295, 37297 (July 9, 1993) (*1993 Certain Steel Final; Brazil Hot-Rolled Final*, 64 FR at 38746. We note that because the Department determined that it is appropriate to use a 15-year allocation period for non-recurring subsidies, equity infusions provided prior to 1984 no longer provide benefits in the POI. None of the parties has submitted information or argument, nor is there evidence of changed circumstances which would cause us to reconsider these determinations.

Equity Methodology

Section 351.507(a)(3) of the Department's CVD Regulations provides that a determination that a firm is unequityworthy constitutes a determination that the equity infusion was inconsistent with usual investment practices of private investors. The applicable methodology is described in section 351.507(a)(6) of the regulations, which provides that the Department will treat the equity infusion as a grant. Use of the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information.

Creditworthiness

To determine whether a company is uncreditworthy, the Department must examine whether the firm could have obtained long-term loans from conventional commercial sources based on information available at the time of the government-provided loan. *See* section 351.505(a)(4) of the CVD Regulations. In this context, the term ''commercial'' refers to loans taken out by the firm from a commercial lending institution or debt instruments issued by the firm in a commercial market. *See* section 351.505(a)(2)(ii) of the CVD Regulations.

The Department has previously determined that respondents were uncreditworthy in the following years: USIMINAS, 1984–1988; COSIPA, 1984–1989 and 1991–1993; and CSN 1984-1992. *See Certain Steel from Brazil,* 58 FR at 37297; *Brazil Hot-Rolled Final,* 64 FR at 38746–38747. The parties have not presented any new information or arguments that would lead us to reconsider these findings.

Discount Rates

From 1984 through 1994, Brazil experienced persistent high inflation. There were no long-term fixed-rate commercial loans made in domestic currencies during those years that could be used as discount rates. As in the *Certain Steel Final* (58 FR at 37298) and the *Brazil Hot-Rolled Final* (64 FR 38745–38746), we have determined that the most reasonable way to account for the high inflation in the Brazilian economy through 1994, and the lack of an appropriate Brazilian discount rate, is to convert the non-recurring subsidies into U.S. dollars. If available, we applied the exchange rate applicable on the day the subsidies were received, or, if unavailable, the average exchange rate in the month the subsidies were received. Then we applied, as the discount rate, a long-term dollar lending rate. Therefore, for our discount rate, we used data for U.S. dollar lending in Brazil for long-term non-guaranteed loans from private lenders, as published in the World Bank Debt Tables: External Finance for Developing Countries. This conforms with our practice in *Certain Steel Final* (58 FR at 37298); *Brazil Hot-Rolled Final* (64 FR at 38746); and, *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela,* 62 FR 55014, 55019, 55023 (October 21, 1997).

As discussed above, we have determined that USIMINAS, COSIPA, and CSN were uncreditworthy in the years in which they received equity infusions. Section 351.505 (a)(3)(iii) of the CVD Regulations directs us regarding the calculation of the benchmark interest rate for purposes of calculating the benefits for uncreditworthy companies: To calculate the appropriate rate for uncreditworthy companies, the Department must identify values for the probability of default by uncreditworthy and creditworthy companies. For the probability of default by an uncreditworthy company, we normally rely on the average cumulative default rates reported for the Caa to C-rated category of companies as published in Moody's Investors Service, ''Historical Default Rates of Corporate Bond Issuers, 1920–1997'' (February 1998).[1] *See* 19 CFR 351.505(a)(3)(iii). For the probability of default by a creditworthy company, we used the cumulative default rates for Investment Grade bonds as reported by Moody's. We established that this figure represents a weighted average of the cumulative default rates for Aaa to Baa-rated companies. *See* September 24, 1999, Memorandum to the File, ''Conversations and correspondence regarding the weighted average default rates of corporate bond issuers as published by Moody's,'' on file in the Central Records Unit, Room B–099 of the main Commerce building (CRU). The use of the weighted average is appropriate because the data reported by Moody's for the Caa to C-rated companies are also weighted averages. *See Id.* For non-recurring subsidies, we used the average cumulative default rates for both uncreditworthy and creditworthy companies based on a 15-year term, since all of the non-recurring subsidies examined were allocated over a 15-year period.

I. Programs Determined To Be Countervailable

A. Pre-1992 Equity Infusions

The GOB, through SIDERBRAS, provided equity infusions to USIMINAS (1984 through 1988), COSIPA (198 through 1989 and 1991) and CSN (1984 through 1991) that have previously been investigated by the Department. *See Certain Steel from Brazil,* 58 FR at 37298; *Brazil Hot-Rolled Final*, 64 FR at 38747–38748.

For the reasons discussed above, we preliminarily determined that under section 771(5)(E)(i) of the Act, the equity infusions into USIMINAS, COSIPA and CSN were not consistent with the usual investment practices of private investors (*see* ''Equityworthiness'' section above). Thus, these infusions constitute financial contributions within the meaning of section 771(5)(D) of the Act and confer a benefit in the amount of each infusion. These equity infusions are specific within the meaning of section 771(5A)(D) of the Act because they were limited to each of the companies. Accordingly, we preliminarily determined that the pre-1992 equity infusions are countervailable subsidies within the

[1] We note that since publication of the CVD Regulations, Moody's Investors Service no longer reports default rates for Caa to C-rated category of companies. Therefore for the calculation of uncreditworthy interest rates, we will continue to rely on the default rates as reported in Moody Investor Service's publication dated February 1998 (at Exhibit 28).

meaning of section 771(5) of the Act. *See Preliminary Determination,* 64 FR at 53337. No parties have provided any new information or argument which would lead us to reconsider this determination.

As explained in the ''Equity Methodology'' section above, we treat equity infusions into unequityworthy companies as grants given in the year the infusion was received. These infusions are non-recurring subsidies in accordance with section 351.524(c)(1) of the CVD Regulations. Consistent with section 351.524(d)(3)(ii) of the CVD Regulations, because USIMINAS, COSIPA and CSN were uncreditworthy in the relevant years (the years the equity infusions were received), we applied a discount rate that takes into account the differences between the probabilities of default of creditworthy and uncreditworthy borrowers. From the time USIMINAS, COSIPA and CSN were privatized, we have been following the methodology outlined in the ''Changes in Ownership'' section above to determine the amount of each equity infusion attributable to the companies after privatization. We continue to rely on this methodology except for the selection of the discount rate as discussed above.

For CSN, we summed the benefits allocable to the POI from all equity infusions and divided by CSN's total sales during the POI. For USIMINAS/COSIPA, we summed the benefits allocable to the POI from all of the equity infusions and divided this amount by the combined total sales of USIMINAS/COSIPA during the POI. On this basis, we determine the net subsidy to be 5.75 percent ad valorem for CSN and 6.16 percent ad valorem for USIMINAS/COSIPA.

B. GOB Debt-for-Equity Swaps Provided to COSIPA in 1992 and 1993

Prior to COSIPA's privatization, and on the recommendation of a consultant who examined COSIPA, the GOB made two debt-for-equity swaps in 1992 and 1993. We previously examined these swaps and determined that they were not consistent with the usual investment practices of private investors; constituted a financial contribution within the meaning of section 771(5)(D) of the Act; and, therefore conferred benefits on COSIPA in the amount of each conversion. *See Brazil Hot-Rolled Final,* 64 FR at 38747. These debt-for-equity swaps are specific within the meaning of section 771(5A)(D)(i) of the Act because they were limited to COSIPA. Accordingly, we preliminarily determined that the GOB debt-for-equity swaps provided to COSIPA in 1992 and 1993 are countervailable subsidies within the meaning of section 771(5) of the Act. *See Preliminary Determination,* 64 FR at 53337. No party has provided any new information or argument which would lead us to reconsider this determination.

Each debt-for-equity swap constitutes an equity infusion in the year in which the swap was made. As such, we have treated each debt-for-equity swap as a grant given in the year the swap was made in accordance with section 351.507(b) of the CVD Regulations. Further, these swaps, as equity infusions, are non-recurring in accordance with section 351.524(c)(1) of the CVD Regulations. Because COSIPA was uncreditworthy in the years of receipt, we applied a discount rate consistent with section 351.524(d)(3)(ii) of the CVD Regulations as discussed in the ''Discount Rates'' section above. Since COSIPA has been privatized, we followed the methodology outlined in the ''Changes in Ownership'' section above to determine the amount of each debt-for-equity swap attributable to the company after privatization. We divided the benefit allocable to the POI from these debt-for-equity swaps by the combined total sales of USIMINAS/COSIPA. On this basis, we determine the net subsidy to be 4.44 percent ad valorem for USIMINAS/COSIPA.

C. GOB Debt-for-Equity Swaps Provided to CSN in 1992

Prior to CSN's privatization, and on the recommendation of a consultant who examined CSN, in 1992, the GOB converted some CSN debt into GOB equity in CSN. In this investigation, we initiated on this debt-for-equity swap as a straight equity infusion (*see Initiation Notice* 64 FR 34204), but subsequent to our initiation, in the *Brazil Hot-Rolled Final*, we determined that it constituted a debt-for-equity swap (64 FR at 38748). In the *Brazil Hot-Rolled Final* , we determined that this swap was not consistent with the usual investment practices of private investors and therefore conferred countervailable benefits on CSN in the amount of the swap. *See Id.* Thus, we preliminarily determined that, pursuant to sections 771(5)(D) and (E)(i) of the Act, this debt-for-equity swap constitutes a financial contribution which confers a benefit in the amount of the swap (*see* ''Equityworthiness'' section above). This debt-for-equity swap is specific within the meaning of section 771(5A)(D) of the Act because it is limited to CSN. Accordingly, we preliminarily determined that the GOB debt-for-equity swap provided to CSN in 1992 is a countervailable subsidy within the meaning of section 771(5) of the Act. *See Preliminary Determination,* 64 FR at 53337. No parties have provided any new information or argument which would lead us to reconsider this determination.

This debt-for-equity swap constitutes an equity infusion in the year in which the swap was made. As such, we have treated this debt-for-equity swap as a grant given in the year the swap was made in accordance with section 351.507(b) of the CVD Regulations. Further this swap, as an equity infusion, is non-recurring in accordance with section 351.524(c)(1) of the CVD Regulations. Because CSN was uncreditworthy in the years of receipt, we applied a discount rate consistent with section 351.524(d)(3)(ii) of the CVD Regulations as discussed in the ''Uncreditworthy Rate'' section above. Since CSN has been privatized, we followed the methodology outlined in the ''Changes in Ownership'' section above to determine the amount of the debt-for-equity swap attributable to the company after privatization. We divided the benefit allocable to the POI from the equity infusion by CSN's total sales during the POI. On this basis, we determine the net subsidy to be 1.39 percent ad valorem for CSN.

II. Program for Which the Investigation Was Rescinded

Negotiated Deferrals of Tax Liabilities

In *Preliminary Determination* (64 FR at 53338), we rescinded our investigation of tax deferrals negotiated by COSIPA and CSN which petitioners had alleged provided them with countervailable subsidies. Our rescission was based on the Department's then-recent final determination that this program is not countervailable. *See Brazil Hot-Rolled Final*, 64 FR at 38748–38749; Memorandum to the File, Countervailing Duty Investigation of Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, August 2, 1999, on file in CRU.

Interested Party Comments

Comment 1: Privatization

Respondents argue that 19 U.S.C. 1677(5)(B) and Article 1.1. of the WTO Agreement on Subsidies and Countervailing Measures (SCM) require the Department to find that there is a financial contribution which confers a benefit before concluding that there is a countervailable subsidy. Because, according to respondents, the statute plainly requires the Department to examine, on a continuing basis, the contribution, the benefit and the causal

connection between the two, respondents argue that it is insufficient to identify a financial contribution, made in the past, to a company owned by the government, and then presume irrebuttably that this contribution confers a benefit to the company after it has changed ownership. Rather, the Department must analyze all subsequent events (including changes in ownership, dividends received, and corporate restructurings) in order to determine how and whether prior financial contributions could benefit the companies and products under investigation.

Respondents cite the Department's practice of recognizing the cessation of subsidies when a countervailable grant is subsequently returned to the government or a countervailable loan is fully repaid, both ''subsequent events'' which extinguish the subsidy. Respondents characterize privatization as another such ''subsequent event'' which must be considered in examining whether a privatized company benefits from pre-privatization subsidies. Respondents argue that the preliminary determination itself, with its ''payback'' analysis, concedes that privatization disrupts the required causal connection between the financial contribution and the benefit. Furthermore, respondents claim that the Department cannot use the stated lack of an obligation to consider the effect of every subsidy in determining whether a countervailable benefit exists (*i.e.*, to conduct an ''effects test'') as an excuse for failing to consider the subsequent events in these circumstances. Respondents state that their position is not premised on requiring an analysis of the effects of all subsidies in all circumstances, but rather on a less burdensome reading of the statute and the SCM that requires consideration of whether a certain limited universe of ''significant events'' subsequent to a subsidy may eliminate the benefits of that subsidy (consistent with long-standing practice as discussed above). Any other reading of the statute, according to respondents, renders 19 U.S.C. 1677(5)(F) an unnecessary amendment of the law.

Respondents further argue that the proper consideration of a ''subsequent event'' in this case, the arm's-length privatization of the companies, would necessarily lead to the conclusion that pre-privatization subsides were eliminated. Without an analytical basis to believe or presume that subsidies have been passed through after an arm's length transaction, respondents believe the Department must conclude that the post-privatization owners do not benefit from pre-privatization subsidies. Respondents rely on the example of Company A which purchases a machine with government assistance and then sells the machine to Company B at market price to illustrate that the benefit of the government assistance remains with Company A; there is no pass-through of advantage or benefit to Company B or the products it may produce with the machine. The same conclusion is necessary when Company B purchases all of the assets and liabilities of (government-owned) Company A. The new owner does not enjoy any advantage. Respondents purport that the owners of a company and their relationship with the assets of the company are critical to any analysis of whether a company has received any benefit from some past financial contribution; when the owners change in an arm's-length privatization, an important dynamic within the company is altered and the entire company changes. Because the Department has overlooked the relevance of the new post-privatization owners, respondents conclude that the analysis is necessarily incomplete.

Respondents further note the changes in ownership and control which resulted from the privatizations of all three companies, and argue that the manner in which the new controlling owners acquired their interests in the companies (arm's-length transactions) preclude the new owners from enjoying any benefit or unfair advantage. Respondents cite the preamble of the CVD Regulations which state that ''where a firm does not pay less for its inputs than it would have to pay * * * as a result of a government financial contribution, it would be very difficult to contend that a benefit exists'' (63 FR at 65361) and argue that because the new owners did not pay less when they acquired the companies, it is ''difficult to contend that a benefit exists.''

Finally, respondents note that the fact the GOB retained some residual or indirect interest in the privatized companies does not preserve prior subsidies or convey new subsidies to the respondent companies. Nor does it undermine respondents' conclusion that the new owners and companies did not enjoy any advantage or benefit from pre-privatization subsidies during the POI.

Petitioners note that respondents' arguments are identical to those respondents made, and the Department rejected, in the *Brazil Hot-Rolled Final.* According to petitioners, respondents have neither addressed the bases for the Department's previous rejection of these arguments nor provided any new argument or information which would warrant a change in the Department's response to these arguments.

Department's Position: We disagree with respondents. In accordance with the statute (sections 771(5)(B) and 771(5)(E) of the Act), the Department has found that COSIPA, CSN and USIMINAS continue to benefit from pre-privatization equity infusions. We have examined the facts of this case in light of the above-cited provisions and find that the methodology we follow is in accordance with the Act. As petitioners noted, the Departments' privatization/change-in-ownership methodology has been upheld by the Courts regardless of the amendments to the Act by the URAA. *See Saarstahl AG* v. *United States,* 78 F.3d 1539 (Fed. Cir. 1996) (*Saarstahl II*); *Inland Steel Bar Co.* v. *United States,* 86 F.3d 1174 (Fed. Cir. 1996) (*Inland II*); and, *Delverde SrL* v. *United States,* 24 F. Supp. 2d 314 (Ct. Int'l Trade 1998) (*Delverde II*).

The Department has satisfied both 19 U.S.C. 1677(5)(B) (section 771(5)(B) of the Act) and Article 1.1. of the SCM in this investigation. We found that the GOB provided financial contributions to respondents, in the form of equity infusions and debt-for-equity conversions in the above-mentioned years which conferred countervailable benefits through the POI. In accordance with the Department's standard methodology, the benefits from these subsidies were allocated over time. Neither of the above-mentioned provisions requires the Department to revisit these determinations.

Under both the SCM and the Act, the Department has the discretion to determine the impact of a change in ownership on the countervailability of past subsidies. The Department has consistently applied its privatization/change-in-ownership methodology to determine the impact that a privatization/change in ownership has on pre-privatization subsidies. However, we have not done this by re-identifying or re-valuing the benefit of the subsidy based on events as of the time when the ownership of the subsidized company changed. The Department identifies and values the subsidy as of the time of the subsidy bestowal and does not revisit this determination. As petitioners correctly note, the Department is not required to examine the effects of subsidies, *i.e.*, trace how benefits are used by companies and whether they provide competitive advantages. Instead, the Department's methodology addresses the impact of the change in ownership on the allocation of pre-privatization subsidies. The Department's methodology accounts for the impact that the change in ownership

has on the measurement of the benefit from pre-privatization subsidies, by allocating, or apportioning, subsidies between the buyer and the seller, as reflected by the purchase price. As the Department said in *Stainless Steel Plate in Coils from Italy,* ''[o]ur 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.'' 64 FR at 15518. Thus, our methodology is wholly consistent with 19 U.S.C. 1677(5)(F) (section 771 (5)(F) of the Act) and, contrary to respondent's argument, provides the analytical basis for determining whether and to what extent subsidies have passed through to the privatized company or remain, in whole or in part, with the seller.

In addition, we remind respondents that section 701(a)(1) of the Act directs the Department to determine whether a countervailable subsidy is being provided ''with respect to the manufacture, production, or export of a class or kind of merchandise.'' We note that the same terminology is also reflected in the SCM (Article 10, footnote 36). Given this focus on the manufacture, production, and/or exportation of merchandise, the focus of the inquiry here should not be on the new owners of the company and how they may or may not have benefitted from the privatization transaction. Instead, as provided for in section 701(a)(1) of the Act and in Article 10, footnote 36 of the SCM, we have focused on the activities of the company, rather than its ownership structure. Our privatization methodology has accounted for the change in the ownership of the company conducting these activities. Thus, we have measured the amount of the benefit that passes through this transaction as respondent companies continued to manufacture, produce and export subject merchandise.

In addition, respondents' reliance on the discussion of inputs in the preamble of the CVD Regulations is misplaced. Contrary to the suggestion in respondents' argument here, the regulations' discussion of inputs does not reflect any change in the Department's approach to the identification of a ''benefit'' under Section 771(5)(B). Rather, it simply reflects the Department's longstanding practice of identifying the ''benefit'' *as of the time of the subsidy bestowal,* which, in the input context, is when the input was provided by the government. It is true that the Department will look at whether the firm paid what the input was worth, but the more fundamental point is that this method of identifying the benefit is based solely on events as of the time of the subsidy bestowal. It is not based in any way on an analysis of post-subsidy bestowal events or how the market value of the subsidy may have changed in the years following the subsidy bestowal.

Finally, we note that we have properly analyzed the GOB's residual and indirect interests in companies during the POI in the context of our standard privatization methodology. We have not considered shares bought by government-owned companies in privatization auctions as privatizations; these transactions do not reflect the change in ownership of the shares from government to private ownership, but rather a transfer from one government holding to another. However, when such companies were themselves privatized, we have made adjustments to reflect the changes in ownership at that time.

Comment 2: Impact of WTO Panel Decision on Privatization

Respondents argue that U.S. law and international obligations require the Department to incorporate the holdings of the recent WTO panel report on privatization in all subsequent proceedings involving privatization issues. The WTO panel reviewing three recent administrative reviews of the countervailing duty order on hot-rolled lead and bismuth carbon steel products from the United Kingdom issued a preliminary report (which was not public) attacking the Department's determination that subsidies bestowed prior to the privatization of a government-owned company pass through to the privatized company. Essentially, according to respondents, the WTO panel concluded that all prior subsidies are extinguished by a privatization achieved through an arm's length transaction. Further, according to respondents, the panel decision indicates that the Department's long-standing approach to privatization is inconsistent with the principles and obligations of the SCM. Respondents cite the *Charming Betsy* doctrine (*see Murray Schooner* v. *Charming Betsy,* 6 U.S. (2 Cranch) 64, 118 (1804)), for the proposition that an act of Congress should not be construed to violate international obligations if any other possible construction remains. Respondents further note that under the WTO, a panel report is a ''clarification'' of the principles embodied in a WTO Agreement, and therefore, to the extent a WTO panel report identifies an inconsistency between the practice of a WTO Member and a WTO Agreement, the report informs the Member how it must adjust its practice to conform with its existing international obligations under the agreement. Respondents argue that to the extent the panel report identifies inconsistencies between U.S. practice and the SCM, the United States is obligated to address those inconsistencies in general; any Department decision subsequent to the panel report that does not reflect the panel's interpretations of the SCM will be inconsistent with U.S. obligations under the SCM. A failure to comport Department actions with the panel report, according to respondents, would certainly result in a remand by a reviewing court.

Respondents note that, in response to the adverse panel report, as an alternative to incorporating the principles of the report in its practice, the United States may, under WTO procedures, elect to compensate the European Union for the nullification and impairment of its rights under the SCM. However, respondents urge the Department not to take this course of action, arguing that the WTO panel's clarification of the rights and obligations of Members under the SCM will remain, *i.e.*, the U.S. will remain obligated to render its decisions under the countervailing duty law in accordance with the panel report. Should the Department continue to issue decisions that conflict with the panel report, respondents argue that the United States will remain vulnerable to a series of challenges that it has nullified and impaired the rights of WTO Members. Finally, respondents note that the failure to implement the WTO report will be directly contrary to the United States' strong position that the integrity of the WTO dispute resolution process can only be preserved by members' compliance with panel rulings, however adverse.

Petitioners argue that the Department should disregard respondents' arguments as they are predicated on an interim and confidential panel report. Petitioners cite the *Final Affirmative Countervailing Duty Determination; Certain Cut-to-Length Carbon-Quality Steel Plate from France*, 64 FR 73277 (December 29, 1999) and *Final Affirmative Countervailing Duty Determination; Certain Cut-to-Length Carbon-Quality Steel Plate from Italy*, 64 FR 73244 (December 29, 1999), wherein the Department stated ''this was an interim (*i.e.*, preliminary) confidential report. As such, it is inappropriate for the parties or the Department to comment on it.'' *Id.* at 73271. Petitioners

further argue that even if the panel report were relevant to the current investigation, respondents' arguments about the legal significance of the report are mistaken. First, petitioners argue that it is premature to discuss any implementation of the panel report, which has not yet been circulated among WTO members (and which cannot be considered for adoption until 20 days thereafter). Furthermore, petitioners note that the United States has the right to request that the report be reviewed by the Appellate Body, and argue that the report itself may be riddled with errors and the Department should not implement erroneous findings that remain subject to reversal on appeal.

Second, petitioners note that U.S. law expressly prohibits the implementation of the panel report in the instant investigation. According to petitioners, the relevant statutory provision prohibits the amendment, rescission, or modification of regulations or practices found by a panel or Appellate Body to be inconsistent with any of the Uruguay Round Agreements unless and until the appropriate congressional committees have been consulted; the Trade Representative has sought advice from relevant private sector advisory committees; the agency or department head has provided an opportunity for public comment on a proposed modification through its publication in the **Federal Register**; the Trade Representative has submitted a report to the appropriate congressional committees regarding the proposed modification; the Trade Representative and the agency head have consulted with the appropriate congressional committees on the proposed contents of the final rule; and, the final rule or other modification had been published in the **Federal Register**. *See* 19 U.S.C. 3533(g)(1). Thus, petitioners conclude that it would be unlawful for the Department to change its practice with regard to privatization until the statutorily mandated actions have been fulfilled.

Finally, petitioners argue that the panel report has no binding effect in U.S. law, dismissing respondents' interpretation of the *Charming Betsy* doctrine. Petitioners state that respondents are mistaken in assuming the WTO panel report would provide the basis for the Court of International Trade (CIT) to overturn a final determination in this investigation that subsidies persist after privatization because case law shows that the Department may make its own determination regarding U.S. international obligations, and the CIT will give deference to those determinations, regardless of GATT or WTO panel reports to the contrary.

Department's Position: As a threshold matter, we disagree with respondents that our international obligations under the SCM require a change in our approach to privatization in the instant case. Although the panel report has now been circulated to all WTO Members and is no longer confidential, petitioners are correct in noting that unless and until the panel report is adopted by the membership, the United States has no obligation with respect to the report. As of now, the report has not been adopted. It is therefore premature to consider what obligations, if any, the report may impose on the United States.

Even if it were not premature for the Department to reconsider our approach to privatization in light of the adverse panel report, and it were otherwise appropriate to do so, we agree with petitioners that, under 19 U.S.C. 3533(g)(1), a ''regulation or practice may not be amended, rescinded, or otherwise modified in the implementation of such report unless and until'' the very specific statutory obligations therein provided are fulfilled.

Thus, we continue to determine that a portion of subsidies bestowed on a government-owned company prior to privatization continues to benefit the production of the privatized company.

Comment 3: Valuation of Equity Infusion Benefits

Respondents argue that the Department's practice of treating equity infusions into unequityworthy companies like grants necessarily overstates the benefits of such infusions and, contrary to 19 U.S.C. 1671(a), results in the Department countervailing more than the net benefits actually received by the company. Respondents maintain that the Department's methodology fails to recognize the basic differences between equity investments and grants: Grants are unaccompanied by financial obligations; equity investments are accompanied by the obligations to generate a return (*i.e.*, to pay dividends) and to cede a claim on the company's assets to the investor. Respondents argue that, in examining government equity investments, the Department must measure the degree to which the firm is relieved of these two obligations. Respondents note that in examining other forms of subsidization, the Department recognizes the ability of a company to offset completely the benefits of the subsidy, for example, by adjusting the interest rate upward on a loan at a preferential interest rate until it reaches parity with market rates. Respondents concede that it may be reasonable to treat the equity infusions as grants in a case in which there were demonstrably no costs to the company receiving the equity, but argue that there is no basis in law or fact for the Department's irrebuttable presumption that unequityworthy companies incur absolutely no costs in connection with government investments.

If the Department persists in treating equity infusions like grants, respondents argue for a change in methodology in which the Department recognizes all post-equity infusion events, including privatization; increases in net worth; and, the payment of dividends to the investor prior to the end of the POI. Only by ''netting out'' these identifiable and related costs, respondents argue, can the Department comply with its statutory mandate not to countervail more than the net benefit.

Petitioners again note that respondents' arguments with respect to equity methodology are identical to those considered and rejected by the Department in the *Hot-Rolled Steel Final*. Petitioners maintain that respondents have ignored the Department's reasoning in the *Hot-Rolled Steel Final* and, thus, have presented no reason for the Department change that reasoning.

Department's Position: As they did in the *Hot-Rolled Steel Final*, respondents are once again basically arguing a return to the ''rate of return shortfall'' methodology (RORS), which the Department rejected in 1993 because it relied on an *ex post facto* analysis of events and represented a cost-to-government analysis of the benefit. The Department instead determined that the grant methodology was the most appropriate for analyzing the benefit from an equity infusion into an unequityworthy company. As the Department said in the *GIA*, 58 FR at 37239:

> [u]sing the grant methodology for equity infusions into unequityworthy companies is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information. Thus, neither the benefit nor the equityworthiness determination should be reexamined *post hoc* since such information could not have been known to the investor at the time of the investment. Therefore, the grant methodology, when used for equity infusions into unequityworthy companies * * * should not be adjusted based on subsequent events (*e.g.,* dividends, profits).

The Department has consistently applied the grant methodology to

measure the benefit from equity infusions into unequityworthy companies since 1993. *See, e.g., Certain Steel from Brazil; Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy,* 59 FR 18357 (March 18, 1994); *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55014 (October 22, 1997); and *Final Affirmative Countervailing Duty Determination; Stainless Steel Plate in Coils from Belgium*, 64 FR 15567, 15569 (March 31, 1999). This methodology has been upheld by the Court. *See British Steel plc* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel I*). Respondents' argument that equity investments impose additional costs on companies is not relevant and has been rejected by the Court. We have found respondents to be unequityworthy as discussed in the ''Equityworthiness'' section above. This finding has not been disputed by respondents. Our finding of unequityworthiness is akin to saying that private investors would not have invested capital in the firm. Therefore, we have continued to use the grant methodology to measure the benefit of equity infusions (and debt-for-equity conversions), as discussed in the ''Equity Methodology'' section above.

Comment 4: Exchange Rate Issues

Respondents take issue with the exchange rates the Department used in the calculations for the preliminary determination. While the Department used official monthly average exchange rates from the Central Bank of Brazil to convert to dollars most of the equity infusions examined, the Department used daily exchange rates from the Dow Jones Business Information Service to convert to dollars four of the equity infusions examined. Respondents argue that the Department's use of the Dow Jones rates is both inaccurate and inconsistent and the Department should use the official Central Bank of Brazil exchange rates (which respondents have provided in their questionnaire responses) for all currency conversions. Respondents cite an example of a daily exchange rate for which the Dow Jones rate differs by nearly twenty percent from the Central Bank rate, resulting in overstating the dollar value of the relevant equity infusion. Furthermore, respondents note that an official Central Bank rate is intrinsically superior for the purposes of a countervailing duty proceeding, and is more consistent in that the Department is using Central Bank monthly average rates for most of the currency conversions in the calculations.

Petitioners argue that respondents have provided no reason for the Department to doubt the reliability of the Dow Jones data, and therefore no reason to change the interest rates used in the calculations.

Department's Position: For the calculations for the preliminary determination, we used the monthly average exchange rates provided in the questionnaire responses, published in the *Suma Economica*, and sourced from the Central Bank of Brazil. Where we used daily exchange rates, the data provided by respondents did not meet our needs: although it came from the same source, it was not clear whether the exchange rates provided were ''buy'' or ''sell'' rates, or an average of the two. Since the Department uses an average of the ''buy'' and ''sell'' rates, we sought and used another source for that data, the exchange rates maintained on Import Administration's web site. For this final determination, we have now identified and used another public source of the appropriate exchange rate data: the Central Bank of Brazil's web site. As indicated in the calculation memorandum for these final results (on file in CRU), daily exchange rate data is available from the Central Bank of Brazil back to 1985. We used this data to calculate the average of the ''buy'' and ''sell'' rates, and also to calculate the monthly average exchange rates we used. Exchange rate data for 1984 was unavailable from the Central Bank's web site; for 1984 we used the exchange rate data reported by respondents, which is published in the *Suma Economica* and sourced from the Central Bank of Brazil.

Comment 5: Repayment Calculations

Respondents argue that the gamma ratio used in the Department's privatization methodology does not properly reflect the proportion of the purchase price that represents repayment of prior subsidies; they maintain that an average of infusion values to net worth ratios over time does not provide a meaningful ratio. Respondents instead suggest comparing the present value of the unamortized pre-privatization infusions (at the time of the infusion) to the total net worth of the company at the time of privatization. They hold that this approach more properly accounts for the difference between a company that received an infusion ten years prior to subsidization from a company that receives the same infusion the year before privatization.

Once again, petitioners note that respondents have forwarded the same arguments considered and rejected by the Department in *Brazil Hot-Rolled Steel Final.* According to petitioners, respondents have not provided any reason for the Department to deviate from the position articulated at that time.

Department's Position: As we did in the *Brazil Hot-Rolled Steel Final* and for this final determination, we have continued to calculate gamma using historical subsidy and net worth data. The gamma calculation serves as a reasonable estimate of the percent that subsidies constitute of the overall value of the company. This methodology has been upheld by the courts in *Saarstahl II, Delverde II,* and *British Steel plc* v. *United States,* 929 F. Supp. 426, 439 (CIT 1996). Respondents' criticism of the Department's current methodology centers on their belief that the average of subsidies to net worth does not take into account the timing of the receipt of subsidies and the corresponding net present value of the subsidies. We note that while gamma itself does not factor in the net present value of the subsidies, the results of the gamma calculation are applied to the present value of the remaining benefit streams at the time of privatization. Thus, our current calculations, as a whole, do account for the present value of the remaining benefits at the time of privatization.

Comment 6: Adjustments to Purchase Prices in Privatizations

Respondents argue that the Department incorrectly adjusted the purchase prices downward to account for both the use of privatization currencies and the acquisition of shares by CVRD. Respondents argue that the relevant value of the currencies, in identifying the purchase price of the companies, is the present value of the currencies, the amount at which the currencies were accepted by the GOB. Respondents hold that this value is correct because it represents the value of the debt that the GOB retired through the sales. Further, the GOB had a real liability equal to the present value of the instrument and the value of this liability, retired through the transaction, must be used in the calculation as it attempts to identify the amount of subsidy ''paid back'' to the government in the privatization. Respondents state that the value of the privatization currencies to the purchasers of the shares is irrelevant. They provide examples of different currency exchange rates and different bond values to illustrate the point that the value to the GOB remains the same in each scenario. In short, respondents note that when measuring the value of subsidies, the Department focuses exclusively on the value of the subsidy to the recipient, at

the time the subsidy is received. Thus, respondents urge the Department to focus, in this instance, on the value received by the government, *i.e.,* the present value of the privatization currencies used to purchase privatized companies; it is the perspective of the recipient that is consistently relevant.

In addition, respondents note that in *Certain Steel from Brazil,* the Department examined the privatization of USIMINAS, was aware of the secondary market trading of the privatization currencies, and did not adjust USIMINAS's purchase price. Therefore, respondents argue, the hot-rolled steel investigation represented a departure from the Department's earlier approach, a departure which was not adequately explained and which does not now provide the basis for the adjustment to purchase price.

Finally, respondents disagree with the treatment of shares purchased by CVRD in the privatizations. Respondents state that CVRD's share purchases were made on commercial terms, a fact which is supported by the participation of other private investors in those privatization auctions, and thus the purchase price should not be discounted for CVRD's participation. Respondents note that the verification reports reinforce this conclusion and state they cannot be penalized for a GOB investment made on terms consistent with commercial considerations.

Petitioners support the Department's preliminary adjustments to account for the market value of privatization currencies. Petitioners state that record evidence demonstrates that the currencies traded at deep discounts from their face values on secondary markets. Petitioners state that the statute and practice reveal a strong preference for using market-determined prices to make valuation decisions. They hold that because the GOB could purchase the securities on the secondary market, just like any private investors, the value to the GOB was exactly the same as the market value.

Department's Position: As a threshold matter, respondents' arguments are identical to those considered and rejected by the Department in the *Brazil Hot-Rolled Final* (64 FR at 38751). With no new arguments to consider (and no new information developed in the course of this investigation), we continue to view respondents' arguments regarding the valuation of privatization currencies as flawed. Respondents are correct in noting that the GOB retired debts equal to the present value of the currencies accepted in exchange for shares. However, that fact is not relevant to our analysis of the purchase price in the privatization transaction; the proper value of the purchase price to use in the privatization calculation is the market selling price of the company. Since the purchase price was partially accounted for by privatization currencies and those currencies were discounted on secondary markets, the market selling price of the company is partially composed of the market value of the privatization currencies. As we stated in the *Brazil Hot-Rolled Final,* to use the present value of the currencies when determining the purchase price would be to overstate the cash, market value of the purchase price. As petitioners correctly point out, it is the Department's preference to use market values in calculations where possible. The discounted value accurately represents the market value of the currencies, and therefore the price paid by participants in the privatization auctions. That the GOB accepted those currencies at present value is irrelevant to our analysis of the purchase price. With respect to respondents' argument about our examination of the currencies in *Certain Steel from Brazil,* we reiterate the point articulated in the *Brazil Hot-Rolled Final* (64 FR at 38751). While the fact that privatization currencies were used to acquire USIMINAS shares was documented in the record of that case, the parties did not have the opportunity to comment on the final privatization methodology applied and the implications that various facts in evidence may have had on this methodology. Furthermore, in *Certain Steel from Brazil,* and the companion cases, the Department developed its privatization methodology, and applied it for the first time in the final determinations. We have gained experience with the methodology since that time. In this investigation, we have properly determined that privatization currencies were overvalued by the GOB and that the discounted, market value should be used in the privatization calculation as discussed above. We have used the discounted value best supported by record evidence.

Finally, we disagree with respondents with respect to the treatment of CVRD share purchases. Government purchases of government assets cannot be seen properly as a ''privatization'' or ''change in ownership'' that would give rise to a reallocation of subsidies between buyer and seller. Instead, these transactions represent a transfer of government funds from one account to another. Thus, we have continued to remove the CVRD purchases from the calculation as discussed above. In addition, we note that we have accounted for the 1997 partial privatization of CVRD in the calculations.

Comment 7: Not All Privatization Currencies Used in Privatizations Were Acquired at Discounted Prices

Respondents argue that the Department's valuation of the privatization currencies mistakenly assumes that all currencies were acquired by the users on the secondary market at a discount. They point to the Privatization Certificates (CPs), which banks were forced to purchase under the Collar Plan for 100 percent of their value, and SIDERBRAS debentures which SIDERBRAS creditors were given in lieu of receiving debt payment. Respondents state that many banks chose to use the CPs in privatization auctions, as holders of other privatization currencies also did, exchanging one-to-one for shares, rather than trade them on the secondary market. They maintain that if instruments used in privatization auctions were not actually acquired on the secondary market, a secondary market discount cannot be applied. Similarly, even if the instruments were trading in a secondary market at a premium, respondents argue, no adjustment for market value would be appropriate. Thus, respondents argue, there is no basis for the Department to assume that all currencies used in the privatization auctions were acquired at discounts on the secondary market and information in the record indicates that some of the currencies were either used by their original owners who had come by them as a result of the GOB's debt restructuring plan or borrowed on commercial terms from BNDES (the GOB development bank); to continue to adjust the purchase price for the secondary market discounts is to apply an adverse inference without justification.

Petitioners believe that to focus on the acquisition price of the privatization currencies is to focus on the wrong moment in time. The relevant question, according to petitioners, is not what price was paid in the past to acquire the currencies, but what were the currencies worth at the time they were used to make purchases in the GOB privatization auctions.

Department's Position: As discussed in the previous comment, the appropriate measure of the value of the privatization currencies is not their cost to their holders at the time of acquisition (be that at the time the original instruments were issued, when they were acquired on the secondary market, or when they were borrowed

from another holder), but their value in the secondary market at the same time they were used in privatization auctions. This represents the value that the holders could have realized, in the alternative, through a commercial transaction at the time of the privatization auctions. The secondary market provides the commercial ''benchmark'' for evaluating whether the value the GOB attributed to the currencies was appropriate, and whether the purchase price represents something with a comparable market value. The secondary market discounts which are supported on the record indicate that the GOB overvalued the currencies in the privatization auctions and that the purchase price is tainted by the GOB's overvaluation. We agree with petitioners that the statute expresses a preference for using market-determined prices when examining government actions, and we have appropriately examined the respondents' purchase prices through the lens of the discounted secondary market trading in privatization currencies.

Comment 8: Asymmetrical Comparisons in the Gamma Calculations

Respondents urge the Department to correct the gamma calculation to overcome the asymmetry inherent in ratios which mix the use of historical figures and figures corrected for inflation, *i.e.,* the numerators and denominators should be expressed in the same terms. They argue that the Department can correct this inaccuracy by ensuring that the ratios are expressed in the same terms, and recommend accomplishing this by converting to dollars the numerators and denominators.

Petitioners argue that the asymmetry results from respondents having reported unusable data. Petitioners note that respondents' proposed correction works entirely to respondents' advantage by resulting in a higher repayment ratio. Petitioners note that in accordance with CIT rulings, respondents are not entitled to benefit from their failure to satisfy the Department's requests for information; thus for any year in which the Department does not have the appropriate information, petitioners urge the Department to assume the ratio is zero.

Department's Position: We agree, in part, with respondents and petitioners. In calculating the gamma ratio, we would prefer to compare historical subsidies with historical net worth, or indexed subsidies with indexed net worth. For purposes of the preliminary determination, we used the same information that we used in the *Brazil Hot-rolled Final*. In that case, we had some years for which the data was symmetrical and some years for which we only had historical subsidies and indexed net worth. Since the preliminary determination, we have reexamined the financial statements on the record, and have found that for a number of additional years, the financial statements do provide an inflation-adjusted subsidies value. Therefore, we have been able to calculate a symmetrical comparison for the following years: for USIMINAS and COSIPA for the relevant years from 1988 (except 1992 for COSIPA) forward and for CSN from 1987 forward (except 1992). For all other years, we have continued to calculate the gamma ratios as we did in the preliminary determination. We agree with petitioners that respondents have not demonstrated that their proposed modification yields a more symmetrical or accurate comparison in the gamma ratios than the ratios we calculated for the preliminary determination. However, we disagree with petitioners that we should adversely assume that the ratio is zero since for all of the years, we have information on either historical or indexed subsidy values and net worth.

Comment 9: Corrections Made at Verification

Respondents contend that the Department's calculations for this final determination should include the corrected POI sales figures which were presented and verified at verification. The figures which were corrected were: the USIMINAS total sales value; the volume and value of COSIPA exports of subject merchandise to the United States; and, the volume and value of CSN total sales and the value of CSN exports of the subject merchandise to the United States.

Department's Position: We agree with respondents and have used the corrected figures in our calculations for this final determination. The Department normally accepts minor corrections to submitted information at verification, and the opportunity to make minor corrections was included in the verification outlines that were used to prepare for verification. The corrected figures were verified in accordance with our standard verification procedures; thus, we have used them in the calculations.

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.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated a combined ad valorem rate for USIMINAS and COSIPA and an individual rate for CSN. The total estimated net countervailable subsidy rates are stated below.

Company	Net subsidy rate
IMINAS/COSIPA	10.60% ad valorem.
CSN	7.14% ad valorem.
All Others	9.21% ad valorem.

In accordance with our preliminary affirmative determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of cold-rolled flat-rolled carbon-quality steel products from Brazil which were entered, or withdrawn from warehouse, for consumption on or after October 1, 1999, the date of the publication of our preliminary determination in the **Federal Register**. In accordance with section 703(d) of the Act, which provides that suspension ordered after the preliminary determination may not remain in effect for more than four months, we will instruct the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after January 29, 2000 but to continue the suspension of liquidation of entries made between October 1, 1999 and January 29, 2000.

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.

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: January 18, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–1849 Filed 2–3–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–830]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil

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

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall (Companhia Siderurgica Nacional or CSN), Martin Odenyo (Usinas Siderurgicas de Minas Gerais and Companhia Siderτrgica Paulista or USIMINAS/COSIPA), Nancy Decker, or Robert M. James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W. Washington, DC 20230; telephone: (202) 482–1398, (202) 482–5254, (202) 482–0196 and (202) 482–5222, 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 (April 1999).

Final Determination

We determine that certain cold-rolled flat-rolled carbon-quality steel products (cold-rolled steel) from Brazil 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 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 November 10, 1999. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 61249 (November 10, 1999) (Preliminary Determination). Since the publication of the PreliminaryDetermination the following events have occurred.

One of the respondents in this investigation, Companhia Siderurgica Nacional (CSN) refused verification. The Department verified sections A–C of Usinas Siderugicas de Minas Gerais (USIMINAS') responses from November 15 through November 19, 1999, at USIMINAS' administrative headquarters in Belo Horizonte, Brazil. The Department verified section D of USIMINAS' response from November 8 through November 12, 1999, at USIMINAS' production facility in Ipatinga, Brazil. See Memorandum For the File; ''Sales Verification of Sections A–C Questionnaire Responses Submitted by Usinas Siderurgicas de Minas Gerais, S.A., December 23, 1999 (USIMINAS' Sales Verification Report) and Memorandum to Neal Halper, Acting Director, Office of Accounting; ''Verification of the Cost of Production and Constructed Value Data—USIMINAS,'' December 20, 1999 (USIMINAS' Cost Verification Report).

The Department verified sections A–C of Companhia Siderurgica Paulista (COSIPA's) responses from November 8 through November 12, 1999, at COSIPA's production facility in Cubatao, Brazil. The Department verified section D of COSIPA's response from November 15 through November 20, 1999, at COSIPA's production facility in Cubatao, Brazil. See Memorandum For the File; ''Sales Verification of Sections A–C Questionnaire Responses Submitted by Companhia Siderurgica Paulista (COSIPA),'' December 17, 1999 (COSIPA's Sales Verification Report) and Memorandum to Neal Halper, Acting Director, Office of Accounting; ''Verification of the Cost of Production and Constructed Value Submissions of Companhia Siderurgica Paulista,'' December 23, 1999 (COSIPA's Cost Verification Report).

The Department verified sections A (General Information) and B (Home Market Sales) responses of Rio Negro Industria e Comercio de Aco S.A. (Rio Negro) (an affiliated distributor of USIMINAS) on November 4 and November 5, 1999. The verification was performed at Rio Negro's sales branch and administrative headquarters in Guarulhos, Brazil. See Memorandum to the File; ''Sales Verification Report of Rio Negro Industria e Comercio de Aco S.A.,'' December 27, 1999, (Rio Negro's Sales 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 November 29, 1999, Bethlehem Steel Corporation, Gulf States Steel, Inc., Ispat Inland Steel, LTV Steel Company, Inc., National Steel Corporation, Steel Dynamics, Inc.,U.S. Steel Group, a unit of USX Corporation, Weirton Steel Corporation, Independent Steelworkers Union, and United Steelworkers of America (petitioners) requested a public hearing. On January 6, 1999, the petitioners withdrew requests for a hearing, and therefore, there was no hearing for this investigation. On December 30, 1999, petitioners and USIMINAS/COSIPA filed case briefs. We received rebuttal briefs from petitioners, USIMINAS/COSIPA and CSN on January 5, 2000. On December 23, 1999, the Department sent a request to USIMINAS to submit a new home market sales listing as a result of minor corrections identified at verification. The Department received this information on December 30, 1999.

Scope of the Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in

successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States (HTSUS), are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and

(a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (.001 inch), or

(b) semi-processed, with core loss of less than 0.085 watts/pound per mil (.001 inch);

- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

Thickness: 0.001 to 0.010 inch
Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight %	<0.002%

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:

Thickness: ≤1.0 mm
Width: ≤ 152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤0.03	≤0.006

MECHANICAL PROPERTIES

Tensile Strength	≥162 Kgf/mm^2
Hardness	≥475 Vickers hardness number

PHYSICAL PROPERTIES

Flatness	<0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area Percentage
Sulfide Inclusion %	≤0.04
Oxide Inclusion %	≤0.05

Compressive Stress: 10 to 40 Kgf/mm^2

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μ)
t ≤0.209	Rz ≤0.5
0.209 <t ≤0.310	Rz ≤0.6
0.310 <t ≤0.440	Rz ≤0.7
0.440 <t ≤0.560	Rz ≤0.8
0.560 <t	Rz ≤1.0

- Certain ultra thin gauge steel strip, which meets the following characteristics:

Thickness: ≤0.100 mm ±7%
Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%
Tensile Strength	600 to 850 N/mm^2

PHYSICAL PROPERTIES

Surface Finish	≤0.3 micron.
Camber (in 2.0 m)	<3.0 mm.
Flatness (in 2.0 m)	≤0.5 mm.
Edge Burr	<0.01 mm greater than thickness.
Coil Set (in 1.0 m)	<75.0 mm.

- Certain silicon steel, which meets the following characteristics:
  Thickness: 0.024 inch +/− .0015 inch

Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches)
Gamma Crown (in 5 inches)	0.0005 inch, start measuring ¼ inch from slit edge
Flatness	20 I–UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable)
Camber (in any 10 feet)	1/16 inch
Coil Size I.D.	20 inches

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz)	3.8 Watts/Pound max.
NAAS	
Permeability (1.5T/60 Hz)	1700 gauss/oersted typical
NAAS	1500 minimum

• Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:
Thickness: 0.025 to 0.245 mm
Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	<0.01	0.004 to 0.007	<0.007

• Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03			—	0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08	—	0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.
Surface Treatment as follows:
The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

• Certain annealed and temper-rolled cold-rolled continuously cast steel, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Al	N
Weight %	<0.08	<0.04	<0.40	<0.03	<0.03	0.010–0.025	<0.0025

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Tolerance: Guaranteed inside of 15 mm from mill edges	±5 percent (aim ±4 percent)
Width Tolerance	−0/+7 mm
Hardness (Hv)	Hv 85–110
Annealing	Annealed
Surface	Matte
Tensile Strength	>275N/mm^2
Elongation	>36%

• Certain annealed and temper-rolled cold-rolled continuously cast steel, in coils, with a certificate of analysis per Cable System International (''CSI'') Specification 96012, with the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Base Weight	55 pounds
Theoretical Thickness	0.0061 inch (+/−10 percent of theoretical thickness)
Width	31 inches
Tensile Strength	45,000–55,000 psi

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Elongation	minimum of 15 percent in 2 inches

• Certain full hard tin mill black plate, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION:

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides 1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Stone Finish	16(0.4)	8(0.2)	24(0.6)

• Certain ultra-bright tin mill black plate meeting ASTM 7A specifications for surface finish and RA of seven micro-inches or lower.

• Concast cold-rolled drawing quality sheet steel, ASTM A–620–97, Type B, or single reduced black plate, ASTM A–625–92, Type D, T–1, ASTM A–625–76 and ASTM A–366–96, T1–T2–T3 Commercial bright/luster 7a both sides, RMS 12 maximum. Thickness range of 0.0088 to 0.038 inches, width of 23.0 inches to 36.875 inches.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 53 pound base weight (0.0058 inch thick) with a Temper classification of T–2 (49–57 hardness using the Rockwell 30 T scale).

• Certain single reduced black plate, meeting ASTM A–625–76 specifications, 55 pound base weight, MR type matte finish, TH basic tolerance as per A263 trimmed.

• Certain single reduced black plate, meeting ASTM A–625–98 specifications, 65 pound base weight (0.0072 inch thick) with a Temper classification of T–3 (53–61 hardness using the Rockwell 30 T scale).

• Certain cold-rolled black plate bare steel strip, meeting ASTM A–625 specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0058 inch ±0.0003 inch
Hardness	T2/HR 30T 50–60 aiming
Elongation	≥ 15%
Tensile Strength	51,000 psi ±4.0 aiming

• Certain cold-rolled black plate bare steel strip, in coils, meeting ASTM A–623, Table II, Type MR specifications, which meet the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.04	0.05

PHYSICAL AND MECHANICAL PROPERTIES

Thickness	0.0060 inch (±0.0005 inch)
Width	≤10 inches (+¼ to ⅜ inch/–0)
Tensile strength	55,000 psi max.
Elongation:	minimum of 15 percent in 2 inches

• Certain ''blued steel'' coil (also know as ''steamed blue steel'' or ''blue oxide'') with a thickness of 0.30 mm to 0.42 mm and width of 609 mm to 1219 mm, in coil form;

• Certain cold-rolled steel sheet, whether coated or not coated with porcelain enameling prior to importation, which meets the following characteristics:

• Thickness (nominal): ≤ 0.019 inch

• Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004		
Min. Weight %		0.010	0.012

• Certain cold-rolled steel, which meets the following characteristics:
• Width: > 66 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	Si
Max. Weight %	0.07	0.67	0.14	0.03

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–2.000
Min. Yield Point (MPa)	265
Max Yield Point (MPa)	365
Min. Tensile Strength (MPa)	440
Min. Elongation %	26

• Certain band saw steel, which meets the following characteristics:
Thickness: ≤ 1.31 mm
Width: ≤ 80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤ 0.03	≤ 0.007	0.3 to 0.5	≤ 0.25

Other properties:
Carbide: fully spheroidized having > 80% of carbides, which are ≤ 0.003 mm and uniformly dispersed
Surface finish: bright finish free from pits, scratches, rust, cracks, or seams, smooth edges
Edge camber (in each 300 mm of length): ≤ 7 mm arc height
Cross bow (per inch of width): 0.015 mm max.
• Certain transformation-induced plasticity (TRIP) steel, which meets the following characteristics:

Variety 1

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.09	1.0	0.90
Max. Weight %	0.13	2.1	1.7

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yield Point (MPa)	320
Max Yield Point (MPa)	480
Min. Tensile Strength (MPa)	590
Min. Elongation %	24 (if 1.000–1.199 thickness range) 25 (if 1.200–1.599 thickness range) 26 (if 1.600–1.999 thickness range) 27 (if 2.000–2.300 thickness range)

Variety 2

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.12	1.5	1.1
Max. Weight %	0.16	2.1	1.9

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.000–2.300 (inclusive)

PHYSICAL AND MECHANICAL PROPERTIES—Continued

Min. Yield Point (MPa)	340
Max Yield Point (MPa)	520
Min. Tensile Strength (MPa)	690
Min. Elongation %	21 (if 1.000–1.199 thickness range) 22 (if 1.200–1.599 thickness range) 23 (if 1.600–1.999 thickness range) 24 (if 2.000–2.300 thickness range)

Variety 3:

CHEMICAL COMPOSITION

Element	C	Si	Mn
Min. Weight %	0.13	1.3	1.5
Max. Weight %	0.21	2.0	2.0

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	1.200–2.300 (inclusive)
Min. Yield Point (MPa)	370
Max Yield Point (MPa)	570
Min. Tensile Strength (MPa)	780
Min. Elongation %	18 (if 1.200–1.599 thickness range) 19 (if 1.600–1.999 thickness range) 20 (if 2.000–2.300 thickness range)

• Certain corrosion-resistant cold-rolled steel, which meets the following characteristics:

Variety 1:

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.15	0.40	0.08	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.600–0.800
Min. Yield Point (MPa)	185
Max Yield Point (MPa)	285
Min. Tensile Strength (MPa)	340
Min. Elongation %	31 (ASTM standard 31% = JIS standard 35%)

Variety 2:

CHEMICAL COMPOSITION

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.10	0.40	0.10	0.35

PHYSICAL AND MECHANICAL PROPERTIES

Thickness Range (mm)	0.800–1.000
Min. Yield Point (MPa)	145
Max Yield Point (MPa)	245
Min. Tensile Strength (MPa)	295
Min. Elongation %	31 (ASTM standard 31% = JIS standard 35%)

Variety 3:

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cu	Ni	Al	Nb, Ti, V, B	Mo
Max. Weight %	0.01	0.05	0.40	0.10	0.023	0.15–.35	0.35	0.10	0.10	0.30

PHYSICAL AND MECHANICAL PROPERTIES

Thickness (mm):	0.7
Elongation %:	≥35

• Porcelain enameling sheet, drawing quality, in coils, 0.014 inch in thickness, +0.002, −0.000, meeting ASTM A–424–96 Type 1 specifications, and suitable for two coats.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000. 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (''U.S. Customs'') purposes, the written description of the merchandise under investigation is dispositive.

The Department received comments from a number of parties including importers, respondents, consumers, and the petitioners, aimed at clarifying the scope of these investigations. See Memorandum to Joseph A. Spetrini (Scope Memorandum), January 18, 2000, for a list of all persons submitting comments and a discussion of all scope comments including those exclusion requests under consideration at the time of the preliminary determination in these investigations.

Period of Investigation

The period of the investigation (POI) is April 1, 1998, through March 31, 1999.

Facts Available

Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority * * *; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.'' The statute requires that certain conditions be met before the Department may resort 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. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as the facts otherwise available. 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.'' See Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong. 2nd Sess. (1994), 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: Antidumping Duties; Countervailing Duties:, 62 FR 27296, 27340 (May 19, 1997). The statute notes, in addition, 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.

CSN

We have determined that, in light of CSN's refusal to continue it's participation in this investigation, facts available are warranted with respect to CSN for the final determination. Further, as a result of CSN's refusal to permit verification, adverse inferences are appropriate, pursuant to section 776(b). The Department, for this final determination, has selected as the facts otherwise available with respect to CSN, the highest margin in the petition of 63.32 percent. Please see Comment 3 below for a more detailed explanation of this issue.

USIMINAS/COSIPA

Please see comment section below.

Critical Circumstances

As in the Preliminary Determination, 64 FR 61249, 61261 (November 10, 1999), we continue to find critical circumstances for respondents USIMINAS/COSIPA as well as for ''all others.'' As for CSN, due to its refusal to permit verification of its company-specific shipment data for the base and comparison periods, we no longer have reliable data upon which to base a critical circumstances determination for this respondent. Therefore, we must use facts available in accordance with section 776(a) of the Act. Accordingly, we examined whether U.S. Customs data reasonably preclude an increase in shipments of fifteen percent or more within a relatively short period for CSN. However, these data include products not subject to this investigation and, therefore, we cannot rely on these data in determining whether there were massive shipments of subject merchandise over a relatively short period. Moreover, these data do not permit the Department to ascertain the import volumes for any individual company, including CSN. As a result, in accordance with section 776(b) of the Act, we have used an adverse inference in applying facts available and determine that there were massive imports from CSN over a relatively short period.

With respect to companies in the ''all others'' category, it is the Department's normal practice to base its determination on the experience of

investigated companies. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate From Japan, 64 FR 73215, 73218 (December 29, 1999), and Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey , 62 FR 9737, 9741 (March 4, 1997). However, for companies in the ''all others'' category we do not use adverse facts available. Accordingly, we considered the verified shipping data of the other mandatory respondents (USIMINAS/COSIPA). In this case, we found massive imports for USIMINAS/COSIPA, based on an increase in imports of more than 100 percent. We also considered whether U.S. customs data would permit the Department to analyze imports of subject merchandise by other producers (by, for example, backing out shipments by USIMINAS/COSIPA). However, these data include products not subject to this investigation. Therefore, it is not appropriate to base our critical circumstances determination on these data. (See Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Germany, 64 FR 30710, 30728 (June 8, 1999)). We considered that the sole respondent with verified scope-specific shipment data for the base and comparison periods demonstrated massive imports. See Preliminary Determination, 64 FR 61249,61261 (November 10, 1999) Based on these facts, we find that there were massive imports from the uninvestigated companies.

Accordingly, for this final determination we find that critical circumstances exist for USIMINAS/COSIPA, CSN and for the ''all others'' category.

Fair Value Comparisons

To determine whether sales of cold-rolled steel products from Brazil were made at less than fair value, we compared the 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 section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by respondents covered by the description in the Scope of Investigation section above and sold in Brazil during the POI are considered 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, the Department compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the antidumping questionnaire and reporting instructions.

Affiliated Respondents

In our preliminary determination, we determined that USIMINAS and COSIPA were affiliated parties, and we collapsed these entities. See Collapsing Memorandum to Joseph A. Spetrini from Richard Weible, October 12, 1999 (Collapsing Memo). For the purpose of this investigation, we continue to consider these two respondents as a single entity. Petitioners also argue that all three respondents are affiliated and should be collapsed. For this final determination, the Department determined that there is insufficient evidence on the record to warrant a collapsing of all three respondents. See Comment 1 below for a further discussion of this issue.

Level of Trade

USIMINAS/COSIPA

In our preliminary determination, the Department found that in the home market USIMINAS/COSIPA made sales to end-users, affiliated distributors, and unaffiliated distributors. USIMINAS/COSIPA claims seven ''channels of distribution'' with respect to home market sales: (1) Mill to original equipment manufacturer (OEMs); (2) mill to affiliated distributor; (3) mill to unaffiliated distributor; (4) affiliated distributor to affiliated distributor; (5) affiliated distributor to OEM; (6) affiliated distributor to non-affiliated distributor; and (7) affiliated distributor to retailer. As in the Preliminary Determination, we determine that the selling functions of the affiliates for downstream sales were significantly different than those for mill direct sales, and therefore, we determine that downstream sales by affiliates were made at a different level of trade (LOT) than other HM sales.

In addition, while USIMINAS/COSIPA mill direct sales to end-users (whether or not further processed) and mill direct sales to unaffiliated distributors involve different channels of distribution, these sales do not involve significant differences in selling functions. Therefore, we do not consider these channels to represent different levels of trade. Thus, we determine that downstream sales and mill direct sales represent two different home market LOTs.

In the U.S. market USIMINAS/COSIPA claim that all sales were made at one level of trade, through one channel of distribution. USIMINAS/COSIPA state that all U.S. sales were made to unaffiliated trading companies. As in the Preliminary Determination, the Department finds U.S. sales to be at the same LOT as home market mill direct sales. Therefore, U.S. sales were only compared to home market mill direct sales, and no LOT adjustment was necessary.

Export Price

The Department based its calculations 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. The Department calculated EP based on packed prices charged to the first unaffiliated customer in the United States.

We calculated EP for USIMINAS/COSIPA based on the same methodology employed in the Preliminary Determination, except as noted in the comment section below, and in addition, amounts reported as warranty for U.S. sales are treated as movement expenses in the final determination (see Final Analysis Memorandum dated January 18, 2000).

Normal Value

Home Market Viability

As discussed in the Preliminary Determination, we determined that the home market was viable for USIMINAS/COSIPA. 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 consider 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% 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) and Preamble to 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 sales to that affiliated customer 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).

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

Petitioners provided reasonable grounds to believe or suspect that USIMINAS/COSIPA's sales of the foreign like product under consideration for determining NV may have been at prices below the cost of production (COP), as provided in section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by the respondents in this investigation.

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP based on the sum of respondents' cost of materials, fabrication, general expenses, and packing costs. We relied on USIMINAS/COSIPA's submitted COP, except in the following specific instances:

1. For USIMINAS we adjusted the transfer price for iron ore obtained from an affiliated supplier in accordance with the major input rule. See Comment 20.

2. Consistent with the preliminary determination we revised its submitted G&A expense ratio to exclude packing expenses from the cost of goods sold used as the denominator in the calculation of the ratio. In addition, for the final determination we revised the G&A expense ratio to include employee profit sharing expenses and write-offs of idled-assets. See Comments 22 and 24.

3. We revised the reported cost of manufacturing (COM) to include idled-asset depreciation expense in COSIPA's costs. See Comment 23.

4. Consistent with the preliminary determination we revised respondents submitted financial expense ratio to include expenses for export financing and exclude foreign exchange losses related to accounts receivable. See Comment 21.

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 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. On a product-specific basis, we compared the COP to home market prices (including billing adjustments), less any applicable movement charges, discounts and rebates, and vat taxes (ICMS and IPI).

Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the 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 the 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 within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. Because we compared prices to POI or fiscal year average costs, 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

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, general expenses, U.S. packing costs, and profit. We made adjustments to each respondent's reported cost as indicated above in the COP section. In accordance with section 773(e)(2)(A) of the Act, we based selling, general and administrative expenses and profit on the 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 Brazil. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses.

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 made adjustments, where appropriate, for physical differences in the merchandise in accordance with 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 of the Department's regulations. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs (see Comment 8).

As in the Preliminary Determination, we find it is appropriate to use two averaging periods to avoid the possibility of a distortion in the dumping calculation. This methodology is consistent with our policy adopted in Stainless Steel Plate in Coils from Korea, 64 FR 15444, 15452 (March 31, 1999) (SSPC from Korea) and Stainless Steel Sheet and Strip from Korea, 64 FR 30664, 30676 (June 8, 1999) (Stainless Sheet from Korea). Therefore, for all respondents, we have used two averaging periods for this final determination, the beginning of the POI through January 12, 1999, and January 13, 1999, through the end of the POI.

We calculated NV for USIMINAS/COSIPA based on the same methodology employed in the Preliminary Determination except as noted in the comment section below, in addition to minor changes noted in the Final Analysis Memorandum as a result of verification.

Currency Conversion

As in the Preliminary Determination, our analysis of dollar-real exchange rates show that the real declined rapidly in early 1999, losing over 40 percent of its value in January 1999, when the Brazilian government ended its exchange rate restrictions. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-real exchange rate during recent years, and it did not rebound significantly in a short time. As such, we determine that the decline in the real during January 1999 was of such magnitude that the dollar-real exchange rate cannot reasonably be viewed as having simply fluctuated at that time, *i.e.,* as having experienced only a momentary drop in value relative to the normal benchmark. We find that there was a large, precipitous drop in the value of the real in relation to the U.S. dollar in January 1999.

We used daily rates from January 13, 1999 through March 4, 1999 based on the analysis discussed in the preliminary determination. We then resumed the use of our normal methodology through the end of the period of investigation (March 31, 1999), starting with a benchmark based on the average of the 20 reported daily rates on March 5, 1999. See Comment 3 below for further discussion of our methodology.

Analysis of Interested Party Comments

I. Issues Pertaining to All Three Respondents

Comment 1: Whether To Collapse USIMINAS/COSIPA With CSN

Petitioners assert that in addition to collapsing USIMINAS/COSIPA, all of the respondents should be collapsed into a single entity for purposes of this investigation. They argue that CSN and USIMINAS/COSIPA produce the same products, share common directors, and have intertwined operations, all of which create the potential for the manipulation of price or production. Referring to the Letter from Dewey Ballantine LLP to the U.S. Department of Commerce, Case No. A–351–828 (March 11, 1999) (Collapsing Comments) and the November 8, 1999, submission by petitioners in the instant case, petitioners argue that the linkages between all three respondents clearly satisfy the affiliation and collapsing criteria set out in the Department's regulations.

Petitioners cite to the definition of affiliated parties and what constitutes ''control'' of one entity over another in section 771(33)(E) and (G) of the Act and in the Statement of Administrative Action, H.R. Doc. No. 103–316, at 838–30 (1994) (SAA). Petitioners maintain that CSN, in conjunction with Companhia Vale do Rio Doce (CVRD) and other affiliated companies, or the ''CSN/CVRD group,'' is affiliated with USIMINAS/COSIPA as evidenced by (1) the CSN/CVRD group sharing equity and managerial relationships, thereby establishing a single business unity under the control of Benjamin Steinbruch, the chairman of the board of CSN and CVRD; (2) the CSN/CVRD group being the largest single shareholder in USIMINAS. See Memorandum from Case Analysts to the File, Case No. A–351–830 at Exhibit 2, page 1 (December 23, 1999) (USIMINAS Sales Verification Report); and (3) the ''CSN/CVRD group'' sharing board members with USIMINAS.

Petitioners note that the Department's regulations at section 351.401(f)(2) provide that two or more affiliated producers will be collapsed where producers have production facilities for similar and identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and the Secretary concludes there is significant potential for manipulation of price or production. Referring to this same section, which explains that the Department examines the following factors, among others: (i) The level of common ownership; (ii) overlapping board of directors; and (iii) whether operations are intertwined, such as through involvement in production and pricing decisions, petitioners claim that there is a potential for CSN and USIMINAS/COSIPA to manipulate price and production. According to petitioners, CSN and USIMINAS/COSIPA are capable of easily shifting production among themselves, as evidenced by similar production facilities and similar products. Additionally, petitioners point out that the Brazilian government determined that CVRD, the biggest shareholder in USIMINAS and a major shareholder in CSN, should sell off some or all of its steel assets on the basis of ''unacceptable concentration of interests and abuse of economic power.'' See Petitioners' November 8, 1999 submission at 2–3 and Attachment 1 (''CVRD Told to Sell Steel Interests,'' Metal Bulletin, August 19, 1999, at 19). Petitioners also point out that the Brazilian government has been investigating, and recently fined, CSN, USIMINAS, and COSIPA for price-fixing and allegedly operating a cartel. See Petitioners' November 8, 1999 submission at 2–3 and Attachment 2 (''Brazilian Mills Deny Price-Fixing, Face Large Fines,'' Metal Bulletin, November 1, 1999, at 3).

Petitioners cite cases (*see FAG Kugelfischer* v. *United States,* 932 F. Supp. 315 (CIT 1996); *Nihon Cement Co., Ltd.* v. *United States,* 17 CIT 400 (1993); *Queen's Flowers de Colombia, et al.,* v. *United States,* 981 F. Supp. 617 (CIT 1997)) in which the U.S. Court of International Trade (the Court) upheld the Department's articulation of these collapsing criteria. Petitioners state that the central issue according to the Court is ''whether parties are sufficiently related to present the possibility of price manipulation.'' Petitioners stress that there is more than a ''possibility'' of price manipulation in the instant investigation, and that evidence confirms that the three companies are extensively intertwined and act collectively to manipulate prices and production.

According to petitioners, CSN's refusal to cooperate in this investigation or to permit verification at its facilities casts doubts on CSN's assertion that it operates independently. Furthermore, petitioners claim that the factors in this investigation are similar to those relied upon in prior determinations such as Final Results of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers from Columbia, 61 FR 42833, 42853 (August 19, 1996) (Fresh Cut Flowers); Final Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker from Mexico, 64 FR 13148, 13151 (March 17, 1999); Final Determination of Sales at Less than Fair Value: Stainless Steel Wire Rod from Sweden, 63 FR 40449, 40453–54 (July 29, 1998); and Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 62 FR 55574, 55587–88 (October 27, 1997), in which the Department collapsed respondents. Petitioners argue that the record in the instant case is even more compelling because of the findings of the Brazilian government. Petitioners concluded that the three companies should be assigned a single rate in this investigation based on the companies meeting the statutory standard for affiliation and collapsing, the documentation of collusive practices by the Brazilian government, CSN's refusal to cooperate, and the Department's previous decisions.

CSN counters that petitioners have not provided any new or convincing arguments or information to support collapsing. CSN stresses that two criteria in section 351.401(f)(1) of the Department's regulations must be met with respect to collapsing: (1) The companies are affiliated, and (2) the companies have similar production facilities that could be used to restructure manufacturing priorities and there is a significant potential for manipulation of price or production. Regarding criterion one, CSN argues that shareholdings and board memberships have not changed since the Hot-Rolled Steel from Brazil investigation, where the Department found an absence of affiliation (see Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil, 64 FR 38756, 38762–63 (July 19, 1999) (Hot-Rolled Steel from Brazil)) nor have they changed since the cold-rolled countervailing verification of CSN and CVRD (CVD Verification Report of CVRD at 1–2 (December 1, 1999); and

CVD Verification Report of CSN at 2 (December 1, 1999).

CSN points out that the Brazilian government findings, which it claims is the only new information proffered by petitioners, does not meet criterion two: the potential for the manipulation of price or production. CSN states that the Brazilian government was merely recommending CVRD sell some or all of its steel assets, and that the government observed the ''possibility'' of limited competition. CSN claims that this does not mean that CVRD controls either CSN or USIMINAS/COSIPA, or that petitioners have produced any new facts. Regarding the charges of price-fixing between CSN and USIMINAS/COSIPA, CSN maintains that these charges are not true. Nonetheless, CSN claims that the Brazilian government's investigation proves that CSN and USIMINAS/COSIPA are not affiliated, since affiliated companies are permitted to discuss and set prices. Furthermore, CSN emphasizes that the Brazilian government claimed that the companies were resembling a cartel not a monopoly; but, in any case, the government has not brought up charges.

CSN concludes that the second criterion of the law cannot be used to prove the first criterion, and that petitioners have failed to present anything new on the issue of affiliation. Although petitioners presented new information on the issue of price manipulation, CSN states that this information, which is being appealed, does not prove that the companies are affiliated.

USIMINAS/COSIPA (hereinafter, referred to as respondents) agree with CSN that the collapsing argument is moot because the Department has already rejected it six times in four consecutive investigations. Respondents assert that, in the Hot-Rolled Steel from Brazil investigation, the Department had rejected the significance of USIMINAS and CSN sharing a board member and the allegations of price fixing. See Hot-Rolled Steel From Brazil, 64 FR 38756, 38762–38763. Additionally, respondents point out that Mr. Gabriel Stoliar, who petitioners claim was a member of the board for both USIMINAS and CSN during the POI, has not served on the USIMINAS board since June 1999. See USIMINAS Sales Verification Report at 9–10.

On the subject of price-fixing, respondents state that USIMINAS/COSIPA and CSN are fierce competitors. See CVD Verification Report of CSN at 3 (December 1, 1999). Respondents argue that the Brazilian authorities' price-fixing allegations, which USIMINAS/COSIPA have denied, support their claim that they have a competitive relationship with CSN and that the companies are not affiliated. Referring to Milton Handler et Al., Trade Regulation ch. 4 (3d ed. 1990) (discussing ''Competitor Collaboration on Price Fixing and Division of Markets,'') respondents argue that price-fixing arises when competitors share price information, not when different arms of the same company share it.

Respondents also agree with CSN that the Brazilian government's recommendation that CVRD divest itself of certain investments was merely an unenforceable policy recommendation. Respondents follow up by stressing that CVRD does not face any sanctions or penalties if it does not act on the Brazilian government's recommendation. See CVD Verification Report of CVRD at 2. Additionally, respondents agree with CSN that this information does not prove that CVRD actually controls both CSN and USIMINAS.

Respondents argue that petitioners documented links between CVRD and CSN, not between CSN and USIMINAS or even CVRD and USIMINAS. In any case, respondents emphasize that neither CSN nor CVRD controls USIMINAS, as noted in the Hot-Rolled Steel From Brazil, 64 FR 38756, 38763 and the CVD Verification Report of CVRD at 2, or COSIPA. Furthermore, respondents claim that CVRD almost sued USIMINAS to withdraw its investment, the two companies are moving toward a more distant relationship, and CVRD refused to assist USIMINAS in responding to the Department's requests for information. See USIMINAS and COSIPA's Section A Response, July 20, 1999, at Exhibit. 9; USIMINAS Verification Report at 7 and 8; CVD Verification Report of CVRD at 2, and Respondents Rebuttal Brief, January 5, 2000 at Exhibit 3.

As to petitioners comments regarding CSN's refusal to cooperate in verification, respondents counter that the Department did verify CSN extensively in the CVD proceeding, but have no opinion as to whether the Department should apply adverse facts available against CSN for not participating further in the instant investigation (see Comment 2). However, respondents strongly disagree with petitioners' argument that the Department apply adverse facts available against USIMINAS/COSIPA because of CSN's withdrawal from the case. Respondents state that applying adverse facts available on one company based on the actions of another unaffiliated company is against WTO agreements, the U.S. ''facts available'' statute, the Department's regulations, and the Department's practice (see Section 773e(b) of the Act). Respondents emphasize that they fully cooperated with the Department on the collapsing issue; therefore the Department cannot render its collapsing decision on the basis of facts available (see 19 U.S.C. section 1677e). Furthermore, respondents contend that applying adverse facts available in the collapsing issue would reward CSN for its non-participation, while penalizing USIMINAS/COSIPA for their full cooperation, because this would result in lower weighted-average rate for CSN and a higher rate for USIMINAS/COSIPA than the rates calculated in the Preliminary Determination.

Respondents conclude that the cases petitioners discussed with respect to the collapsing issue are based on factors that are completely absent from the instant investigation. USIMINAS/COSIPA and CSN should not be collapsed because they are not mutually controlled by a third party, and do not control each other. In addition, respondents note that petitioners have abandoned their argument in the parallel countervailing duty investigation.

Department's Position

We disagree with petitioners. The Department has determined that USIMINAS and COSIPA should be collapsed for margin calculation purposes. To collapse CSN with USIMINAS/COSIPA, as petitioners suggest, requires that we first find that CSN and USIMINAS/COSIPA are affiliated parties within the meaning of section 771(33) of the Act. Because we find that USIMINAS/COSIPA is not affiliated with CSN, we have not collapsed these entities for purposes of this investigation.

The issue of whether CSN is affiliated with USIMINAS/COSIPA is governed by section 771(33) of the Act, which deems the following persons to be affiliated: (A) Members of a family; (B) any officer or director of an organization and such organization; (C) partners; (D) employer and employees; (E) any person directly or indirectly owning, controlling, or holding with power to vote, 5% 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; and (G) any person who controls any other person and such other person. For purposes of this provision, a person controls another person if the person is in a position to exercise restraint or direction over the

other person. Petitioners arguments for finding USIMINAS/COSIPA and CSN affiliated appear to be based on subparagraphs (E) and (G) of section 771(33) of the Act.

Pursuant to section 771(33)(E), the Department examined CSN's ownership interest, direct or indirect, in USIMINAS (USIMINAS/COSIPA does not own or control any shares in CSN). CSN owns a 31% equity interest in Valepar, which owns 27% of CVRD. Throughout the POI, CVRD, in turn, had a 15.48%, 23.14%, or 22.99% interest in USIMINAS, with changes in equity interest taking place in July 1998 and January 1999. Even assuming the highest possible percentages of equity ownership by CSN in Valepar, by Valepar in CVRD, and by CVRD in USIMINAS, CSN would own well under 5% of USIMINAS. Based on this evidence, CSN and USIMINAS/COSIPA are not affiliated within the meaning of section 771(33)(E) of the Act.

With respect to affiliation based on control, petitioners have not clearly identified which entities they believe are in a position to exercise control over CSN and USIMINAS (or USIMINAS/COSIPA) or on which specific subparagraph (F or G) of section 771(33) they are relying in their analysis. Therefore, we have analyzed petitioners comments under both section 771(33)(F) and (G).

In accordance with section 771(33)(F), we first examined whether the record establishes common control over these entities by Mr. Steinbruch, CVRD, or Previ pension fund (which itself holds significant ownership interests in CSN, CVRD, and USIMINAS) as separate entities. Assuming arguendo that we were to conclude that Mr. Steinbruch, as chairman of CSN's board of directors, controls CSN, the record contains no evidence that he controls USIMINAS.

CVRD is affiliated with both CSN and USIMINAS under section 771(33)(E). CVRD directly owns more than 5% of USIMINAS (22.99% of the voting shares at the end of the POI) and indirectly owns, through its holdings in Docenave, more than 5% of CSN (10.3% of the voting shares). However, CVRD does not control both CSN and USIMINAS. Mr. Gabriel Stoliar, the CEO of CVRD, serves on the eight-to-ten-member boards of both CSN and USIMINAS. However, Brazilian law prohibits board members from representing any other company's interests while serving on the board of a different company. See COSIPA's Sales Verification Report at 4. In addition, the record indicates that the USIMINAS board of directors (the ''administrative council'') is responsible for macroeconomic issues such as investment matters and does not control daily operations. See USIMINAS' Sales Verification Report at 9. Finally, CVRD is not a member of the USIMINAS shareholder's agreement, whose members control 50.52% of the voting stock of that company. The Department finds that, under the circumstances of this case, CVRD is not in a position to control USIMINAS within the meaning of section 771(33) of the Act. Because CVRD does not control USIMINAS, it cannot exercise common control over both CSN and USIMINAS within the meaning of subsection (F). Therefore, the issue of whether CVRD controls CSN is moot for purposes of this analysis.

Previ, like CVRD, is affiliated with both CSN and USIMINAS through equity ownership. However, subsection (F) requires a finding of common control, not merely of common affiliation. Previ is not a member of the USIMINAS shareholders' agreement, which controls 50.52% of the voting stock of that company. Nor is there other evidence that Previ is in a position to control USIMINAS. Because the record evidence does not establish that Previ is in a position to control USIMINAS, we find that CSN and USIMINAS are not affiliated by virtue of common control by Previ.

The SAA recognizes that, even in the absence of an equity relationship, control may be established ''through corporate or family groupings'' (see SAA at 838), *i.e.,* a corporate or family group may constitute a ''person'' within the meaning of section 771(33) of the Act. *See Ferro Union* v. *United States,* Slip Op. 99–27 (CIT, March 23, 1999). In such a case, the control factors of individual members of the group (*e.g.,* stock ownership, management positions, board membership) are considered in the aggregate. Accordingly, the Department considered whether USIMINAS and CSN are affiliated by virtue of common control by a corporate or family group.

What constitutes a ''corporate group'' for purposes of the affiliation analysis is not defined; the Department must address the issue on a case-by-case basis. The cases in which the Department has recognized that affiliation exists by virtue of participation in the same corporate or family group involved common control of the firms at issue by members of the same family, the same group of investors, or the same group of corporations. In other words, the ''control group'' language in the SAA does not add a new criterion to the statutory definition of ''affiliation.'' It merely acknowledges that the controlling entity of the ''common control'' provision can be something other than a physical or legal person, and can exercise that common control by means other than equity ownership. It does not allow for treating all affiliation relationships as if they created new ''control groups.'' With respect to USIMINAS and CSN, there is no such pattern of common control. We do not find any definable corporate group that controls both CSN and USIMINAS. Thus, we do not have a basis in the record to find affiliation under section 771(33)(F) of the Act.

With respect to section 771(33)(G) of the Act, petitioners have again failed to clearly identify a basis for finding that CSN controls USIMINAS (or USIMINAS/COSIPA), or vice versa. Petitioners appear to argue that CSN and CVRD are a ''corporate group'' for purposes of the affiliation analysis. While we agree that CSN and CVRD are affiliated, that by itself is not sufficient to consider them a ''corporate group'' for purposes of an affiliation analysis. Moreover, even if the Department were to treat CSN and CVRD as a corporate group, there is no evidence that the alleged ''CSN/CVRD group'' controls USIMINAS within the meaning of section 771(33)(G) of the Act. More to the point, we do not find a sufficient basis in the record to treat CSN, CVRD and Previ as a corporate group for purposes of the affiliation analysis. See Hot-Rolled Steel From Brazil, 64 FR 38756, 38762.

Although petitioners have submitted new information since the Hot-Rolled Steel From Brazil on the investigation by the Brazilian Ministry of Justice of these companies, there is not sufficient evidence on the record to determine that USIMINAS/COSIPA and CSN should be collapsed. As noted by respondents, section 351.401(f)(1) of the Department's regulations indicates that the two criteria must be met with respect to collapsing: (1) the companies are affiliated, and (2) the companies have similar production facilities that could be used to restructure manufacturing priorities and there is a significant potential for manipulation of price or production. While the Brazilian Ministry of Justice investigation may relate to the second criterion, the first threshold requirement, affiliation, has not been met.

Because the record evidence does not support a finding that USIMINAS (or USIMINAS/COSIPA) and CSN are affiliated under any provision of section 771(33), there is no basis to apply the collapsing criteria in section 351.401(f). Therefore, the Department has continued to treat CSN and USIMINAS/

COSIPA as separate entities for the purposes of this investigation.

II. Company Specific Sales Comments

CSN

Comment 2: Use of Total Facts Available for CSN

Petitioners state that CSN's abrupt refusal to cooperate in this investigation warrants the use of total adverse facts available. Petitioners specifically reference CSN's failure to provide a reconciliation of its submitted costs to the amounts in its cost of manufacturing statement. In addition, petitioners point out that CSN refused to provide information regarding its reported commission payments, and on the eve of verification, refused to respond to any requests for further information, and would not permit the Department to verify any information.

Citing section 782(i)(1) of the Act, petitioners state that the Department must verify information before making a final determination or must use facts available if the information cannot be verified. Petitioners further assert that it is the Department's longstanding practice, which the courts have upheld, to use total facts available, including information and comments on the record, when a party prevents the Department from verifying its data and withdraws from participation in an investigation. Petitioners maintain that CSN stands to benefit from its lack of cooperation and its withdrawal from this proceeding; therefore, using total adverse facts available is justified.

Petitioners note that the statute permits the Department, in relying on facts available, to draw an adverse inference where a respondent has failed to cooperate by not acting to the best of its ability. Petitioners argue that this is the case here, since CSN has withdrawn from the proceeding, refuses further participation, and would not permit verification of its information. Petitioners note that the Department's well-established practice in such cases is to employ total adverse facts available. Petitioners further note that when a company refuses to cooperate or otherwise significantly impedes an investigation, the Department uses as adverse facts available the highest of: (1) The highest margin in the petition (or initiation); (2) the highest margin calculated for another respondent within the same country for the same class or kind of merchandise, or (3) the estimated margin found in the Preliminary Determination.

With respect to adverse facts available, petitioners cite Notice of Final Determination of Sales at Less Than Fair Value of Foam Extruded PVC and Polystyrene Framing Stock from the United Kingdom, 61 FR at 51411, 51412 (October 2, 1996), where the respondent withdrew from the proceeding and the Department used the respondent's own information to calculate the margin because it was higher than the highest margin alleged in the petition or the highest calculated rate of any respondent in the investigation. Petitioners conclude that the instant investigation requires the Department to use a margin of 63.32 percent, which is the highest margin provided in the Petition, as adverse facts available.

CSN responds by referring to its November 2, 1999 letter to the Department, where it announced that it was pulling out of the investigation because any results of the investigation ''would have no basis in reality.'' CSN states that the verified dumping margin would have been close to, and just as commercially prohibitive as, the facts available rate. While CSN expected to be painted as uncooperative, CSN claims it did not want the Department to invest its resources in verifying data that would have still resulted in a market-prohibitive rate reflective of a time when the Brazilian real was overvalued.

In sum, CSN expects the Department to use facts available to determine CSN's deposit rate, and denies that it has ever ''frustrated the Department's inquiry.'' CSN claims that it submitted the cost reconciliations cited by petitioners. Additionally, CSN stresses that it has not prevented the Department from investigating the affiliation issue. According to CSN, these issues were verified in the instant countervailing duty investigation, as well as in the hot-rolled steel investigation.

Department's Position

We agree with petitioners that the application of adverse facts available is warranted. Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information by the deadlines for the submission of information or in the form and manner requested, significantly impedes a proceeding under the antidumping statute, or provides such information but the information cannot be verified, the Department shall, subject to subsections 782 (c)(1) and (e) of the Act, use facts otherwise available in reaching the applicable determination. Because the respondent CSN withdrew from the proceeding following the Preliminary Determination, CSN's questionnaire response on the record is unverifiable. See ''Letter to the Secretary of Commerce from Counsel for CSN'', November 2, 1999. In addition, CSN failed to respond to a second supplemental questionnaire of October 15, 1999. Therefore, under sections 776 (a)(2)(B), (C), and (D) of the Act, the Department must use facts otherwise available in making its determination.

In addition, as required by section 782(d), CSN was warned that failure to participate in the investigation or permit verification constituted a deficiency which could result in the use of the facts available. Moreover, section 782(e) is not applicable as CSN did not permit verification, the information CSN submitted cannot serve as a reliable basis for making the final determination, and CSN has not demonstrated that it has acted to the best of its ability to provide the information requested and to meet other requirements (*e.g.* verification) established by the Department with respect to the information. Thus, the use of facts available is also warranted under section 782.

Section 776(b) provides that, where facts available are otherwise appropriate, an adverse inference may be used when a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. (See also SAA at 198.) Such adverse inference may include reliance on information derived from the petition. To determine whether the respondent cooperated by acting to the best of its ability under 776(b), the Department considers, among other facts, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. See, *e.g,* Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand;, 62 FR 53808, 53819–53820, (October 16, 1997) (Certain Welded Carbon Steel from Thailand); Final Results of Antidumping Duty Administrative Review: Brass Sheet and Strip from Germany; 63 FR 42823, 42824 (August 11, 1998).

CSN's failure to participate following the Preliminary Determination and refusal to permit verification of its information on the record demonstrate the CSN has failed to cooperate to the best of its ability in this investigation. Thus, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted with regard to CSN. The Department's well-established practice in such cases is to employ total adverse facts available. Consistent with Department practice in cases in which a respondent fails to cooperate to the

best of its ability by withdrawing from the investigation and refusing to respond to the supplemental questionnaires, and pursuant to section 776(b)(1) of the Act, we have applied, as facts available, a margin based on the highest margin alleged in the petition. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey, 62 FR 9737–9738 (March 4, 1997).

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is described in the SAA at 870 as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.''

The SAA further provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. Thus, to corroborate secondary information, to the extent practicable, the Department will examine the reliability and relevance of the information used.

During the Department's pre-initiation analysis of the petition, we reviewed the adequacy and accuracy of the information in 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 of Antidumping Duty Investigations; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Argentina, Brazil, the People's Republic of China, Indonesia, Japan, the Russian Federation, Slovakia, South Africa, Taiwan, Thailand, Turkey and Venezuela, 64 FR 34194 (June 25, 1999) (Notice of Initiation) and ''Import Administration AD Investigation Initiation Checklist,'' (June 21, 1999). The estimated dumping margins of the petitioners were based on two different methods. First, EP was determined based on the import average unit value (AUV) for the three ten-digit categories of the HTSUS accounting for 90 percent of in-scope imports from Brazil during the fourth quarter of 1998. Petitioners presumed that the customs values used to calculate the AUV for each HTSUS category reflect the actual ''transaction value'' of the merchandise being shipped by Brazilian mills. Second, EP was determined based on Brazilian producers' offers for sale of CR flat products in the United States. Petitioners obtained this information from industry sources in the United States. The Department determined the adequacy and accuracy of the information from which the petition margin was calculated by reviewing all of the data presented and by requesting clarification and confirmation from petitioners and their sources as needed. See Attachment B to the Initiation Checklist and Memorandum to the File: Telephone Conversation with Market Research Firm Regarding the Petition for the Imposition of Antidumping Duties (June 21, 1999).

We noted that the U.S. price quote of the per unit values of the subject merchandise derived by petitioners were well within the range of the average unit values reported by U.S. Customs. U.S. official import statistics are sources which we consider to require no further corroboration by the Department. See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China, 62 FR 5140, 51412 (October 1, 1997). To further corroborate the home market prices in the petition, for the final determination, we reexamined the highest margin in the petition in light of information obtained during the investigation to the extent it is practicable, and determined it has probative value. Specifically, we compared the ex works home market prices in the petition to the verified home market prices for similar steel products (*i.e.*, of the same quality, dimensions, *etc.*) reported by USIMINAS/COSIPA, net of all movement expenses, discounts and billing adjustments, and direct selling expenses. We found that the petition prices were well within the range of prices reported by respondents for similar products; in fact, these prices were quite conservative compared to the actual prices reported by respondents. Based on the above, we find that the estimated margins set forth in the petition have probative value. Therefore, we are assigning to CSN the highest margin in the petition of 63.32 percent.

Comment 3: Currency Conversion Methodology

Petitioners do not agree with how the Department handled its currency conversion methodology for the Preliminary Determination. Citing sections 773A(a) of the Act and 351.415(c) of the Department's regulations, petitioners stress that the Department is to employ daily exchange rates for currency conversion purposes, but that fluctuations in exchange rates shall be ignored. Petitioners note that this language is mandatory and provides no exceptions. Petitioners assert that no mention is made in the statute of special treatment for large and precipitous drops. Petitioners do acknowledge that the Change in Policy Regarding Currency Conversion, 61 FR 9434 (March 8, 1996) (Policy Bulletin 96–1) calls for the use of actual daily rates when declines in the value of foreign currency are so ''precipitous and large'' as to reasonably preclude the possibility that it is only fluctuating. However, they argue that while the Department has the discretion to establish the definition ''fluctuation in exchange rates,'' that definition must be reasonable. See *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 842–43 (1984) (Chevron). Petitioners assert that the Department's exception to its stated definition is unreasonably pro-respondent and has no basis in law or logic. Petitioners further argue that Policy Bulletin 96–1, in effect, allows countries to dump during times of financial crisis.

In conclusion, petitioners state that in accordance with the statute, the Department must ignore fluctuations in all exchange rates, regardless of their size or speed. Moreover, petitioners emphasize that the Department should apply the normal 40-day benchmark standard in this investigation. Otherwise, petitioners recommend that if the Department should persist in adhering to its policy in dealing with large and precipitous declines, certain legal and methodological defects must be rectified. Petitioners note the Department's methodology does not adequately indicate when a precipitous decline occurs, and the methodology fails to adhere to the underlying rationale as to why currency fluctuations are ignored, namely because they provide an inaccurate representation of reality. Therefore, petitioners recommend the Department find that a ''precipitous decline'' occurs whenever the daily exchange rate is more than 25 percent below the preceding 40-day average. In addition, petitioners suggest that if the Department finds a 40-day benchmark is too long to reflect the volatility of exchange rates in a period of decline, then it could instead use a 10-day benchmark during periods when daily exchange rates deviated from the 40-day benchmark figure by more than 25 percent.

Respondents disagree with petitioners and request that the Department continue applying its well-established currency conversion methodology. Respondents maintain that 773A(a) of the Act ''ensure[s] that the process of currency conversion does not distort

dumping margins.'' (see also SAA at 841). According to respondents, Policy Bulletin 96–1 recognizes that there can be precipitous and large declines, precluding the possibility that a currency is only fluctuating. Respondents argue that the Department has applied this aspect of its currency-conversion methodology in other cases involving precipitous currency changes. (See Preliminary Determination 64 FR 61249, 61258 (November 10, 1999).

Respondents argue that the currency conversion methodology employed by the Department is necessary to ensure its calculations are consistent with the objectives of the antidumping law. Respondents point out that the Department has the discretion to interpret antidumping laws. Furthermore, respondents argue that cases that petitioners cite do not support their proposition that the Department's currency conversion methodology should be changed. To ensure a fair comparison, respondents state that the Department must ensure that its calculation methodology continually reflects all changes in the commercial circumstances of a particular producer that effect the analysis of comparative revenue, such as dramatic declines in the exchange rate. Citing Stainless Steel Plate in Coils from the Republic of Korea, 64 FR 15444, 15451 (March 31, 1999). Respondents argue that ''[d]umping margins should not be 'artificially' created simply due to unforeseen changes in the exchange rate.''

Respondents further assert that the Department's currency conversion methodology ensures that calculations accurately measure the existence or absence of dumping on a sale-by-sale basis. Respondents claim that U.S. law and the WTO Antidumping Agreement mandate that the Department focus on whether calculations accurately compare the per unit revenue received by a producer for a particular export sale with the per unit revenue received for a contemporaneous home market sale, rather than the results of the calculations. Respondents maintain that the purpose of the trade laws is not to punish companies for whom dramatic currency drops in short periods of time—which are utterly beyond their control—distort their home market sales prices once they are converted to U.S. dollars.

Respondents cite Stainless Sheet from Korea, SSPC from Korea and Certain Welded Carbon Steel from Thailand, stating that the Department's methodology is not ''pro-respondent'' because it often leads to a more favorable result for petitioners. Furthermore, respondents argue that there is no bias in acknowledging that a precipitous drop in a currency's value presents different methodological problems than a routine fluctuation. According to respondents, petitioners' proposed alternative to the Department's established methodology would produce inaccurate results. Respondents further assert that petitioners did not provide any evidence or support for their proposition. In addition, respondents point out that petitioners' proposed methodology would overstate the actual exchange rate, causing unjustifiable rises and falls during particular periods. Respondents conclude that the Department should continue to use the currency-conversion methodology it has used for almost four years.

Department's Position

We disagree with petitioners that our exchange rate methodology has no basis in law or logic. As stated in the preliminary results, we made currency conversions into U.S. dollars in accordance with section 773A of the Act. 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 Policy Bulletin 96.1; see also Preliminary Results of Antidumping Duty Administrative Review; Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands, 64 FR 36841, 36843 (July 8, 1999); Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand, 64 FR 30476, 30480 (June 8, 1999). (An exception to this rule is described below.)

Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement occurs when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method see Policy Bulletin 96–1: such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar.) However, because the current case involves a decrease rather than an increase in the value of a foreign currency, this provision does not apply. See SAA at 842.

In adopting its currency conversion policy, the Department recognized that a sudden large decrease in the value of a currency without any significant rebound could meet the technical definition of a fluctuation. To avoid this unintended result, in Policy Bulletin 96.1 the Department explained that we would apply the average benchmark rate in the case of an exchange rate ''fluctuation'' but also stated that we would use daily rates when ''the decline in the value of a foreign currency is so precipitous and large as to reasonably preclude the possibility that it is merely fluctuating.'' We recognize the Policy Bulletin did not define a ''precipitous and large'' decline in the value of a foreign currency, because the Department had not yet faced the situation, but properly left this determination to be made in future cases. In Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From The Republic of Korea, 64 FR 14865,14867 (March 29, 1999) (Rubber from Korea) and other Korean cases, the Department found that a decline of more than 40 percent within a two-month period was sufficiently large and precipitous that use of daily rates was warranted during this two-month period. In contrast, in Notice of Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Indonesia, 64 FR 14690, 14693 (March 26, 1999) (Extruded Rubber Thread from Indonesia), the Department found that a decline of some 50 percent spread over five months was not precipitous and large and continued to employ its normal exchange rate methodology. See 64 FR 14690, 14693 (March 26, 1999). See Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand, 64 FR 56759, 56763 (October 21, 1999) (Pipe and Tube from Thailand). See also, DRAMS from Korea: Final Results of Antidumping Duty Administrative Review, 64 FR 69694, 69703–04 (December 14, 1999).

Our analysis of dollar-real exchange rates show that the real declined rapidly in early 1999, losing over 40 percent of its value in January 1999, when the Brazilian government ended its exchange rate restrictions. The decline was, in both speed and magnitude, many times more severe than any

change in the dollar-real exchange rate during recent years, and it did not rebound significantly in a short time. Indeed, the decline in value of the real was as large and more rapid than the decline in the value of the Korean won in 1997, which we have found to be precipitous and large in numerous recent cases. As such, we continue to determine that the decline in the real during January 1999 was of such magnitude that the dollar-real exchange rate cannot reasonably be viewed as having simply fluctuated at that time, *i.e.,* as having experienced only a momentary drop in value relative to the normal benchmark. We find that there was a large, precipitous drop in the value of the real in relation to the U.S. dollar in January 1999, warranting application of daily exchange rates.

We recognize that, following a large and precipitous decline in the value of a currency, a period may exist during which exchange rate expectations are revised and thus it is unclear whether further declines are a continuation of the large and precipitous decline or merely fluctuations. Under the circumstances of this case, such uncertainty may have existed following the large, precipitous drop in January 1999. Thus, we devised a methodology for identifying the point following a precipitous drop at which it is reasonable to presume the rates were merely fluctuating. Beginning on January 13, 1999, we used only actual daily rates until the daily rates were not more than 2.25 percent below the average of the 20 previous daily rates for five consecutive days. At that point, we determined that the pattern of daily rates no longer reasonably precluded the possibility that they were merely ''fluctuating.'' Using a 20-day average for this purpose provides a reasonable indication that it is no longer necessary to refrain from using the normal methodology, while avoiding the use of daily rates exclusively for an excessive period of time. Accordingly, from the first of these five days, we resumed classifying daily rates as ''fluctuating'' or ''normal'' in accordance with our standard practice, except that we began with a 20-day benchmark and on each succeeding day added a daily rate to the average until the normal 40-day average was restored as the benchmark. See Pipe and Tube from Thailand.

Applying this methodology in the instant case, we used daily rates from January 13, 1999, through March 4, 1999. We then resumed the use of our normal methodology through the end of the period of investigation (March 31, 1999), starting with a benchmark based on the average of the 20 reported daily rates on March 5, 1999.

While petitioners have suggested a 10-day benchmark (instead of a 20 or 40-day benchmark), they have not submitted any information to indicate that a 10-day average would be any more appropriate or produce more accurate results than a 20-day average, which day-by-day builds back up to a 40-day benchmark.

Comment 4: Home Market Sales With Warranty Expenses

Petitioners request that the Department reclassify all of USIMINAS' home market sales with home market warranty (WARRH) amounts as sales of non-prime merchandise, and exclude all of these particular sales from the calculation of normal values. Petitioners note that WARRH equals the amount of credit notes provided to customers for product quality problems, and that warranty expenses are sale-specific.

Respondents counter that petitioners' request must be rejected for several reasons. First, early in this investigation, respondents note that the Department rejected the petitioners' request for blanket reclassification of respondent's sales of prime product into non-prime product; in its supplemental questionnaire, the Department redirected respondents to classify all sales as prime or non-prime on a ''sold as'' basis. Second, respondents state that there have been no developments since the Department originally rejected the petitioners' identical request. Although the petitioners cite the Department's verification report finding that USIMINAS' warranties relate to quality problems, respondents argue that this statement only confirms that the Department verified that respondents' warranty expenses are based on customer claims of product quality problems after a sale is made. Third, respondents state that warranty expenses are based on customer claims of product quality problems, and are in a separate field from the prime/non-prime field. Respondents argue that the significance of this designation at the time of sale is important because it is fair to assume that a seller will price prime products differently than non-prime products. Respondents further state that the prime/non-prime fields allows the Department to segregate sales based on information that was known to the buyer and seller at the time of sale.

Respondents argue that the objective of the warranty field is entirely different. Respondents state that all purchasers of prime material assume that they are in fact buying a prime product that meets the specifications requested. Respondents explain that it is inevitable, in the course of doing business, that some customers will claim, after receipt of the product, that the product does not meet its expectations, due to defects, shipping damages or a number of other reasons. Respondents note that in all of these circumstances, the underlying ''problem'' with the steel occurs after the sale.

Respondents explain that when a company reimburses the customer for a warranty claim, because it warrants that its products will always meet the customer's expectations, the company incurs a warranty cost. Respondents state that the entire purpose of the Department's field is to isolate these costs either on a sale-specific or a product line-specific basis. Respondents continue to state that there is no Department practice whereby sale-specific warranty expenses are used as a key to then reclassify all sales for which warranty expenses were incurred from prime to non-prime sales.

Respondents, citing Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Italy, 64 FR 30750, 30753 (June 8, 1999), also noted that for most companies, there are never any warranty costs for non-prime sales, which are sales where a buyer forfeits his right to a warranty claim. Therefore, respondents maintain that all sales with warranty claims should not be reclassified as non-prime merchandise because it would make the Department's warranty field meaningless. Respondents conclude that the warranty expense field presumes that the product was purchased and sold as a prime product.

Department's Position

We agree with the petitioners in part and with respondents in part. The Department has reclassified USIMINAS' home market sales as non-prime sales when no quantity adjustment was reported but there is a warranty claim. When the Department examined two invoices from a list of invoices with warranty reported during verification, the company noted that the material was not returned, but was reclassified as scrap or irregular blank scrap. Since all sales examined with warranties (and no returned quantity) were for sales of merchandise that ended up being non-prime, we have assumed all sales with warranties (and no returned quantities) are non-prime. This is appropriate since the net price reported (gross unit price less warranties) is representative of non-prime merchandise, which is what the customer ended up receiving.

In addition, as noted on page 39 of the USIMINAS' Sales Verification Report, we have found (and at verification USIMINAS agreed) that where a warranty adjustment was reported and a partial quantity adjustment was also reported, these sales are actually partial returns and warranty is not applicable. Therefore, we have set the warranty field (WARRH) to zero where there was a partial return of merchandise.

Comment 5: Home Market Discounts

Petitioners argue that the Department should deny adjustments for USIMINAS' reported home market discounts. Petitioners state that the Court of Appeals for the Federal Circuit (Federal Circuit) recently held that price adjustments must relate exclusively to merchandise within the scope of the proceeding, unless the same rebate percentage is uniformly applied to both subject and non-subject merchandise. See *SKF USA Inc.* v. *United States,* 180 F.3d 1370 (Fed. Cir. 1999) (SKF) and SKF, 180 F.3d 1376, citing *Smith-Corona Group, Consumer Products Div.* v. *United States,* 713 F.2d 1568, 1580–81 (Fed. Cir. 1983). Petitioners argue that USIMINAS used both subject and non-subject merchandise to calculate the rebate percentage for discounts, and did not provide the Department with documentation regarding the ''unusually high'' discount in the other discount category, reported in the field OTHDISH. Therefore, petitioners conclude that the Department should deny USIMINAS' claimed home market discounts (quantity discounts (QTYDISH) and OTHDISH) to customers.

Respondents counter that the Department should allow this adjustment to NV. Respondents explain that USIMINAS was not able to report discounts on a sale-by-sale basis given the difficulties in tracing these adjustments to the actual sale. Respondents note the allocation methodology used by USIMINAS is the same as the Department accepted in Hot-Rolled Steel from Brazil which was based on the same facts. Respondents further state that USIMINAS' allocation methodology is consistent with the Department's regulations and the SAA. Respondents note that while petitioners imply SKF breaks new ground, the Federal Circuit emphasized its decision was consistent with its past decisions and those of the Court that accepted reasonable apportionment of adjustments. Respondents note that the Department was able to verify all information from USIMINAS, with a single exception. Respondent argue that although USIMINAS was unable to provide a requested document because of the many demands placed on it during verification, this single omission cannot serve as a reasonable basis to deny USIMINAS' home market discount adjustment as requested by petitioners.

Department's Position

We agree in part with both petitioners and respondents. Two types of discounts were reported by USIMINAS: (1) Quantity discounts, which were reported on a customer specific basis; and (2) other discounts, which were reported based on an aggregate amount for the POI. Both types of discounts involved dividing all discounts granted in the period (by customer in the case of quantity discounts) for subject and non-subject merchandise, by the total sales in the period (by customer in the case of quantity discounts) for subject and non-subject merchandise.

Section 351.401(g) of the Department's regulations state that the Secretary may consider allocated expenses when transaction-specific reporting is not feasible, provided the Secretary is satisfied that the allocation method used does not cause inaccuracies or distortions. In addition, any party seeking to report an expense or price adjustment on an allocated basis must demonstrate to the Secretary's satisfaction that the allocation is calculated on as specific a basis as is feasible. Also, the Secretary will not reject an allocation method solely because the method includes expenses incurred, or price adjustments made, with respect to sales of merchandise that does not constitute subject merchandise or a foreign like product (whichever is applicable). We note that the cases cited by petitioner relate to the Department's practice prior to changes made by the URAA and adoption of the Department's new regulations.

For quantity discounts, we find that USIMINAS has reported this discount in the most specific basis that is feasible. Moreover, having examined the information provided by USIMINAS regarding the products it manufactures, we find no reason to conclude that discounts would be granted disproportionately on its out-of-scope steel products as opposed to its in-scope steel products as this merchandise is broadly similar in value, physical characteristics and the manner in which it is sold. Therefore, this adjustment meets the criteria of section 351.401(g) of the Department's regulations, and we are continuing to allow an adjustment to NV for quantity discounts.

For other discounts, we were unable to verify one large item (composing the vast majority of this expense). In addition, the allocation on this expense was done in the aggregate, for various types of discounts. In other words, several discounts were lumped together for sales of all products to all customers; thus, the allocation was not customer-, product-, or even discount-specific. Therefore, we are not satisfied that USIMINAS submitted this adjustment in the most specific basis that is feasible. Therefore, we are disallowing the adjustment to NV for other discounts.

Comment 6: Home Market Interest Revenue

Petitioners point out that USIMINAS' late payment interest plus fines charges (INTREVH) are applied to all sales on a global basis rather than to specific sales. Referring to SKF, petitioners argue that the interest revenue is not uniformly applied. Furthermore, they contend that the interest revenue adjustment for USIMINAS' home market sales is calculated based on both subject and non-subject merchandise. In the instant investigation, according to petitioners, the amount of interest revenue that USIMINAS receives from the customer is not the same for each sale let alone for each product, as it depends on factors that vary from sale-to-sale, such as the number of days after the due date that interest is charged. Petitioners request the Department to deny USIMINAS' calculation of the adjustment for home market interest revenue, and, as facts available, instead add the highest reported amount for INTREVH to the price of all home market sales.

Respondents argue that it is well established that a company may allocate price adjustments when transaction-specific reporting is not feasible. Respondents indicate that the Department allowed USIMINAS to report home market interest revenue in this manner in Hot-Rolled Steel From Brazil investigation, and granted the same adjustment. Respondents state that petitioners miss the point with their argument in that of course, the amount that USIMINAS receives in interest will vary from sale to sale, because there is no reasonable basis for the Department to expect every delinquent customer to withhold payment the exact same number of days. Moreover, respondents note, when the customer has an acceptable reason for late payment then USIMINAS may decide to extend the due date without charging interest revenue as stated in the Section B response. Respondents maintain that USIMINAS reported interest revenue amounts to the best of its ability, and that its methodology was reasonable and

not distortive. Further, Respondents argue that the Department verified the accuracy of USIMINAS' reported home market interest revenue.

Department's Position

We agree with respondents that it is reasonable for USIMINAS to allocate price adjustments when transaction-specific reporting is not feasible, and that the price adjustment methodology used was appropriate. In Hot-Rolled Steel from Brazil, 64 FR 38756, 38790–38791 (July 19, 1999) we accepted a similar allocation methodology for USIMINAS' interest revenue. Section 351.401(g) of the Department's regulations state that the Secretary may consider allocated expenses when transaction-specific reporting is not feasible, provided the Secretary is satisfied that the allocation method used does not cause inaccuracies or distortions. In addition, any party seeking to report an expense or price adjustment on an allocated basis must demonstrate to the Secretary's satisfaction that the allocation is calculated on as specific a basis as is feasible. Also, the Secretary will not reject an allocation method solely because the method includes expenses incurred, or price adjustments made, with respect to sales of merchandise that does not constitute subject merchandise or a foreign like product (whichever is applicable). Therefore, this adjustment meets the criteria of section 351.401(g) of the Department's regulations, and we are continuing to accept USIMINAS' calculation of the adjustment for home market interest revenue.

Comment 7: Indirect Selling Expenses/ Warehousing Expenses

Petitioners argue that the Department should reclassify all of USIMINAS' U.S. indirect selling expenses as movement expenses. Petitioners point out that USIMINAS includes warehousing expenses incurred at the port of export in its indirect selling expenses. Petitioners note that at verification, when asked to break out warehousing expenses from its indirect selling expenses, USIMINAS stated it had no means of precisely ascertaining these costs. Petitioners insist that the Department has established a clear practice of treating post-shipment warehousing expenses as movement expenses, as prescribed in section 351.401(e)(2) of the Department's Regulations. Respondents state that USIMINAS' warehousing expenses are properly treated as indirect selling expenses based on verification and the Department's determination in past investigations. Respondents note that USIMINAS has consistently classified its port warehouse expenses as indirect selling expenses because it is unable to isolate all of its warehouse costs from other indirect selling expenses, *i.e.* these expenses are fixed expenses and are aggregated with other fixed selling expenses in USIMINAS' accounting system. Respondents argue that the Department has consistently accepted USIMINAS's treatment of its port expenses as indirect selling expenses, including in Hot-Rolled Steel from Brazil and the facts surrounding these expenses have not changed. It is further claimed that there is nothing inequitable in USIMINAS' treatment of its warehouse expense as indirect selling expenses, because USIMINAS treated all warehouse expenses the same, regardless of whether they were related to home market sales, export sales, or both.

Department's Position

We disagree with petitioners. Respondents consistently informed the Department that USIMINAS was unable to segregate warehousing expenses from its indirect selling expenses and that it had reported all warehousing as part of these expenses. See respondents' Section B response at B–50 (August 30, 1999). The Department did not uncover any information at verification to indicate that USIMINAS was able to segregate warehousing from indirect expense. Therefore, we have accepted USIMINAS' data, as reported, and are not reclassifying USIMINAS' indirect selling expenses as movement expenses for this final determination.

Comment 8: Home Market Packing

Petitioners request that the Department exclude COSIPA's home market packing expenses from its home market sales analysis because the Department was unable to examine and confirm these costs during verification. Petitioners assert that at verification, COSIPA explained it had selected a month as representative of POI-wide packing costs, but that the Department was unable to examine and confirm the validity of the underlying presumption that one month was, in fact, representative.

Respondents state that the Department should deny the petitioners' request. Respondents note that Section B of COSIPA's response made it clear that the adjustment for packing materials was based on two components: valuation of per unit cost and a quantification of types of materials used for each packing type. Respondents argue that with respect to the valuation of the per unit costs for each type of packing, COSIPA explained at verification that it used the value of material inputs in the month of September 1998 as a representative month for per unit packing materials costs. Respondents note that COSIPA used the same methodology for the packing adjustment for home market sales and export sales, so the methodology was market-neutral.

Respondents point out that the Department verified that the material cost valuations were based on its September 1998 inventory values after viewing similar records for purchases from other months to see if September was distortive.

According to respondents, although there were minor variations in per unit packing for some other packing materials, the variations did not undermine COSIPA's methodology of using prevailing inventory valuations in September as a surrogate for per unit values during the POI. Respondents point out that there was a decision to defer additional verification of the packing adjustment to the cost verification to give COSIPA time to prepare similar documents for additional months. Respondents note that during the cost verification, COSIPA presented the additional information requested at the sales verification but the cost verifiers did not dedicate time in the cost verification to COSIPA's packing adjustment.

Respondents note that the Department will accept a Respondent's packing adjustment if reasonable and not distortive. Respondents state the Department should reject the petitioners' request to apply adverse inferences and to reject the petitioners home market packing costs, and that COSIPA provided details of its packing adjustment in its Section B/C responses, as well as explained and prepared additional documentation of all aspects of packing adjustment at verification.

Department's Position

We agree with petitioners that COSIPA's home market packing expenses should be excluded from the final determination. The COSIPA verification report notes that COSIPA based its packing costs solely on company records for September 1998. While the verification team attempted to establish that these mid-POI costs were representative by comparing the reported figures to those for other periods at the beginning and end of the POI, we were unable to do so, because COSIPA did not provide the appropriate

data from its microfiched records. Although COSIPA had been specifically advised in the verification outline that the Department would be looking into its home market packing claim, COSIPA only produced worksheets purporting to reflect packing material costs throughout the POI at the very end of verification. These data, however, were untimely and, in any case, unverifiable, given that they arrived when there was no longer time to look into their accuracy. Thus, we have not reviewed this data for the final determination.

We also note that COSIPA used the same methodology for its U.S. packing expense which, as on the home market side, could not be verified. Because of this verification failure for U.S. and home market packing expenses, we are, as an adverse inference, using the reported packing figures for export sales while denying them for normal value as the facts otherwise available, in accordance with sections 776(a) and (b) of the Act. Section 776 (a)(2)(D) requires the use of facts available where information can not be verified. Section 776(b) calls for the Department to use an adverse inference where it finds, as here, that a party failed to act to the best of its ability to respond to the Department's requests for information. As was made abundantly clear at verification, the necessary documentation to calculate accurate packing costs for both markets based on a POI-wide sampling of costs, was readily at hand for COSIPA. In spite of this, COSIPA elected to base its claim for adjustments for packing costs solely on a single month's inventory cost reports, without making any effort to establish the validity of this assumption. Accordingly, we find that COSIPA did not act to the best of its ability to report these costs, indeed, disregarding readily-available cost data for this adjustment. Therefore, as an adverse inference, we are denying the home market packing adjustment, while using the reported U.S. packing costs, based on verified data for September, for calculating EP. This approach is fully consistent with the intent of section 776(b) of the Act, as well as the Court's holding in *Timken Company* v. *United States*, 673 F. Supp. 495, 512 (CIT 1987).

Comment 9: COSIPA's Home Market Billing Adjustments

Petitioners request that the Department deny COSIPA's claimed home market billing adjustments in their entirety because those adjustments could not be verified or, alternatively, revise the adjustments to the amounts that the Department identified during verification. Petitioners claim that COSIPA's billing adjustment methodology is questionable because the Department disagreed with some of COSIPA's amounts during verification.

Respondents state the Department should reject petitioners' argument and continue to grant COSIPA's home market billing adjustment, as corrected. Respondents state the billing adjustment for the first home-market sales trace was properly verified. Respondents argue that the petitioners base their claim on a corrected billing adjustment and an ambiguous sentence in the verification report regarding an apparent overstatement of the billing adjustment because the supplemental nota fiscal on its face indicated a different corrected billing adjustment than that presented by COSIPA. Respondents note that the ''difference'' identified on the supplementary nota fiscal does not reflect the Department's prescribed calculation (total credit divided by tons shipped) but the calculator tape (in COSIPA Sales Verification Exhibit 26) divides the value of the supplemental nota fiscal by the total quantity shipped to arrive at the corrected billing adjustment.

Respondents point out that on all other home market pre-select and surprise sales traces, the Department noted no discrepancies. Therefore, respondents see no reason to reject all home market billing adjustments, as petitioners suggest.

In their rebuttal briefs, petitioners state that the Department should treat billing adjustments (BILLADJH) not as a deduction to gross unit price (GRSUPRH), but as an addition to the gross unit price. Petitioners state that a careful analysis of COSIPA's data indicates that the company's reported billing adjustments represent increases to gross unit price (as opposed to deductions). Petitioners state that in the Preliminary Determination, the Department subtracted billing adjustments (BILLADJH) from gross unit price (GRSUPRH) for all of COSIPA's home market sales. Petitioners urge the Department to correct this alleged error by adding billing adjustments to gross unit price, or alternatively, by employing a second variable (GRSUPRH2) which represents the fully-adjusted gross unit price amounts (*i.e.*, the prices after all billing adjustments have been taken into account). Also in their rebuttal, petitioners withdraw their original argument that these adjustments were improperly reported as they believe it would be inappropriate for the Department to reward COSIPA for any errors that may have been found at verification.

Department's Position

The Department reviewed the per-ton calculation of COSIPA's billing adjustments at verification and, minor mathematical corrections aside, had no reason to question the underlying methodology. The correct adjustment was calculated on a transaction-specific basis as the adjustment's total value, inclusive of taxes, divided by the applicable tonnage. After reviewing the respondents' clarifications on the proper treatment of these billing adjustments the Department does not find error with the methodology used for calculating the corrected billing adjustment for this sale. Therefore, we agree with the respondents that billing adjustment values were properly calculated.

We also agree with the argument raised by petitioners in their rebuttal brief. After careful analysis of the information on the record, we agree that COSIPA's billing adjustments represent increases to gross unit price, rather than deductions from gross unit price. See Memorandum to the File, dated January 7, 2000. The Department has corrected this error in the final determination by employing GRSUPRH2, which represents the fully-adjusted gross unit price amounts (*i.e.*, the prices after all billing adjustments have been taken into account).

Comment 10: COSIPA's Home Market Resales

Petitioners point out that COSIPA has certain resales that were not linked to their original production records. Instead, petitioners state, COSIPA relied on product characteristics as described on the billing invoice to generate CONNUMs, making COSIPA's reported material specifications questionable. Petitioners note that the specifications reported by COSIPA for such resales are not specifications of the material actually sold, since the material was originally produced to a different order. Petitioners further assert that COSIPA made no attempt to link the material involved in such resales to production records even though it said it was possible to do so. Petitioners recommend that the Department exclude all sales of such resales, but since the resales cannot be separately identified, as facts available, the Department should exclude all home market sales below a specific price.

Respondents state that the Department should use COSIPA's databases as submitted and verified by the Department. Respondents stress that petitioners argument that the

Department should exclude all of COSIPA's home market sales with no production records from its home market database demonstrates a wholesale misunderstanding of the products sold.

Respondents point out that COSIPA's initial Section B response indicated that for some isolated product characteristic fields, in limited circumstances, COSIPA believed it was helpful to reference its production records to confirm the correct product characteristic code. Respondents note that for a limited category of grades, COSIPA referenced production records if there was differing yield strength information (*i.e.,* whereas some grades specified a minimum yield strength, some grades only identified a maximum.) In addition, respondents note that reference to production records and customer orders was also helpful in coding the thickness tolerance field. Respondents state that reference to production records was entirely unnecessary as COSIPA's invoices provided all of the necessary information.

Respondents note that in the event COSIPA was unable to link a particular invoice with a particular production record, COSIPA used alternative methodology for these sales for certain product characteristic fields. Respondents point out that in the case of a customer returning and COSIPA then reselling this product to another customer, COSIPA would lose the link between the final sale and the original production records. Respondents note that COSIPA used the information in the invoice or customer order or other resource as a basis to decide the product characteristic of the product sold. Respondents claim that the use of alternative information such as the invoice is not distortive, and that it is fair to presume a company would not mischaracterize its product characteristics on an invoice.

Respondents claim that petitioners logic is twisted because they assert affirmatively that the specifications reported by COSIPA for resales are not the specifications of the material actually sold. Respondents point out that at the time of invoicing when the product is resold, COSIPA is able to ascertain the product characteristics of the product to be sold. Respondents note that in rare cases, COSIPA was not in a position to confirm the product characteristic on the invoice with the information for a particular production run. Respondents state that in many dumping investigations, respondents are not able to access production information for each individual invoice.

Respondents argue that petitioners wrongly claim that COSIPA ''made no attempt'' to link the material invoiced and sold to underlying production records. Respondents note that COSIPA explored several methods to attempt to correlate production records with invoices for resales; however, at verification, for any given resale COSIPA was not always able to find the production records, invoice or order related to the original sale. Respondents note that this is not the same as COSIPA not attempting to make the link at all.

Department's Position

We agree with respondents that sales with no production records should not be excluded. Respondents have consistently acknowledged COSIPA's inability to link production records to a limited amount of sales. However, COSIPA used alternative methodologies, such as referencing the invoice and customer order, to confirm the product characteristics of the products sold. At verification, for each home market and U.S. sales traced, we compared product characteristics as recorded on COSIPA's nota fiscal with underlying production records and did not find a single instance where these characteristics differed between the two sources. Therefore, we conclude that the nota-fiscal is a valid substitute for the missing production records in this case, and we find no evidence which would cast doubt on the reported specifications and characteristics of COSIPA's sales. Accordingly, we have accepted the reported product specifications and characteristics for this group of sales.

Comment 11: Date of Sale for COSIPA's U.S. Sales

According to petitioners, per section 351.401(i) of the Department's regulations, the essential terms of COSIPA's U.S. sales were established by export contract before the commercial invoice was issued because sales price did not change after the export contract date. Petitioners urge the Department to use COSIPA's contract date in lieu of the commercial invoice date as the official U.S. date of sale. Since contract dates are not reported, petitioners suggest that, as facts available, the Department revise sales dates by subtracting an average number of days between the export contract and commercial invoice from the reported sale dates, excluding any sales whose revised dates of sales fall outside of the POI.

Respondents state that the Department should continue to use the date of sale as identified by COSIPA *i.e.*, the earlier of the commercial invoice or the not a fiscal date, as the date of sale, not the petitioner's proposed use of a surrogate export contract date as the date of sale. Respondents note that the Department presumptively used the invoice date as date of sale, although it may use another date only if satisfied that a different date better reflects the date on which the exporter or producer established the material terms of sales.

Respondents argue that use of the export contract date would be unlawful and unreasonable. Respondents point out the export contract date does not establish the critical term of sale: actual quantity produced and sold. According to respondents, quantity is not known until, at the earliest, the steel is actually produced and leaves the factory. Respondents further note that COSIPA's date of sale methodology was based on its entire universe of sales during the POI, not a limited sample of 4 or 5 sales. Therefore, that the Department's sales traces at verification found no instance of the price or quantity changing is of little moment. Additionally, the Department addressed this very issue in Hot-Rolled Steel from Brazil, rejecting petitioners' arguments regarding COSIPA's date of sale.

Further, respondents state that petitioners' allegations are untimely since the Department's practice is to address the date of sale issue in the early stages of an investigation in the Section A response. Respondents argue that during this proceeding neither the petitioners nor the Department ever suggested COSIPA's export contract date would be a more appropriate date of sale at the supplemental Section A or C stages nor at verification, nor did the Department request that COSIPA alter its date of sale methodology. This eleventh-hour challenge must be rejected, COSIPA insists, as it raised at a stage in the proceeding which precludes any correction.

Department's Position

We agree with the respondents that the evidence on the record does not establish that the contract date best represents the date of sale for COSIPA's U.S. sales. Thus, for date of sale, we have continued to use the earlier of the commercial invoice date or the nota fiscal date. Petitioners make reference to page 9 of the COSIPA verification report, which states that the export contract ''for U.S. sales shows the total tonnage, price and product quality. It also specifies the estimated delivery time, sales conditions, payment terms, and has the date of issuance.'' This statement is accurate; however, this statement only relates to the tiny number of COSIPA's sales examines,

and does not establish that the sales conditions and payment terms do not change after the contract date. With no evidentiary basis for disregarding the presumptive date of sale identified in our regulations, we have continued to use COSIPA's reported sale dates, consistent with our approach in Hot-Rolled Steel from Brazil 64 FR 38756, 38780 (July 19, 1996).

Comment 12: Direct Selling Expense Related to U.S. Sales

Petitioners point out that COSIPA sells to the United States via COSIPA Overseas, located in the Cayman Islands. Petitioners argue that activities conducted on behalf of COSIPA Overseas' and the expenditures associated with them relate exclusively to export transactions. (The precise nature of these expenses necessitates extensive reference to business proprietary information. For a complete discussion of this issue, and our position thereon, please see the Final Analysis Memorandum, January 18, 2000, a public version of which is on file in room B–099 of the main Commerce building.) Petitioners go on to indicate that COSIPA funds these expenditures by paying an amount to COSIPA Overseas on sales from COSIPA to COSIPA Overseas. Petitioners assert that the Department found this should have been a direct expense. Therefore, petitioners state that the Department should deduct this amount from the U.S. price.

Respondents assert that while COSIPA's accounting books refer to these amounts as a specific type of expense, this label is not entirely accurate, thus explaining the ''confusion'' engendered by statements referenced in the Department's COSIPA Sales Verification Report. In fact, respondents conclude, there is no basis in fact or law for concluding that these amounts represent direct selling expenses or for deducting these amounts from COSIPA's U.S. sales prices.

Department's Position

We disagree with petitioners. After careful review of the record, the Department has determined that the foreign sales expense identified by petitioners cannot be considered a direct expense, since the accounting entries do not represent an ''expense'' at all. Therefore, despite the ambiguity engendered by statements recounted in the COSIPA verification report on this subject, the Department cannot treat these accounting entries between COSIPA Overseas and COSIPA as direct selling expenses because they do not invoice ''expenses'' of any kind. See Final Analysis Memorandum for an additional discussion of this issue.

Comment 13: Imputed Interest Revenue

Respondents argue that the Department should not impute interest revenue on sales for which COSIPA has never been paid and therefore never collected such revenue. Respondents note that for COSIPA's home market sales that remained unpaid as of October 1, 1999 (the date of its first supplemental response), the Department selected October 1, 1999, as a surrogate payment date and used that date to calculate an imputed interest revenue. Respondents state that in the Preliminary Determination, the Department's decision to impute interest revenue is based upon an incorrect assumption that COSIPA will inevitably be paid for these sales and will collect interest and penalties. Respondents acknowledge that it receives interest revenue from customers who pay late, but states it has reported these receipts appropriately. However, respondents state that the record does not support the Department's decision to impute interest revenue receipts on sales for which no payment at all has been received, and that COSIPA cannot predict with certainty when, or if, certain customers will pay the invoiced amount (including late payment charges). Respondents state that the Department's reference in the Preliminary Determination to Section 776(b) of the Act, which authorizes the use of adverse inferences against parties who fail to cooperate, is unwarranted with regard to home market interest revenue on unpaid sales. Respondents reference *Olympic Adhesives Inc.* v. *United States*, 899 F2nd 1565, 1573 (Fed. Cir. 1990) and state that a company's inability to provide information is not the same as a refusal to provide that information.

Petitioners state that if it is in fact the case, as respondents claim, that there is ample reason to believe that the sales with missing payments within COSIPA's home market dataset are sales for which full payment is not expected by COSIPA, then the Department should classify all of those sales as being made outside of the ordinary course of business, and should exclude those sales from its margin analysis. Petitioners state that companies such as COSIPA will not ordinarily sell merchandise to customers from whom they do not expect payment in full for the merchandise. Petitioners emphasize that while non-payment of some portion of bills is a possibility, it is not the normal practice for any company within a market economy desiring to stay in business for very long.

Department's Position

We disagree with the respondents' argument, and agree, in part, with the petitioners' argument. We agree with the general principle of the petitioners' argument that it is not the normal practice for a company operating within a market economy to continue operating for any length of time under conditions of non-payment for a significant portion of its invoices. At minimum, if a company over time does not receive a significant portion of payments, the company would certainly try to minimize this loss by discontinuing selling to, or altering the level of business conducted with these customers. Although COSIPA may indeed not receive full payment (with interest and penalties) for a certain number of sales, the Department cannot assume non-payment for all sales with missing payments reported to the Department. Without any additional evidence supporting the respondent's claim on this matter, the Department is not in a position to assume non-payment of interest revenue for all of these sales. Stating this, the Department likewise cannot assume the petitioners' argument that these sales are sales outside the ordinary course of trade is accurate, absent additional record evidence. Therefore, for sales with unreported payment dates, we are continuing as we did in the Preliminary Determination, 64 FR 61249, 61259 (November 10, 1999) to calculate an imputed interest revenue expense for COSIPA. See Final Analysis Memorandum.

Comment 14: Home Market Freight Adjusted by ICMS Tax

Respondents argue that the Department should not make a downward adjustment to the reported home market freight adjustments for ICMS. Respondents note that in the Preliminary Determination, the Department excluded from home market inland freight costs the associate ICMS taxes. Respondents state that the Department is obligated to make deductions from normal value for all inland freight expenses associated with home market sales. See 19 U.S.C. 1677b(a)(6)(B). Respondents state that neither the Department is obligated to make deductions from normal value for all inland freight expenses associated with home market sales. See 19 U.S.C. 1677b(a)(6)(B). Respondents state that neither the Department nor the petitioners have suggested that the

respondents are receiving some form of tax credit as they do in connection with the ICMS paid on raw materials purchases; nor can this inference be gathered from any other Brazilian proceeding. Respondents conclude that the Department should find that taxes paid on freight expenses are part of movement expenses, and deduct the ICMS incurred on freight from normal value (in addition to the expense for the freight service itself), as it has done in all previous investigations and administrative reviews involving Respondents. See Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil, 63 FR 6899, 6908 (February 11, 1998).

Petitioners argue that the Department correctly subtracted ICMS taxes from the respondents' home market inland freight amounts. Petitioners state that the ICMS tax is unquestionably a VAT tax and that the Department's adjustment is consistent with its current methodology (petitioners cite to Hot Rolled Steel from Brazil). Petitioners claim that the respondents' assertion that the Department has included ICMS taxes in home market freight expenses in ''all previous investigations and administrative reviews'' involving respondents is not accurate, and that there is no basis on the record in this investigation to deviate from the Department's stated practice.

Department's Position

We agree with petitioners. For USIMINAS' U.S. sales examined at verification, respondents did not include ICMS tax within home market inland freight for U.S. sales, but did include ICMS taxes in inland freight for home market sales. Likewise, COSIPA did not include ICMS taxes within home market inland freight for U.S. sales. For COSIPA's home market sales, the evidence is unclear. The vast majority of sales examined at verification were within Sao Paulo state and, thus, freight charges would not be subject to ICMS taxes; the freight invoice for one remaining home market observation indicated no ICMS taxes were included. However, COSIPA has stated affirmatively that ''freight charges are based on the services plus any applicable taxes (*i.e.,* ICMS tax). In this scenario, the freight provider then remits the taxes collected from * * * COSIPA and USIMINAS to the state.'' USIMINAS/COSIPA Case Brief at 5 (original emphasis); see also Respondents' Supplemental Questionnaire Response, October 29, 1999, at 9. Thus, we conclude that the preponderance of record evidence indicates that for USIMINAS/COSIPA, home market freight carriers on interstate runs include ICMS in their freight charges. This is similar to the reporting of ICMS taxes on sales of the merchandise under investigation (ICMS taxes are paid on home market sales and not on U.S. sales; we deduct ICMS taxes from reported gross unit price). If ICMS taxes are included within movement expenses, which are deducted from the gross unit price, and we calculate gross unit price net of ICMS taxes, then the movement expenses should similarly be a net of the ICMS taxes. ICMS taxes must be concurrently deducted from movement expenses, as well as gross unit price to make the entire calculation tax-neutral.

In the Second Supplemental Questionnaire, we asked respondents to report, for each individual sale, the ICMS taxes paid on inland freight on the sales tape. Respondents replied: ''[w]hether or not the ICMS is included in the transport expense paid by Respondents depends on the destination of the shipment. For example, for shipments by COSIPA to destinations within the state of Sao Paulo, COSIPA pays the transporter its fee for the transport services, and then COSIPA pays the ICMS directly to the state. For shipments outside the state of Sao Paulo, it is the transporter's responsibility to pay ICMS.'' See Respondents' Supplemental Response at 9 (October 29, 1999). Respondents stated that the Department should deduct any ICMS paid by respondents directly to the state, but if they could not identify these ICMS taxes, it would only prejudice them. Respondents claimed that they were unable to *perfectly isolate* ICMS related to freight in the time permitted (see Id. at 10). Therefore, they did not report it separately. Printouts in USIMINAS'' sales verification exhibits indicate that they are indeed able to break out ICMS paid to the freight provider. Because respondents have failed to provide information by the deadline for submission, the Department is required to apply facts available under section 776(a)(2)(A). Moreover, because respondents has not acted to the best of its ability to identify the amount ICMS an adverse inference is appropriate under 776(b). Consequently, as facts available, we have deducted ICMS tax from movement expenses (for all home market sales with inland freight reported, by USIMINAS/COSIPA and their affiliated resellers) based on the highest rate applicable to respondents, 18 percent. See Respondents' Section B Response at B–42 (August 30, 1999). While COSIPA may not have paid taxes on some of those sales, we are deducting ICMS taxes nonetheless since we have no way of distinguishing which sales had ICMS tax since respondents did not break out the taxes as requested.

Comment 15: Non-Rectangular Blanks

Respondents argue that the Department should exclude all non-rectangular blanks from the scope of the investigation. Respondents submit a brief historical overview:(1) Respondents submitted on July 12, 1999 a letter requesting the Department to exclude all non-rectangular blanks from the scope of the investigation; (2) the Department's November 1, 1999, Memorandum from Case Analyst to Joseph A. Spetrini (Scope Memorandum) did not identify or address the respondent's scope request; and (3) since the Preliminary Determination, petitioners have requested the Department to exclude most non-rectangular blanks from the scope of the investigation.

Respondents emphasize that there is a subset of non-rectangular blanks that is covered by the respondents exclusion request which is not covered by petitioners' request. The petitioners' exclusion request proposes to limit the exclusion only to non-rectangular blanks that are in the ''approximate shape or outline of a finished article.''

Respondents argue that the Department should revise petitioners' proposed exclusion definition for several reasons: (1) It would be difficult for U.S. Customs officials to determine, on an entry-by-entry basis, whether a particular non-rectangular blank approximates the shape or outline of a finished article; (2) the petitioners' exclusion request does not consider the fact that consumers of non-rectangular blanks normally require the manufacturer to stamp the product into a shape that is similar to the shape of the final finished product; for the customer to do otherwise would not be economical; (3) an application of the Diversified Products criteria demonstrates that all non-rectangular blanks should be excluded. In particular, there are significant and meaningful differences in the physical characteristics of the product, the expectations of the ultimate purchasers, the ultimate use of the product, and the channels of trade in which the product is sold, from the primary cold-rolled steel products subject to this investigation. See *Diversified Products* v. *United States,* 572 F. Supp 883 (CIT 1983). Respondents refer to their July 12, 1999, analysis of the Diversified Products criteria and state that the application of the Diversified Products

criteria is identical whether or not the non-rectangular blank conform with the petitioners' proposed definition of the non-rectangular blanks excluded from the investigation.

Petitioners initially point out although parties agree on the term ''blanks,'' petitioners did not exclude *all* cold-rolled steel of non-rectangular shape. See Scope Exclusion Letter at 2. Petitioners maintain that if cold-rolled steel imports are within the scope definition, then they are covered by the investigation, regardless of their shape. Referring to Chapter 72, Note 1.(k) of the HTSUS (already set up), petitioners state that non-rectangular shapes are properly classified as ''flat-rolled products.'' Petitioners stress that products that should not be classified as ''flat-rolled products'' are those that assume the character of products of other headings.

Petitioners argue that if the Department were to revise the scope of the investigation, it would be an invitation to circumvent this proceeding, an abuse of its discretion, and a direct contradiction to recent pronouncements by the Administration that the law will be vigorously enforced. According to petitioners, respondents' argument that there is ''no commercial incentive'' for a customer to insert an additional step into its production process is false. Petitioners maintain that if respondents can avoid a duty cost with a less expensive change—*i.e.,* cutting a corner of a steel sheet—then there is, in fact, a ''commercial incentive,'' and such imported products would compete for sales with products made by the domestic industry.

With regard to respondents' argument that the definition provided in Petitioners' Scope Clarification Letter would be ''unmanageable'' by the U.S. Customs Service, petitioners maintain that the letter makes clear that products that assume the character and parts or finished articles are not intended to be covered. Petitioners also disagree with respondents' contention that application of Diversified Products criteria suggests that all non-rectangular blanks should be excluded. According to petitioners, their letter reveals that the products not included are those that are actually dedicated components of other items or complete articles themselves. Petitioners note that there is a real difference between a steel sheet that has been cut to a shape that is technically non-rectangular and a piece of steel that can only be used as part of some other article.

Petitioners submitted a clarification to the scope exclusion, which replaces petitioners' November 3, 1999 submission. Petitioners agree that the following product should be excluded from the scope of the instant investigation: ''Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.'' See Petitioners' Draft of Scope Exclusion/Clarification Letter (January 12, 2000). Petitioners emphasize that any product that does not meet these specifications is included within the scope of the investigation.

Department's Position

We agree with petitioners, who have revised the scope, carefully articulating the ''non-rectangular'' products that are excluded. It has been determined that the HTSUS will be the governing factor for classifying these products. In this case, products that are no longer commercially recognized as basic steel mill products—*i.e.,* advanced products which have assumed the character of articles or products classified outside Chapter 72 of the HTSUS—will not be included in the scope. See ''Scope of the Investigation,'' above.

Comment 16: Thickness Tolerance

The respondents contend that the Department should recognize COSIPA's ¾ mill thickness tolerance code distinctions. Respondents note that the Department's antidumping questionnaire identifies codes for thickness tolerance to include ¼ mil tolerance, ½ mil tolerance, and standard mil tolerance. Respondents further state that the questionnaire also allows respondents to specify and explain any other codes for thickness tolerances which they consider applicable to the subject merchandise. In response to the questionnaire, respondents note that they provided a code which represents subject merchandise with a ¾ mil thickness tolerance.

Respondents note that in the Preliminary Determination, the Department treated ¾ mil tolerance as standard mill tolerance. The respondents state that the Department has not provided an explanation why it recognized some tolerance distinctions while at the same time it has ignored other tolerance distinctions of the same magnitude. Respondents believe that the Department should revise its computer programs so that ¾ mil thickness tolerance sales are kept distinct from standard tolerance sales.

Petitioners disagree with the respondents' argument that ¾ mil thickness tolerance sales should be kept distinct from standard tolerance sales. Petitioners believe the Department should reject this argument since respondents were offered an opportunity to propose a ¾ mil thickness tolerance in their response to the Department's model-matching criteria, and did not. Petitioners make reference to respondents' August 30, 1999, questionnaire response, which states that sales are categorized as standard tolerance sales which meet the following conditions: (1) Customer did not specify a thickness tolerance; (2) sales which cannot be linked to a customer order; (3) sales from inventory.

Petitioners state that the burden is on the respondents to justify the need for an additional tolerance category, and that the respondents' case brief has offered nothing more than the unsupported assertion that the ¾ mil thickness tolerance is a ''fairly common customer specification'' for COSIPA sales. Petitioners believe that the Department's decision to place these ¾ mil tolerance sales into the standard mil category is consistent with respondents' own practice of assigning various categories of sales to the standard category, which in effect uses that category as a ''catchall''.

Department's Position

We agree with petitioners. The respondents were given every opportunity to propose a ¾ mil thickness tolerance in their response to the Department's model-match criteria, and did not. In fact, the antidumping questionnaire explicitly states that if the respondents need to add subcategories to the thickness tolerances, the respondents should contact the Department immediately and describe why the Department should use this information to define identical and similar merchandise. Respondents did not contact the Department as requested, nor did the Respondents place any information on the record to indicate that ¾ mil tolerance is a industry-wide recognized mil tolerance category. In their questionnaire response, the respondents simply stated that they were adding this additional thickness tolerance to the mil thickness tolerances categories provided by the Department. However, respondents failed to submit any information or documentation which would indicate that the steel industry recognizes ''¾ mil'' tolerances as a production standard, as it does ¼ mil and mil tolerances. Therefore, for the Final Determination, we continued to treat the limited number of ¾ mil tolerance sales as standard mil tolerance.

Comment 17: Credit Cost Calculations

The respondents note that in the Preliminary Determination the Department adjusted the credit cost calculation for USIMINAS because USIMINAS had calculated credit costs based on a gross price. The Department adjusted the credit cost calculation by deducting taxes from gross price. Respondents state that in the event the Department continues to deduct taxes from gross price prior to calculating credit costs, the Department may now use USIMINAS' reported credit costs, since the adjustment was already made to the respondent's data in the October 29, 1999, submission.

Petitioners do not address this issue in their rebuttal briefs.

Department's Position

The Department concludes that it is appropriate to deduct taxes from gross unit price for the calculation of credit costs in the Final Determination. We accept the respondents' adjusted credit costs, which were calculated using prices net of taxes.

Comment 18: Theoretical Weight Sales

Respondents state that the Department adjusted all home market sales with a conversion factor, which was used by the Department in a recent administrative review involving cold-rolled steel. Respondents note that on October 29, 1999, USIMINAS provided the Department with a conversion factor based on its historical sales experience. Respondents assert that the Department verified the conversion factor and that the Department verified that USIMINAS sells sheet in the home market based on both theoretical weight and adjusted theoretical weight. Respondents note that all USIMINAS'' U.S. sheet sales are on adjusted theoretical basis. Therefore, respondents contend that in matching these U.S. sales of sheet to home market sales, it is necessary to adjust the home market sheet sales sold on a theoretical weight basis to an adjusted theoretical weight basis.

Respondents contend that in light of USIMINAS' submissions, the Department can now adjust price and charges for USIMINAS' home market theoretical weight sales. They note that the adjusted theoretical weight is always greater than the theoretical weight. Respondents note that when the Department adjusts prices and charges, the Department must divide by the conversion factor. Respondents note that this applies to all adjustments except freight and other adjustments not dependent on invoice weight. Respondents contend that freight costs are invoiced by freight providers on a gross weight basis. Respondents note this also applies to packing costs which were calculated on an actual weight basis.

Petitioners argue that Department should reject the conversion factor provided by USIMINAS, and as facts available, continue to convert all of USIMINAS' home market theoretical weight sales to an actual weight basis by multiplying the reported quantities for these sales by 0.96 and dividing the reported prices for these sales by that factor.

Petitioners state that the conversion factor provided by USIMINAS at verification relates exclusively to conversions from a theoretical weight basis to an adjusted theoretical weight basis, meaning that the company still has never provided a conversion factor that might be used to convert actual weight to a theoretical weight basis (or vice versa). Petitioners argue that the conversion factor provided by USIMINAS is suspect, and state that the respondents have not put forward any arguments which provides the Department with any reason to alter its use of facts available for the final determination. Petitioners also refer to the verification report which states that the USIMINAS conversion factor was based on a study done a long time ago. Petitioners argue that this statement provides reason to doubt whether the figure provided by USIMINAS represents the relationship between the company's theoretical weight quantities and adjusted theoretical weight sales quantities during the period of investigation.

Department's Position

In the Preliminary Determination we treated all USIMINAS' U.S. sales as actual weight sales, and we treated all USIMINAS' home market sales of sheet as theoretical weight sales. USIMINAS later clarified that its U.S. sales of sheet are in adjusted theoretical weight and its home market sales are in adjusted theoretical and theoretical weight, and it provided a conversion factor between theoretical and adjusted theoretical weight.USIMINAS claimed that adjusted theoretical weight approximates actual weight.

While we verified the relationship between theoretical and adjusted theoretical weight using this factor, we find that USIMINAS did not submit convincing evidence that adjusted theoretical weight approximates actual. Therefore, for the final determination, we are using the factor submitted by USIMINAS to convert its U.S. and home market adjusted theoretical weight sales to theoretical weight (including conversion of all prices and adjustments, excepting packing). We then converted the U.S. and home market theoretical weight to actual weight (including conversion of all prices and adjustments, excepting packing) using the factor used in the Preliminary Determination 64 FR 61249, 61259 (November 10, 1999).

Comment 19: PIS/COFINS Taxes

Respondents argue that the Department incorrectly declined to deduct PIS and COFINS taxes from home market prices. Respondents note that the tax adjustment provision of section 773(a)(6)(B)(iii) of the Act ensures that the Department makes a tax-neutral comparison when comparing normal value to export price by requiring the Department to adjust normal value by the amount of any indirect taxes imposed on home market sales, but not on export sales. Respondents state that, until recently, the Department considered Brazil's Programa de Integracao Social (PIS) and Contribuicao do FinSocial (COFINS) taxes to be indirect taxes that fall within the meaning of the tax adjustment provision. The Department's change in its treatment of these taxes, according to respondents, is based on a factually incorrect assumption that these taxes apply to total gross revenues and on a legally improper understanding of what indirect taxes are.

Respondents point out that the statute and prior case law make clear that three circumstances must exist for the tax adjustment provision to apply to a particular tax. First, the tax must be ''directly'' imposed on the home market product. Second, it must be rebated or not collected on export sales. Third, it must be added to or included in the price of the home market sale. Respondents argue that the fact that these taxes are not imposed on exports has never been an issue. Thus, respondents state that the only requirements of significance in this review are the first and third requirements.

With the Department failing to adjust respondents' home market price for Brazil's PIS/COFINS taxes in the Preliminary Determination, respondents argue that the Department incorrectly determined that ''these taxes are levied on total revenues.'' Respondents state that until recently, the Department consistently held that PIS/COFINS fall within the meaning of the tax adjustment provision. Respondents cite numerous antidumping cases from Brazil in support of their position that PIS and COFINS should be deducted

from home market price. See respondents' Case Brief at 17.

Respondents contend that in the Final Administrative Review of Silicon Metal from Brazil, 62 FR 1970 (January 14, 1997) (Silicon Metal from Brazil, 1997), the Department erroneously determined that PIS/COFINS are analogous to two Argentine taxes previously determined not to be indirect taxes within the meaning of the tax adjustment provision. Respondents state that in the Final Determination of the Less-Than-Fair Value Investigation of Silicon Metal from Argentina, 56 FR 37891 (August 9, 1991) (Silicon Metal from Argentina), the Department refused to make an upward adjustment to U.S. price for two Argentine taxes because these taxes were based on non-sales revenue as well as sales revenue. Respondents argue that the Department concluded that these taxes were not ''directly'' imposed on Argentine sales within the meaning of section 773(a)(6)(B)(iii) of the Act.

According to respondents, petitioners in Silicon Metal from Brazil, 1997 glossed over the fact that Brazilian and Argentine taxes are, in fact, vastly different by asserting that PIS/COFINS are ''almost identical'' to the two Argentine taxes. Respondents state that, contrary to the Argentine taxes, PIS/COFINS are imposed only on a company's sales revenue.

In addition, respondents claim that the Department's decision not to make an adjustment for PIS and COFINS is unsupported by any accounting or economic analysis. Respondents contend that the fact that PIS and COFINS sales taxes are calculated on an aggregate basis as opposed to an invoice-specific basis is irrelevant—the tax liability is the same. In respondents' view, no basis exists to conclude that the manner of calculating a tax disqualifies a tax from an adjustment under section 773(a)(6)(B)(iii) of the Act.

Respondents state that the Department has not, in any of its decisions relating to this issue, identified any support for its classification of a sales tax as a ''gross revenue tax'' simply because it is calculated on an aggregate basis. As a result, respondents reiterate that the taxes are based exclusively on home market sales and for this reason the Department for almost two decades found these taxes to qualify for a circumstance of sale adjustment.

Respondents state that the third prong, inclusion of the taxes in the home market price, is satisfied in the instant case; the Department has never based its denial of the PIS/COFINS adjustment on a specific or explained finding that the taxes were not included in the price and passed through to the home market customer. Respondents note that in the Final Administrative Review of Color Television Receivers from Korea, 49 FR 50420 (December 28, 1984), the Department made an adjustment for home market taxes based on the conclusion that the taxes were fully passed through to the home market customers. Respondents assert that the Department determined that it was authorized to make an adjustment under section 772(d)(1)(C) of the Act. Therefore, respondents urge the Department to determine that PIS and COFINS are included in the home market price, and passed through to home market customers. In addition, respondents assert that in the Preliminary Determination, the Department did not cite to any record evidence that there is no pass-through, nor did it prepare any questions related to the pass-through aspect of these taxes in its questionnaires or at verification. Since the Department never asked respondents to rebut any newfound presumption that these taxes were not included in the home market price to the customers, respondents believe the Department is not justified in finding no pass-through in this investigation.

If the Department were to argue that PIS and COFINS are not included in the price because they are not itemized on the invoice (like the IPI and ICMS taxes), respondents maintain that it would be wrong for two reasons: (1) PIS and COFINS were not itemized on the Brazilian invoices in all the Department's previous investigations which allowed adjustments to normal value for these taxes, yet it always found that these taxes were included in the home market price, and qualified for an adjustment; (2) whether or not the tax is itemized on the invoice is irrelevant to a pass-through finding. Respondents note that if the tax is not itemized, it is simply included in the gross unit price. According to respondents, itemization on the invoice only indicates how the tax is calculated in the accounting records of the company.

Respondents conclude that there is no justification for the Department's preliminary decision to ignore the necessary deduction for PIS and COFINS. Respondents argue that the PIS/COFINS adjustment is consistent with Department findings (except for recent ''erroneous'' decisions), and decisions by the Courts. Moreover, according to respondents, there is no evidence on the record to support a Department presumption that PIS/COFINS are not included in the home market price. Respondents state that the PIS/COFINS adjustment is required to ensure that the Department's LTFV comparisons are tax neutral, as contemplated by the U.S. dumping law and Article 2.4 of the WTO Antidumping Agreement.

Petitioners argue that PIS/COFINS taxes should not be deducted from normal value. Petitioners state that the statute and the SAA clearly state that downward adjustments to normal value may only be made for tax amounts directly imposed upon sales of the foreign like product. See section 773(a)(6)(B)(iii) of the Act and SAA at 827 and 828. Petitioners refer to the COSIPA verification report at 22, which states that PIS and COFINS taxes use the same base of calculation. Petitioners claim that the base of calculation is the total gross revenue of the corporation, and that neither the PIS nor the COFINS tax is directly imposed on sales of the foreign like product. Petitioners maintain that these taxes are imposed on *all* of the company's domestic sales revenue, including service revenue, on an aggregate basis. Accordingly, petitioners argue, these taxes are not imposed directly upon the foreign like product or components thereof, and there is no statutory basis for their deduction from normal value.

Contrary to respondents' suggestion that the Department lacks an understanding of indirect taxes, petitioners state that the Department is intimately familiar with the way the PIS/COFINS taxes are imposed and collected, and the Department has painstakingly reviewed this issue in several recent cases. Petitioners make special note of the Final Results of Antidumping Duty Administrative review of Certain Cut-to-Length Carbon Steel Plate from Brazil, 63 FR 6889, 6911 (February 11, 1998) and add that the respondents simply seek to overturn the Department's practice based on no new facts or new arguments.

Department's Position

Since 1997, the Department has consistently disallowed claimed adjustments to normal value for PIS/COFINS taxes. According to section 773(a)(6)(B)(iii) of the Act, normal value of the merchandise will be reduced by the amount of any taxes imposed directly upon the foreign-like product or components thereof which have been rebated, or which have not been collected, on the subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign-like product.

PIS/COFINS taxes do not appear to be imposed on subject merchandise or components thereof, leading to no statutory basis to deduct them from NV.

See page 29 of USIMINAS' Sales Verification Report and Verification Exhibit 24. Citing to Silicon Metal from Brazil: Notice of Final Results of Antidumping Duty Administrative Review, 64 FR 6305, 6318 (February 9, 1999) (Silicon Metal from Brazil), the Department determined that ''a deduction of the PIS and COFINS taxes is not correct in the calculation of NV because these taxes are levied on total revenues (except for export revenues), and thus the taxes are direct, similar to taxes on profit or wages.'' See Hot-Rolled Steel from Brazil at 38765. Therefore, the Department will not deduct the PIS/COFINS taxes from the NV in the Final Determination.

III. Cost Issues

Comment 20: Major Inputs

USIMINAS and COSIPA argue that the Department does not have evidence on the record to support disregarding the transfer price of iron ore from its affiliate CVRD or demonstrating that the transfer price is below CVRD's cost of production. Respondents assert that the Department has confirmed that the iron ore prices charged by CVRD are above the prices charged by unaffiliated suppliers. Further, respondents maintain that, even though they could not compel CVRD to provide its COP for iron ore, the evidence on the record shows that CVRD made a profit during the POI in its ore and metals division; therefore, the Department has no reasonable grounds to believe that iron ore was being supplied at less than its COP and the use of facts available for this issue is not warranted. As support respondents cite article 2.2.1.1 of the international antidumping agreement which states that ''costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration.''

Moreover, respondents claim that the cost of iron ore does not represent a significant portion of the cost of the merchandise under investigation as the regulations suggest. COSIPA argues that not only is iron ore a minor input, but its relationship with CVRD is indirect and does not permit influence or control over the company, and thus does not constitute affiliation. COSIPA points to the fact that the relationship exists strictly because of CVRD's minority stock ownership in USIMINAS.

Additionally, COSIPA asserts that in the preliminary determination the Department violated the statute by using adverse inferences (*i.e.,* petition rate) in the application of facts available relating to the major input rule. Both USIMINAS/COSIPA note that they were unable to compel CVRD to provide cost of production information. However, they maintain that under section 776(b) of the Act, the Department must find that ''the respondent failed to cooperate to the best of its ability,'' in order to resort to adverse inferences in applying facts available. Respondents state that the record shows that they attempted in every way to obtain the cost of production from CVRD, but CVRD refused. Thus, if the Department decides to use information other than the invoice price from CVRD to determine iron ore costs, it should use corroborated information from independent sources.

Petitioners contend that the Department's use of adverse facts available in valuing the iron ore acquired by respondents' from CVRD is appropriate. According to petitioners, the record clearly indicates that (1) iron ore is a major input to the production of subject merchandise, (2) CVRD is affiliated with both USIMINAS and COSIPA, (3) respondents refused to provide the Department with CVRD's cost of producing iron ore, thereby failing to act to the best of their ability to provide requisite information, and (4) the statute mandates valuing the purchase of a major input from an affiliated party at the highest of the transfer price, the market price, or the cost of production. Thus, in lieu of CVRD's actual production cost information, the Department had no choice but to resort to facts available.

Departments Position

We have applied the major input rule in accordance with section 773(f)(3) of the Act in valuing the iron ore received from CVRD. In doing so, we have used, as non-adverse facts available, the COP information provided in the June 2, 1999 petition as the COP of iron ore from CVRD since respondents' did not provide the COP information as requested by the Department.

We consider iron ore to be a major input in accordance with section 773(f)(3) of the Act. In determining whether an input is considered major, among other factors, the Department considers both the percentage of the input obtained from affiliated suppliers (versus unaffiliated suppliers) and the percentage the individual element represents of the product's COM. We determined in this case that iron ore represents a significant percentage of the total cost of manufacturing and that USIMINAS receives a significant portion of its iron ore from its affiliate CVRD. The combination of the significant amounts of the inputs obtained from CVRD and the relatively large percentage the iron ore represents of the product's COM increases 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 applies to this input.

Section 773(f)(2) allows the Department to test whether transactions between affiliated parties involving any element of value (*i.e.,* major or minor inputs) are at prices that ''fairly reflect the market under consideration.'' Section 773(f)(3) allows the Department to test whether, for transactions between affiliated parties involving a major input, the value of the major input is less than the affiliated supplier's COP where there is reasonable cause to believe or suspect the price of iron ore is below COP. 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 ensure that the transfer price or market price is not below cost. We consider the initiation of a sales-below-cost investigation reasonable grounds to believe or suspect that major inputs to the foreign like product may also have been sold at prices below the COP within the meaning of section 773(f)(3) of the Act. See, *e.g.,* Final Results of Antidumping Administrative Review: Silicomanganese from Brazil, 62 FR 37871 (July 15, 1997).

Because we have determined that iron ore purchased from an affiliate is a major input in production of cold-rolled steel, the statute requires that, for the dumping analysis, the major input should be valued at the higher of transfer price, market price or COP. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17324, 17335 (April 9, 1999). In accordance with sections 773(f)(2) and (3) of the Act, we attempted to compare the transfer price for iron ore purchased from USIMINAS/COISPA's affiliated supplier to the supplier's COP and a market price. As noted above, even though the Department requested that USIMINAS/COSIPA provide its affiliated supplier's actual COP for iron ore in the original section D questionnaire, the supplemental questionnaires and at verification, USIMINAS failed to do so. Contrary to USIMINAS/COSIPA's assertion, the fact that CVRD's metals division may be

profitable does not demonstrate that the prices it charged to USIMINAS and COSIPA were above its COP.

Section 776(a) of the Act provides for the use of facts available where necessary information is not available on the record. As a result of USIMINAS' and COSIPA's failure to provide the requested information, we have used partial facts available to ensure the COP of the major input is taken into consideration in applying the major input rule. As a gap filling facts available, we included the iron ore cost from the petition as the COP of iron ore to preform the major input rule test. We note that we have not made an adverse inference in selecting the facts available as respondents claim. Rather, it is a gap filling facts available based on the only information on the record related to the COP of iron ore.

Comment 21: Financial Expense

USIMINAS/COSIPA argue that in the Preliminary Determination the Department improperly included interest expenses and foreign exchange losses related to export sale-specific financing and improperly excluded foreign exchange gains related to accounts receivable. According to respondents, Brazilian law permits banks to provide advance financing to companies, based on a letter of credit obtained from customers for export sales. Respondents state that under the financing agreement they pay the bank interest and assume the risk of exchange rate gains or losses until the merchandise is shipped. The bank assumes the risk of the exchange rate gains or losses from the date of shipment to the date of payment from the customer. Because the financing costs are incurred exclusively on export sales, the respondent asserts that the costs should not be included in the COP calculation. As support respondents cite *AK Steel Corp.* v. *United States,* Slip Op. 97–152, at 12 n. 2 (CIT November 14, 1997) which states ''when referring to the cost of producing the merchandise the statute plainly means the merchandise in question sold in the home market.''

Further, respondents contend that the petitioners argument that money is fungible does not justify the inclusion of these expenses in the COP and CV calculations. According to respondents, the Department does not recognize that all money is fungible, because it does not permit income from long-term assets or non-operating income to reduce financial costs. If all money was fungible such income would be used to reduce financial costs of production. In addition, respondents argue that if money is fungible there is no justification for including all financial expenses while including only some financial income, as in the instant case where income generated by foreign exchange gains related to accounts receivable has been excluded.

Petitioners contend that the Department properly included the financing costs under the fungibility principle. Petitioners claim that it's the Department's longstanding policy to treat interest expense as financial expenses not selling expenses. Petitioners assert that funds obtained from export sales financing could be used in producing the merchandise sold in the home market. Therefore, the Department appropriately included these costs in the calculation of COP and CV because they do relate to production of merchandise for all markets.

Further, petitioners argue that the Department properly excluded foreign exchange gains related to accounts receivable from the calculation of the financial expense ratio. According to petitioners, only foreign exchange gains and losses related to debt are relevant to the financial expense calculation. Thus, the foreign exchange gains generated from accounts receivable relate to sales transactions and were properly excluded from the financial expense ratio calculation.

Department's Position

We agree with petitioners that interest expense and foreign exchange losses incurred on advance financing for export sales should be included in the financial expense ratio calculation. The Department's longstanding practice recognizes the fungible nature of a company's invested capital resources (*i.e.,* debt and equity). This practice was upheld in *Camargo Correa Meais, S.A.* v. *United States,* 17 C.I.T. 897, 902 (August 13, 1993), where the court approved the Department's policy of recognizing the fungible nature of invested capital resources. In this case, we determined that the interest expense and foreign exchange losses incurred on the export financing represent financing activities of the entity. As noted by the petitioners, the funds received from using the accounts receivable as collateral may be used in any capacity the company decides, such as, in producing subject merchandise. Accordingly, the interest expense and foreign exchange losses incurred on these types of agreements are related to the companies' debt. Therefore, we have included both the expense and losses in the calculation of the financial expense ratio.

We disagree with respondents' argument that we should include foreign exchange gains related to accounts receivable as an offset to interest expense in the calculation of financial expenses. The Department typically includes in its calculation of COP and CV foreign exchange gains and losses resulting from transactions related to a company's manufacturing activities (*e.g.,* purchases of inputs). See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago, 63 FR 9177, 9181 (February 24, 1998). We do not consider exchange gains and losses resulting from sales transactions to be related to the manufacturing activities of the company. Thus, for the final determination we have disallowed foreign exchange gains related to accounts receivable as an offset to financial expenses.

Comment 22: Including Employee Profit Sharing Expenses in the G&A Expense Ratio

For the final determination, petitioners assert that the Department should recalculate USIMINAS/COSIPA's combined G&A expense ratio to include employee profit-sharing expenses. According to petitioners, the Department typically includes these expenses in the calculation of the COP. For example, petitioners cite the Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Sheet and Strip in Coils from France, 64 FR 30820, 30823 (June 8, 1999), in which the Department included similar profit-sharing costs in the calculation of COP.

USIMINAS/COSIPA did not comment on this issue.

Department's Position

We agree with petitioners that respondents' employee profit sharing expense should be included in the calculation of COP and CV. It is the Department's established practice to include this type of expense in the calculation of COP and CV. Because employee profit sharing is a cost of labor and it is an expense recognized within the POI it should be included in the reported cost in accordance with full absorption costing principle. See, e.g., Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Turkey, 63 FR 68429 (December 11, 1998). For the final determination we included USIMINAS' employee profit sharing expenses in the combined G&A expense rate calculation.

Comment 23: Idled-Assets

Petitioners argue that COSIPA did not include idled-asset depreciation expense as an element of its production costs. Petitioners assert that the Department has a longstanding practice of including depreciation on idled-assets in the reported costs, citing Final Results of Antidumping Duty Administrative Reviews; 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 20585, 20609 (April 27, 1998) (TRBs from Japan). As further support, petitioners cite, Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part; Silicon Metal From Brazil, 62 FR 1954, 1958 (January 14, 1997) where the Department adjusted the respondents depreciation expense stating ''fully absorbed costs, including idle-equipment depreciation expense for producing the subject merchandise should be included in the COP and CV.'' Thus, petitioners contend that in the final determination the Department should include the depreciation expense related to COSIPA's idled-assets in the reported costs.

COSIPA did not comment on this issue.

Department's Position

We agree with the petitioners that depreciation expense of idled-assets should be included in the COP and CV. It is the Department's practice to include in fully absorbed factory overhead the depreciation of equipment not in use or temporarily idled, notwithstanding home market accounting standards which may allow companies to refrain from doing so. See, TRBs from Japan. See also *NTN Bearing Corp. of America, et al., plaintiffs,* v. *United States,* Slip Op. 93–129 (CIT August 4, 1993), where the court upheld the Department's decision to include depreciation expenses for idled equipment. Accordingly, in the final determination we included the idled-asset depreciation expense in COSIPA's costs.

Comment 24: Write-Offs of Idled-Assets

During the POI, COSIPA wrote off certain production assets, but excluded the loss from write-offs from the reported COP and CV. Petitioners maintain that it is the Department's standard practice to include the costs related to write-offs of production assets in the reported costs, citing *Final Results of Antidumping Duty Administrative Review: Extruded Rubber Thread From Malaysia,* 61 FR 54767, 54772 (October 22, 1996) (Extruded Rubber Thread). Accordingly, Petitioners contend that in the final determination the Department should include the costs related to COSIPA's write-offs of production assets in the reported costs.

COSIPA argues that the Department should not include the costs related to write-offs of production assets in the reported costs because these assets were idled before and after the POI and are classified as ''non-operating costs'' under Brazilian GAAP. Respondent maintains that in Final Determination of Sales at Less Than Fair Value; Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Italy, 60 FR 31981, 31990 (June 19, 1995), the Department refused to include as a cost of production the cost of idled assets which ''relate clearly to discontinued operations from a prior period and are no longer productive assets.'' According to the respondent, the Department normally uses the last completed fiscal year of the POI to calculate the G&A expense ratio. Therefore, since a large portion of the written-off assets were idled before the POI and the remaining amount relates to assets idled in the first two months of the 1999 fiscal year these costs should not be included in the G&A expense ratio, which is calculated based on the 1998 fiscal year. As support, respondent cites the Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From Thailand, 60 FR 22557, 22560 (May 8, 1995). Further, the respondent asserts that if the Department decides to include the expense for the assets written-off in the numerator for calculating the G&A expense rate, then the Department should also include this amount in the denominator.

Department's Position

We disagree with the respondent. In accordance with past practice, the Department has included write-offs of the permanently idled assets in COP and CV. See, *e.g.,* Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Spain, 63 FR 40391, 40403 (July 29, 1998), wherein the Department included write-offs of permanently idled assets and related spare parts in the COP and CV. We do not consider write-offs of idled assets to be the type of expense we would exclude from the COP and CV. This equipment was related to the production operations of the company, the undepreciated value has never been charged against income, and it was expensed during the period of review. The loss realized from the assets written off is an actual expense to the company. Accordingly, the Department normally includes this type of equipment write-off in the calculation of COP and CV. See Extruded Rubber Thread., Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy, 60 FR 31981, 31990 (June 19, 1995); Final Results of Antidumping Duty Administrative Review: Certain Cut-To-Length Carbon Steel Plate from Germany, 61 FR 13834, 13836 (March 28, 1996); and Final Results of Antidumping Duty Administrative Review: High-Tenacity Rayon Filament Yarn from Germany, 59 FR 15897, 15899 (March 28, 1995).

The Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe case cited by the respondent is not controlling because during that investigation a gain or loss on the discontinued operations had yet to be recognized in the company's normal books and records. However, the notice did state that ''upon disposal of the assets, the gain or loss on the sales will be included on the respondent's income statement and we will include the gain or loss in COP/CV.'' In this case, we are including write-offs of equipment which were being recognized by the company during the POI.

Regarding respondent's argument concerning including the write-offs in both the numerator and denominator in calculating the G&A rate, we disagree. If the Department calculated the G&A expense ratio as respondent suggest, the result would distort the dumping analysis because we would be applying a ratio which includes write-offs in the denominator to a base (*i.e.,* COM) which does not include write-offs. In order to correctly reflect the G&A expenses incurred by respondents, the G&A ratio must be calculated using a COS figure that excludes write-offs and applied to a COM that excludes write-offs. This is consistent with the methodology used in the Notice of Final Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 63 FR 32833, 32837 (June 16, 1998) and the Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan, 63 FR 8910, 8933 (February 23, 1998).

Comment 25: Weighted-Average Cost by CONNUM

USIMINAS and COSIPA contend that for collapsing purposes the Department should use a single cost of manufacture and general expense ratio for each

company, calculate a dumping margin for each company, then weight-average the two margins to obtain a single dumping margin. Respondents make this assertion because the two companies: (1) Have separate production facilities, (2) are located in two different regions of Brazil, (3) are separately run on a day-to-day basis, (4) have different production costs, (5) possess different machinery and processes, and (6) maintain different cost accounting systems. Thus, given these differences it is unreasonable for the Department to expect either company to price its products above the other company's COP.

Further, respondents claim that the first court decision approving the Department's collapsing policy makes clear that it is limited to ''calculating a single dumping margin.'' According to respondents, the purpose for the policy was to protect against price manipulation. However, in the present case, the Department has allegedly extended the collapsing policy beyond the intended purpose of the policy for no reason.

Petitioners maintain that the Department has properly calculated a combined cost of manufacture and a combined G&A rate for USIMINAS and COSIPA. Petitioners contend that it is the Department's stated policy to treat collapsed companies as divisions of the same corporate entity, rather than as affiliated parties, for cost reporting purposes. See Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea, 63 FR 13170, 13185 (March 18, 1998). Petitioners counter respondent's argument against the use of a combined cost of manufacture by stating that USIMINAS is COSIPA's parent company and that the costs of the two companies are combined in the preparation of USIMINAS' consolidated financial statements. USIMINAS and COSIPA also produce essentially the same products and therefore the potential for cost and price manipulation exists.

Department's Position

We agree with the petitioners that it is the Department's standard practice to weight-average the collapsed entity's separate costs into a single COP. Section 351.401(f) of the regulations provides for special treatment of affiliated producers where the potential for manipulation of prices or production in an effort to evade antidumping duties imposed on the sale of subject merchandise exists. In accordance with this section of the regulations, we collapse all sales prices and production costs of the affiliated entities as if they were a single company with different production facilities. See, *e.g.,* Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy, 64 FR 6615, 6622 (February 10, 1999). See also Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea, 63 FR 13170, 13185 (March 18, 1998), wherein the Department weight-averaged the cost across all collapsed entities. Accordingly, in the final determination we calculated a combined cost of manufacture and a combined G&A rate for USIMINAS and COSIPA.

Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we are instructing Customs to continue to suspend liquidation of all entries of cold-rolled flat-rolled, carbon-quality steel products from Brazil that are entered, or withdrawn from warehouse, for consumption on or after August 12, 1999 (90 days prior to 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 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)
CSN	63.32
USIMINAS/COSIPA	46.68
All Others	46.68

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of 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 in antidumping 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: January 18, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–1850 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–852]

Notice of Antidumping Duty Order: Creatine Monohydrate From the People's Republic of China

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

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv, Rosa Jeong, or Ryan Langan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4207, (202) 482–3853, and (202) 482–1279, 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, all citations to the regulations of the Department of Commerce (''the Department'') are to 19 CFR part 351 (1998).

Scope of the Order

For purposes of this investigation, the product covered is creatine monohydrate, which is commonly referred to as ''creatine.'' The chemical name for creatine monohydrate is N-(aminoiminomethyl)-N-methylglycine monohydrate. The Chemical Abstracts Service (''CAS'') registry number for this product is 6020–87–7. Creatine monohydrate in its pure form is a white, tasteless, odorless powder, that is a naturally occurring metabolite found in muscle tissue. Creatine monohydrate is provided for in subheading 2925.20.90 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although

the HTSUS subheading and the CAS registry number are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Antidumping Duty Order

On January 28, 2000, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (''ITC'') notified the Department that a U.S. industry is ''materially injured,'' within the meaning of section 735(b)(1)(A) of the Act, by reason of less-than-fair-value imports of creatine monohydrate from the PRC. Therefore, the Department will direct the United States Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the subject merchandise exceeds the export price of the subject merchandise for all relevant entries of creatine monohydrate from the PRC, except for subject merchandise imported from Tianjin Tiancheng Pharmaceutical Co., Ltd. (''Tiancheng'') and Nantong Medicines and Health Products Import and Export Co., Ltd. (''Nantong''), which both received a zero final margin. Antidumping duties will be assessed on all unliquidated entries of creatine monohydrate from the People's Republic of China (''PRC'') (except entries from Tiancheng and Nantong) entered, or withdrawn from warehouse, for consumption on or after July 30, 1999, the date of publication of the Department's preliminary determination in the **Federal Register** (64 FR 41375). Furthermore, we will instruct Customs to refund all cash deposits, or bonds posted, for entries of subject merchandise from Tiancheng and Nantong.

The ITC further found that critical circumstances do not exist with respect to imports of the subject merchandise from the PRC. As a result, the Department will direct Customs officers to refund any cash deposits made, or bonds posted, pursuant to the Department's affirmative determination of critical circumstances on merchandise produced/exported by Shanghai Freemen International Trading Co., Ltd., Shanghai Greenmen International Trading Co., Ltd. and by any companies subject to the PRC-wide rate which were entered on or after May 1, 1999 (which is 90 days prior to the Department's preliminary determination publication date of July 30, 1999) and before July 30, 1999.

On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the weighted-average antidumping duty margins as noted below:

Exporter/manufacturer	Weighted-average margin percentage
Blue Science International Trading (Shanghai) Co., Ltd.	58.10
Nantong Medicines and Health Products Import and Export Co., Ltd.	0.00
Shanghai Desano International Trading Co., Ltd.	24.84
Shanghai Freemen International Trading Co., Ltd. and Shanghai Greenmen International Trading Co., Ltd.	44.43
Suzhou Sanjian Fine Chemical Co., Ltd.	50.32
Tianjin Tiancheng Pharmaceutical Co., Ltd.	0.00
PRC-wide rate	153.70

This notice constitutes the antidumping duty order with respect to creatine monohydrate from the PRC, pursuant to section 735(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with sections 736(a) and 19 CFR 351.211.

Dated: January 31, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2582 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–403–801]

Final Results of Expedited Sunset Review: Fresh and Chilled Atlantic Salmon From Norway

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

ACTION: Notice of Final Results of Expedited Sunset Review: Fresh and Chilled Atlantic Salmon from Norway.

SUMMARY: On July 1, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway (64 FR 35588) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties, and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited (120 day) review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick 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, D.C. 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

EFFECTIVE DATE: February 4, 2000.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''), and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope

The product covered by this order is the species Atlantic salmon (Salmon Salar) marketed as specified herein; the order excludes all other species of salmon: Danube salmon, Chinook (also called ''king'' or ''quinnat''), Coho (''silver''), Sockeye (''redfish'' or ''blueback''), Humpback (''pink'') and Chum (''dog''). Atlantic salmon is a whole or nearly-whole fish, typically (but not necessarily) marketed gutted, and cleaned, with the head on. The subject merchandise is typically packed in fresh-water ice (''chilled''). Excluded from the subject merchandise are fillets, steaks and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Atlantic salmon was classifiable under item number 110.2045 of the

Tariff Schedules of the United States Annotated (''TSUSA''). Prior to January 1, 1990, Atlantic salmon was provided for under item numbers 0302.0060.8 and 0302.12.0065.3 of the Harmonized Tariff Schedule of the United States (''HTSUS'') (56 FR 7678, February 25, 1991). Currently, it is provided for under HTSUS item number 0302.12.00.02.09. The subheadings above are provided for convenience and customs purposes. The written description remains dispositive.

There have been no scope rulings for the subject order. There was one changed circumstances determination in which the Department affirmed that Kinn Salmon AS was the successor-in-interest to Skaarfish Group A/S.[1]

History of the Order

In the February 25, 1991, final determination in the antidumping duty investigation, covering the period September 1, 1989, through February 28, 1990, the Department determined the following weighted-average dumping margins for respondent companies (56 FR 7661):

Salmonor A/S	18.39
Sea Star International A/S	24.61
Skaarfish Mowi A/S	15.65
Fremstad Group A/S	21.51
Domstein and Co.	31.81
Saga A/S	26.55
Chr. Bjelland Seafoods A/S	19.96
Hallvard Leroy A/S	31.81
All others	23.80

Since the April 12, 1991, issuance of the antidumping duty order, the Department has completed four administrative reviews on imports of the subject merchandise from Norway (56 FR 14920). In the first administrative review, covering the period October 3, 1990, through March 31, 1992, Skaarfish A/S (''Skaarfish'') and ''all others'' were assigned margins of 2.15 percent and 23.80 percent, respectively.[2]

The second administrative review, conducted at the request of the Coalition for Fair Atlantic Salmon Trade, covered 85 exporters during the period April 1, 1992, through March 31, 1993, and the Department found that 31 of the 85 reviewed firms did not ship subject merchandise during the period of review (''POR''). Of those 31 firms, 28 had not been previously reviewed, and the Department assigned to them the original ''all others'' rate of 23.80 percent. The Department assigned the remaining three non-shipper respondents—Domstein Salmon A/S, Hallvard Leroy A/S and Saga A/S—their rates from the original investigation. The 52 respondent companies that failed to respond were assigned a margin of 31.91 percent.[3]

In the third administrative review, covering the period April 1, 1993, through March 31, 1994, where the Department reviewed 24 exporters, the dumping margin changed for two exporters, Skaarfish and Norwegian Salmon A/S (''Norwegian Salmon''), to 2.28 percent and 13.88 percent, respectively.[4]

In the fourth administrative review, covering the period April 1, 1997, through March 31, 1998, the Department reviewed one exporter, Nornir Group A/S, to which it assigned a margin of 31.81 percent.[5]

Additionally, the Department completed one new shipper review, covering Nordic Group A/L (''Nordic''), from May 1, 1995, through October 31, 1995.[6]

Background

On July 1, 1999, the Department initiated a sunset review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway (64 FR 35588), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of domestic interested parties within the deadline (July 15, 1999) specified in section 351.218(d)(1)(i) of the *Sunset Regulations.* Subsequently, we received a complete substantive response to the notice of initiation on August 2, 1999, on behalf of the Coalition for Fair Atlantic Salmon Trade (''FAST'') and the following individual members of FAST: Atlantic Salmon of Maine, Connors Aquaculture, Inc., DE Salmon, Inc., Island Aquaculture Corp., Maine Aqua Foods, Inc., Maine Coast Nordic, Inc., Treats Island Fisheries, and Trumpet Island Salmon Farm, Inc. (collectively, ''domestic interested parties''). As U.S. producers of the subject merchandise and a business association whose members are U.S. producers of the subject merchandise, the domestic interested parties claim interested-party status under sections 771(9)(C) and (F) of the Act. Without a substantive response from respondent interested parties, the Department, pursuant to 19 CFR 351.218(e)(1)(ii)(C), determined to conduct an expedited, 120-day review of this order.

In accordance with 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.,* an order in effect on January 1, 1995). On October 18, 1999, the Department determined that the sunset review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway is extraordinarily complicated, and, therefore, we extended the time limit for completion of the final results of this review until not later than January 27, 2000, in accordance with section 751(c)(5)(B) of the Act.[7]

Although the deadline for this determination was originally January 27, 2000, due to the Federal Government shutdown on January 25 and 26, 2000, resulting from inclement weather, the timeframe for issuing this determination has been extended by one day.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted the review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent administrative reviews, and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and shall provide to the Commission the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department discusses below its determinations concerning continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the antidumping duty

[1] *See Fresh and Chilled Atlantic Salmon From Norway; Final Results of Changed Circumstance Antidumping Duty Administrative Review*, 64 FR 9979 (March 1, 1999).

[2] *See Fresh and Chilled Atlantic Salmon From Norway; Final Results of Antidumping Duty Administrative Review*, 58 FR 37912 (July 14, 1993), and *Fresh and Chilled Atlantic Salmon From Norway; Amended Final Results of Antidumping Duty Administrative Review*, 60 FR 11070 (March 1, 1995).

[3] *See Fresh and Chilled Atlantic Salmon From Norway; Final Results of Antidumping Duty Administrative Review*, 59 FR 12242 (March 16, 1994).

[4] *See Fresh and Chilled Atlantic Salmon From Norway; Final Results of Antidumping Duty Administrative Review*, 61 FR 65522 (December 13, 1996); and *Fresh and Chilled Atlantic Salmon From Norway; Amended Final Results of Antidumping Duty Administrative Review*, 62 FR 44255 (August 20, 1995).

[5] *See Fresh and Chilled Atlantic Salmon From Norway; Final Results of Antidumping Duty Administrative Review*, 64 FR 17616 (April 12, 1999).

[6] *See Fresh and Chilled Atlantic Salmon From Norway; Final results of New Shipper Antidumping Duty Administrative Review,* 62 FR 1430 (January 10, 1997).

[7] *See Extension of Time Limit for Final Results of Five-Year Reviews,* 64 FR 62167 (November 16, 1999).

order revoked. In addition, the domestic interested parties' comments on each of these issues are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin,* the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2 of the *Sunset Policy Bulletin*). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3 of the *Sunset Policy Bulletin*).

In addition to consideration of the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations,* this constitutes a waiver of participation.

The domestic interested parties argue that revocation of the antidumping duty order would result in continued dumping by Norwegian producers/exporters and material injury to the U.S. industry (*see* August 2, 1999, Substantive Response of domestic interested parties at 16). With respect to declining import volumes, the domestic interested parties assert that the imposition of antidumping duties has significantly reduced the volume of U.S. imports of subject merchandise from Norway. *Id.* at 18. Citing U.S. Census Bureau statistics, they note that the average import volume from Norway in the three years following the imposition of the order was 95.7 percent lower than average import volumes in the three years prior to the order. *Id.*

As discussed in section II.A.3 of the *Sunset Policy Bulletin,* the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. With the exception of Nordic, which received a 0.00 percent margin in a new shipper review (62 FR 1430; January 10, 1997), dumping margins above *de minimis* have existed throughout the life of the order, and continue to exist, for shipments of subject merchandise from all other Norwegian producers/exporters investigated by the Department.

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the 1991 order. By examining U.S. Census Bureau IM146 reports, the Department finds that, consistent with import statistics provided by domestic interested parties, imports of the subject merchandise from Norway declined significantly following the issuance of the antidumping duty order, and continue to remain at very low levels.

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Given that dumping has continued at levels above *de minimis* after the issuance of the order, import volumes for subject merchandise have significantly declined, respondent interested parties have waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin,* the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation (*see* section II.B.1 of the *Sunset Policy Bulletin*). Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations (*see* sections II.B.2 and 3 of the *Sunset Policy Bulletin*).

The domestic interested parties assert that the Department should provide to the Commission the margins from the original investigation for Skaarfish Mowi A/S (now Kinn Salmon A/S), Domstein, Saga, Hallvard Leroy A/S as the rates likely to prevail if the order were revoked (*see* August 2, 1999, Substantive Response of domestic interested parties at 23). Further, domestic interested parties identify Sea Star International, Fremstad Group, Chr. Bjelland, Salmonor A/S and Nornir Group A/S as companies from the original investigation that have chosen to increase dumping. Domestic interested parties recommend that the Department assign to these companies a margin of 31.81 percent from the 1992/93 review because these companies would be likely to dump at least to the same degree without the discipline of the order. *Id.* at 24. For Norwegian producers/exporters that were not parties to the original investigation, but were assigned margins in the Department's second and third administrative reviews, the domestic interested parties assert that the Department should assign to these companies the margins from those reviews. *Id.* at 25.

According to the *Sunset Policy Bulletin,* a company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order (*see* section II.B.2 of the *Sunset Policy Bulletin*). The *Sunset Policy Bulletin* notes that the Department will normally consider market share; however, absent information on relative market share, and absent argument to the contrary, we have looked at import volumes in the present case.

As discussed in the *Sunset Policy Bulletin,* a more recent rate may be appropriate where a company chooses to increase dumping in order to increase or maintain market share. According to the U.S. Census Bureau IM146 reports, however, overall imports have decreased. Without company-specific information or argument related to increasing exports corresponding to increased dumping, we have no basis to determine that a more recent rate is more probative. Therefore, we will report to the Commission the company-specific and ''all others'' rates as contained in the Final Results of Review section of this notice, because these rates reflect the behavior of producers/

exporters without the discipline of the order.

Final Results of Review

As a result of the review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin of dumping (percent)
Salmonar A/S	18.39
Sea Start International	24.61
Kinn Salmon A/S (formerly, Skaarfish)	15.65
Fremstad Group (A/S)	21.51
Domstein and Co	31.81
Saga A/S	26.55
Chr. Bjelland	19.96
Hallvard Leroy (A/S)	31.81
All others	23.80

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These five-year (''sunset'') reviews and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 28, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2591 Filed 2–3–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–827]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Mexico

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

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Russell Morris or John R. Brinkmann, at (202) 482–1775 or (202) 482–4126, respectively; AD/CVD Enforcement II, Office VI, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act 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 refer to the regulations codified at 19 CFR part 351 (April 1999).

Preliminary Determination

We preliminarily determine that certain large diameter carbon and alloy seamless standard, line, and pressure pipe (seamless pipe) from Mexico are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

Case History

This investigation was initiated on July 20, 1999.[1] *See Initiation of Antidumping Duty Investigations: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and Mexico and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from the Czech Republic, Japan, the Republic of South Africa and Romania*, 64 FR 40825 (July 28, 1999) (*Initiation Notice*). Since the initiation of the investigation, the following events occurred:

On August 12, 1999, the Department issued its antidumping questionnaire to Tubos de Acero de Mexico, S.A. (TAMSA), the sole Mexican producer of the subject merchandise.

On August 23, 1999, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to each of these antidumping investigations are materially injuring the U.S. industry. *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, Japan, Mexico, Romania, and South Africa*, 64 FR 46953 (August 27, 1999).

We issued supplemental questionnaires where appropriate. Responses to those supplemental questionnaires were timely filed between November 1, 1999 and November 16, 1999, and we have incorporated the information provided in those responses into this preliminary determination.

On November 17, 1999, the Department concluded, consistent with section 733(c)(1)(B) of the Act, that the Mexican investigation of large diameter pipe is extraordinarily complicated, and that additional time was necessary to issue the preliminary determination. Consequently, we extended the deadline for the preliminary determination to January 26, 2000. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Small and Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From the Czech Republic, Romania and Mexico*, 64 FR 66168 (November 24, 1999).

Although the deadline for this determination was originally January 26, 2000, due to the Federal Government shutdown on January 25 and 26, 2000, resulting from inclement weather, the time frame for issuing this determination has been extended by two days.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On January 14, 2000, TAMSA requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the affirmative

[1] The petitioners in this investigation are Gulf States Tube, a division of Vision Metals, Inc.; Koppel Steel Corporation; Sharon Tube Corporation; USS/Kobe Steel Corporation; United Steel Workers of America; and U.S. Steel Group, a unit of USX Corporation, hereinafter referred to as Petitioners.

preliminary determination in the **Federal Register**. TAMSA also included a request to extend the provisional measures to not more than six months. Therefore, in accordance with 19 CFR 351.210(b), because (1) our determination is affirmative; (2) the requesting exporter accounts for a significant portion of exports of the subject merchandise; and (3) no compelling reason for denial exists, we are granting the respondent's request and are postponing the final determination until not later than 135 days after the date of the publication of the preliminary determination. Suspension of liquidation will be extended accordingly.

Period of Investigation

The period of this investigation (POI) comprises TAMSA's four most recent fiscal quarters prior to the filing of the petition, (*i.e.*, April 1, 1998, through March 31, 1999).

Scope of Investigation [2]

For purposes of this investigation, the products covered are large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials (ASTM) A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335 (grades P1, P2, P11, P12, P21 and P22 only), ASTM A–589, ASTM A–795, and the American Petroleum Institute (API) 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of this investigation are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this investigation are currently classifiable under the subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.31.60.50, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.60, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States (HTSUS).

Specifications, Characteristics, and Uses: Large diameter seamless pipe is used primarily for line applications such as oil, gas, or water pipeline, or utility distribution systems. Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes in large diameters is for use as oil and gas distribution lines for commercial applications. A more minor application for large diameter seamless pipes is for use in pressure piping systems by refineries, petrochemical plants, and chemical plants, as well as in power generation plants and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335 (grades P1, P2, P11, P12, P21 and P22 only), ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from the scope of this investigation are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335 (grades P1, P2, P11, P12, P21 and P22 only), ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition,

[2] On September 3, 1999, the petitioners requested that the scope of the investigations be amended to exclude certain products made to the A–335 specification. This change is reflected in the current scope.

finished and unfinished oil country tubular goods (OCTG) are excluded from the scope of this investigation, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise under investigation is dispositive.

Class or Kind

From August through November 1999, the Department received submissions from importers, respondents, and consumers in the companion investigations involving small and large diameter seamless pipe from Japan, requesting that the subject merchandise be considered more than one class or kind. Specifically, those parties requested that the Department subdivide each of these investigations into the following separate classes or kinds of merchandise: (1) Commodity grade carbon seamless standard, line and pressure pipe; (2) alloy seamless pipe; and (3) high-strength seamless line pipe. On November 8, 1999, the petitioners rebutted these arguments. We have preliminarily determined that there is a single class or kind of merchandise for small diameter pipe and another distinct single class or kind of merchandise for large diameter pipe. For further discussion on this topic, including the comments received, see the *Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and the Republic of South Africa*, 64 FR 69721 (December 14, 1999).

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by TAMSA covered by the description in the *Scope of Investigation* section, above, and sold in Mexico during the POI, are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on six criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: specification/grade, manufacturing process, outside diameter, wall thickness, surface finish, and end-finish. 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 as listed above.

Fair Value Comparisons

To determine whether sales of seamless pipe products from Mexico were made in the United States at 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. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEPs for comparison to weighted-average NVs.

Constructed Export Price

In accordance with section 772 of the Act, we calculated a CEP for each sale. 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.

When sales are made prior to importation through an affiliated U.S. sales agent to an unaffiliated customer in the United States, it is the Department's practice to examine several criteria in order to determine whether or not the sales are CEP or export price (EP) sales. Those criteria are: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent was limited to that of a ''processor of sales-related documentation'' and a ''communications link'' between the exporter and the unaffiliated U.S. buyer. *See, e.g., Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review,* 64 FR 26934, 26941 (May 18, 1999); and *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews (Canadian Steel),* 63 FR 12725, 12738 (March 16, 1998). In the Canadian Steel case, the Department clarified its interpretation of the third prong of this test, as follows:

> Where the factors indicate that the activities of the U.S. affiliate are ancillary to the sale (*e.g.,* arranging transportation or customs clearance, invoicing), we treat the transactions as EP sales. Where the U.S. affiliate has more than an incidental involvement in making sales (*e.g.,* solicits sales, negotiates contracts or prices) or providing customer support, we treat the transactions as CEP sales.
> *Canadian Steel,* 63 FR at 12738.

For sales of seamless pipe products during the POI, TAMSA utilizes the services of two affiliated selling agents in the United States, Siderca Corporation (Siderca) and another affiliate, hereinafter referred to as Company A (the name of Company A is business proprietary information). TAMSA reported, as EP transactions, its seamless pipe sales for which Siderca and Company A served as the importers of record and which were shipped directly from Mexico to the unaffiliated U.S. customer. Conversely, TAMSA reported as CEP transactions the subject merchandise that was stored in Company A's warehouse and later sold out of Company A's inventory. After careful examination of the record, the Department has preliminarily determined that both selling agents, Siderca and Company A, act as more than simply a ''processor of sales-related documentation'' or ''a communication link.'' As a result of our analysis, we are reclassifying TAMSA's reported EP sales as CEP sales, as defined in section 772(b) of the Act. Specifically, both Siderca and Company A solicit sales, negotiate the price, obtain customer approval, prepare sales documentation (*i.e.,* invoices), receive payment and forward payment to TAMSA. For a further discussion, see Memorandum *Whether to Reclassify Certain EP Sales by Tubos de Acero de Mexico, S.A in the U.S. Market as CEP Sales,* dated January 28, 2000, public version, on file in the Central Record Unit (CRU), Room B–099, of the Main Commerce Building.

We based CEP on the packed, cost-insurance-freight (CIF), ex-factory, free-on-board (FOB), or delivered prices to the first unaffiliated customer in the United States, as appropriate. We reduced these prices for discounts and rebates, where appropriate.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from the plant or warehouse to the port of exportation, foreign brokerage, handling and loading charges, international freight, marine insurance, U.S. duties and U.S. inland freight expenses (from port to the customer).

In accordance with section 772(d)(1) of the Act, where appropriate, we deducted from the starting price those

selling expenses that related to economic activity in the United States, including direct selling expenses (credit costs, warehousing, and warranties), indirect selling expenses and indirect selling expenses of the affiliated selling agents. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act. *See Preliminary Calculation Memorandum,* dated January 28, 2000, public version on file in the CRU.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities, and that there is no particular market situation that prevents a proper comparison with the U.S. price. The statute contemplates that quantities normally will be considered insufficient if they are less than five percent of the aggregate quantity of sales of the subject merchandise to the United States.

TAMSA had a viable home market for seamless pipe products, and reported home market sales data for purposes of the calculation of NV.

In deriving NV, we made certain adjustments to price as detailed in the *Calculation of Normal Value Based on Home-Market Prices* section of this notice, below.

B. Arm's Length Test

Sales to affiliated customers for consumption in the home market which were determined not to be at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403 and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's length. *See Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan,* 62 FR 60472, 60478 (November 10, 1997) and *Antidumping Duties; Countervailing Duties: Final Rule (Antidumping Duties),* 62 FR 27295, 27355–56 (May 19, 1997). We included in our NV calculations those sales to affiliated customers that passed the arm's-length test in our analysis. See 19 CFR 351.403; *Antidumping Duties,* 62 FR at 27355–56.

C. Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, at 829–831 (1994), to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales.

To determine whether comparison market sales were at different LOTs we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's length) customers. If the comparison-market sales were at a different LOT and the differences affected 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 made a LOT adjustment under section 773(a)(7)(A) of the Act, where appropriate.

In accordance with the Act, we examined the chain of distribution and the selling activities associated with sales reported by TAMSA to its two customer categories in the home market. TAMSA reported three distinct channels of distribution in the home market: (1) Sales to end users; (2) sales to distributors; and (3) sales to one specific end user which received additional services pursuant to a just-in-time agreement. We found that the channels of distribution through the distributors and the first referenced end users differed significantly from the channel to the end user that received additional services as enumerated in the just-in-time agreement. Based on our overall analysis, we found that the home market sales constituted two LOTs: (1) Distributors and end users (LOT 1), and (2) the end user that received additional services pursuant to the just-in-time agreement (LOT 2).

We examined the sales from TAMSA to the two affiliated resellers (*i.e.,* at the constructed, or CEP LOT) and found only one LOT in the U.S. market. This CEP LOT was comparable to the home market LOT 1. For the vast majority of comparisons, we were able to determine NV based on sales of identical merchandise made at the same LOT as the U.S. CEP sales. Accordingly, because we compared U.S. to home market sales at the same LOT, no LOT adjustment was warranted under section 773(a)(7)(A) of the Act. Where there were no identical comparison market sales at the same LOT as the U.S. CEP sales, we compared U.S. sales to identical merchandise sold at the other LOT in the home market and made a LOT adjustment under section 773(a)(7)(A) of the Act. For a detailed description of our LOT analysis and adjustment methodology for these preliminary results, see the January 28, 2000, *Antidumping Investigation of Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico: Preliminary Level of Trade Findings Memorandum,* on file in the CRU.

We note that the U.S. Court of International Trade (CIT) has held that the Department's practice of determining LOTs for CEP transactions after CEP deductions is an impermissible interpretation of section 772(d) of the Act. *See Borden, Inc.,* v. *United States,* 4 F. Supp. 2d 1221, 1241–42 (CIT 1998) (*Borden*). The Department believes, however, that its practice is in full compliance with the statute. On June 4, 1999, the CIT entered final judgment in *Borden* on the LOT issue. *See Borden, Inc.,* v. *United States,* Court No. 96–08–01970, Slip Op. 99–50 (CIT June 4, 1999). The government has filed an appeal of *Borden* which is pending before the U.S. Court of Appeals for the Federal Circuit. Consequently, 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 Department's regulations at § 351.412.

D. Calculation of Normal Value Based on Home-Market Prices

We calculated NV based on ex-factory or delivered prices. Pursuant to 19 CFR 351.401(c), we adjusted the gross unit price for discounts and rebates to arrive at the ''starting price'' for NV. We made deductions from the starting price for inland freight, warehousing, and inland insurance. In addition, we made circumstance-of-sale (COS) adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. These included imputed credit expenses, warranty expenses, commissions, interest revenue, and performance bond fees. In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs. *See Preliminary Calculation Memorandum,* dated January 28, 2000, public version on file in the CRU.

In accordance with § 351.410(e) of the Department's regulations, where commissions are incurred in one market

(in this case the home market), but not in the other, we make an allowance for indirect selling expenses in the other market up to the amount of the commissions granted. In this case, because commissions were paid in the home market, but not in the United States, and thus were deducted from the home market price, we made an adjustment for U.S. indirect selling expenses incurred in Mexico which were associated with sales of the subject merchandise. We made such an adjustment by adding the U.S. indirect selling expenses, up to the amount of the home market commissions, to home market price rather than subtracting them from the CEP.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773(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.

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing Customs to suspend liquidation of all entries of large diameter seamless pipe products from Mexico, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing Customs to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice. The weighted-average dumping margins are provided below.

Manufacturer/exporter	Margin (percent)
TAMSA	4.60
All others	4.60

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by this determination are materially injuring, or threaten material injury to, the United States industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than March 16, 2000. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination no later than 135 days after the date of publication of this notice in the **Federal Register**.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: January 28, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2580 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818, A–489–805]

Certain Pasta From Italy and Turkey: Extension of Preliminary Results of Antidumping Duty Administrative Reviews

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

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder at (202) 482–2305, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary results within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results.

Background

On August 30, 1999, the Department published a notice of initiation of the administrative reviews of the antidumping duty orders on certain pasta from Italy and Turkey, covering the period July 1, 1998 to June 30, 1999 (64 FR 47167). The preliminary results are currently due no later than April 3, 2000.

Extension of Preliminary Results of Reviews

We determine that it is not practicable to complete the preliminary results of these reviews within the original time limits. Therefore, we are extending the time limits for completion of the preliminary results until no later than June 30, 2000. *See* Decision Memorandum from John Brinkmann to Holly A. Kuga, dated January 31, 2000, which is on file in the Central Records

Unit, B–099 of the main Commerce Building. We intend to issue the final results no later than 120 days after the publication of the notice of preliminary results of these reviews.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: January 31, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 00–2586 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Final Results of Expedited Sunset Review: Polyethylene Terephthalate Film From Korea

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

ACTION: Notice of Final Result of Expedited Sunset Review: Polyethylene Terephthalate Film from Korea.

SUMMARY: On July 1, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on polethylene terephthalate (''PET'') film from Korea pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of a domestic interested party, and inadequate response from respondent interested parties, the Department determined to conduct an expedited sunset review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW, Washington, DC 20230; telephone (202) 482–5050 or (202) 482–1560, respectively.

EFFECTIVE DATE: February 4, 2000.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*'') and 19 CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope

The merchandise covered by this antidumping duty order includes all gauges of raw pre-treated, or primed polythylene terephthalate film, sheet, and strip, whether extruded or co-extruded. The films excluded from this antidumping duty order are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order. PET film is currently classifiable under Harmonized Tariff Schedule (''HTS'') item number 3920.62.00.00. The HTS item number is provided for convenience and U.S. Customs purposes. The written description remains dispositive.

History of the Order

On June 5, 1991, the Department published the antidumping duty order and amended final determination of sales at less than fair value (''LTFV'') on PET film from Korea. *See Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea* as amended (56 FR 25669, June 5, 1991). On September 26, 1997 (62 FR 50557) the Department published *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Notice of Final Court Decision and Amended Final Determination of Antidumping Duty Investigation*. In the notice of final court decision and amended final determination of the antidumping duty LTFV investigation, based on our determination on remand, SKC Limited and SKC America, Inc. (collectively ''SKC'') was assigned a margin of 13.92 percent ad valorem, Cheil Synthetics Incorporated (''Cheil''), a margin of 36.33 percent ad valorem, and the ''all others'' margin was 21.5 percent.

The Department has completed six administrative reviews of PET film since the issuance of the antidumping duty order.[1] On September 26, 1997, the Department issued the *Final Results of Changed Circumstances Antidumping Duty Administration Review,* 63 FR 3703 (January 26, 1998), in which the Department determined that Saehan Industries, Inc. (''Saehan'') was the successor firm to Cheil. The Department has not found duty absorption with respect to this order.

The order remains in effect for all producers and exporters of PET film from Korea, except for Cheil and Kolon, for which the Department revoked the antidumping duty order.[2]

Background

On July 1, 1999, the Department initiated a sunset review of the antidumping duty order on PET film from Korea (64 FR 35588) pursuant to section 751(c) of the Act. On July 15, 1999, the Department received a Notice

[1] *See* 1.a. *Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 60 FR 42835 (August 17, 1995), as amended *Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Amended Final Results of Antidumping Duty Administrative Review,* 61 FR 53997 (February 12, 1996).

2.b. *Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews and Notice of Revocation in Part,* 61 FR 35177 (July 5, 1996).

3.c. *Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review and Notice of Revocation in Part,* 61 FR 58374 (November 14, 1996), as amended 62 FR 1735 (January 13, 1997).

4.d. *Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 62 FR 38064 (July 16, 1997), as amended 62 FR 45222 (August 26, 1997).

5.e. *Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 63 FR 37334 (July 10, 1998), and *Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Notice of Final Court Decision and Amended Final Results of Antidumping Duty Administrative Review,* 63 FR 52241 (September 30, 1998).

6.f. *Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke in Part;* 64 FR 62648 (November 17, 1999).

[2] *See Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews and Notice of Revocation in Part,* 61 FR 35177 (July 5, 1996), and *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Review and Notice of Revocation in Part,* 61 FR 58374 (November 14, 1996).

of Intent to Participate on behalf of E.I. Dupont de Nemours & Company (''DuPont''), and Mitsubishi Polyester Film, LLC (''MFA''), (collectively ''the domestic interested parties''), within the deadline specified in § 351.218(d)(1)(i) of the *Sunset Regulations*. On August 2, 1999, we received a complete substantive response to the notice of initiation from the domestic interested parties within the deadline specified in § 351.218(d)(3)(i) of the *Sunset Regulations*. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as U.S. producers of a domestic like product. Dupont states that it was the petitioner in the original investigation and has been a participant in all completed administrative reviews of this antidumping duty order. MFA states that it purchased U.S. PET film operations from the Hoechst Celanese Corporation. Hoechst Celanese Corporation was also a petitioner in the original investigation and an active participant in prior administrative reviews.

Although we did not receive a substantive response from any respondent interested party, on August 2, 1999, we received a waiver of participation from SKC. Co., Ltd. and SKC America, Inc. (collectively ''SKC''). Pursuant to 19 CFR 351.218(e)(1)(ii)(C), we determined to conduct an expedited sunset review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.,* an order in effect on January 1, 1995). Therefore, on November 16, 1999, the Department determined that the sunset review of the antidumping duty order on PET film from Korea is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than January 27, 2000, in accordance with section 751(c)(5)(B) of the Act.[3] Although the deadline for this determination was originally January 27, 2000, due to the Federal Government shutdown on January 25 and 26, 2000, resulting from inclement weather, the time-frame for issuing this determination has been extended by two days.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c)(1) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order. Pursuant to section 752(c)(3) of the Act, the Department shall provide to the International Trade Commission (''the Commission'') the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, the petitioners' comments with respect to the continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3 of the *Sunset Policy Bulletin*).

In addition to consideration of the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. The Department received a waiver of participation from SKC. In addition, the Department did not receive a substantive response from any respondent interested party. Pursuant to § 351.218(d)(2)(iii) of the *Sunset Regulations,* lack of substantive response from respondent interested parties also constitutes a waiver of participation.

The petitioners argue that revocation of the antidumping duty order would likely lead to continuation of dumping by producers and exporters of PET film from Korea based on the continuation of dumping since the original investigation. The petitioners assert that from 1990 to 1995 dumping margins remained above *de minimis* (*see* the petitioners August 2, 1999, Substantive Response at 6). Additionally, although in some instances (between 1996 and 1998) dumping margins fell below *de minimis*, these *de minimis* dumping margins do not establish that producers and exporters of the subject merchandise have ceased dumping. Instead, petitioners argue that the most recent preliminary results of administrative review provide a strong indication that one producer, has resumed dumping (FR 41380 (July 30, 1999)). Further petitioners assert that the other producer that was assessed *de minimis* dumping margins in the past, STC, did not make any sales or shipments during the subsequent two reviews. Petitioners argue that this suggests that STC is unable to remain competitive in the U.S. market with the discipline of the order in place.

With respect to import volume, the domestic interested parties assert that, based on the Department's *Sunset Policy Bulletin*, an examination of import volumes by the Department is not necessary to make a likelihood determination given that dumping continues. However, the petitioners state that should the Department examine import statistics, the Department will find that import volumes are highly inconclusive. Using official import statistics for HTS subheading 3920.62.00.00, the petitioners argue that prior to the issuance of the antidumping duty order (between 1989 and 1990) the quantity of imports of the subject merchandise to the United States grew by 1,265.15 percent (*see* the petitioners August 2, 1999, Substantive Response at 7, and Exhibit 2). The petitioners note that after the imposition of the antidumping duty order, the level of import growth dropped. The petitioners maintain that, although between 1991 and 1992 import volume increased, the increase was only

[3] *See Extension of Time Limit for Final Results of Five-Year Reviews,* 64 FR 62167 (November 16, 1999).

by 62.93 percent, compared to the 1,265.15 percent increase between 1989 and 1990. In addition, by 1998, imports declined by 5.57 percent. Further, the petitioners assert that over the history of the order, absolute import volumes have fluctuated significantly. *See* the petitioners August 2, 1999 Substantive Response at 7 & 8, and Exhibit 1.

The petitioners, also argue that the exchange rate movements (won/$) can be relevant to a determination of likelihood of future dumping because the movement in the exchange rate can mask the extent of dumping and affect the Department's dumping margin calculations. *See* the domestic interested parties Substantive Response at 8. Moreover, petitioners argue that the Department should consider the change in producer and importers behavior when making its likelihood determination. Petitioners assert that a major portion of the margins calculated in the original investigation was attributable to certain types of PET film products, such as off-grade film. Petitioners contend that producers and importers decreased their shipments of off-grade material in order to obtain lower dumping margins. Once the order is removed petitioners argue that producers and importers can resume easily their shipment of off-grade material which would result in dumping at a significant level.

As discussed above in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed.

After examining the history of this antidumping duty order, we find that dumping margins above *de minimis* levels continue to exist for at least some producers. Given that dumping margins continue to exist, respondent interested parties waived their right to participate in the instant review, and absent argument and evidence to the contrary, the Department determines that dumping would likely continue or recur if the order on PET film from Korea were revoked. Because we based our determination on continuation of dumping margins above *de minimis*, we did not consider import volumes and the other factors cited by the petitioners.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, the Department will provide to the Commission the company-specific margins from the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order. Further, for companies not specifically investigated, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the all others rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The petitioners argue that, consistent with the SAA, the Department should report to the Commission the rates from the original investigation as the magnitude of the margin likely to prevail if the antidumping duty order is revoked, because they are the only calculated rates that reflect the behavior of exporters without the discipline of the order in place. In addition, for companies that did not participate in the investigation, or for companies that did not begin shipping until after the order was issued, the petitioners argue that the Department should use the ''all others'' rate from the investigation.

We agree with the petitioners that the dumping margins from the original investigation are representative of Korean producers and exporters behavior should the order be revoked because they reflect the behavior of producers and exporters without the discipline of the order. Therefore, absent argument or evidence to the contrary, we will report to the Commission margins contained in the Final Results of Review of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated below.

Manufacturer/exporter	Margin (percent)
SKC Limited and SKC America, Inc.(SKC).	13.92.
Saehan (formerly Cheil Synthetics, Inc.).	Revoked.
Kohn Industries. (Kohn) ...	Revoked.
All others	21.50.

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 31, 2000.

Holly Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2590 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–805]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania

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

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Charles Riggle, Group II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4162, (202) 482–0650, 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 (the Department) regulations are to the regulations at 19 CFR part 351 (April 1, 1999).

Preliminary Determination

We preliminarily determine that certain small diameter carbon and alloy seamless standard, line and pressure pipe (seamless pipe) from Romania is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on July 20, 1999, based on a petition filed by the Koppel Steel Corporation, Gulf States Tube (a division of Vision Metals), Sharon Tube, U.S. Steel Group (a unit of USX Corporation), and the United Steelworkers of America (collectively, petitioners). *See Initiation of Antidumping Duty Investigations: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and Mexico; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From the Czech Republic, Japan, the Republic of South Africa and Romania,* 64 FR 40825 (July 28, 1999). Since the initiation of this investigation, the following events have occurred:

On August 12 and 17, 1999, we issued antidumping questionnaires to the Romanian embassy with instructions to identify any additional producers/exporters of the subject merchandise who had not contacted the Department, and to forward the questionnaire to all producers/exporters of the subject merchandise. On August 31, 1999, we received a response from the Romanian embassy.

On August 16, 1999, the United States International Trade Commission (the ITC) preliminarily determined that there is a reasonable indication that imports of the products under investigation are materially injuring the United States industry. *See* 64 FR 46953 (August 27, 1999) (ITC Report Publication No. 3321).

On September 9, 1999, we received a letter from S.C. Republica S.A. (Republica), a producer of the subject merchandise in Romania, stating that it did not sell the subject merchandise to the United States during the period of investigation (POI) and, therefore, will not file a response to the Department's questionnaire.

On September 13 and October 7, 1999, we received questionnaire responses from Sota Communication Company (Sota) and Metal Business International S.R.L. (MBI) (collectively, respondents), the trading companies exporting the subject merchandise during the POI, and their respective producers S.C. Silcotub S.A. (Silcotub) and S.C. Petrotub S.A.(Petrotub). We issued supplemental questionnaires on September 24 and October 18, 1999, to which we received responses on October 14, November 1, and November 5, 1999.

On September 15, 1999, we invited interested parties to provide comments on the surrogate country selection and publicly available information for valuing the factors of production. We received comments from the respondents on October 15 and November 17, 1999.

On October 7, and November 19, 1999, the respondents and their respective producers requested that the Department find the seamless pipe industry in Romania to be a market-oriented industry (MOI). Subsequently, the Department issued a letter to the Romanian embassy on October 14, 1999, requesting any additional information relevant to the MOI request. On October 22, 1999, we received comments from the Romanian Ministry of Industry and Commerce in support of the MOI claim. The petitioners submitted comments to the Department on November 2, 1999, objecting to the MOI claim made by the responding companies and the Romanian Ministry of Industry and Commerce.

Based on a request made by the petitioners on November 10, 1999, we postponed the preliminary determination until January 26, 1999. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Small and Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From the Czech Republic, Romania and Mexico,* 64 FR 66168 (November 24, 1999).

Between January 6 and January 12, 2000, the petitioners and the respondents submitted additional comments regarding the preliminary determination.

Although the deadline for this determination was originally January 26, 2000, due to the Federal Government shutdown on January 25 and 26, 2000, resulting from inclement weather, the timeframe for issuing this determination has been extended by two days.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on November 5, 1999, the respondents requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination. Further to that request, on November 12, 1999, the respondents requested that the Department extend by 60 days the application of the provisional measures prescribed under paragraphs (1) and (2) of section 773(d) of the Act. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

The scope of this investigation includes small diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the American Society for Testing and Materials (ASTM) A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and the American Petroleum Institute (API) 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of this investigation are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this investigation are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

Specifications, Characteristics, and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure

pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple- or quadruple-certified pipes is in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipe or ''hollow profiles'' of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications.

The scope of this investigation includes all seamless pipes meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from the scope of this investigation are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished OCTG are excluded from the scope of this investigation, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise under investigation is dispositive.

Class or Kind

From August through November 1999, the Department received submissions from importers, respondents, and consumers in the companion investigations involving small and large diameter seamless pipe from Japan, requesting that the subject merchandise be considered more than one class or kind. Specifically, those parties requested that the Department subdivide each of these investigations into the following separate classes or kinds of merchandise: (1) Commodity grade carbon seamless standard, line and pressure pipe; (2) alloy seamless pipe; and (3) high-strength seamless line pipe. On November 8, 1999, the petitioners rebutted these arguments. We have preliminarily determined that there is a single class or kind of merchandise for small diameter pipe and another distinct single class or kind of merchandise for large diameter pipe. For further discussion on this topic see the *Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and the Republic of South Africa,* FR 64 69721 (December 14, 1999).

Period of Investigation

The period of this investigation (POI) comprises each exporter's two most recent fiscal quarters prior to the filing of the petition (*i.e.,* October 1, 1998, through March 31, 1999).

Nonmarket Economy Status

The Department has treated Romania as a non-market-economy (NME) country in all past antidumping investigations (*see, e.g., Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Romania,* 61 FR 24274 (May 14, 1996)). A designation as a NME remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act).

The respondents in this investigation have not requested a revocation of Romania's NME status. We have, therefore, preliminarily determined to continue to treat Romania as a NME.

When the Department is investigating imports from a NME, section 773(c)(1) of the Act directs us to base normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the *Normal Value* section, below.

Market-Oriented Industry

As indicated above, the two Romanian producers and their respective trading companies, as well as the Romanian Ministry of Industry and Commerce, requested that the Department find the seamless pipe industry in Romania to be a MOI.

The criteria for determining whether a MOI exists are: (1) There must be virtually no government involvement in setting prices or amounts to be produced; (2) the industry producing the merchandise under review should be characterized by private or collective ownership; and (3) market determined prices must be paid for all significant inputs, whether material or non-material, and for all but an insignificant portion of all inputs accounting for the total value of the merchandise. *See Chrome-Plated Lug Nuts from the People's Republic of China; Final Results of Administrative Review,* 61 FR 58514, 58516 (November 15, 1996) (*Lug Nuts*). In addition, in order to make an affirmative determination that an industry in a NME country is a MOI, the Department requires information on virtually the entire industry. A MOI claim, and supporting evidence, must cover producers that collectively constitute the industry in question; otherwise, the MOI claim is dismissed. (*See, e.g., Freshwater Crawfish Tailmeat from the People's Republic of China, Final Determination of Sales at Less than Fair Value,* 62 FR 41347, 41353 (August 1, 1997) (*Crawfish*).)

We find preliminarily in this investigation that the Romanian seamless pipe industry does not meet the Department's criteria for an affirmative MOI finding because the respondents have placed information on the record showing that all of the known seamless pipe producers were primarily owned by the government during virtually the entire POI. Specifically, in prior cases, even where we have found some degree of private and collective ownership in the industry in question, we determined that the second prong of the MOI test was not met because the share of total production capacity accounted for by private enterprises or collectives was small. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China* 63 FR 251, 72261 (December 31, 1998). Furthermore, notwithstanding the issue of ownership, we do not have sufficient information with respect to approximately 20 percent of the seamless pipe industry in Romania and, therefore, are unable to determine whether the Romanian government is involved in setting prices or amounts to be produced for a significant portion of the industry for which we have no information on the record. For a complete discussion of the Department's preliminary determination that the seamless pipe industry does not constitute a MOI, *see* the December 15, 1999, memorandum, *Whether the Seamless Pipe Industry* in Romania Should Be Treated as a Market-Oriented Industry, which is on file in the Central Records Unit (CRU) (room B–099 of the main Commerce Building).

Separate Rates

It is the Department's policy to assign all exporters of subject merchandise subject to investigation in a non-market-economy (NME) country a single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. For purposes of this ''separate rates'' inquiry, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this test, exporters in NME countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control over exports, both in law (de jure) and in fact (de facto).

Evidence supporting, though not requiring, a finding of de jure absence of government control includes the following: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

De facto absence of government control with respect to exports is based on the following four criteria: (1) Whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to negotiate and sign contracts. (*See Silicon Carbide,* 59 FR at 22587.)

We have determined, according to the criteria identified in *Sparklers* and *Silicon Carbide,* that the evidence of record demonstrates an absence of government control, both in law and in fact, with respect to exports by Sota and MBI. Both Sota and MBI were established as privately-owned limited-liability trading companies after Romania began its extensive privatization program in 1990; neither company has been state-owned nor controlled by provincial or local governments. These companies are only limited by their respective articles of incorporation and bylaws and are not subject to legislative enactments decentralizing the companies' control. Specifically, the information on the record shows that these companies are autonomous in selecting their management, negotiating and signing contracts, setting their own export prices and retaining their own profits. For a complete discussion of the Department's preliminary determination that Sota and MBI are entitled to separate rates, *see* the January 28, 2000, memorandum, *Assignment of Separate Rates for Respondents in the Antidumping Duty Investigation of Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania,* which is on file in the CRU.

Romania-Wide Rate

As in all NME cases, the Department implements a policy whereby there is a rebuttable presumption that all exporters or producers comprise a single exporter under common government control, the ''NME entity.'' The Department assigns a single NME rate to the NME entity, unless an exporter can demonstrate eligibility for a separate rate. Information on the record of this investigation indicates that Sota and MBI are the only Romanian exporters to the United States of the subject merchandise produced by Silcotub and Petrotub. Further, as noted above, although Republica produces the subject merchandise, we have confirmed with U.S. Customs that no subject merchandise produced by Republica was sold to the United States during the POI, either directly by Republica or through trading companies in Romania.

Since all exporters/producers of the subject merchandise sold to the United States during the POI responded to the Department's questionnaire, and we have no reason to believe that there are other non-responding exporters/producers of the subject merchandise during the POI, we calculated a Romania-wide rate based on the weighted-average margins determined for Sota and MBI.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Sota and MBI to the United States were made at LTFV, we compared the export price (EP) to the NV, as described in the *Export Price* and *Normal Value* sections of this notice, below. In accordance with

section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to weighted-average NVs.

Export Price

We used EP methodology in accordance with section 772(a) of the Act, because Sota and MBI sold the subject merchandise directly to unaffiliated customers in the United States prior to importation, and CEP methodology was not otherwise appropriate.

1. Sota

We calculated EP based on packed C&F prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant/warehouse to the port of embarkation, brokerage and handling in Romania, and ocean freight. Because certain domestic brokerage and handling and inland freight were provided by NME companies, we based those charges on surrogate rates from Indonesia and Egypt. (*See* the *Normal Value* section for further discussion.)

2. MBI

We calculated EP based on packed FOB Romanian-port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant/warehouse to the port of embarkation, and brokerage and handling in Romania. As with Sota, because certain domestic brokerage and handling and inland freight were provided by NME companies, we based those charges on surrogate rates from Indonesia and Egypt. (*See* the *Normal Value* section for further discussion.)

Normal Value

A. *Surrogate Country*

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME country; and (2) are significant producers of comparable merchandise. The Department initially determined that Egypt, the Philippines, Morocco, Algeria, Jamaica, and Ecuador are the countries most comparable to Romania in terms of overall economic development (*see* the August 24, 1999, memorandum, *Certain Small Diameter Pipe (''S–D Pipe'') from Romania: Nonmarket Economy Status and Surrogate Country Selection*). We subsequently included Indonesia among the countries which are economically comparable to Romania because Indonesia's GNP per-capita and overall economic development are also similar to those of the above-referenced countries.

Because of a lack of the necessary factor price information from the other potential surrogate countries that are significant producers of comparable products to the subject merchandise, we have relied, where possible, on information from Indonesia, the source of the most complete information from among the potential surrogate countries. Accordingly, we have calculated NV by applying Indonesian values to the Romanian producers' factors of production for virtually all factors. Where we were unable to obtain Indonesian values, we used values for inputs from Egypt, which also produces products comparable to the subject merchandise. For a complete analysis of the selection of the surrogate country, see the January 28, 2000, memorandum, *Selection of the Surrogate Country in the Antidumping Duty Investigation of Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania* on file in the CRU.

B. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the companies in Romania which produced seamless pipes for the exporters that sold seamless pipes to the United States during the POI. To calculate NV, the reported unit factor quantities were multiplied by publicly available Indonesian and, where necessary, Egyptian values.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. We added to Indonesian surrogate values a surrogate freight cost using the reported distance from the domestic supplier to the factory because this distance was shorter than the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F. 3d 1401 (Fed. Cir. 1997). Where a producer did not report the distance between the material supplier and the factory, we used as facts available the longest distance reported, *i.e.*, the distance between the Romanian seaport and the producer's location. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics.

We valued material inputs and packing material (*i.e.*, where applicable, steel billet, lacquer, plastic caps, ink, paint, strap, clips, steel scrap, and foil) by Harmonized Tariff Schedule (HTS) number, using imports statistics from the UN Commodity Trade Statistics for 1998. Where a material input was purchased in a market-economy currency from a market-economy supplier, we valued such a material input at the actual purchase price in accordance with § 351.408 (c)(1) of the Department's regulations. For a complete analysis of surrogate values, *see* the January 28, 2000, memorandum, *Factors of Production Valuation for Preliminary Determination Valuation Memorandum*), on file in the CRU.

We valued labor using the method described in 19 CFR 351.408(c)(3).

To value electricity, we used the 1997 electricity rates, as adjusted, for Indonesia reported in the publication *Energy Prices and Taxes,* 2nd quarter 1999. We based the value of natural gas on 1998 Indonesian prices reported in *Energy Prices and Taxes,* 2nd quarter 1999.

We based our calculation of factory overhead and selling, general and administrative (SG&A) expenses on 1997 financial statements of three Indonesian producers (*i.e.*, PT Jakarta Kyoei, PT Jaya Pari, and PT Krakatau) of products comparable to the subject merchandise. In order to calculate a positive amount for profit consistent with *Certain Fresh Cut Flowers From Ecuador: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 64 FR 18878 (April 16, 1999), we calculated profit based only on PT Krakatau's financial statement because the financial statements for PT Jakarta Kyoei and PT Jaya Pari indicate that those companies incurred losses. Disregarding those financial statements enabled us to derive an ''element of profit'' as intended by the SAA. *See* SAA at 839.

To value truck freight rates, we used a 1999 rate provided by a trucking company located in Indonesia. For rail transportation, we valued rail rates using information found in a December, 1994 cable from the U.S. Embassy in Jakarta, Indonesia, as adjusted for inflation.

For brokerage and handling, because an Indonesian value was unavailable, we used a 1999 rate provided by a trucking and shipping company located in Alexandria, Egypt. For further details, see *Valuation Memorandum.*

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise from Romania entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice 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 EP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage
Sota Communication Company	13.75
Metal Business International S.R.L.	10.99
Romania-wide rate	12.34

The Romania-wide rate applies to all entries of the subject merchandise except for entries from exporters/producers that are identified individually above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine by the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs in six copies must be submitted to the Assistant Secretary for Import Administration no later than March 20, 2000, and rebuttal briefs no later than March 27, 2000. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on March 23, 2000, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination not later then 135 days after the publication of this notice in the **Federal Register**.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: January 28, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2577 Filed 2–3–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–851–802]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From the Czech Republic

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

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or John Brinkmann, at (202) 482–0984 or (202) 482–4126, respectively; AD/CVD Enforcement, Office VI, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act 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 refer to the regulations codified at 19 CFR part 351 (April 1999).

Preliminary Determination

We preliminarily determine that certain small diameter carbon and alloy seamless standard, line, and pressure pipe (seamless pipe) from the Czech Republic are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on July 20, 1999.[1] *See Initiation of Antidumping Duty Investigations: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and Mexico; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From the Czech Republic, Japan, the Republic of South Africa and Romania,* 64 FR 40825 (July 28, 1999) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred:

As of the date of initiation of this investigation, the Czech Republic was still considered a non-market economy (NME) country. On July 23, 1999, the Department received a letter from the Czech Ambassador, on behalf of the Government of the Czech Republic, requesting revocation of the Czech Republic's NME status, under section 771(18)(A) of the Act, in the context of this investigation. On August 5, 1999, the Department initiated a formal inquiry into the Czech Republic's status as a NME. On August 12, 1999, the Department selected Nova Hut, a.s. (Nova Hut), the sole producer of the subject merchandise in the Czech Republic, as a mandatory respondent, and issued section A of the NME and market economy [2] antidumping questionnaires to Nova Hut. On August 16, 1999, the Department received comments from the Czech Government and petitioners addressing the criteria necessary to revoke the Czech Republic's NME status.

[1] The petitioners in this investigation are Gulf States Tube, a Division of Vision Metals, Inc.; Koppel Steel Corporation; Sharon Tube Corporation; USS/Kobe Steel Corporation; U.S. Steel Group, a unit of USX Corporation; and the United Steelworkers of America.

[2] Both versions of the questionnaire were issued because Nova Hut had requested that the NME status of the Czech Republic be revoked.

On August 23, 1999, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to this antidumping investigation are materially injuring the U.S. industry. *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, Japan, Mexico, Romania, and South Africa,* 64 FR 46953 (August 27, 1999).

On August 17, 1999, we issued the remainder of the NME and market economy questionnaires to Nova Hut.

While Nova Hut responded to section A of the Department's NME questionnaire on September 9, 1999, no further NME responses were received. Nova Hut submitted its responses to Department's market economy questionnaire on September 9 and October 14, 1999.

On November 2, 1999, the petitioners requested that the Department initiate a below-cost sales investigation. After examining the petitioners' request, on November 5, 1999, the Department initiated a below-cost sales investigation and requested that Nova Hut respond to the Department's cost of production questionnaire. See Memorandum from John Brinkmann to David Mueller, *Allegation of Sales Below the Cost of Production for Nova Hut, a.s. (Cost Memo),* dated November 5, 1999, on file in the Central Records Unit (CRU), room B–099 of the Main Commerce Department Building. Nova Hut submitted its response to the Department's cost of production questionnaire on December 13, 1999.

We issued supplemental questionnaires where appropriate. Responses to those supplemental questionnaires were timely filed between November 12, 1999 and January 6, 2000 and we have incorporated the information provided in those responses into this preliminary determination.

On November 10, 1999, the petitioners made a timely request that the Department postpone the preliminary determination in this investigation and the companion investigations from Romania and Mexico on the grounds that these investigations are extraordinarily complicated. On November 17, 1999, in accordance with section 733(c)(1) of the Act we extended the deadline for the preliminary determination to January 28, 2000. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Small and Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From the Czech Republic, Romania and Mexico,* 64 FR 66168 (November 24, 1999).

On December 10, 1999, the Department revoked the Czech Republic's NME status. *See* Memorandum to Robert S. LaRussa, *Antidumping Investigation of Certain Small Diameter Carbon and Alloy Seamless Standard Line and Pressure Pipe from the Czech Republic: Non-Market Economy (''NME'') Country Status (Czech Republic: NME Status),* dated November 29, 1999, on file in the CRU and the section on *Revocation of the Czech Republic's Non-Market Economy Status,* below. Thereafter, this investigation continued under the Department's market economy procedures.

On January 18, 2000, the petitioners submitted comments regarding Nova Hut's response to the Department's section D questionnaire. We note that the petitioners' submission was not received in sufficient time to be considered for purposes of the Department's preliminary determination.[3] However, we intend to examine these comments in detail and, if necessary, we will issue an additional questionnaire to clarify or supplement information previously submitted by Nova Hut.

On January 19 and 20, 2000, in response to the Department's section D supplemental questionnaire, Nova Hut provided additional information from its affiliated suppliers. On January 21, 2000, Nova Hut responded to the petitioners' January 18, 2000, comments. As explained above, we will take these comments into consideration for the final determination.

Although the deadline for this determination was originally January 26, 2000, due to the Federal Government shutdown on January 25 and 26, 2000, resulting from inclement weather, the time frame for issuing this determination has been extended by two days.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On October 29, 1999, Nova Hut requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**. Nova Hut also included a request to extend the provisional measures to not more than six months. Therefore, in accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant portion of exports of the subject merchandise, and (3) no compelling reason for denial exists, we are granting the respondent's request and are postponing the final determination until not later than 135 days after the date of the publication of the preliminary determination.

Period of Investigation

The period of this investigation (POI) comprises Nova Hut's four most recent fiscal quarters prior to the filing of the petition (*i.e.,* April 1, 1998, through March 31, 1999).

Scope of Investigation

For purposes of this investigation, the products covered are small diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and the American Petroleum Institute (API) 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of this investigation are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process

[3] Given that the Department did not revoke the Czech Republic's NME status until December 10, 1999, Nova Hut did not respond to the Department's December 22, 1999 supplemental section D questionnaire until January 6, 2000. As a result, the petitioners did not submit their comments regarding this response until January 18, 2000.

(hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this investigation are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the HTSUS.

Specifications, Characteristics, and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various ASME code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes is in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipe or ''hollow profiles'' of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications.

The scope of this investigation includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from the scope of this investigation are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished oil country tubular goods (OCTG) are excluded from the scope of this investigation, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise under investigation is dispositive.

Class or Kind

From August through November 1999, the Department received submissions from importers, respondents, and consumers in the companion investigations involving small and large diameter seamless pipe from Japan, requesting that the subject merchandise be considered more than one class or kind. Specifically, those parties requested that the Department subdivide each of these investigations into the following separate classes or kinds of merchandise: (1) Commodity grade carbon seamless standard, line and pressure pipe; (2) alloy seamless pipe; and (3) high-strength seamless line pipe. On November 8, 1999, the petitioners rebutted these arguments. We have preliminarily determined that there is a single class or kind of merchandise for small diameter pipe and another distinct single class or kind of merchandise for large diameter pipe. For further discussion on this topic see the *Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and the Republic of South Africa,* FR 64 69721 (December 14, 1999).

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by Nova Hut covered by the description in the *Scope of Investigation* section, above, and sold in the Czech Republic during the POI, are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on six criteria to match U.S. sales

of subject merchandise to comparison-market sales of the foreign like product: specification/grade, manufacturing process, outside diameter, wall thickness, surface finish, and end-finish. 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 as listed above.

Revocation of the Czech Republic's Non-Market Economy Status

In determining whether to revoke NME-country status under section 771(18)(A) of the Act, the Department must take into account the following factors under section 771(18)(B): (1) The extent to which the currency of the foreign country is convertible into the currency of other countries; (2) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management; (3) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country; (4) the extent of government ownership or control of the means of production; (5) the extent of government control over the allocation of resources and over the price and output decisions of enterprises; and (6) such other factors as the administering authority considers appropriate.

Since its emergence as an independent, democratic state, the Czech Republic has made significant progress in its transformation into a market economy country. The Czech currency is now fully convertible. Wages in the Czech Republic are largely determined by free bargaining between labor and management. Trade has been liberalized and tariffs reduced, and the Czech government is actively promoting foreign investment and business ventures. Industry, agriculture and services have all been privatized, and the power to make decisions related to the allocation of resources, and over pricing and output decisions, now rests with the private sector. Based on the preponderance of evidence related to economic reforms in the Czech Republic required under section 771(18)(B) of the Act, the Department revoked the Czech Republic's NME country status, effective January 1, 1998. *See Czech Republic: NME Status.*

Fair Value Comparisons

To determine whether sales of seamless pipe products from the Czech Republic were made in the United States at LTFV, we compared the 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 section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

Export Price

We used EP methodology in accordance with section 772 of the Act, because Nova Hut sold the subject merchandise directly to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States prior to the date of importation, and CEP methodology was not otherwise, appropriate.

We calculated EP based on documents alongside freight (DAF Polish border) packed prices charged to the first unaffiliated customer in the United States. In accordance with section 772(c)(2) of the Act, we made deductions from the starting price, where appropriate, for movement expenses, including foreign inland freight and export license fees for shipment.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities, and that there is no particular market situation that prevents a proper comparison with the EP. The statute contemplates that quantities will normally be considered insufficient if they are less than five percent of the aggregate quantity of sales of the subject merchandise to the United States.

Nova Hut had a viable home market for seamless pipe products, and reported home market sales data for purposes of the calculation of NV.

In deriving NV, we made certain adjustments to price as detailed in the *Calculation of Normal Value Based on Home-Market Prices* section of this notice, below.

B. Cost of Production Analysis

As noted above, on November 2, 1999, petitioners filed a below-cost sales allegation against Nova Hut. Based on our analysis of the allegation, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that sales of seamless pipe, manufactured in the Czech Republic, were made at prices below the cost of production (COP). *See Cost Memo.* As a result, the Department conducted an investigation to determine whether Nova Hut made home market sales during the POI at prices below their respective COPs, within the meaning of section 773(b) of the Act.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of Nova Hut's costs of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A) and packing.

For the COP calculation, we relied on Nova Hut's COP information from the company's December 13, 1999, and January 6, 2000 submissions, except in the following instances:

(1) Nova Hut obtained iron, a major input, from an affiliate. For reporting purposes, Nova Hut valued this input at the weighted-average transfer price.[4] Based on the transfer price and market price information in Nova Hut's December 12, 1999, and January 6, 2000, cost of production responses, for the preliminary determination, we compared the transfer price of iron to the market price of iron. Because the market price was higher than the transfer price, we increased the transfer price to reflect the market price;

(2) For the minor inputs purchased from affiliated parties (*i.e.,* oxygen and iron ore), we increased the reported transfer prices to reflect the higher market prices;

(3) We revised Nova Hut's general and administrative (G&A) expense rate calculation; and

(4) We revised the financial expense ratio.

See Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination for Nova Hut, dated January 28, 2000, on file in the CRU.

[4] Sections 773(f)(2) and (3) of the Act prescribe how the Department is to treat affiliated-partly transactions in the calculation of cost of production and constructed value. With respect to major inputs purchased from affiliated suppliers, the Department's practice is that such imports will normally be valued at the higher of the affiliated party's transfer price, the market price of the inputs, or the actual costs incurred by the affiliated supplier in producing the input. (*See, e.g. Fresh Atlantic Salmon From Chile: Final Determination of Sales at Less Than Fair Value,* 63 FR 31426, 31427 June 9, 1998); *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Italy,* 64 FR 6615, 6621–6623 (February 10, 1999). However, Nova Hut was unable to provide the suppliers' cost information in time for consideration in this preliminary determination (this information was provided on January 19 and 20, 2000). Therefore, for this preliminary determination, we used the transfer prices or market prices, as appropriate. We will consider the respondent's suppliers' cost data for the final determination.

2. Test of Home-Market Sales Prices

We compared the weighted-average COP for Nova Hut 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 within an extended period of time (*i.e.,* a period of one year) in substantial quantities [5] and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

We used the revised COP data from the December 13, 1999, and January 6, 2000, submissions, to compare to the home market prices, less any applicable billing adjustments, discounts, rebates, and indirect selling expenses, on a model-specific basis.

3. Results of the COP Test

Pursuant to section 773(b)(2)(B) of the Act, since we found 20 percent or more of Nova Hut's sales of certain products during the POI were at prices less than the weighted-average COP for the POI, we preliminary determine such sales to have been made in ''substantial quantities'' within an extended period of time. We also preliminary determine these sales below cost were not made at prices that would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of these preliminary results, we have disregarded these 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. Although, some products had no above-cost sales, we did not need to use constructed value (CV) as a basis for NV in our comparisons to EP, because all EP sales were matched to similar models of above-cost sales from the home market.

C. Arms-Length Test

Sales to affiliated customers for consumption in the home market which were determined not to be at arm's-length were excluded from our analysis. To test whether these sales were made at arm's-length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403 and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's-length. *See Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan,* 62 FR 60472, 60478 (November 10, 1997) and *Antidumping Duties; Countervailing Duties: Final Rule (Antidumping Duties),* 62 FR 27295, 27355–56 (May 19, 1997). We included those sales to affiliated customers that passed the arm's-length test in our analysis. (*see* 19 CFR 351.403).

D. Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316 at 829–831 (1994), to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales.

We examined information on the selling activities associated with each channel of trade in each of Nova Hut's markets. Nova Hut's home market sales were all exworks and its U.S. sales were DAF Polish border. The EP LOT did not differ considerably from the home market LOT with respect to selling activities, although there were slight differences with respect to advertising and warehousing. Therefore, we determine that there was a single LOT in each market and that these LOTs were comparable. For a detailed description of our level-of-trade methodology and findings for this preliminary determination, *see* the January 28, 2000, *Antidumping Investigation of Certain Small Diameter Seamless Pipe from the Czech Republic: Preliminary Level of Trade Findings Memorandum* on file in the CRU.

E. Calculation of Normal Value Based on Home-Market Prices

We performed price-to-price comparisons using sales of comparable merchandise in the home market that did not fail the cost test. We calculated NV based on ''exworks'' prices. In addition, we made circumstance-of-sale (COS) adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. These included imputed credit expenses and billing adjustments. We made no adjustments for discounts or rebates since the invoice price is already net of these discounts and rebates. In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs.

We made the following adjustments to Nova Hut's reported home market sales data: (1) We recalculated the imputed credit expenses by adding back to the gross price, on-invoice billing adjustments made for orders that did not meet a minimum quantity requirement; (2) for sales with missing payment dates, the Department set the date of payment as the projected preliminary results date; (3) we deleted seamless pipe products that were sold as an overrun or non-prime product since overrun and non-prime seamless pipe were not sold in the U.S. market; and (4) we used the revised variable cost of manufacturing and total cost of manufacturing reported in the COP database and CV database to calculate our difference in merchandise adjustment, as noted above in the *Cost of Production Analysis* section. *See Preliminary Calculation Memorandum for Nova Hut, a.s.,* dated January 28, 2000, on file in the CRU.

Currency Conversions

We made currency conversions into United States dollars in accordance with section 773A(a) of the Act based on exchange rates in effect on the dates of the United States sales, as provided by the Dow Jones Business Information Services.

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing Customs to suspend liquidation of all entries of seamless pipe products from the Czech Republic, that are entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing Customs to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are provided below.

Manufacturer/exporter	Margin (percent)
Nova Hut	12.55
All Others	12.55

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our

[5] In accordance with section 773(b)(2)(C)(i) of the Act, we determined that sales made below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of NV.

determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the United States industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later March 16, 2000. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination no later than 135 days after the date of publication of this notice in the **Federal Register**.

This determination is issued and published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: January 28, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2583 Filed 2–3–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–702, A–580–813, and A–583–816]

Final Results of Expedited Sunset Reviews: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan, South Korea, and Taiwan

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

ACTION: Notice of Final Results of Expedited Sunset Reviews: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Japan, South Korea and Taiwan.

SUMMARY: On July 1, 1999, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping duty orders on certain stainless steel butt-weld pipe and tube fittings (''pipe and tube fittings'') from Japan, South Korea (''Korea''), and Taiwan (64 FR 35588) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and an adequate response filed on behalf of a domestic interested party and inadequate response (in these cases, no response) from respondent interested parties in each of these reviews, the Department decided to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to the continuation or recurrence of dumping at the levels indicated in the Final Results of Reviews section of this notice.

FOR FURTHER INFORMATION CONTACT: Mark D. Young 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) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: February 4, 2000.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for conducting sunset reviews are set forth in Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) (''Sunset Regulations''), and 19 CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin'').

Scope

The products covered by these reviews include certain stainless steel butt-weld pipe and tube fittings. These fittings are used in piping systems for chemical plants, pharmaceutical plants, food processing facilities, waste treatment facilities, semiconductor equipment applications, nuclear power plants and other areas. The subject merchandise are currently classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') item number 7307.23.00.00. The HTSUS item number is provided for convenience and customs purposes. The written description remains dispositive.

With respect to the order on subject imports from Japan and Taiwan, the Department has made several scope rulings. The following products were determined to be within the scope of the order:

Product within scope	Importer	Citation
Superclean or ultraclean pipe fittings from Japan	Benkan Corporation	56 FR 1801 (January 17, 1991).
A774 type stainless steel pipe fittings from Taiwan	Tachia Yung Ho	58 FR 28556 (May 14, 1993).
Cast butt-weld pipe fittings from Taiwan	Eckstrom Industries	Eckstrom Ind. v. United States, Court No. 97–10–01913, Slip. Op., 99–99 (Ct. Int'l Trade Sept. 20, 1999).

The following products were determined to be outside the scope of the order:

Product outside scope	Importer	Citation
Certain gasket raised face seal sleeves and certain stainless steel ''Fine-fit'' tube fittings imported from Japan.	Fujikin of America, Inc	60 FR 54212 (October 20, 1995).
Stainless steel tube fittings with non-welded end connection, and other products from Taiwan.	Top Line Process Equipment Corporation.	60 FR 54213 (October 20, 1995).
Primet joint metal seal fittings and primet joint weld fittings from Japan.	Daido	61 FR 5533 (February 13, 1996).
Sleeves of clean vacuum couplings and superclean microfittings from Japan.	Benkan	61 FR 5533 (February 13, 1996).
Superclean fittings from Japan	Benkan UCT Corporation	61 FR 40194 (August 1, 1996).

These reviews cover imports from all manufacturers and exporters of pipe and tube fittings from Japan, Korea, and Taiwan.

History of the Orders

Japan

The Department published its final affirmative determination of sales at less than fair value (''LTFV'') with respect to imports of pipe and tube fittings from Japan on February 4, 1988 (53 FR 3227). In this determination, the Department published three weighted-average dumping margins (which included a *de minimis* margin [1]) and an ''all others'' rate. The Department published its antidumping duty order on pipe and tube fittings from Japan on March 25, 1988.[2] The Department has conducted four administrative reviews of this order since its imposition.[3] In each of the four reviews we calculated one company-specific margin. The order remains in effect for all manufacturers and exporters of the subject merchandise from Japan, other than Fuji who was excluded from the antidumping duty order.

Korea

The Department published its final affirmative determination of sales at LTFV with respect to imports of pipe and tube fittings from Korea on December 29, 1992 (57 FR 61881). In this determination, the Department published weighted-average dumping margins for one company and an ''all others'' rate. The Department published its antidumping duty order on pipe and tube fittings from Korea on February 23, 1993.[4] The Department has not conducted an administrative review of this order since its imposition. The order remains in effect for all manufacturers and exporters of the subject merchandise from Korea.

Taiwan

On May 14, 1993, the Department issued its final affirmative determination of sales at LTFV regarding pipe and tube fittings from Taiwan (58 FR 28556). In this determination, the Department published weighted-average dumping margins for three companies and an ''all others'' rate. The Department subsequently published an amended final determination and antidumping duty order on June 16, 1993.[5] Since the order was issued, the Department has completed three administrative reviews with respect to pipe and tube fittings from Taiwan.[6] The order remains in effect for all manufacturers and exporters of the subject merchandise from Taiwan.

Background

On July 1, 1999, the Department initiated sunset reviews of the antidumping duty orders on pipe and tube fittings from Japan, Korea, and Taiwan (64 FR 35588), pursuant to section 751(c) of the Act. We received Notices of Intent To Participate in each of the three sunset reviews, on behalf of Alloy Piping Products, Inc. (''Alloy''), Flowline Division of Markovitz Enterprises, Inc. (''Flowline''), Gerlin, Inc. (''Gerlin''), and Taylor Forge Stainless, Inc. (''Taylor'') (collectively ''domestic interested parties''), by July 16, 1999, within the deadline specified in § 351.218(d)(1)(i) of the Sunset Regulations. Pursuant to section 771(9)(C) of the Act, the domestic interested parties claimed interested-party status as U.S. manufacturers whose workers are engaged in the production of domestic like products. Moreover, the domestic interested parties stated that they have been involved in these proceedings since their inception. The Department received complete substantive responses from the domestic interested parties by August 2, 1999, within the 30-day deadline specified in the Sunset Regulations under § 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to these proceedings. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct expedited, 120-day, reviews of these orders.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.,* an order in effect on January 1, 1995). The reviews at issue concern transition orders within the meaning of section 751(c)(6)(C)(ii) of the Act. Therefore, the Department determined that the sunset reviews of the antidumping duty orders on pipe and tube fittings from Japan, Korea, and Taiwan are extraordinarily complicated and extended the time limit for completion of the final results of these reviews until not later than January 27, 2000, in accordance with section 751(c)(5)(B) of the Act.[7]

Although the deadline for this determination was originally January 27, 2000, due to the Federal Government shutdown on January 25 and 26, 2000, resulting from inclement weather, the time frame for issuing this determination has been extended by one day.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether

[1] One of the three companies investigated, Fuji Acetylene Industries Co., Ltd. (''Fuji''), was excluded from the antidumping duty order, since the Department found that it had a *de minimis* dumping margin.

[2] See Antidumping Duty Order: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Japan, 53 FR 9787 (March 25, 1988).

[3] See Stainless Steel Butt-Weld Pipe and Tube Fittings from Japan; Final Results of Antidumping Duty Administrative Review, 56 FR 14922 (April 12, 1991); 56 FR 20592 (May 6, 1991); 57 FR 46372 (October 8, 1992); 59 FR 12240 (March 16, 1994).

[4] See Antidumping Duty Order: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Korea, 58 FR 11029 (February 23, 1993).

[5] See Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Taiwan, 58 FR 33250 (June 16, 1993).

[6] See Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Final Results of Antidumping Duty Administrative Review, 63 FR 67855 (December 9, 1998) (3rd review); 65 FR 2116 (January 13, 2000) (1st & 2nd review).

[7] See Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 62167 (November 16, 1999).

revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making these determinations, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and it shall provide to the International Trade Commission (''the Commission'') the magnitude of the margins of dumping likely to prevail if the order were revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margins are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margins are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its Sunset Policy Bulletin, the Department indicated that determinations of likelihood will be made on an order-wide basis. See Sunset Policy Bulletin, 63 FR at 18872. In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. See *Id.*

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In these instant reviews, the Department did not receive a substantive response from any respondent interested party. Pursuant to § 351.218(d)(2)(iii) of the Sunset Regulations, this constitutes a waiver of participation.

In their substantive responses, the domestic interested parties argue that revocation of these antidumping duty orders would likely lead to a continuation or recurrence of dumping by Japanese, Korean, and Taiwanese, producers/manufacturers. They argue further that since the imposition of the antidumping duty orders, most respondents have continued to dump in the U.S. market and have reduce their sales of pipe and tube fittings dramatically. The domestic interested parties argue that this demonstrates the inability of the producers from subject countries to sell in the United States at any significant volume without dumping. Therefore, they assert, were the antidumping duty orders revoked, it is likely that Japanese, Korean, and Taiwanese producers would need to dump in order to sell their pipe and tube fittings in any significant quantities in the United States.

Japan

The domestic interested parties argue that the imposition of the antidumping duty order had a dramatic effect on subject import volumes from Japan. They indicate that in the years following the order, Japanese imports have averaged 13 percent of their pre-order levels. Moreover, they assert, the dumping margins for Japanese manufacturers continue at significant levels. In sum, the domestic interested parties argue, the dramatic decline in import volumes following the imposition of the order in conjunction with continued margins of dumping indicates that dumping by Japanese pipe and tube fitting producers is likely to continue or recur in the event of revocation of the order.[8]

Korea

With respect to subject merchandise from Korea, the domestic interested parties maintain that, in the year the order was imposed, imports from Korea fell to 4,228 pounds from approximately 523,619 pounds the year before. They argue further that, in the years following the imposition of the order, average import volumes of the subject merchandise were more than 90 percent lower than in the years preceeding the issuance of the order. Therefore, the domestic interested parties argue that the near cessation of imports from Korea demonstrates that Korean manufacturers need to dump pipe and tube fittings in the U.S. market in order to sell at pre-order volumes. To support this conclusion the domestic interested parties assert that dumping margins for all Korean manufacturers of pipe and tube fittings are extraordinarily high at 21.2 percent. Yet, they contend, Korean manufacturers never availed themselves of the administrative review process to demonstrate that their dumping has ceased or abated.[9]

Taiwan

The domestic interested parties assert that only one Taiwanese respondent has had dumping margins below *de minimis* levels since the issuance of the order. They argue that, following the issuance of the order, imports from Taiwan dropped to a level far below their pre-order level and have never been more than 50 percent of their pre-order level. The domestic interested parties conclude that Taiwanese importers need to dump pipe and tube fittings in the U.S. market in order to sell at pre-order volumes. To corroborate this conclusion, the domestic interested parties note that the dumping margins for all but one Taiwanese manufacturer are extraordinarily high and yet, they have never availed themselves of the administrative review process to demonstrate that their dumping has abated.[10]

General Discussion

If companies continue dumping with the discipline of an order in place or imports ceased after the issuance of the order, the Department may reasonably infer that dumping would continue or recur if the discipline were removed. See section II.A.3 of the Sunset Policy Bulletin and the SAA at 890, and the House Report at 63–64. As pointed out above, dumping margins at levels above *de minimis* continue to exist for shipments of the subject merchandise from Japan, Korea, and Taiwan.

Consistent with section 752(c) of the Act, the Department also considers the volume of imports before and after issuance of the order. As outlined in each respective section above, the domestic interested parties argue that a significant decline in the volume of imports of the subject merchandise from

[8] See August 2, 1999, Substantive Response of the Domestic Interested Parties regarding pipe and tube fittings from Japan at 12.

[9] See August 2, 1999, Substantive Response of the Domestic Interested Parties regarding pipe and tube fittings from Korea at 13.

[10] See August 2, 1999, Substantive Response of the Domestic Interested Parties regarding pipe and tube fittings from Taiwan at 14.

Japan, Taiwan, and Korea since the imposition of the orders provides further evidence that dumping would continue if the orders were revoked. In their substantive responses, the domestic interested parties provided statistics demonstrating the decline in import volumes of pipe and tube fittings from Japan, Korea, and Taiwan. The Department agrees with the domestic interested parties' arguments that imports of the subject merchandise fell sharply after the orders were imposed and never regained pre-order volumes.

As noted above, in conducting its sunset reviews, the Department considered the weighted-average dumping margins and volume of imports in determining whether revocation of these antidumping duty orders would lead to the continuation or recurrence of dumping. Based on this analysis, the Department finds that the existence of dumping margins at levels above de minimis and a reduction in export volumes after the issuance of the orders is highly probative of the likelihood of continuation or recurrence of dumping. A deposit rate above *de minimis* continues in effect for exports of the subject merchandise by all (except as indicated in footnotes 11 & 12) known Japanese,[11] Korean and Taiwanese,[12] manufacturers/exporters of the subject merchandise. Therefore, given that dumping has continued over the life of the orders, import volumes have declined significantly after the imposition of the order, respondent parties have waived participation in these reviews, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue or recur if the orders were revoked.

Magnitude of the Margin

In the Sunset Policy Bulletin, the Department stated that normally it will provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation. See Sunset Policy Bulletin 63 FR 18873. Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty-absorption determinations. See *id.* at 18873–74. To date, the Department has not issued any duty-absorption findings in any of these three cases.

In their substantive response, the domestic interested parties recommended that, consistent with the Sunset Policy Bulletin, the Department provide to the Commission the company-specific margins from the original investigations. Moreover, regarding companies not reviewed in the original investigations, the domestic interested parties suggested that the Department report the ''all others'' rates included in the original investigations.

The Department agrees with the domestic interested parties. The Department finds that the margins calculated in the original investigations are probative of the behavior of Japanese, Korean, and Taiwanese manufacturers/exporters if the orders were revoked as they are the only margins which reflect their actions absent the discipline of the order.

Therefore, the Department will report to the Commission the company-specific and all others rates from the original investigations as contained in the Final Results of Reviews section of this notice.

Final Results of Reviews

As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the margins listed below:

JAPAN

Manufacturer/exporter	Margin (percent)
Mie Horo	65.08
Nippon Benkan Kogyo, K.K	37.24
All others	49.31

Fuji Acetylene Industries, Co., Ltd. was excluded from the antidumping duty order based on a de minimis dumping margin calculated in the Final Less Than Fair Value Determination. See Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Butt-Weld Pipe Fittings from Japan, 53 FR 3227 (February 4, 1988).

KOREA

Manufacturer/exporter	Margin (percent)
The Asia Bend Co. Ltd.	21.20
All others	21.20

TAIWAN

Manufacturer/exporter	Margin (percent)
Tachia Yung Ho Machine Industry Co. Ltd.	76.20
Ta Chen Stainless Pipe Co. Ltd.	0.64
Tru-Flow Industrial Co., Ltd.	76.20
All others	51.01

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 28, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

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[11] One Japanese producer was excluded from the antidumping duty order based on a de minimis dumping margin calculated in the Final Less Than Fair Value Determination. Supra at footnote 1.

[12] As noted above, one Taiwanese producer/exporter currently has a de minimis dumping margin.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–810, A–583–815]

Final Results of Expedited Sunset Reviews: Certain Welded Stainless Steel Pipes From the Republic of Korea and Taiwan

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

ACTION: Notice of Final Results of Expedited Sunset Reviews: Certain Welded Stainless Steel Pipes from the Republic of Korea and Taiwan.

SUMMARY: On July 1, 1999, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping duty orders on certain welded stainless steel pipes (''pipes'') from the Republic of Korea (''Korea'') and Taiwan (64 FR 35588) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and an adequate response filed on behalf of a domestic interested party and inadequate response (in these cases, no response) from respondent interested parties in each of these reviews, the

Department decided to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to the continuation or recurrence of dumping at the levels indicated in the Final Results of Reviews section of this notice.

FOR FURTHER INFORMATION CONTACT: Mark D. Young 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) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: February 4, 2000.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for conducting sunset reviews are set forth in Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) (''Sunset Regulations''), and 19 CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3 Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin'').

Scope

The merchandise subject to these reviews are certain welded austenitic stainless steel pipe that meets the standards and specifications set forth by the American Society for Testing and Materials (''ASTM'') for the welded form of chromium-nickel pipe designated ASTM A–312. The merchandise covered by the scope of these orders also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A–312. Pipes are produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. Pipes are a commodity product generally used as a conduit to transmit liquids or gases. Major applications for pipes include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines. Imports of pipes are currently classifiable under the following Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 7306.40.5005, 7306.40.5015, 7306.40.5040, 7306.40.5065, and 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of this order is limited to welded austenitic stainless steel pipes. Although the HTSUS subheadings are provided for convenience and United States Customs purposes, our written description of the scope of these orders are dispositive.

History of the Orders

Korea

The Department published its final affirmative determination of sales at less than fair value (''LTFV'') with respect to imports of pipes from Korea on November 12, 1992 (57 FR 53693). In this determination and subsequent antidumping duty order, the Department published two weighted-average dumping margins and an ''all others'' rate.[1] These margins were later amended by the Department pursuant to a ruling by the Court of International Trade. [2] The Department has not completed an administrative review of this order since its imposition; [3] however, there has been one changed-circumstance review. [4] The order remains in effect for all Korean manufacturers and exporters of the subject merchandise.

Taiwan

On November 12, 1992, the Department issued its final affirmative determination of sales at LTFV regarding pipes from Taiwan (Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes from Taiwan, 57 FR 53705 (November 12, 1992). In this determination, the Department published four weighted-average dumping margins and an ''all others'' rate.[5] These margins were later amended by the Department,[6] pursuant to a ruling by the Court of International Trade.[7] Since the order was issued, the Department has completed four administrative reviews [8] and one changed-circumstances review [9] with respect to pipes from Taiwan. The order remains in effect for all manufacturers and exporters of the subject merchandise from Taiwan, other than Chang Mien.

Background

On July 1, 1999, the Department initiated sunset reviews of the antidumping duty orders on pipes from Korea and Taiwan (64 FR 35588), pursuant to section 751(c) of the Act. We received Notices of Intent To Participate, in each of the two sunset reviews, on behalf of Avesta Sheffield Pipe Co., Damascus Tubular Division of Damascus-Bishop Tube Co., Davis Pipe Inc., and the United Steel Workers of America (AFL–CIO/CLC) (collectively ''domestic interested parties''), by July 16, 1999, within the deadline specified in § 351.218(d)(1)(i) of the Sunset Regulations. Pursuant to section 771(9)(C) and (D) of the Act, the domestic interested parties claimed interested-party status as U.S. manufacturers and workers engaged in the production of domestic like products. Moreover, the domestic interested parties stated that they have been involved in all segments of these proceedings since their inception. The Department received complete substantive responses from the domestic

[1] See Antidumping Duty Order and Clarification; Certain Welded Stainless Steel Pipes from the Republic of Korea, 57 FR 62301 (December 30, 1992) (clarifying HTSUS numbers).

[2] *See Avesta Sheffield, Inc.* v. *United States*, 17 CIT 1212, 838 F.Supp. 608 (1993); *see* also *Federal Mogul Corp. and the Torrington Co.* v. *United States*, 17 CIT 1093, 834 F.Supp. 1391 (1993); and Amended Final Determination and Antidumping Duty Order: Certain Welded Stainless Steel Pipe From Korea, 60 FR 10064 (February 23, 1995).

[3] However, on December 28, 1999, the Department issued preliminary results of review in this case. See Certain Welded ASTM A–312 Stainless Steel Pipe from Korea: Preliminary Results of Antidumping Duty Administrative Review, 64 FR 72645 (December 28, 1999).

[4] See Certain Welded Stainless Steel Pipe From Korea; Final Results of Changed-Circumstances Antidumping Duty Administrative Review, 63 FR 16979 (April 7, 1998) (determination that SeAH Steel Corp. (''SeAH'') is the corporate successor to Pusan Steel Pipe Co., Ltd. (''Pusan'')).

[5] Chang Tieh Industry Co. Ltd. (''Chang Tieh'') currently Chang Mien was excluded from the Taiwanese antidumping duty order in light of the zero percent margin it received in the final determination of sales at LTFV. However, it was listed as one of the four respondent companies originally investigated by the Department (57 FR 5370); see also Notice of Amended Final Determination and Antidumping Duty Order; Certain Welded Stainless Steel Pipes from Taiwan, 59 FR 6619 (February 11, 1994) and *Chang Tieh Industry Co.* v. *United States*, 840 F.Supp. 141 (Ct. Int'l Trade 1993) (regarding the Department's error in imposing conditions upon Chang Tieh's exclusion from the antidumping duty order.)

[6] Notice of Amended Final Determination, 59 FR 6619.

[7] See Chang Tieh Industry Co. 840 F.Supp. at 141.

[8] See Welded Stainless Steel Pipes from Taiwan; Final Results of Administrative Review, 64 FR 33243 (June 22, 1999) (the first and second administrative reviews were jointly published); 62 FR 37543 (July 14, 1997); 63 FR 38382 (July 16, 1998).

[9] See Certain Welded Stainless Steel Pipe From Taiwan; Final Results of Changed-Circumstances Antidumping Duty Administrative Review, 63 FR 34147 (June 23, 1998) (determination that Chang Mien Industries Co., Ltd (''Chang Mien'') is the corporate successor to Chang Tieh).

interested parties by August 2, 1999, within the 30-day deadline specified in the Sunset Regulations under § 351.218(d)(3)(i). On August 2, 1999, the Department received a waiver of participation, in the sunset review of certain welded stainless steel pipes from Korea, on behalf of Korea Iron & Steel Association (''KOSA''), SeAH Steel Corporation, Ltd. (''SeAH''), and Hyundai Pipe Co., Ltd. (''Hyundai''). We did not receive a substantive response from any respondent interested party to these proceedings. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department determined to conduct expedited, 120-day, reviews of these orders.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). The reviews at issue concern transition orders within the meaning of section 751(c)(6)(C)(ii) of the Act. Therefore, the Department determined that the sunset reviews of the antidumping duty orders on pipes from Korea and Taiwan are extraordinarily complicated and extended the time limit for completion of the final results of these reviews until not later than January 27, 2000, in accordance with section 751(c)(5)(B) of the Act.[10]

Although the deadline for this determination was originally January 27, 2000, due to the Federal Government shutdown on January 25 and 26, 2000, resulting from inclement weather, the time frame for issuing this determination has been extended by one day.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making these determinations, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and it shall provide to the International Trade Commission (''the Commission'') the magnitude of the margins of dumping likely to prevail if the order were revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margins are discussed below. In addition, the domestic interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margins are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its Sunset Policy Bulletin, the Department indicated that determinations of likelihood will be made on an order-wide basis (See Sunset Policy Bulletin, 63 FR at 18872). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see id).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. We received a waiver of participation, in the sunset review of certain stainless steel pipes from Korea, from KOSA, SeAH, and Hyundai on August 2, 1999. The Department did not receive a substantive response from any respondent interested party. Pursuant to § 351.218(d)(2)(iii) of the Sunset Regulations, lack of substantive response from respondent interested parties constitutes a waiver of participation.

In their substantive responses, the domestic interested parties argue that revocation of these antidumping duty orders would likely lead to a continuation or recurrence of dumping by Korean and Taiwanese producers/manufacturers. The domestic interested parties argue that the records in these proceedings demonstrate that respondents reduced their sales to the United States after the issuance of the orders and continued to dump at the same or at higher rates of dumping. Further, they argue that the substantial decline in the volume of imports of pipes from Korea and Taiwan following the issuance of the orders demonstrates the inability of the producers from subject countries to sell in the United States at any significant volume without dumping. They support this argument with statistics showing that, since the imposition of the orders, respondents have generally reduced their shipments to the United States. Therefore, they assert, were the antidumping duty orders revoked, it is likely that Korean and Taiwanese producers would need to dump in order to sell their pipes in any significant quantities in the United States. In conclusion, the domestic interested parties state that whether comparing the level of imports during the calendar year encompassing the period of investigation or the calendar year most immediately preceding the order, the dramatic decrease in import levels underscores the importance of the orders in the domestic market.

Korea

With respect to subject merchandise from Korea, the domestic interested parties maintain that Korean importers need to dump pipes in the U.S. market in order to sell at pre-order volumes. They state that the order's extraordinary impact on imports in the period following the issuance of the order demonstrates the inability of Korean producers to sell pipes in the United States without dumping. The domestic interested parties also note that in 1998 Korean imports of the subject merchandise jumped to 116 percent of 1991 levels after Pusan purchased Sammi Metal Products Co., Ltd. (''Sammi'') pipe division out of bankruptcy. Apart from 1998's unusually high level, they argue that imports of the subject merchandise from Korea following the issuance of the order have never been more than 59 percent of their 1991 level.[11]

[10] See Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 62167 (November 16, 1999).

[11] See August 2, 1999, Substantive Response of the Domestic Interested Parties regarding pipes from Korea at 16.

Taiwan

The domestic interested parties argue that the imposition of the antidumping duty order had a dramatic effect on subject import volumes from Taiwan. In addition, they note that post-order imports from Taiwan have, on average, remained at 57 percent of the 1991 level. Even in 1998, the domestic interested parties add, when consumption of stainless steel products was at an all time high, imports from Taiwan were only 80 percent of 1991 imports. In conclusion they state that a comparison of the pre- and post-order import levels supports a reasonable inference that dumping would continue absent the disciplinary influence of the order.[12]

If companies continue dumping with the discipline of an order in place or imports ceased after the issuance of the order, the Department may reasonably infer that dumping would continue or recur if the discipline were removed (see section II.A.3 of the Sunset Policy Bulletin, the SAA at 890, and the House Report at 63–64). Dumping margins above *de minimis* continue to exist for all producers and exporters of pipes from Korea and Taiwan, other than Chang Mien, which was excluded from the order on Taiwan.

Consistent with section 752(c) of the Act, the Department also considers the volume of imports before and after issuance of the order. As outlined in each respective section above, the domestic interested parties argue that a significant decline in the volume of imports of the subject merchandise from Korea and Taiwan since the imposition of the orders provides further evidence that dumping would continue if the orders were revoked. In their substantive responses, the domestic interested parties provided statistics demonstrating the decline in import volumes of pipes from Korea and Taiwan immediately following the issuance of the orders. The Department agrees with the domestic interested parties' arguments that imports of the subject merchandise fell after the orders were imposed and never regained pre-order volumes.[13]

As noted above, in conducting its sunset reviews, the Department considered the weighted-average dumping margins and volume of imports in determining whether revocation of these antidumping duty orders would lead to the continuation or recurrence of dumping. Based on this analysis, the Department finds that the existence of dumping margins at levels above *de minimis* after the issuance of the orders is highly probative of the likelihood of continuation or recurrence of dumping. A deposit rate above *de minimis* continues in effect for exports of the subject merchandise by all known Korean and Taiwanese manufacturers/exporters of the subject merchandise.[14] Therefore, given that dumping has continued over the life of the orders, import volumes have declined significantly after the imposition of the order,[15] respondent parties have waived participation, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue or recur if the orders were revoked.

Magnitude of the Margin

In the Sunset Policy Bulletin, the Department stated that normally it will provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation. See Sunset Policy Bulletin, 63 FR at 18873. Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty-absorption determinations. See id, 63 FR at 18873–74. To date, the Department has not issued any duty-absorption findings in any of these cases.

In their substantive response, the domestic interested parties recommended that, consistent with the Sunset Policy Bulletin, the Department provide to the Commission the company-specific margins from the original investigation, except that the Department should use the 31.90 percent margin assigned to Ta Chen Stainless Pipe Co., Ltd. (''Ta Chen'') in the first two annual administrative reviews, not the 3.27 percent found in the original investigation. Moreover, regarding companies not reviewed in the original investigations, the domestic interested parties suggested that the Department report the ''all others'' rates included in the original investigations.

In the Sunset Policy Bulletin we indicated that, consistent with the SAA and the House Report, we may determine, in cases where declining (or no) dumping margins are accompanied by steady or increasing imports, that a more recently calculated rate reflects that companies do not have to dump to maintain market share in the United States and, therefore, that dumping is less likely to continue or recur if the order was revoked. Alternatively, if a company chooses to increase dumping in order to increase or maintain market share, the Department may provide the Commission with a more recently calculated margin for that company. The Sunset Policy Bulletin provides that we will entertain such considerations in response to argument from an interested party. Further, we noted that, in determining whether a more recently calculated margin is probative of an exporter's behavior absent the discipline of an order, the Department normally will consider the company's relative market share, with such information to be provided by the parties. It is clear, therefore, that in determining whether a more recently calculated margin is probative of the behavior of exporters were the order revoked, the Department considers company-specific exports and company-specific margins. Additionally, although we expressed a clear preference for market-share information, in past sunset reviews, where market-share information was not available, we relied on changes in import volumes between the periods before and after the issuance of the order. See, *e.g.*, Final Results of Expedited Sunset Review: Stainless Steel Plate from Sweden, 63 FR 67658 (December 8, 1998), and Final Results of Expedited Sunset Reviews: Certain Iron Construction Castings From Brazil, Canada, and the People's Republic of China, 64 FR 30310 (June 7, 1999).

In sunset reviews, although we make likelihood determinations on an order-wide basis, we report company-specific margins to the Commission. Therefore, it is appropriate that our determinations regarding the magnitude of the margin likely to prevail be based on company-specific information. Generic arguments that margins decreased over the life of the order while, at the same time, exporters' share of the U.S. market remained constant do not address the question of whether any particular company decreased its margin of dumping while at the same time maintaining or increasing market share. In fact, such generic argument may disguise company-specific behavior

[12] See August 2, 1999, Substantive Response of the Domestic Interested Parties regarding pipes from Taiwan at 15.

[13] With the exception of Korean imports of the subject merchandise in 1998, which increased to 116 percent of 1991 pre-order level as noted above.

[14] With the exception of Chang Tieh, now Chang Mien, which was excluded from the Taiwanese order.

[15] Based on import data from the U.S. Department of Commerce, the U.S. Treasury, the International Trade Commission, and the domestic interested parties.

demonstrating increased dumping coupled with increased market share.

Our review of import statistics, provided by the domestic interested parties, covering pipes from Korea and Taiwan demonstrated that the margins calculated in the original investigations are probative of the behavior of Korean and Taiwanese manufacturers/exporters if the orders were revoked as they are the only margins which reflect their actions absent the discipline of the order. However, with respect to Ta Chen, the Department disagrees with the domestic interested parties. Absent evidence that Ta Chen chose to increase dumping in order to maintain or increase market share, the margin calculated in the original investigation is the margin the Department will provide to the Commission.[16]

Therefore, the Department will report to the Commission the company-specific and all others rates from the original investigations as contained in the Final Results of Reviews section of this notice.

Final Results of Reviews

As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the margins listed below:

KOREA

Manufacturer/exporter	Margin (percent)
Pusan Steel Pipe Co., Ltd (now SeAH Steel Corp.)[1]	2.67
All manufacturers/producers/exporters	7.00

[1] SeAH is the corporate successor to Pusan, and Pusan had acquired certain of Sammi's production assets. See Certain Welded Stainless Steel Pipe from Korea; Final Results of Changed-Circumstances Antidumping Duty Administrative Review, 63 FR 16979 (April 7, 1998).

TAIWAN

Manufacturer/exporter	Margin (percent)
Chang Tieh Industry Co., Ltd (now Chang Mien)[1].	excluded.
Jaung Yuann Enterprise Co., Ltd..	31.91.
Ta Chen Stainless Pipe Co., Ltd.	3.27.
Yeun Chyang Industrial Co., Ltd.	31.90.
All Others	19.84.

[1] For the purposes of antidumping duty law the Department concluded that Chang Mein is the successor firm to Chang Tieh, and, as such is excluded from the order. See Certain Welded Stainless Steel Pipe From Taiwan; Final Results of Changed-Circumstances Antidumping Duty Administrative Review, 63 FR 34147 (June 23, 1998).

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 28, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2585 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

[16] The Department recently made a preliminary determination to revoke the order, with respect to Ta Chen, based on *de minimis* margins in the last three reviews. See Certain Welded Stainless Steel Pipe from Taiwan Certain Welded: Preliminary Results of Antidumping Administrative Review, 64 FR 71728 (December 22, 1999). However, given that Ta Chen waived participation in this sunset proceeding and did not provide any information indicating that a more recently calculated margin would be more appropriate, the Department determined that, consistent with the Sunset Policy Bulletin, the margin calculated in the original investigation is most likely to prevail if the order were revoked.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron-metal Castings From India: Amended Final Results of Countervailing Duty Administrative Review Pursuant to Settlement

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

ACTION: Notice of amendment to final results of countervailing duty administrative review.

SUMMARY: On January 18, 1991, the Department of Commerce (''the Department'') published in the **Federal Register** its final results of administrative review of the countervailing duty order on certain iron-metal castings from India for the period 1986 (56 FR 1976). Pursuant to a settlement agreement, the Department has recalculated the countervailing duty rates. The final countervailing duty rates for this review period are listed below in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: On January 18, 1991, the Department published the final results of its administrative review of the countervailing duty order on certain iron-metal castings from India for the period January 1, 1986 through December 31, 1986. *See Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings from India*, 56 FR 1976. Subsequently, respondents challenged the final results before the Court of International Trade (CIT). The primary issue involved the calculation of the program rates for the subsidies provided under India's International Price Reimbursement Scheme (IPRS). The IPRS is a program through which the Government of India (GOI) provided rebates to castings exporters that purchased domestically-produced pig iron at prices set by the GOI. According to the GOI, these rebates were calculated to equal the differences between the higher domestic prices actually paid and the lower alternative prices available from sources outside of India.

As the IPRS was also the subject of litigation for the review period 1985 in *Creswell v. United States*, Consolidated Court No. 91–01–00012 (*Creswell*), litigation for the review period 1986 was stayed pending finalization of *Creswell*. After the CIT affirmed the Department's remand determination for the 1985 administrative review (*see Creswell*, slip op. 98–139 (CIT Sept. 29, 1998)), the Department published a notice of amended final results in accordance with that opinion. *See Certain Iron-metal Castings from India: Amended Final Results of Countervailing Duty Administrative Review In Accordance With Decision Upon Remand*, 63 FR 67858 (December 9, 1998). In lieu of pursuing further litigation with respect to the administrative review of the review period 1986, the parties have entered into a settlement agreement. The parties agreed to countervailing duty rates that were calculated based on the methodology approved by the CIT in *Creswell*. On December 10, 1999, the

CIT approved the settlement agreement and dismissed the lawsuit. *See Southern Star, Inc.,* v. *United States*, Slip Op. 99–130, Consol. Ct. No. 91–01–00060 (CIT December 10, 1999).

Final Results of Review

Pursuant to the settlement agreement, we recalculated the company-specific and all-other subsidy rates for the period January 1, 1986, through December 31, 1986. The amended final countervailing duty rates are:

Manufacturer/exporter	Revised rates (percent)
Crescent Foundry Co. Pvt. Ltd. ..	9.07
Kejriwal Iron & Steel Works	23.75
Govind Steel	128.60
Uma Iron & Steel Co./Commex Corp.	30.24
All Others	16.66

The Department will instruct the U.S. Customs Service (Customs) to assess countervailing duties on all appropriate entries. The Department will issue liquidation instructions directly to Customs. The above rates will not affect the cash deposit requirements currently in effect.

This amendment to the final results of countervailing duty administrative review notice is in accordance with section 751(a)(1) of the Tariff Act, as amended (19 U.S.C. 1675(a)(1)), 19 CFR 351.213, and 19 CFR 351.221(b)(5).

Dated: January 24, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–2578 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron-Metal Castings From India: Amended Final Results of Countervailing Duty Administrative Review Pursuant to Settlement

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

ACTION: Notice of amendment to final results of countervailing duty administrative review.

SUMMARY: On August 22, 1991, the Department of Commerce (''the Department'') published in the **Federal Register** its final results of administrative review of the countervailing duty order on certain iron-metal castings from India for the period 1987 (56 FR 41658). Pursuant to a settlement agreement, the Department has recalculated the countervailing duty rates. The final countervailing duty rates for this review period are listed below in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: On August 22, 1991, the Department published the final results of its administrative review of the countervailing duty order on certain iron-metal castings from India for the period January 1, 1987 through December 31, 1987. *See Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings from India*, 56 FR 41658. Subsequently, respondents challenged the final results before the Court of International Trade (CIT). The primary issue involved the calculation of the program rates for the subsidies provided under India's International Price Reimbursement Scheme (IPRS). The IPRS is a program through which the Government of India (GOI) provided rebates to castings exporters that purchased domestically-produced pig iron at prices set by the GOI. According to the GOI, these rebates were calculated to equal the differences between the higher domestic prices actually paid and the lower alternative prices available from sources outside of India.

As the IPRS was also the subject of litigation for the review period 1985 in *Creswell* v. *United States*, Consolidated Court No. 91–01–00012 (*Creswell*), litigation for the review period 1987 was stayed pending finalization of *Creswell*. After the CIT affirmed the Department's remand determination for the 1985 administrative review (*see Creswell*, slip op. 98–139 (CIT Sept. 29, 1998)), the Department published a notice of amended final results in accordance with that opinion. *See Certain Iron-metal Castings from India: Amended Final Results of Countervailing Duty Administrative Review In Accordance With Decision Upon Remand*, 63 FR 67858 (December 9, 1998). In lieu of pursuing further litigation with respect to the administrative review of the review period 1987, the parties have entered into a settlement agreement. The parties agreed to countervailing duty rates that were calculated based on the methodology approved by the CIT in *Creswell*. On December 10, 1999, the CIT approved the settlement agreement and dismissed the lawsuit. *See Super Castings,* v. *United States*, Slip Op. 99–131, Consol. Ct. No. 91–09–00659 (CIT December 10, 1999).

Final Results of Review

Pursuant to the settlement agreement, we recalculated the company-specific and all-other subsidy rates for the period January 1, 1987, through December 31, 1987. The amended final countervailing duty rates are:

Manufacturer/exporter	Revised rates (%)
Crescent Foundry Co. Pvt. Ltd. ..	8.25
Kejriwal Iron & Steel Works	7.18
RSI India Pvt. Ltd.	9.42
Uma Iron & Steel Co.	7.56
Super Castings (India)	37.96
Select Steel	37.17
Commex	24.39
All Others	18.62

The Department will instruct the U.S. Customs Service (Customs) to assess countervailing duties on all appropriate entries. The Department will issue liquidation instructions directly to Customs. The above rates will not affect the cash deposit requirements currently in effect.

This amendment to the final results of countervailing duty administrative review notice is in accordance with section 751(a)(1) of the Tariff Act, as amended (19 U.S.C. 1675(a)(1)), 19 CFR 351.213, and 19 CFR 351.221(b)(5).

Dated: January 24, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–2579 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended export trade certificate of review, application No. 90–7A007.

SUMMARY: The Department of Commerce has issued an amended Export Trade Certificate of Review to The United States Surimi Commission (''USSC'') on January 28, 2000. Notice of issuance of the original Certificate was published in the **Federal Register** on August 30, 1990 (55 FR 35445).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs,

International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export TradingCompany Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1998).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 90–7A007, was issued to The United States Surimi Commission (''USSC'') on August 22, 1990 (55 FR 35445, August 30, 1990), and lastly amended on August 3, 1995 (60 FR 41879, August 14, 1995).

USSC's Export Trade Certificate of Review has been amended to:

1. Add the following companies as new ''Members'' of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Highland Light Seafoods, LLC, Seattle, WA (Controlling Entity: Highland Light, Inc., Seattle, WA) and The Starbound Limited Partnership, Seattle, WA (Controlling Entity: Aleutian Spray Fisheries, Inc., Seattle, WA).

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: January 28, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–2568 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 88–5A013.

SUMMARY: The Department of Commerce has issued an amended Export Trade Certificate of Review (''Certificate'') to the Construction Industry Suppliers Association of America International (''CISAI'') on January 13, 2000. Notice of issuance of the original Certificate was published in the **Federal Register** on October 26, 1988 (53 FR 43253).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1997).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Casting Industry Suppliers of America International's original Certificate was issued on October 13, 1988 (53 FR 43253, October 26, 1988), and previously amended on March 2, 1990 (55 FR 23123, June 6, 1990), December 16, 1991 (57 FR 883, January 9, 1992) and on October 9, 1997 (62 FR 54832, October 22, 1997). Casting Industry Suppliers of America International's Certificate has been amended to:

1. Change the listing of the Certificate holder cited in this paragraph to the new listing cited in this paragraph in parenthesis as follows: CISA Export Trade Group, Inc. (Casting Industry Suppliers of America International); and

2. Change the listing of the ''Member'' cited in this paragraph to the new listing cited in this paragraph in parenthesis as follows: Didion Manufacturing Company (Didion International, Inc.); and

3. Delete the following companies as ''Members'' of the Certificate within the meaning of section 325.2 (1) of the Regulations (15 CFR 325.2 (1)): Georg Fischer Disa, Inc., Holly, MI; Hickman, Williams & Company, Livonia, MI; Borden Chemical Company, Louisville, KY; Delta Resins & Refractories, Milwaukee, WI; Vulcan Engineering, Helena, AL and

4. Add the following companies as new ''Members'' of the Certificate within the meaning of § 325.2 (1) of the regulations (15 CFR 325.2 (1)): ABB Industrial System Inc, Columbus, Ohio, for the activities of its division ABB Metallurgy, New Brunswick, NJ; CSI Industrial Systems Corporation, Grayling, MI; Fairmount Minerals, Ltd., Chardon, OH; and Hamilton Technical Ceramics, Paris, ON Canada.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, l4th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: January 13, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–2569 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020100B]

Fishing Vessel Declaration For Western Gulf of Maine Restricted Fishery Program; Proposed Information Collection; Comment Request

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

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 April 4, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at *LEngelme@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Richard A. Pearson, One Blackburn Drive, Gloucester, MA 01930, 978–281–9279.

SUPPLEMENTARY INFORMATION:

I. Abstract

The New England Fishery Management Council (NEFMC) is currently considering management alternatives for the Gulf of Maine (GOM) multispecies fishery for inclusion in Framework Adjustment 33 to the Northeast Multispecies Fishery Management Plan (FMP). Two of the potential management measures have collection-of-information requirements associated with them.

These are the Western Gulf of Maine (WGOM) Restricted Fishery Program and the Multispecies Party/Charter Closed Area Exemption Certificate. These are described here.

Western GOM Restricted Fishery Program.

One of the management measures proposes to establish a new declaration that would allow vessel owners to annually enroll into a program entitled the Western Gulf of Maine (WGOM) Restricted Fishery Program. Vessels enrolled in this program would be allowed access to the area referred to as the WGOM Restricted Fishery Area, but would be limited to 25 Days-At-Sea or 25 trips, whichever is less, during the months of February, March, April and May in any fishing year. Vessels not enrolled in the WGOM Restricted Fishery Program category would be prohibited from fishing in the WGOM restricted fishery area during these months.

The WGOM restricted fishery area has preliminarily been described as an area extending from 43°50' N. Lat. and the Maine coast to 43°50' N. Lat., 70°00' W. Long. to 43°00' N. Lat., 70°15' W. Long. to 42°00' N. Lat., 70°15' W. Long. to 42°00' and the Massachusetts coast.

Multispecies Party/Charter GOM Closed Area Exemption Certificate

This proposed management measure would require vessel owners possessing a multispecies party/charter Federal permit, or operating a vessel as a party/charter vessel and fishing for multispecies, to obtain an exemption certificate to be allowed access to fish in GOM closed areas. This exemption certificate would allow access to GOM closed areas but would prohibit the vessel owner from utilizing multispecies days-at-sea while carrying passengers for hire on-board the vessel for the duration of the exemption certificate. Three potential duration periods have been proposed for the certificate, three months, six months and 12 months.

II. Method of Collection

Vessel owners electing to enroll into the WGOM Restricted Fishery Program would be required to complete an application form. Vessel owners would apply for the Multispecies Party/Charter GOM Closed Area Exemption Certificate by making a phone call.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,003.

Estimated Time Per Response: 5 minutes for the Western GOM Restricted Fishery Program and 2 minutes for the Multispecies Party/Charter GOM Closed Area Exemption Certificate.

Estimated Total Annual Burden Hours: 57.

Estimated Total Annual Cost to Public: $438.

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: January 28, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 00–2575 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020100A]

Marine Mammal Stranding Report; Proposed Information Collection; Comment Request

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

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 April 4, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at *LEngelme@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Nicole R. Le Boeuf, Office of Protected Resources, F/PR2, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 402(b) of the Marine Mammal Protection Act (MMPA) requires that information on marine mammal strandings be collected. The Marine Mammal Stranding Reports provide baseline information on marine mammal mortalities, human interactions with marine mammals, and marine mammal population dynamics. NMFS uses the information to fulfill management responsibilities under the

MMPA. The Marine Mammal Stranding Reports are submitted by members of the marine mammal stranding network—the vast majority of whom are volunteers who have been authorized by NMFS to respond to strandings.

There are three marine mammal stranding data forms proposed for use. All the forms are intended to accurately characterize marine mammal strandings data. The new Marine Mammal Human Interaction and Marine Mammal Disposition Reports are designed to supplement the existing main form, the Marine Mammal Stranding Report.

The Marine Mammal Stranding Report was designed to provide a basic record of a marine mammal stranding event. The proposed Marine Mammal Stranding Report contains minor modifications of the form currently in use by the stranding networks. The modifications were made to increase consistency with data collected and currently used databases, to clarify meanings of data fields, and to improve the overall readability and appearance of the form.

The Marine Mammal Human Interaction Report is designed to provide stranding responders with a tool to objectively examine and collect data on marine mammal strandings specific to signs of human interaction. The Report is intended to prompt the examiner to collect data that will lead to a human interaction determination of ''yes'', ''no'', or ''could not be determined''. The determination is recorded on the Marine Mammal Stranding Report, but the detailed information supporting this determination is provided on the Marine Mammal Human Interaction Report. The data collected on this form will help managers determine the frequency and type of human interactions that occur with marine mammals.

The Marine Mammal Disposition Report is designed to provide information regarding the treatment and disposition of a live marine mammal after initial examination and/or rehabilitation. Stranding network participants submit the Marine Mammal Stranding Report on a timely basis, but a live stranded animal may require longer care and/or may be deemed non-releasable and may be permanently retained in a captive display facility. The Marine Mammal Disposition Report allows the stranding network to provide follow-up information on the care, release, tagging, and specimen collection of live stranded marine mammals. This information will help managers track the final disposition of marine mammals that strand alive.

II. Method of Collection

Stranding Network members submit basic biological data contained on the reporting forms to NMFS Regional Offices for compilation and analysis.

III. Data

OMB Number: 0648–0178.

Form Number: NOAA Forms 89–864, 89–870, and 89–869.

Type of Review: Regular submission.

Affected Public: Individuals, not-for-profit institutions, business or other for-profit, Federal government, and state and local government

Estimated Number of Respondents: 400

Estimated Time Per Response: 20 minutes

Estimated Total Annual Burden Hours: 2,240

Estimated Total Annual Cost to Public: $2,200

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: January 28, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 00–2576 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012800I]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Council) will hold a meeting to discuss stock assessment plans for 2000. The meeting will be open to the public.

DATES: The meeting will be held February 28–February 29, 2000. The meeting will begin on Monday, February 28, 2000 at 10:00 a.m., and reconvene February 29, 2000 at 8:00 a.m.; the meeting will run as late as necessary each day to complete scheduled business.

ADDRESSES: The meeting will be held at the Pacific States Marine Fisheries Commission, 45 SE 82nd Drive, Suite 100, Gladstone, OR 97027–2522.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck, Fishery Management Analyst; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to plan the stock assessment process for groundfish species in 2000. The meeting will consider revisions to the terms of reference used for 1999 stock assessments, revise the goals and objectives for the annual stock assessment cycle, develop a calendar for 2000 stock assessment activities, confirm the list of species to be assessed in 2000, designate the resources and personnel for the assessments and the reviews, and discuss ways of improving coordination of the process. The meeting will also consider developing draft terms of reference for the process to rebuild overfished stocks.

Although non-emergency issues not contained in this notice may be discussed at the meeting, those issues will not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: January 28, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–2574 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

[Docket No. 000131021–0021–01]

National Weather Service (NWS) Modernization and Associated Restructuring; Final Certification of No Degradation of Service for the Combined Consolidation and/or Automation and Closure of Eight Weather Service Offices (WSO)

AGENCY: NWS, NOAA, Commerce.

ACTION: Notice.

SUMMARY: On January 28, 2000, the Under Secretary of Commerce for Oceans and Atmosphere transmitted to Congress notice of Consolidation and/or Automation and Closure certification approval for WSOs Hartford, Connecticut; Kahului, Hawaii; Portland, Maine; Boston and Worcester, Massachusetts; Concord, New Hampshire; Providence, Rhode Island; and Beckley, West Virginia. Pub. L. 102–567 requires the final certifications be published in the FR. This notice is intended to satisfy that requirement.

EFFECTIVE DATE: February 4, 2000.

ADDRESSES: Requests for copies of the final certification packages should be sent to Tom Beaver, Room 11426, 1325 East-West Highway, Silver Spring, MD 20910–3283.

FOR FURTHER INFORMATION CONTACT: Tom Beaver at 301–713–0300 ext. 136.

SUPPLEMENTARY INFORMATION: These eight certifications were proposed in the March 26, 1999, FR for public comment. The 60-day public comment period closed on May 26, 1999. One public comment was received from Mr. Jack W. Ferns, Director, State of New Hampshire Department of Transportation, pertaining to WSO Concord. The comment and the NWS response is set forth here for reference.

Comment on Concord: Mr. Ferns wrote, ''A number of years ago our office opposed the consolidation of Flight Service Stations (FSS) and specifically the closure of the FSS at Concord. We felt strongly, at the time, that loosing [sic] the FSS would compromise aviation safety. Now with the proposed closure of the NWS we feel that Concord has been dealt a second blow.

While we understand the effects of automation on our economy and the existing modernization process, we continue to recognize that weather services available on a person to person basis is becoming obsolete.

Our Department supports your effort to commission and certify an Automated Surface Observing System (ASOS) at Concord. Thank you for the opportunity to respond.''

NWS Response: Mr. John Jensenius, Liaison Officer for WS Concord, spoke with Mr. Ferns to assure him of the NWS commitment to provide continued support to the Concord area. Mr. Ferns said he is disappointed he will no longer be able to walk to the Concord office and discuss the weather with NWS personnel. Mr. Jensenius told him he could call the Portland forecast office, located in Gray, Maine, anytime for a weather briefing and offered to provide Mr. Ferns with a tour of the Portland office. Mr. Ferns stated he would try to work a tour into his schedule.

At its June 25, 1999, meeting, the Modernization Transition Committee (MTC) endorsed these certifications as not resulting in a degradation of service.

After consideration of the public comment received and the MTC endorsements, the Under Secretary of Commerce for Oceans and Atmosphere approved these eight combined consolidation and/or automation and closure certifications and transmitted notice of approval to Congress on January 28, 2000. Certification approval authority was delegated from the Secretary of Commerce to the Under Secretary in June 1996. The NWS is now completing the certification requirements of Pub. L. 102–567 by publishing the final consolidation and/or automation and closure certification notice in the FR.

Dated: February 1, 2000.

John E. Jones, Jr.,

Deputy Assistant Administrator for Weather Services.

[FR Doc. 00–2572 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 17 February 2000 at 10:00 AM in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001. Items of discussion will include designs for projects affecting the appearance of Washington, D.C., including buildings and parks.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, D.C. January 28, 2000.

Charles H. Atherton,

Secretary.

[FR Doc. 00–2510 Filed 2–3–00; 8:45 am]

BILLING CODE 6330–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Safety Standard for Cigarette Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of November 24, 1999 (64 FR 66171), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information required in the Safety Standard for Cigarette Lighters (16 CFR Part 1210). No comments from members of the public were received in response to the **Federal Register** notice. By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information without change for three years from the date of approval.

The Safety Standard for Cigarette Lighters requires disposable and novelty lighters to be manufactured with a mechanism to resist operation by children younger than five years of age. Certification regulations implementing the standard require manufacturers and importers to submit to the Commission a description of each model of lighter, results of prototype qualification tests for compliance with the standard, and a physical specimen of the lighter before the introduction of each model of lighter in commerce.

The Commission uses the records of testing and other information required

by the certification regulations to determine that disposable and novelty lighters have been tested and certified for compliance with the standard by the manufacturer or importer. The Commission also uses this information to obtain corrective actions if disposable or novelty lighters fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

Additional Information About the Request for Extension of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Safety Standard for Cigarette Lighters, 16 CFR Part 1210.

Type of request: Extension of approval without change.

General description of respondents: Manufacturers and importers of disposable and novelty cigarette lighters.

Estimated number of respondents: 45.

Estimated average number of hours per respondent: 175 per year.

Estimated number of hours for all respondents: 7,875 per year.

Estimated cost of collection for all respondents: $500,000 to $1,000,000 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by [insert date that is 30 days from publication of this notice in the **Federal Register**] to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington D.C. 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 504–0416, ext. 2226.

Dated: January 31, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–2438 Filed 2–3–00; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Requirements for Electrically Operated Toys and Children's Articles

AGENCY: Consumer Product Safety Commission.

ACTION:

SUMMARY: In the **Federal Register** of November 24, 1999 (64 FR 66171), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information required in the Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children (16 CFR Part 1505). No comments were received in response to that notice. By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information without change for three years from the date of approval by OMB.

The regulations in Part 1505 establish performance and labeling requirements for electrically operated toys and children's articles to reduce unreasonable risks of injury to children from electric shock, electrical burns, and thermal burns associated with those products. Section 1505.4(a)(3) of the regulations requires manufacturers and importers of electrically operated toys and children's articles to maintain records for three years containing information about: (1) Material and production specifications; (2) the quality assurance program used; (3) results of all tests and inspections conducted; and (4) sales and distribution of electrically operated toys and children's articles.

The records of testing and other information required by the regulations allow the Commission to determine if electrically operated toys and children's articles comply with the requirements of the regulations in Part 1505. If the Commission determines that products fail to comply with the regulations, this information also enables the Commission and the firm to: (i) identify specific lots or production lines of products which fail to comply with applicable requirements; and (ii) notify distributors and retailers in the event those products are subject to recall.

Additional Information About the Request for Extension of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children, 16 CFR Part 1505.

Type of request: Extension of approval without change.

General description of respondents: Manufacturers and importers of electrically operated toys and children's articles.

Estimated number of respondents: 40.

Estimated average number of hours per respondent: 200 per year.

Estimated number of hours for all respondents: 8,000 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by [insert date that is 30 days from publication of this notice in the **Federal Register**] to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

Copies of this request for extension of the information collection requirements and supporting documentation are available for Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, ext. 2226.

Dated: January 3, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–2439 Filed 2–3–00; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of

information under the provisions of the Paperwork Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: Technical Assistance for Public Participation (TAPP) Application; DD Form 2749; OMB Number 0704–0392.

Type of Request: Extension.

Number of Respondents: 265.

Responses per Respondent: 1.

Annual Responses: 265.

Average Burden per Response: 4 hours.

Annual Burden Hours: 1,060.

Needs and Uses: The collection of information is necessary to identify products or services requested by community members of restoration advisory boards or technical review committees to aid in their participation in the Department of Defense's environmental restoration program, and to meet Congressional reporting requirements. Respondents are community members of restoration advisory boards or technical review committees requesting technical assistance to interpret scientific and engineering issues regarding the nature of environmental hazards at an installation. This assistance will aid communities in participating in the cleanup process. The information, directed by 10 U.S.C. 2705, will be used to determine the eligibility of the proposed project, begin the procurement process to obtain the requested products or services, and determine the satisfaction of community members of restoration advisory boards and technical review committees receiving the products and services.

Affected Public: Not-For-Profit Institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 22, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–2441 Filed 2–3–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–12]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense Office of the Secretary.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–12 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: November 22, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

12 November 1999

In reply refer to:
I-99/012810

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-12, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $45 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Mark P. Scher
Acting Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-12

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Israel

(ii) Total Estimated Value:

Major Defense Equipment*	$ 19 million
Other	$ 26 million
TOTAL	$ 45 million

(iii) Description of Articles or Services Offered: Seven hundred Joint Direct Attack Munitions (JDAM) tail kits, MK-84 inert bombs, testing, spare and repair parts, support equipment, contractor engineering and technical support, and other related elements of program support.

(iv) Military Department: Air Force (YEQ)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 12 November 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel - Joint Direct Attack Munitions

The Government of Israel has requested a possible sale of 700 Joint Direct Attack Munitions (JDAM) tail kits, MK-84 inert bombs, testing, spare and repair parts, support equipment, contractor engineering and technical support, and other related elements of program support. The estimated cost is $45 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale will contribute significantly to U.S. strategic and tactical objectives. Israel will maintain its qualitative edge with a balance of new weapons procurement and upgrades supporting its existing systems. Israel will have no difficulty absorbing these JDAMs into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Boeing Company of St. Louis Missouri. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government representatives or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-12

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The Joint Direct Attack Munitions is actually a guidance kit that converts existing unguided free-fall bombs into precision-guided "smart" munitions. By adding a new tail section containing an Inertial Navigation System (INS) guidance/Global Positioning System (GPS) guidance to existing inventories of MK-84 bombs, the cost effective JDAM provides highly accurate weapon delivery in any "flyable" weather. The INS, using updates from the GPS, helps guide the bomb to the target via the use of movable tail fins.

2. Weapon accuracy is dependent on target coordinates and present position as entered into the guidance control unit. After weapon release, movable tail fins guide the weapon to the target coordinates. In addition to the tail kit, other elements in the overall system that are essential for successful employment include:

Access to accurate target coordinates.
INS/GPS capability
Operational Test and Evaluation Plan.

3. A determination has been made that Israel can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 00–2440 Filed 2–3–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Seventh Annual National Security Education Program (NSEP) Institutional Grants Competition

AGENCY: Department of Defense, National Security Education Program (NSEP).

ACTION: Notice.

SUMMARY: The NSEP announces the opening of its Seventh Annual Competition for Grants to U.S. Institutions of Higher Education.

DATES: The 2000 NSEP Grants Competition begins on Friday, February 4, 2000. [Preliminary Proposals are due Monday, April 10, 2000.

ADDRESSES: Grants Solicitations (application and guidelines) will be available and may be downloaded from the NSEP home page (http://www.ndu.edu/nsep) beginning Friday, February 4, 2000. As alternate methods, you may obtain copies of the solicitation package by: writing to NSEP, Institutional Grants, Rossyln P.O. Box 20010, 1101 Wilson Blvd., Suite 1210, Arlington, VA 22209–2248; by facsimile request nsepo@ndu.edu

FOR FURTHER INFORMATION CONTACT: Carol Anne Spreen, Institutional grants Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Arlington, VA 22209–2248; (703) 696–1991; Electronic mail address: spreenc@ndu.edu

Dated: November 22, 1999.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–2442 Filed 2–3–00; 8:45 am]
BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Eastern Arkansas Region Comprehensive Study, Bayou Meto Basin, AR, General Reevaluation

AGENCY: U.S. Army Corps of Engineers, Department of Defense

ACTION: Notice of intent.

SUMMARY: The purpose of this general reevaluation is to develop a plan that

provides flood control, agricultural water supply, groundwater protection and conservation, waterfowl management, and environmental enhancement and restoration. The Grand Prairie Region and Bayou Meto Basin, Arkansas, flood-control project was authorized by the Flood Control Act of 1950 and deauthorized by the Water Resources Development Act (WRDA) of 1986. This project was reauthorized by the WRDA of 1996 with an expanded scope that includes groundwater protection and conservation, agricultural water supply, and waterfowl management. Language in the Fiscal Year 1998 Appropriations Act directed the U.S. Army Corps of Engineers to initiate a reevaluation of the Bayou Meto Basin from within available funds. The appropriations acts for fiscal year 1999 and 2000 provided funding to continue to reevaluation.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Bright, telephone (901) 544–0745, CEMVM–PM, 167 North Main Street, Room B–202, Memphis, TN 38103–1894. Questions regarding the DEIS may be directed to Mr. Edward Lambert, telephone (901) 544–0707, CEMVM–PM–E.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The Eastern Arkansas Region Comprehensive Study, completed in 1990, indicated that a feasible plan of improvement for agricultural water supply and conservation exists for the Bayou Meto Basin, Arkansas. The Bayou Meto Basin Project general reevaluation will focus on developing a plan of improvement that will meet the flood control and water supply needs of the project area while providing substantial net environmental benefits. Preliminary studies indicate the a combination of measures of needed to meet the water supply needs of the project area. Identified water-supply components are (1) water conservation (increased irrigation efficiencies), (2) groundwater protection and conservation, (3) additional on-farm storage, and (4) a system to import surface water from the Arkansas River. Irrigation and flood-control features will be designed to avoid or minimize adverse environmental impacts; alternative plan designs will include recommendations from state and Federal natural resource agencies. Moreover, a major emphasis will be placed on the formulation of environmental project features. Measures to create and/or restore fish and wildfish habitat (including waterfowl habitat), improve water quality, and protect existing surface water and groundwater resources will be integral components of all alternative plans. The project area encompasses 779,109 acres between the Arkansas and White rivers in east central Arkansas; it includes portions of Arkansas, Jefferson, Lonoke, and Prairie counties.

2. Alternatives

Alternatives will be developed that provide flood control, agricultural water supply, groundwater conservation and protection, waterfowl management, and environmental enhancement and restoration. Comparisons will be made among alternative plans, and alternative plans will be compared to the ''no action'' alternative.

3. Scoping Process

An intensive public involvement program has been initiated and will be maintained throughout the study to (1) solicit input from individuals and interested parties so that problems, needs, and opportunities within the project area can be properly identified and addressed and (2) provide status updates to concerned organizations and the general public. Affected Federal, state, and local agencies; affected Indian tribes; and other interested private organizations and parties are encouraged to participate in the scoping process. Significant issues to be analyzed include potential impacts (negative and positive) to groundwater and surface water resources, fisheries, water quality, wetlands, wildlife, endangered species, cultural resources, and agricultural lands. Two public scoping meetings will be held within the project area. The first scoping meeting will be held on February 15, 2000, 5:30 p.m., at the England Elementary School, 400 East DeWitt, England, Arkansas. The second meeting is scheduled for February 16, 2000, 5:30 p.m., at the Lonoke Primary School, 800 Lincoln Street, Lonoke, Arkansas. It is anticipated that the DEIS will be available for public review during the fall of 2002. A public meeting will be held during the review period to receive comments and address questions concerning the DEIS.

Dated: January 26, 2000.

Daniel W. Krueger,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 00–2545 Filed 2–3–00; 8:45 am]

BILLING CODE 3710–KS–M

DEPARTMENT OF DEFENSE

Department of the Army Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Mining Activities Associated With Hobet Mining, Inc.'s (Hobet) Spruce No. 1 Surface Mine Located Near Blair, in Logan County, West Virginia

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: Pursuant to Section 404 of the Clean Water Act, the Huntington District, U.S. Army Corps of Engineers (Corps), in cooperation with several Federal and State cooperating agencies will prepare (in accordance with Section 102(2)(c) of the National Environmental Policy Act) an Environmental Impact Statement (EIS). The EIS will evaluate potentially significant impacts to the natural, physical, and human environment as a result of the proposed mining activities associated with Hobet's Spruce No. 1 Surface Mine.

ADDRESSES: Send written comments and suggestions concerning this proposal to Teresa Hughes, U.S. Army Corps of Engineers, Huntington District, Attn: Regulatory Branch–OR–FS, 502 8th Street, Huntington, West Virginia, 25701. Telephone (304) 529–5710 or electronic mail at Teresa.D.Huges@Lrh01.usace.army.mil. Requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Michael D. Gheen, Chief of Regulatory Branch, Attn: Regulatory Branch–OR–F, U.S. Army Corps of Engineers, Huntington district, 502 8th Street, Huntington, West Virginia 25701, Telephone (304) 529–5487 or electronic mail at Michael.D.Gheen@Lrh01.usace.army.mil

SUPPLEMENTARY INFORMATION: The Corps invites comments and suggestions regarding potential effects of the proposed action, including the regulatory issues and significant environmental effects to be addressed in the EIS, to promote open communication and better decision making. All persons and organizations that have an interest in the proposed project, including affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties, are urged to participate in this NEPA environmental analysis process. Written comments from the public regarding the

environmental and regulatory issues and alternatives to be addressed in the EIS will be accepted. The Corps will hold public meetings to receive public input, either verbal or written, on relevant environmental and regulatory issues that should be addressed in the EIS. The locations and starting times of the public meetings will be announced.

In accordance with 40 CFR 1506.5(c) and 33 CFR Part 325, Appendix B, (8)(f)(2), it is our understanding that Hobet will secure the services of a contractor for the preparation of an EIS. Hobet solicited bids for prospective contractors. Hobet will employ Michael Baker, Jr., Inc. to prepare the EIS for the proposed mining activities associated with the Spruce No. 1 Surface Mine.

The Corps and its cooperating agencies implement Federal and State laws with which mining operations and associated discharges to waters of the United States must comply. The cooperating agencies involved in this NEPA process are the Office of Surface Mining (OSM), U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (FWS), and the West Virginia Division of Environmental Protection (WVDEP). Each of the cooperating Federal and State agencies will provide their expertise in compiling information and evaluating potential impacts of the proposed project. OSM is responsible for national administration of the Surface Mining Control and Reclamation Act (SMCRA); it has delegated the authority for the SMCRA programs for surface mining operations in West Virginia to the State of West Virginia DEP. Discharges of fill material into waters of the United States are regulated under Section 404 of the Clean Water Act, administered by the Corps and applicable 404 regulations issued by the Corps and EPA. Other discharges to waters of the United States are subject Section 402 of the Clean Water Act, administered nationally by the EPA with authority for the program delegated to the State of West Virginia (DEP). Coordination with the FWS will be accomplished in compliance with the Endangered Species Act (ESA) and the Fish and Wildlife Coordination Act (FWCA). Coordination required by other laws and regulations will also be conducted.

This EIS will evaluate potentially significant environmental impacts associated with Hobet's proposed Spruce No. 1 Surface mine on water quality, streams, aquatic and terrestrial habitat, habitat fragmentation, the hydrological balance, and other individual and cumulative effects. Cumulative environmental impacts may include the efficacy of stream restoration; the viability of reclaimed streams compared to natural waters; the impact of valley fills on aquatic life, wildlife and nearby residents; biological and habitat analyses; and practicable alternatives for in-stream placement of excess overburden; measures to minimize stream filling to the maximum extent practicable; and the effectiveness of mitigation and reclamation measures.

The activity is to remove overburden to expose coal seams in order conduct surface mining activities on the Spruce No. 1 mining area. The proposed action is to issue a 404 permit to authorize the discharge of overburden into the streams in the surrounding project area.

The scoping process (40 CFR 1501.7 and 33 CFR Part 325, Appendix B) will consist of determining the extent to which potentially significant issues shall be analyzed. It shall define the study area based on the resources potentially affected, opportunities, and geographic areas likely affected by alternative plans. It shall identify current and potential future planning related activities to and not part of the study under consideration. The process shall identity and review consultation requirements, so that cooperating agencies (as defined in 40 CFR 15 CFR 1508.12) may prepare required analyses and studies concurrently with the study under consideration. Coordination of such agencies will be in accordance with Executive Order 12372 and 33 CFR 384. The process shall also indicate tentative planning and a decision making schedule.

Comments received in response to this solicitation, including names and address of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered.

To assist the Corps in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. These comments will assist in early scoping and later development of alternatives for the DEIS.

Michael D. Gheen,

Chief, Regulatory Branch.

[FR Doc. 00–2546 Filed 2–3–00; 8:45 am]

BILLING CODE 3710–GM–M

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

DATES AND TIMES: Friday, February 11, 2000, 9:00 am–3:00 pm.

ADDRESSES: Conference Rooms A–106/A–107, U.S. Department of Energy, Nevada Operations Office, 232 Energy Way, North Las Vegas, Nevada 89030–4199. Note: Members of the public who plan to attend this open meeting are requested to contact Mr. Darwin Morgan, Director of the Office of Public Affairs, U.S. Department of Energy, Nevada Operations Office in advance of the meeting in order to facilitate access to the meeting site. Mr. Morgan may be reached at (702) 295–3521 or via e-mail at morgan@nv.doe.gov.

FOR FURTHER INFORMATION CONTACT: Betsy Mullins, Executive Director, or Richard Burrow, Deputy Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Secretary of Energy Advisory Board (The Board) is to provide the Secretary of Energy with essential independent advice and recommendations on issues of national importance. The Board and its subcommittees provide timely, balanced, and authoritative advice to the Secretary of Energy on the Department's management reforms, research, development and technology activities, energy and national security responsibilities, environmental cleanup activities, and economic issues relating to energy.

Tentative Agenda

Friday, February 11, 2000

9:00 am–9:15 am—Welcome & Opening Remarks—SEAB Chairman Andrew Athy

9:15 am–9:35 am—Opening Remarks—Energy Secretary Bill Richardson

9:35 am–9:45 am—Introduction of New Board Members

9:45 am–10:15 am—Briefing on the DOE's Racial Profiling Task Force Report

10:15 am–11:00 am—Board Action on the Laboratory Operations Board's External Members' Report on Laboratory Directed Research and Development.

11:00 am–11:45 am—Updates on SEAB Subcommittees and Working Group Activities:

—Russia Task Force

—Education Working Group

11:45 am–1:00 pm—Lunch

1:10 pm–1:30 pm—Updates on SEAB Subcommittees and Working Group Activities:

—Openness Advisory Panel

—NIF Task Force
1:30 pm–2:45 pm—Update on DOE Activities:
—National Nuclear Security Administration
—Energy Efficiency
2:45 pm–3:00 pm—Public Comment Period
3:00 pm–Closing Remarks & Adjourn

This tentative agenda may change. We will have a final agenda available at the meeting.

Public Participation

The Chairman of the Secretary of Energy Advisory Board is empowered to conduct the meeting in a way that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in North Las Vegas, Nevada, the Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. You may submit written comments to Betsy Mullins, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to the programmatic issues that needed to be resolved prior to publication.

Minutes

We will make minutes and a transcript of the meeting available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 am and 4:00 pm, Monday through Friday except Federal holidays. You can find more information on the Secretary of Energy Advisory Board at the Board's web site, located at http://www.hr.doe.gov/seab

Issued at Washington, D.C., on January 31, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–2542 Filed 2–3–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–167–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 31, 2000.

Take notice that on January 27, 2000, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective February 1, 2000, the following tariff sheets:

Thirty-Seventh Revised Sheet No. 8A
Twenty-Eighth Revised Sheet No. 8A.01
Twenty-Ninth Revised Sheet No. 8A.02
Thirty-Third Revised Sheet No. 8B
Twenty-Sixth Revised Sheet No. 8B.01

FGT states that in Docket No. TM00–1–34–000 filed on August 27, 1999, FGT filed to establish a Base Fuel Reimbursement Charge Percentage (Base FRCP) of 2.75% to become effective for the six-month Winter Period beginning October 1, 1999. In the instant filing, FGT states that it is filing a flex adjustment of 0.25% to be effective February 1, 2000, which, when combined with the proposed Base FRCP of 2.75%, results in an Effective Fuel Reimbursement Charge Percentage of 3.00%.

FGT states that the tariff sheets listed above are being filed pursuant to Section 27.A.2.b of the General Terms and Conditions of FGT's Tariff, which provides for flex adjustments to the Base FRCP. Pursuant to the terms of Section 27.A.2.b, a flex adjustment shall become effective without prior FERC approval provided that such flex adjustment does not exceed 0.50%, is effective at the beginning of a month, is posted on FGT's EBB at least five working days prior to the nomination deadline, and is filed no more than sixty and at least seven days before the proposed effective date. FGT states that the instant filing comports with these provisions and FGT has posted notice of the flex adjustment prior to the instant filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2459 Filed 2–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–431–000]

Natural Gas Pipeline Company of America; Notice of Rescheduling of Conference

January 31, 2000.

Take notice that due to closure of the Federal Government because of inclement weather, the conference in the above-captioned proceeding originally scheduled for Tuesday, January 25, 2000, has been rescheduled for Thursday, February 10, 2000, beginning at 10:00 a.m., in Hearing Room No. 1, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Secretary.

[FR Doc. 00–2458 Filed 2–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–84–000, et al.]

Panda Gila River, L.P., et al., Electric Rate and Corporate Regulation Filings

January 27, 2000.

Take notice that the following filings have been made with the Commission:

1. Panda Gila River, L.P.

[Docket No. EG00–84–000]

Take notice that on January 20, 2000, Panda Gila River, L.P. (Panda Gila River), with its principal offices at 4100 Spring Valley Road, Suite 1001, Dallas, Texas 75244, filed with the Federal Energy Regulatory Commission, an application for determination of exempt wholesale generator status pursuant to

Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations.

Panda Gila River is a Delaware limited partnership, which will construct, own and operate a 2000 MW natural gas-fired generating facility within the region governed by the Western System Coordinating Council (WSCC) and sell electricity at wholesale.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. e prime, inc.; IEP Power Marketing, LLC; CNG Retail Services Corporation; J. Anthony & Associates Ltd.; Energetix, Inc.; Environmental Resources Trust, Inc.; Burlington Resources Trading Inc.

[Docket No. ER95–1269–015; Docket No. ER95–802–019; Docket No. ER97–1845–011; Docket No. ER95–784–017; Docket No. ER97–3556–010; Docket No. ER98–3233–006; Docket No. ER96–3112–013]

Take notice that on January 19, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

3. Union Electric Development Corporation; Central Hudson Enterprises Corporation; PacifiCorp Power Marketing, Inc.

[Docket No. ER97–3663–010; Docket No. ER97–2869–010; Docket No. ER95–1096–021]

Take notice that on January 20, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

4. Bangor Energy Resale, Inc.

[Docket No. ER98–459–008]

Take notice that on January 18, 2000, Bangor Energy Resale, Inc. filed their quarterly report for the quarter ending December 31, 1999, for information only.

5. Central Maine Power Company; Lone Star Steel Sales Company; Northeast Empire Limited Partnership #1; Northeast Empire Limited Partnership #2; Grayling Generation Station L.P.

[Docket No. ER00–1161–000; Docket No. ER00–1162–000; Docket No. ER00–1163–000; Docket No. ER00–1164–000; Docket No. ER00–1165–000]

Take notice that on January 19, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

Comment date: February 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. PEI Power Corp.; Ameren Services Company; Arizona Public Service Company; CH Resources, Inc.; Central and South West Services, Inc.; Maine Public Service Company

[Docket No. ER00–1173–000; Docket No. ER00–1179–000; Docket No. ER00–1180–000; Docket No. ER00–1181–000; Docket No. ER00–1189–000; Docket No. ER00–1190–000]

Take notice that on January 20, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

Comment date: February 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Puget Sound Energy, Inc.

[Docket No. ER00–1182–000]

Take notice that on January 20, 2000, Puget Sound Energy, Inc. (PSE), as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with PP&L Montana, LLC (PPLM), as Transmission Customer.

PSE requests that the Service Agreements become effective as of January 17, 2000.

A copy of the filing was served upon PPLM.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Central Vermont Public Service Corporation

[Docket No. ER00–1183–000]

Take notice that on January 20, 2000, Central Vermont Public Service Corporation (Central Vermont) tendered for filing a Service Agreement with TransCanda Power Marketing, Ltd. under its FERC Second Revised Electric Tariff Volume No. 8.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on January 10, 2000.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Old Dominion Electric Cooperative

[Docket No. ER00–1199–000]

Take notice that on January 21, 2000, Old Dominion Electric Cooperative filed their quarterly report for the quarter ending December 31, 1999.

Comment date: February 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ES00–16–000]

Take notice that on January 21, 2000, Consolidated Edison Company of New York, Inc. filed an application under Section 204 of the Federal Power Act seeking authorization to issue unsecured short-term debt until December 31, 2001, in an amount not to exceed $800 million at any one time.

Comment date: February 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Santa Rosa Energy LLC

[Docket No. QF97–138–001]

Take notice that on January 21, 2000, Santa Rosa Energy LLC, located at Edens Corporate Center, 650 Dundee Road, Suite 350, Northbrook, IL 60062, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a qualifying cogeneration facility (facility) pursuant to 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility, located at the Santa Rosa Energy Center, is a gas turbine combined cycle cogeneration facility that uses natural gas as its fuel source. The facility includes one combustion turbine generator, with a rated capacity of approximately 168,300 kW at ISO conditions, a heat recovery steam generator, and a condensing steam turbine generator rated at approximately 74,500 kW. The facility will be located in Pace, Florida, in the county of Santa Rosa.

The facility will interconnect directly with the transmission system of Gulf Power Company, located in Pensacola, Florida, and will sell its useful output at wholesale to Gulf Power Company as well as other various qualified buyers. Gulf Power Company will provide supplementary, standby, back-up and maintenance power to the Santa Rosa Energy Center.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Portland General Electric Company

[Docket No. ER98–1643–002]

Take notice that Portland General Electric Company (PGE), on January 19, 2000, tendered for filing proposed changes in its FERC Electric Service Tariff Rate schedule No. 11. The changes consist of restrictions on the

sale of power between PGE, on one hand, and Sierra Pacific Power Company, Nevada Power Company, Sierra Pacific Energy Company, and Sierra Pacific Resources, on the other, based on the proposed acquisition of PGE by Sierra Pacific Resources.

Copies of the filing were served upon PGE's jurisdictional customers and the Oregon Public Utility Commission.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Detroit Edison Company

[Docket No. ER00–459–001]

Take notice that on January 29, 2000, Detroit Edison Company submitted a compliance filing in the above-referenced matter.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Nordic Marketing, L.L.C.

[Docket No. ER00–774–000]

Take notice that on December 21, 1999, and January 6, 2000, Nordic Marketing, L.L.C., tendered for filing supplemental information to its December 10, 1999, filing in the above-referenced docket.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–957–000]

Take notice that on January 19, 2000, Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU), tendered for filing an Amendment to its executed Service Agreement for Network Integration Transmission Service between LG&E/KU and East Kentucky Power Cooperative, Inc., under LG&E/KU's Open Access Transmission Tariff.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Potomac Electric Power Company

[Docket No. ER00–977–000]

Take notice that on January 19, 2000, Potomac Electric Power Company submitted a correction to Amendment No. 1 to its electric service agreement with Southern Maryland Electric Cooperative, Inc. The requested effective date of January 1, 2000 for Amendment No. 1, a rate reduction, was not changed.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Northern Indiana Public Service Company

[Docket No. ER00–1143–000]

Take notice that on January 19, 2000, Northern Indiana Public Service Company (Northern Indiana), tendered for filing a Service Agreement pursuant to its Power Sales Tariff with Northern States Power Company (NSP).

Northern Indiana has requested an effective date of January 20, 2000.

Copies of this filing have been sent to NSP, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Virginia Electric and Power Company

[Docket No. ER00–1151–000]

Take notice that on January 19, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing a Letter of Termination of the Service Agreement between Virginia Electric and Power Company and Southern Company Energy Marketing L.P. (Southern) dated January 1, 1997 and approved by the FERC in a letter order on June 11, 1997 under Docket No. ER97–2834–000.

Virginia Power respectfully requests an effective date of the termination of February 12, 2000, as requested by Southern.

Copies of the filing were served upon Southern Company Energy Marketing L.P., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Central Illinois Light Company

[Docket No. ER00–1152–000]

Take notice that on January 19, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for one new customer, Powerex British Columbia Power Exchange Corporation.

CILCO requested an effective date of January 11, 2000, for the service agreements.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Ogden Martin Systems of Union, Inc.

[Docket No. ER00–1155–000]

Take notice that on January 19, 2000, Ogden Martin Systems of Union, Inc. (Ogden Union), tendered for filing a Power Sales Agreement by and between Sempra Energy Trading Corp. and Ogden Union as a service agreement under Ogden Union's Market Based Rate Tariff.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Duke Power a division of Duke Energy Corporation

[Docket No. ER00–1156–000]

Take notice that on January 19, 2000, Duke Power (Duke), a division of Duke Energy Corporation, tendered for filing a Service Agreement with PG&E Energy Trading-Power, L.P., for power sales at market-based rates. Duke requests that the proposed Service Agreement be permitted to become effective on January 6, 2000.

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: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Duke Energy Corporation

[Docket No. ER00–1157–000]

Take notice that on January 19, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Consumers Energy Corporation, for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on May 7, 1999.

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: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Duke Energy Corporation

[Docket No. ER00–1158–000]

Take notice that on January 19, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Consumers Energy Corporation, for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on May 7, 1999.

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: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Duke Energy Corporation

[Docket No. ER00–1159–000]

Take notice that on January 19, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Tenaska Power Service Co., for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on January 10, 2000.

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: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Duke Energy Corporation

[Docket No. ER00–1160–000]

Take notice that on January 19, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with PECO Energy Company (PECO), for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on January 1, 2000.

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: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Enron Energy Services, Inc.

[Docket No. ER00–1167–000]

Take notice that on January 19, 2000, Enron Energy Services, Inc. (EES), tendered for filing pursuant to Section 205 of the Federal Power Act, its FERC Electric Rate Schedule No. 3 for the Sale, Assignment or Transfer of Firm Transmission Rights (FTRs) to become effective as of February 1, 2000, EES requests a waiver of the 60-day notice requirement. The Rate Schedule authorizes EES to sell, assign or transfer FTRs in California. EES states that Rate Schedule No. 3 is filed in accordance with the Commission's order in California Independent System Operator Corporation, 89 FERC¶ 61,153 (1999).

This filing was sent to the California Independent System Operator Corporation.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Southwestern Public Service Company

[Docket No. ER00–1168–000]

Take notice that on January 19, 2000, New Century Services, Inc. (NCS), on behalf of Southwestern Public Service Company (SPS), tendered for filing pursuant to Section 205 of the Federal Power Act and part 35 of the Commission's regulations, an agreed-upon rate reduction for full requirements service to Caprock Electric Cooperative, Inc., Central Valley Electric Cooperative, Inc., Farmers' Electric Cooperative, Inc., Lea County Electric Cooperative, Inc., Lyntegar Electric Cooperative, Inc., and Roosevelt Electric Cooperative, Inc. NCS also filed a Service Agreement for Network Transmission Service between SPS Wholesale Merchant Function and SPS Transmission Function.

NCS proposes that the filing become effective January 14, 2000.

Copies of this filing were served upon the affected purchasers under the rate schedules and the state commissions within whose jurisdiction SPS sells electricity under the affected rate schedules.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Tiverton Power Associates Limited Partnership

[Docket No. ER00–1171–000]

Take notice that on January 19, 2000, Tiverton Power Associates Limited Partnership (Tiverton), tendered for filing, under section 205 of the Federal Power Act, a rate schedule under which Tiverton will sell energy, capacity and ancillary services at market-based rates and will reassign of transmission capacity.

Tiverton requests an effective date for the proposed rate schedule concurrent with the commencement of operations at its generating facilities.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Williams Energy Marketing & Trading Company

[Docket No. ER00–1172–000]

Take notice that on January 19, 2000, Williams Energy Marketing&Trading Company (Williams EM&T), tendered for filing pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (1994), and Part 35 of the Commission's Regulations, 18 CFR 35, revised pages to the Reliability Must-Run Service Agreements (RMR Agreements) between Williams EM&T and the California Independent System Operator Corporation (ISO) for certain RMR units located at the Alamitos, Huntington Beach, and Redondo Beach Generating Stations.

The purpose of the filing is to update Williams EM&T's existing RMR Agreements to reflect an extension of the existing RMR Agreements for a reduced number of RMR units for 2000, certain annual updates to Schedules A, B & D of the RMR Agreements, and changes to the personnel to receive notice pursuant to Schedule J of the RMR Agreements.

Williams EM&T requests waiver of the prior notice requirements of Section 35.3 of the Commission's Regulations, 18 CFR 35.3, to permit its revised RMR Agreements to become effective as of January 1, 2000.

Copies of the filing were served upon the ISO and Southern California Edison Company.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Northern States Power Company (Minnesota); Northern States Power Company; (Wisconsin)

[Docket No. ER00–1175–000]

Take notice that on January 20, 2000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Network Operating Agreement and a Network Integration Transmission Service Agreement between NSP and City of Medford, WI—Medford Electric Utility.

NSP requests that the Commission accept the Agreements effective January 1, 2000, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. AmerGen Energy Company, L.L.C.

[Docket No. ER00–1177–000]

Take notice on January 20, 2000, AmerGen Energy Company, L.L.C.,

tendered for filing a Reactive Power Compensation Agreement with GPU Energy under its FERC Electric Tariff Original Volume No. 1.

AmerGen is requesting an effective date of December 21, 1999, for the Reactive Power Compensation Agreement.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. Tampa Electric Company

[Docket No. ER00–1178–000]

Take notice that on January 20, 2000, Tampa Electric Company (Tampa Electric), tendered for filing a service agreement with the City of Tallahassee, Florida (Tallahassee) under Tampa Electric's market-based sales tariff.

Tampa Electric requests that the service agreement be made effective on December 26, 1999.

Copies of the filing have been served on Tallahassee and the Florida Public Service Commission.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2456 Filed 2–3–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1142–000, et al.]

Wisconsin Electric Power Company, et al.; Electric Rate and Corporate Regulation Filings

January 28, 2000.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Electric Power Company

[Docket No. ER00–1142–000]

Take notice that on January 19, 2000. Wisconsin Electric Power Company filed their quarterly report for the quarter ending December 31, 1999.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Southern Indiana Gas and Electric Company

[Docket No. ER00–1154–000]

Take notice that on January 19, 2000, Southern Indiana Gas & Electric Company filed their quarterly report for the quarter ending December 31, 1999.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Minnesota Power, Inc.; Kansas City Power & Light Company

[Docket Nos. ER00–1174–000, ER00–1176–000]

Take notice that on January 20, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Power a Division of Duke Energy Corporation

[Docket No. ER00–1184–000]

Take notice that on January 20, 2000, Duke Power (Duke), a division of Duke Energy Corporation, tendered for filing a Service Agreement with TXU Energy Trading Company for power sales at market-based rates. Duke states that this filing is in accordance with Part 35 of the Federal Energy Regulatory Commission's (Commission) Regulations (18 CFR Part 35).

Duke requests that the proposed Service Agreement be permitted to become effective on November 2, 1999.

Duke states that a copy of this filing has been served on the North Carolina Utilities Commission.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Power a Division of Duke Energy Corporation

[Docket No. ER00–1185–000]

Take notice that on January 20, 2000, Duke Power (Duke), a division of Duke Energy Corporation, tendered for filing a Service Agreement with Statoil Energy Services, Inc. for power sales at market-based rates. Duke states that this filing is in accordance with Part 35 of the Federal Energy Regulatory Commission's (Commission) Regulations (18 CFR Part 35).

Duke requests that the proposed Service Agreement be permitted to become effective on January 14, 2000.

Duke states that a copy of this filing has been served on the North Carolina Utilities Commission.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Carolina Power & Light Company

[Docket No. ER00–1186–000]

Take notice that on January 20, 2000, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement with Coral Power, L.L.C. 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: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Southwest Power Pool, Inc.

[Docket No. ER00–1187–000]

Take notice that on January 20, 2000, Southwest Power Pool, Inc. (SPP) tendered for filing executed service agreements for firm point-to-point transmission service and loss compensation service under the SPP Tariff with Southwestern Electric Power Company as Designated Agent for Tex-La Electric Cooperative of Texas, Inc (Tex-La).

Copies of this filing were served on Tex-La.

SPP requests an effective date of January 1, 2000 for each of these service agreements.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Potomac Electric Power Company

[Docket No. ER00–1188–000]

Take notice that on January 29, 2000, Potomac Electric Power Company (Pepco) tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 4, entered into between Pepco and Reliant Energy Services, Inc.

An effective date of September 29, 1999 for these service agreements, with waiver of notice, is requested.

Comment date: February 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER00–1191–000]

Take notice that on January 21, 2000, Niagara Mohawk Power Corporation tendered for filing an Interconnection Agreement between Niagara Mohawk Power Corporation and PSEG Power New York Inc. dated as of January 10, 2000.

Niagara Mohawk Power Corporation requests an effective date of February 15, 2000 or, if later, the closing date of the sale of the Albany generating facility. To the extent necessary, Niagara Mohawk requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: February 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Cabrillo Power I LLC; Cabrillo Power II LLC

[Docket No. ER00–1192–000]

Take notice that on January 21, 2000, Cabrillo Power I LLC and Cabrillo Power II LLC (Cabrillo I & II) tendered for filing their annual update filing governing Reliability Must Run (RMR) services provided by their power plants to the California Independent System Operator Corporation (ISO). Cabrillo I & II's filing includes an agreed upon one-year extension of the RMR Agreements, and provides updates to various Schedules appended to the RMR Agreements related to Contract Service Limits, Target Available Hours, and pre-paid Start-up Charges under the RMR Service Agreements.

Cabrillo I & II have requested an effective date of January 1, 2000.

Copies of this filing have been served upon the ISO, the California Electricity Oversight Board, and the California Public Utilities Commission.

Comment date: February 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. EnerZ Corporation

[Docket No. ER00–1193–000]

Take notice that on January 21, 2000, EnerZ Corporation (EnerZ) filed a Notice of Cancellation of its Rate Schedule FERC No. 1, with a proposed effective date of January 31, 2000. EnerZ is no longer engaged in the power marketing business, will not conduct power marketing activities in the future, and has no outstanding power sales contracts; accordingly, no purchasers will be affected by this notice.

Comment date: February 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Pennsylvania Electric Company

[Docket No. ER00–1194–000]

Take notice that on January 21, 2000, Pennsylvania Electric Company (doing business and hereinafter referred to as GPU Energy) submitted for filing amendments to the 115 kV Seward-Conemaugh Interconnection Agreement Between GPU Energy and Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Metropolitan Edison Company, Pennsylvania Power and Light Company, Philadelphia Electric Company, Potomac Electric Power Company, Public Service Electric and Gas Company, and the United Gas Improvement Company. The amendments modify Schedule 1 and Schedule 2 of the Interconnection Agreement.

Comment date: February 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Northern Indiana Public Service Company; Jersey Central Power & Light Company

[Docket Nos. ER00–1195–000, ER00–1196–000]

Take notice that on January 21, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

Comment date: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. El Paso Merchant Energy, L.P.

[Docket No. ER00–1197–000]

Take notice that on January 21, 2000, El Paso Merchant Energy, L.P. filed a Notice of Succession in Ownership or Operation which hereby adopts, ratifies and makes its own in every respect all applicable rate schedules, and supplements thereto, listed below, heretofore filed with the Federal Energy Regulatory Commission by El Paso Power Services Company and Sonat Power Marketing L.P., effective December 31, 1999.

El Paso Power Services Company—Rate Schedule FERC No. 1 (Market-Based Rate Schedule)

Sonat Power Marketing L.P.—Rate Schedule FERC No. 1 (Market-BasedRate Schedule)

Comment date: February 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. El Paso SPM Company

[Docket No. ER00–1198–000]

Take notice that on January 21, 2000, El Paso SPM Company, 1001 Louisiana Street, Houston, Texas 77002, filed a Notice of Succession in Ownership or Operation which hereby adopts, ratifies, and makes its own, in every respect all applicable rate schedules, and supplements thereto, listed below, heretofore filed with the Federal Energy Regulatory Commission by Sonat Power Marketing Inc., effective December 31, 1999.

Rate Schedule FERC No. 1 (Market-Based Rate Schedule)

Comment date: February 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Cinergy Services, Inc.

[Docket No. ER00–1206–000]

Take notice that on January 24, 2000, Cinergy Services, Inc., collectively as agent for and on behalf of its utility operating company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and Clinton Energy Management, Inc. (3CEMS).

Cinergy and CEMS are requesting an effective date of January 1, 2000.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Sunbury Generation, LLC

[Docket No. ER00–1170–000]

Take notice that on January 19, 2000, Sunbury Generation, LLC (Sunbury), tendered for filing a Power Purchase Agreement between Sunbury and WPS Energy Services, Inc., (PPA).

Sunbury requests that the Commission waive its notice of filing requirements to allow the PPA to become effective on January 20, 2000.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Soyland Power Cooperative, Inc.

[Docket No. ER00–1204–000]

Take notice that on January 24, 2000, Soyland Power Cooperative, Inc. (Soyland), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement between Soyland and Clinton Electric Cooperative, Inc., dated December 15, 1999, and Amendment No. 1 to such Service Agreement dated January 11, 2000. During the terms of the Service Agreement and Amendment No. 1, Soyland will provide firm short-term power to Clinton. Clinton was formerly a member of Soyland, but left Soyland as of December 31, 1997. The Service Agreement represents a decrease in rates when compared to the rates paid by Clinton as a Soyland member as of December 31, 1997. Soyland seeks Commission authorization to provide power according to the terms and rates of the Service Agreement and Amendment No. 1 to Clinton with an effective date of January 1, 2000.

Soyland also seeks a waiver of the commission 60 day prior notice requirements. The power sale will provide Clinton with all of its requirements for the period January 1 through February 29, 2000. Clinton has submitted a Certificate of Concurrence indicating its acceptance of the rates and terms of the Service Agreement and Amendment No. 1.

A copy of this filing was served on Clinton Electric Cooperative, Inc.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. WPS Energy Services, Inc.

[Docket No. ER00–1169–000]

Take notice that on January 19, 2000, WPS Energy Services, Inc. (ESI), tendered for filing a Brokering and Dispatch Agreement (Agreement) between ESI and Sunbury Generation, LLC (Sunbury).

ESI requests that the Commission waive its notice of filing requirements to allow the Agreement to become effective on January 20, 2000.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Cleco Utility Group Inc.

[Docket No. ER00–1153–000]

Take notice that on January 19, 2000, Cleco Utility Group Inc., Transmission services (CLECO), tendered for filing service agreements for non-firm and short term firm point-to-point transmission services under its Open Access Transmission Tariff with Williams Energy Marketing & Trading Company.

CLECO requests an effective date of January 17, 2000.

Comment date: February 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Southwestern Public Service Company

[Docket No. ER00–1168–000]

Take notice that on January 24, 2000, New Century Services, Inc. (NCS), on behalf of Southwestern Public Service Company (SPS), tendered for filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, an amendment to it January 19, 2000, filing of an agreed-upon rate reduction for full requirements service to Caprock Electric Cooperative, Inc., Central Valley Electric Cooperative, Inc., Farmers' Electric Cooperative, Inc., Lea County Electric Cooperative, Inc., Lyntegar Electric Cooperative, Inc., and Roosevelt Electric Cooperative, Inc., and Service Agreement for Network Transmission Service between SPS Wholesale Merchant Function and SPS Transmission Function. The amendment corrects one page of each rate schedule that was incorrectly redlined in the January 19, 2000 filing.

NCS proposes that the amended filing become effective January 14, 2000.

Copies of this filing were served upon the affected purchasers under the rate schedules and the state commissions within whose jurisdiction SPS sells electricity under the affected rate schedules.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Puget Sound Energy, Inc.

[Docket No. ER00–1211–000]

Take notice that on January 24, 2000, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with QST Energy Trading, Inc., (QST).

A copy of the filing was served upon QST.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Puget Sound Energy, Inc.

[Docket No. ER00–1212–000]

Take notice that on January 24, 2000, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with NP Energy Inc.

A copy of the filing was served upon NP Energy Inc.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Puget Sound Energy, Inc.

[Docket No. ER00–1210–000]

Take notice that on January 24, 2000, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with PECO Energy (PECO).

A copy of the filing was served upon PECO.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Cinergy Services, Inc.

[Docket No. ER00–1208–000]

Take notice that on January 24, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Consumers Energy Company (Consumers).

Cinergy and Consumers are requesting an effective date of one date after this filing.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Soyland Power Cooperative, Inc.

[Docket No. ER00–1205–000]

Take notice that on January 24, 2000, Soyland Power Cooperative, Inc. (Soyland), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement between Soyland and Tri-County Electric Cooperative, Inc., dated December 16, 1999, and Amendment No. 1 to such Service Agreement dated January 12, 2000. During the terms of the Service Agreement and Amendment No. 1, Soyland will provide firm short-term power to Tri-County. Tri-County was formerly a member of Soyland, but left Soyland as of December 31, 1997. The Service Agreement represents a decrease in rates when compared to the rates paid by Tri-County as a Soyland member as of December 31, 1997. The power sale will provide Tri-County with all of its requirements for the period January 1 through February 29, 2000. Tri-County has submitted a Certificate of Concurrence indicating its acceptance of the rates and terms of the Service Agreement and Amendment No. 1.

Soyland seeks Commission authorization to provide power according to the terms and rates of the Service Agreement and Amendment No. 1 to Tri-County with an effective date of January 1, 2000. Soyland also seeks a waiver of the commission 60 day prior notice requirements.

A copy of this filing was served on Tri-County Electric Cooperative, Inc.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Central Power and Light Company

[Docket No. ER00–1203–000]

Take notice that on January 24, 2000, Central Power and Light Company (CPL), tendered for filing an Interconnection Agreement between CPL and Duke Energy Hidalgo, L.P., (Duke).

CPL requests an effective date for the Interconnection Agreement of November 12, 1999. Accordingly, CPL requests waiver of the Commission's notice requirements.

CPL states that a copy of the filing was served on Duke and the Public Utility Commission of Texas.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. FirstEnergy System

[Docket No. ER00–1201–000]

Take notice that on January 24, 2000, FirstEnergy System filed a Service Agreement to provide Firm Point-to-Point Transmission Service for ACN Power, Inc., the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is January 7, 2000 for the above mentioned Service Agreement in this filing.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Indeck Pepperell Power Associates

[Docket No. ER00–1202–000]

Take notice that on January 24, 2000, 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 Niagara Mohawk Energy Marketing, Inc. (NMEM), dated December 21, 1999, for service under Indeck Pepperell's Rate Schedule FERC No. 1.

Indeck Pepperell requests that the Service Agreement be made effective as of December 21, 1999.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. FirstEnergy System

[Docket No. ER00–1200–000]

Take notice that on January 24, 2000, FirstEnergy System filed a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for: ACN Power, Inc. , the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is January 07, 2000 for the above mentioned Service Agreement in this filing..

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Cinergy Services, Inc.

[Docket No. ER00–1209–000]

Take notice that on January 21, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Consumers Energy Company (Consumers).

Cinergy and Consumers are requesting an effective date of one day after this filing.

Comment date: February 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. Cinergy Services, Inc.

[Docket No. ER00–1221–000]

Take notice that on January 24, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and British Columbia Power Exchange Corp., (British).

Cinergy and British are requesting an effective date of December 31,1999.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. Cinergy Services, Inc.

[Docket No. ER00–1207–000]

Take notice that on January 24, 2000, Cinergy Services, Inc., collectively as agent for and on behalf of its utility operating company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and Allegheny Energy Supply Company, LLC (AESC).

Cinergy and AESC are requesting an effective date of January 13, 2000.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. Cinergy Services, Inc.

[Docket No. ER00–1220–000]

Take notice that on January 24, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Cinergy Services, Inc. (Cinergy, the Customer).

This service agreement has a yearly firm transmission service with American Electric Power via the Gibson Generating Station Unit No's. 1–5.

Cinergy and Cinergy, the Customer are requesting an effective date of January 1, 2000.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. Cinergy Services, Inc.

[Docket No. ER00–1222–000]

Take notice that on January 24, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and British Columbia Power Exchange Corp., (British).

Cinergy and British are requesting an effective date of December 31, 1999.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

36. Fitchburg Gas and Electric Light Company

[Docket No. ER00–1215–000]

Take notice that on January 24, 2000, Fitchburg Gas and Electric Light Company (FG&E), tendered for filing changes to the rate set forth in FG&E's Open Access Transmission Tariff, FERC Electric Tariff, First Revised Volume No. 4. The changes reflect a decrease in FG&E's Transmission Plant and corresponding decrease in FG&E's rate for transmission service.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

37. Cinergy Services, Inc.

[Docket No. ER00–1216–000]

Take notice that on January 24, 2000, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (COC), tendered for filing an executed service agreement between COC and Engage Energy US, L. P. (Engage), replacing the unexecuted service agreement filed in April 1999 under Docket No. ER99–2511–000 per COC FERC Electric Market-Based Power Sales Tariff, Original Volume No. 7–MB.

Cinergy is requesting an effective date of May 1, 1999 and the same Rate Designation as per the original filing.

Comment date: February 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, 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).

David P. Boergers,

Secretary.

[FR Doc. 00–2457 Filed 2–3–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM99–2–000]

Regional Transmission Organizations; Notice of Dates and Locations for Regional Collaborative Workshops

January 31, 2000.

On December 20, 1999, the Commission issued Order No. 2000 [1] to advance the formation of Regional Transmission Organizations (RTOs). Order No. 2000 announced the initiation of a regional collaborative process [2] to aid in the formation of RTOs. To initiate the collaborative process, the Commission is organizing a series of regional workshops. The following five locations are designated for the Spring 2000 workshops and, as stated in order No. 2000, ''* * * the selection of locations for initial workshops is not to indicate a preference for specific RTO boundaries, but to provide convenient workshop locations.'' [3] The workshops are open to all interested parties and attendance at more than one workshop is permitted. The Commission expects that all transmission owners will attend at least one workshop.

The dates and locations for the Spring 2000 regional workshops are as follows:

March 1–2, 2000 in Cincinnati, OH
March 15–16, 2000 in Philadelphia, PA
March 23–24, 2000 in Las Vegas, NV
March 29–30, 2000 in Kansas City, MO
April 5–6, 2000 in Atlanta, GA

Agendas, procedural rules and specific meeting locations will be provided in advance of the workshops on the Commission's website (*http://www.ferc.fed.us/*). The Commission contact person for these workshops is James Apperson, (202) 219–2962.

David P. Boergers,

Secretary.

[FR Doc. 00–2488 Filed 2–3–00; 8:45 am]

BILLING CODE 6717–01–M

[1] 65 FR 809 (January 6, 2000).

[2] *Id.* at 942–43.

[3] *Id.* at 943.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6532–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; IAQ Practices in Large Buildings Survey

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): IAQ Practices in Large Buildings Survey, EPA ICR Number 1917.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 4, 2000.

ADDRESSES: To obtain a copy of the ICR without charge, contact: Mr. Lee Salmon, Indoor Environments Division, Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., (6609J), Washington, D.C. 20460. A copy of the ICR can also be downloaded off the Internet at http://www.epa.gov/icr; refer to EPA ICR No. 1917.01.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Salmon by telephone at (202) 564–9451 or by e-mail at salmon.lee@epa.gov.

SUPPLEMENTARY INFORMATION: Affected entities: Entities potentially affected by this action are selected owners and managers of office buildings over 50,000 square feet. Survey recipients were selected from the membership lists of the Building Owners and Managers Association (BOMA) and the International Facilities Management Association (IFMA), as well as a list of commercial office buildings greater than 50,000 square feet generated from electronically-available tax records. Federally-owned properties were selected by EPA in consultation with the General Services Administration (GSA).

Title: IAQ Practices in Large Buildings Survey (EPA ICR No. 1917.01).

Abstract: EPA is currently working with other Federal agencies and the public, as well as with other nations, to promote effective approaches for identifying and solving indoor air quality (IAQ) problems. As part of this effort, EPA has developed a guide which addresses indoor air quality in large office buildings entitled ''Building Air Quality: A Guide for Building Owners and Facility Managers'' (BAQ). This document provides an extensive discussion of a wide range of potential indoor air pollutants and suggests ways in which building owners and managers can improve the indoor air quality of their buildings. As a complement to the Guide, EPA has also developed a comprehensive BAQ Action Plan, which describes an eight-step process for improving a building's indoor air quality. The BAQ Action Plan can be used to determine the current condition of an office building's indoor air quality, as well as to successfully implement good IAQ management practices.

Using a seven-page survey, EPA proposes to collect data from building owners and managers. This survey will allow EPA to determine the extent to

which elements of the BAQ guidance have been incorporated into building management practices throughout the United States. The Agency also wishes to determine what barriers to implementation, if any, have been incurred by building owners and managers. These data are essential for measuring the effectiveness of EPA's efforts to encourage good IAQ management practices in large office buildings against the Agency's established Government Performance and Results Act or 1993 (GPRA) goal. By the year 2005, EPA wishes to demonstrate a five-percent increase in the number of large office buildings (*i.e.,* over 50,000 square feet) that use good IAQ management practices.

To determine its success in achieving this goal, EPA intends to survey owners and managers of commercial and Federally-owned office buildings greater than 50,000 square feet on a variety of IAQ practices. The Agency will mail a survey and instructions for completing it to approximately 4,150 building owners and managers. Building owners/ managers will be given up to 30 days to respond. At the end of this period, a follow-up letter will be sent to building owners/ managers to remind them of the survey and to encourage them to respond. The initial survey will establish a baseline for the use rate of IAQ-related practices recommended in EPA's guidance. After its completion, EPA will continue efforts to encourage large office building owners and managers to adopt the IAQ practices outlined in BAQ. EPA intends to conduct another survey in 2005 to assess changes in the use of these practices.

EPA does not expect to receive confidential information from the building owners and managers voluntarily participating in the IAQ Practices in Large Buildings Survey. However, if a respondent does consider the information submitted to be of a proprietary nature, EPA will assure its confidentiality based on the provisions of 40 CFR Part 2, Subpart B, ''Confidentiality of Business Information.''

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) 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.

(ii) 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.

(iii) enhance the quality, utility, and clarity of the information to be collected.

(iv) 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.

Burden Statement: EPA expects to mail surveys to approximately 4,150 building owners and managers. EPA expects approximately 43 percent of those surveyed to respond to this information collection request. Over three years, EPA estimates that the burden to building owners and managers who respond to the survey will be approximately 3,233 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

This survey effort is expected to cost the respondents approximately $67,890. Respondents will incur no capital or start-up costs and the only operation and maintenance component of the survey will be the cost to photocopy the survey once completed (if desired). Burden and cost estimates for the future administration of the IAQ Practices in Large Buildings Survey will be provided at the time this ICR is renewed, but they are expected to be similar to those provided in this **Federal Register** notice.

Dated: January 21, 2000.

Mary T. Smith,

Director, Indoor Environments Division.

[FR Doc. 00–2481 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6250–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 17, 2000 Through January 21, 2000 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements(EISs) was published in FR dated April 09, 1999 (63 FR 17856).

Draft EISs

ERP No. D–COE–E32079–SC Rating EO2, Daniel Island Marine Cargo Terminal Development, Permits and Approvals, South Caroline State PortsAuthority, (SCSPA), Charleston, Berkeley County, SC.

Summary: EPA expressed environmental objections due to significant indirect and induced impacts related to wetlands, environmental justice, waste treatment, air quality, dredge material disposal and discharge permit issues. EPA requested additional information and mitigation measures.

ERP No. D–COE–E39049–FL Rating EC2, Southwest Florida Improvement to the RegulatoryProcess for Rapid Growth and Development,Alternatives Development Group (ADG), Lee and Collier Counties, FL.

Summary: EPA expressed environmental concerns about finalizing this regulatory process given its scope/ complexity.Additional information about future development trends will need to be evaluated in the context of an improved review process to avoid unacceptable losses to the natural environment.

ERP No. D–FAA–G51015–TX Rating EC2, George Bush Intercontinental Airport Houston,Construction and Operation, Runway 8L–26R and Associated Near Term Master Plan Project,City of Houston, Harris County, TX.

Summary: EPA expressed environmental concerns due to potential noise and air related impacts. The FEIS should clarify and demonstrate air conformity requirements including implication to the State Implementation Plan and mitigation measures should be included in the ROD.

ERP No. D–FHW–E40781–FL Rating EC2, FL–423 (John Young Parking), Improvements from FL–50 to Fl–434, City of Orlando, Orange County,FL.

Summary: EPA expressed environmental concern regarding relocation issues and potential noise impacts. EPA requested additional consideration of residential relocations and noise mitigation. EPA also suggested that the project design provide for future light rail and bike lanes.

ERP No. D–SFW–K99029–CA Rating EC2, San Joaquin County Multi-Species HabitatConservation and Open Space Plan, Issuance of Incidental Take Permit, San Joaquin County, CA.

Summary: EPA expressed environmental concerns about compliance with EPA's CWA Section 404(b)(1) guidelines. TheFinal EIS should clearly reflect the requirements to avoid and minimize, to the fullest extent practicable, the discharge of dredged or fill material into waters of the United States.

ERP No. D–USN–E11047–00 Rating EC1, USS Winston S. Churchill (DDG 81), Conducting a Shock Trial, Offshore of Naval Stations,Mayport, FL; Norfolk, VA and/or Pascagoula, MS.

Summary: EPA expressed environmental concerns about the proposed ship shock test, and recommended post-monitoring results be made available to assess mitigation measures.

Final EISs

ERP No. F–COE–G39031–ARGrand Prairie Area Demonstration Project,Implementation, Water Conservation, GroundwaterManagement and Irrigation Water Supply,Prairie, Arkansas, Monroe and Lonoke Counties, AR.

Summary: EPA continued to express concerns about the project and urged the Corps to conduct a comprehensive, or cumulative impact study of the White River basin in order to gain a better understanding of the interaction of implemented and planned projects.

ERP No. F–FAA–C51019–NY LaGuardia Airport East End Roadway Improvements Project, Four New Ramps at the 102nd Street Bridge Construction, Airport Layout Plan Approval and Funding, Queens County, NY.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–USN–K11104–CA Marine Corp Air Station (MCAS) Tustin Disposal and Reuse Plan, Cities of Tustin and Irvine, Orange County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–UAF–C11011–NY Griffiss Air Force Base (AFB) Disposal and Reuse, Implementation, Oneida County, NY.

Summary: No formal comment letter was sent to the preparing agency.

Dated: February 1, 2000.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–2594 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6250–7]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 564–7167 OR www.epa.gov/oeca/ofa Weekly receipt of Environmental Impact Statements Filed January 24, 2000 Through January 28, 2000 Pursuant to 40 CFR 1506.9.

EIS No. 000020, Final EIS, COE, FL, Lake Okeechobee Regulation Schedule Study, To Maintain or Improve Existing Water Storage, St. Lucie and Caloosahatchee River Estuaries, FL , Due: March 6, 2000, Contact: Elmar Kurzbach (904) 232–2325.

EIS No. 000021, Final EIS, USN, NV, Fallon Naval Air Station (NAS), Proposal for the Fallon Range Complex Requirements, Federal and Private Lands, Churchill, Eureka, Lander, Mineral, Nye and Washoe Counties, NV, Due: March 6, 2000, Contact: Terri Knutson (775) 885–6156.

EIS No. 000022, Final EIS, DOE, NM, The Conveyance and Transfer of Certain Land Tracts Administered by the US DOE and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, NM, Due: March 6, 2000, Contact: Elizabeth Withers (505) 667–8690.

EIS No. 000023, Draft EIS, SFW, CA, San Diequito Wetland Restoration Project, Implementation, Comprehensive Restoration Plan, COE Section 404 Permit, Cities of Del Mar and San Diego, San Diego County, CA, Due: March 20, 2000, Contact: Jack Fancher (760) 431–9440.

EIS No. 000024, Draft EIS, FHW, TX, TX–130 Construction, I–35 of Georgetown to I–10 near Seguin, Funding, COE Section 404 Permit, Williamson, Travis, Caldwell, Guadalupe Counties, TX, Due: March 20, 2000, Contact: Walter Waidelich (512) 916–5988.

EIS No. 000025, Final EIS, FHW, AR, MS, AR, Great River Bridge, Construction, US 65 in Arkansas to MS–8 in Mississippi, Funding, COE Section 404 Permit and US Coast Guard Bridge Permit, Desha and Arkansas Counties, AR and Bolivar County, MS, Due: March 6, 2000, Contact: Elizabeth A. Romero (504) 324–5625.

EIS No. 000026, Final EIS, UAF, LA, TX, NM, Realistic Bomber Training Initiative, Improve the B–52 and B–1 Aircrews Mission Training and Maximize Combat Training Time, Barksdale Air Force Base, LA, NM and TX, Due: March 6, 2000, Contact: Brenda Cook (757) 764–9339.

EIS No. 000027, Final EIS, FRC, FL, MS, Florida Gas Transmission Phase IV Expansion Project (Docket No. CP99–94–000), To Deliver Natural Gas to Electric Generator, FL and MS, Due: March 6, 2000, Contact: Paul McKee (202) 208–1088.

Dated: February 1, 2000.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–2595 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6533–6]

Environmental Laboratory Advisory Board; Meeting Dates and Agenda

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App 2) notification is hereby given of an open meeting of the Environmental Laboratory Advisory Board (ELAB).

DATES: The meeting will be held on February 15, 2000, from 1:30 p.m. to 4:00 p.m. (EST).

ADDRESSES: While the meeting will be conducted by teleconference, the public is invited to participate by joining David Friedman in EPA Conference Room 2 on the fourth floor of the Ronald Reagan Building, 1300 Pennsylvania Avenue, NW.

SUPPLEMENTARY INFORMATION: Among the items the Board will discuss are updates from its subcommittees, laboratory performance testing, shipment of environmental samples, and any public comments that the Board has received since their December 1999 meeting.

The meeting is open to the public and time will be allotted for public comment. Written comments are encouraged and should be directed to David Friedman; USEPA; 1200 Pennsylvania Avenue, NW (8101R); Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Friedman; Designated Federal Officer; USEPA; 1300 Pennsylvania Avenue, NW; Washington, DC 20460. If questions arise, please contact Mr. Friedman by phone at (202) 564–6662, by facsimile at (202) 565–2432 or by email at friedman.david@epa.gov.

Dated: January 21, 2000.

Henry L. Longest II,

Deputy Assistant Administrator for Management, Office of Research and Development.

[FR Doc. 00–2478 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00641; FRL–6490–6]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review the following sets of scientific issues being considered by the Agency pertaining to: Food allergenicity of Cry9C endotoxin and other non-digestible proteins; Dietary Exposure Evaluation Model (DEEM) Decompositing procedure and software; MaxLIP (Maximum Likelihood Imputation Procedure) Pesticide residue decompositing procedure and software; Dietary Exposure Evaluation Model (DEEM); and consultation on development and use of distributions of pesticide concentrations in drinking water for FQPA assessments.

The meeting is open to the public. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Laura Morris or Paul Lewis at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting so that appropriate arrangements can be made.

DATES: The meeting will be held on Tuesday, February 29, through Friday, March 3, 2000, from 8:30 a.m. to 5:30 p.m.

ADDRESSES: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. The telephone number for the Sheraton hotel is: (703) 486–1111.

Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00641 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Laura Morris or Paul Lewis, Designated Federal Officials, FIFRA SAP (7101C), Office of Science Coordination and Policy, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6212 or (703) 305–5369; fax number: (703) 605–0656; e-mail address: morris.laura or lewis.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

A meeting agenda and copies of EPA background documents for the meeting will be available early February, 2000. The meeting agenda and EPA primary background documents will be available on the FIFRA SAP web site at http://www.epa.gov/scipoly/sap.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–00641. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall2 (CM2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Can I Request to Participate in this Meeting?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00641 in the subject line on the first page of your response.Members of the public wishing to submit comments should contact the persons listed under **FOR FURTHER INFORMATION CONTACT** to confirm that the meeting date and the agenda have not been modified or changed.

Interested persons are permitted to file written statements before the meeting. To the extent that time permits, and upon advanced written request to the persons listed under **FOR FURTHER INFORMATION CONTACT**, interested persons may be permitted by the Chair of the FIFRA SAP to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc). There is no limit on the length of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify the persons listed under **FOR**

FURTHER INFORMATION CONTACT and submit 40 copies of the summary information. The Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00641. Electronic comments may also be filed online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting?

This 4-day meeting concerns several scientific issues undergoing consideration within the EPA/Office of Pesticide Programs (OPP). The four session topics to be addressed during the 4-day meeting are indicated as follows:

The first session will focus on assessing the potential allergenicity of non-digestible proteins expressed as plant-pesticides. The specific case in question concerns the Cry9C insecticidal protein derived from *Bacillus thuringiensis* and expressed in field corn. The Agency is asking questions on the use of amino acid homology, the brown Norway rat model for food allergenicity and other subjects with regards to the assessment for potential allergenicity.

The second session will address the decomposition module in the Dietary Exposure Evaluation Model (DEEM) software. In estimating dietary exposure to pesticides, the Agency uses several sources for monitoring data of pesticide residues in foods. These monitoring data, however, are in the form of pesticide residues on composited samples and do not directly represent concentrations of pesticide residues in single food items. For acute dietary exposure estimation, it is the residues in single items of produce that are of interest rather than ''average'' residues measured in composited samples. The decomposition module in the DEEM software uses a statistical procedure in order to ''decomposite'' composited monitoring data to estimate residues in single items. The purpose of this presentation is to describe the decomposition component of the software.

The second session will also include a presentation of the MaxLIP (Maximum Likelihood Imputation Procedure) Pesticide residue decompositing procedure and software. For acute dietary exposure estimation, it is the residues in single items of produce that are of interest rather than ''average'' residues measured in composited samples. The MaxLIP software uses a maximum likelihood estimation procedure in order to ''decomposite'' composited monitoring data to estimate residues in single items.

The third session will focus on the Dietary Exposure Evaluation Model (DEEM). A major component of assessing the risks of pesticide substances is the estimation of dietary exposure to pesticide residues in foods. The Agency currently uses the DEEM exposure assessment software in conducting its dietary exposure and risk assessment. The purpose of this session is to describe the components and methodologies used by the DEEM software.

The last session is to provide the FIFRA SAP with a progress report on the Agency's efforts to implement the drinking water component of the FQPA aggregate exposure assessment. Aggregate exposure is defined to encompass multiple potential sources of exposure to pesticides and includes exposure from pesticide residues in food, in drinking water and in the home. In order to combine the drinking water component with the population based distribution of pesticide residues on food items in a statistically rigorous manner, the data should be developed with the same general structure. In this way, the Monte Carlo procedure used for the risk assessment for food stuffs can be extended to the drinking water component.

The Agency will outline the basic steps envisioned in developing national, population-weighted distributions of pesticide residues in drinking water and aggregating them with distributions in food. These steps include development of distributions of pesticide drinking water concentration values across surface water/drinking water intake locations, consideration of the impact of treatment by a water utility, and development of methodologies to combine the adjusted distributions with the distribution of pesticide residues on food items. The presentation on development of distributions of drinking water concentrations will describe a process using measured data with a computer modeling/analysis overlay. The details of how the Agency will consider the effects of treatment will be largely addressed in a future FIFRA SAP meeting.

B. Panel Report

Copies of the Panel's report of their recommendations will be available approximately 45 working days after the meeting, and will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I.B. of this document.

List of Subjects

Environmental protection.

Dated: January 27, 2000.

Steven Galson,

Director, Office of Science Coordination and Policy.

[FR Doc. 00–2483 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6533–4]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that two committees of the USEPA Science Advisory Board (SAB) will meet on the dates and times noted below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

1—Research Strategies Advisory Committee (RSAC)

The Research Strategies Advisory Committee (RSAC) of the Science Advisory Board (SAB), will meet on Wednesday, February 23, 2000 and Thursday, February 24, 2000 in the Madison Hotel, 15th and M Streets, NW, Washington, DC 20005; telephone number (202) 862–1600. The meeting will be held in the Arlington-Monticello Room and it will begin at 8:30 am and end no later than 5:00 pm on both days.

Charge to the Committee

The Science Advisory Board (SAB) has been asked to review and comment on the FY2001 Presidential Budget proposed for EPA's Office of Research and Development (ORD) and the overall Science and Technology (S&T) budget proposed for the EPA. The RSAC will consider how well the budget request: (a) Reflects priorities identified in the EPA and ORD strategic plans; (b) supports a reasonable balance in terms of attention to core research on multimedia capabilities and issues and to media-specific problem-driven topics; and (c) balances attention to near-term and to long-term research issues. In addition, the Committee will offer its advice on: (d) whether the objectives of the research and development program in ORD and the broader science and technology programs in EPA can be achieved at the resource levels requested; and (e) how can EPA use or improve upon the Government Performance and Results Act (GPRA) structure to communicate research plans, priorities, research requirements, and planned outcomes. A portion of the meeting will be devoted to development of the Committee's report.

FOR FURTHER INFORMATION: Members of the public desiring additional information about the meeting should contact Dr. Jack Fowle, Designated Federal Officer, Research Strategies Advisory Committee (RSAC), USEPA Science Advisory Board (1400A), Room 6450, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4547; fax at (202) 501–0582; or via e-mail at <fowle.jack@epa.gov.> For a copy of the draft meeting agenda, please contact Ms. Wanda R. Fields, Management Assistant at (202) 564–4539 or by FAX at (202) 501–0582 or via e-mail at <fields.wanda@epa.gov>.

Materials that are the subject of this review are available from Mr. Mike Feldman of the Office of the Chief Financial Officer or from Mr. Lek Kadeli Office of Research and Development. Mr. Feldman can be reached on (202) 564–6951 or by e-mail at <feldman.mike@epa.gov> and Mr. Kadeli can be reached on (202) 564–6696 or via e-mail on <kadeli.lek@epa.gov>.

Providing Oral or Written Comments

Members of the public who wish to make a brief oral presentation to the Committee must contact Dr. Fowle *in writing* (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Thursday, February 17, 2000 in order to be included on the Agenda. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (*e.g.*, overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or the presentation itself.

2—Environmental Economics Advisory Committee (EEAC)

The Environmental Economics Advisory Committee (EEAC) of the Science Advisory Board (SAB) will meet on Friday, February 25, 2000, at the Madison Hotel, 15th and M Streets, NW, Washington, DC 20005; telephone number (202) 862–1600. The meeting will be held in the Arlington-Monticello Room and it will begin at 9:00 am and end no later than 4:00 pm.

Purpose of the Meeting

The EEAC is meeting to consider and to provide advice and comment to EPA on its white paper entitled, Valuing Fatal Cancer Risk Reductions.

Background Information

The draft EPA Guidelines for Preparing Economic Analyses (Guidelines) provide information and guidance on the valuation of reduced mortality risks. They note that one practical means to value changes in mortality risks is to use the Value of a Statistical Life (VSL) approach. The Guidelines describe a number of important factors to consider in applying benefit transfer approaches using VSL estimates from the empirical literature on wage-risk tradeoffs. The Agency Guidelines, recognizing the importance of this benefit category, noted EPA's commitment to ''continue to conduct annual reviews of the risk valuation literature'' and ''reconsider and revise the recommendations in these guidelines accordingly.'' Further, EPA committed to ''seek advice from the Science Advisory Board as guidance recommendations are revised.'' The Agency is now returning to the SAB–EEAC to obtain additional counsel on this subject.

The importance of these issues was articulated in a recently proposed regulation to reduce human health risks from radon in drinking water. The proposed rule estimated the number of reduced fatal cancers resulting from different regulatory options. The Agency presented information on the economic values for the reductions in fatal cancer risks, along with other quantified benefits. A brief discussion of some of the benefit transfer issues involved in this estimation was published in the preamble to the proposed rule for setting standards for exposure to radon from drinking water sources (**Federal Register**, November 2, 1999 volume 64, Number 211, pages 59245–59378).

In the process of responding to reviews prepared during deliberations on the proposed radon rule, the Agency found that the Guidelines lack sufficient detail on how to fully evaluate and characterize the different risk attributes that are central to a complete understanding of the benefit-cost implications of this rule. For example, time can pass between the point of initial exposure to a carcinogen, the biological manifestation or onset of cancer in the body, the medical diagnosis of cancer, and death caused by the cancer. During development of policies affecting cancer risks, suggestions have been made to discount the VSL estimate to account for latencies, or the delay in time between reduced exposure and when the cancer death would have occurred absent the exposure reduction (even though latency periods may not be known or well-understood).

Others argued that a suitable approach for valuing benefits from reduced cancer risks must consider simultaneously all of the benefit transfer factors related to valuing cancer risks to ensure a careful and full treatment of benefits. There is evidence in the economics literature regarding many such factors (*e.g.*, potential premiums ascribed to cancer risk reductions due to a higher willingness to pay to avoid the dread, pain and suffering, morbidity effects, and other features of cancer endpoints) that may suggest introducing upward adjustment factors which offset any potential downward adjustments caused by accounting for cancer latency. In addition, proponents argue that adjustments for the age of population at risk, income, altruism and other risk characteristics (*e.g.*, controllability, voluntariness) can all have some potential influence on the value of a statistical cancer fatality (VSCF) and

therefore need to be reflected in the quantitative benefit assessment.

While developing the primary benefit estimates for reduced fatal cancer risks in the proposed radon rule, questions arose regarding the implementation of adjustments for some factors, but not others. For example, would it ever be appropriate to adjust only for latency periods, and not other factors, in the valuation of reduced cancer deaths? The Agency is requesting the SAB's counsel to help answer this and related questions regarding the valuation of cancer risks.

Charge to the Committee

The Agency has requested a review by the SAB–EEAC of its ''white paper'' on approaches to estimating the benefits of reduced fatal cancer risks. The principal questions for the Science Advisory Board are:

(a) Does the white paper accurately describe the empirical economic literature relevant to the benefit transfer issues that ensue when using the VSL literature to estimate the VSCF in a benefit-cost analysis?

(b) Does the white paper present the important risk and demographic factors that can affect benefit transfer approaches that use VSL estimates for VSCF?

(c) Does the white paper accurately describe attempts in the economic literature to measure VSCF directly?

(d) There are two numeric case studies of environmental cancer risks developed for the white paper. Each presents risk assessment information that forms the basis for quantifying the number of statistical cancer fatalities that will be reduced as a consequence of a hypothetical proposed environmental policy. The case studies are used to illustrate the outcome of using direct measures of the VSCF and benefit transfer adjustments to VSL estimates in order to calculate the VSCF.

(1) Which of the valuation approaches applied to the case study designated as ALPHA are valid to use? Does this case study omit any credible alternative protocols for valuing reductions in fatal cancer risks for benefit-cost analyses of environmental programs?

(2) Which of the valuation approaches applied to the case study designated as OMEGA are valid to use? Does this case study omit any credible alternative protocols for valuing reductions in fatal cancer risks for benefit-cost analyses of environmental programs?

(e) Which economic methods illustrated with the case studies, or additional methods identified by the Committee under charge question d), serve as credible protocols for the Agency to use in representing quantitative data, qualitative information, and sensitivity analyses for the economic value of reduced fatal cancer risks reported in benefit-cost analyses?

FOR FURTHER INFORMATION: Members of the public desiring additional information about the meeting should contact Mr. Thomas Miller, Designated Federal Officer, Environmental Economics Advisory Committee (EEAC), USEPA Science Advisory Board (1400A), Room 6450, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4558; fax at (202) 501–0582; or via e-mail at <miller.tom@epa.gov>. For a copy of the draft meeting agenda, please contact Ms. Dorothy Clark, Management Assistant at (202) 564–4537 or by FAX at (202) 501–0582 or via e-mail at <clark.dorothy@epa.gov>. Single copies of the background document, *Valuing Fatal Cancer Risk Reductions* can be obtained by contacting Mr. Brett Snyder, U.S. Environmental Protection Agency, Office of Policy and Reinvention (Mail Drop 2172), 1200 Pennsylvania Ave., NW, Washington, DC, 20460, (202) 260–5610, FAX (202) 260–2685, or via email at: <snyder.brett@epa.gov>.

Providing Oral or Written Comments

Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Thomas Miller, Designated Federal Officer for the Environmental Economics Advisory Committee, *in writing* (by letter or fax) no later than 4:00 pm Eastern Time, Thursday, February 17, 2000, at the address noted above in order to be included on the agenda. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any audio-visual equipment (*e.g.,* overhead projector, 35 mm projector, chalkboard, etc.), and at least 35 copies of an outline of the issues to be addressed or the presentation itself. To discuss technical aspects of the meeting, please contact Mr. Miller by telephone at (202) 564–4558. For a copy of the draft agenda please contact Ms. Dorothy Clark, Management Assistant, at (202) 564–4537, or by FAX at (202) 501–0582 or via e-mail at <clark.dorothy@epa.gov>.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting, or mailed soon after receipt by the Agency. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in the Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: January 28, 2000.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 00–2477 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–908; FRL–6398–9]

Novartis Crop Protection; Notice of Filing a Pesticide Petition To Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–908, must be received on or before March 6, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–908 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker (PM 22), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7740; and e-mail address: giles-parker.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–908. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–908 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: *''opp-docket@epa.gov*,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–908. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food,

Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 24, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

9F6004

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

EPA has received a pesticide petition (9F6004) from Novartis Crop Protection, P.O. Box 18300, Greensboro, NC 27419 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of 1,2,3-benzothiadiazole-7-carbothioic acid S-methyl ester (acibenzolar-S-methyl) in or on the raw agricultural commodity brassica leafy vegetables crop group and bananas at 1.0 and 0.1 parts per million (ppm), respectively. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. Novartis believes the metabolism of acibenzolar-S-methyl has been well characterized. Only 4.6% and 14.9% of the total radioactive residue (TRR) was non-extractable in lettuce at the recommended application rate and three times the recommended application rate, respectively. Non-extractables were also low in a tomato metabolism study; 3.4% and 7.4% in tomatoes and foliage, respectively. The metabolism in these crops proceeded via hydrolysis of benzo [1,2,3] thiadiazole-7-carbothioic acid S-methyl ester to benzo [1,2,3] thiadiazole-7-carboxylic acid (BTCA), followed by conjugation as ester, glycoside and/or other plant constituents. The metabolism profile supports the use of an analytical enforcement method that accounts for acibenzolar-S-methyl and metabolites containing the benzo [1,2,3] thiadiazole-7-carboxylic acid (BTCA) moiety.

2. *Analytical method*. Novartis Analytical Method AG-671A is a practical and valid method for the determination and confirmation of CGA-245704 (acibenzolar-S-methyl) in raw agricultural commodities (RAC) and processing substrates from the tobacco, leafy (including brassica) and fruiting vegetable crop groups at a limit of quantitation (LOQ) of 0.02 ppm. The method involves extraction, solid phase cleanup of samples with analysis by high performance liquid chromotography (HPLC) with ultraviolet (UV) detection or confirmatory LC/MS. The validity is demonstrated by the acceptable accuracy and precision obtained on numerous procedural recovery samples (radiovalidation and field trial sample sets), and by the extractability and accountability obtained by the analysis of weathered radioactive substrates using Analytical Method AG-671A. Novartis Analytical Method REM 172.11 is a practical and valid method for the determination and confirmation of CGA-245704 in RAC of bananas at a LOQ of 0.02 ppm. The method involves hydrolytic extraction, partitioning, and solid phase cleanup of samples with analysis by two-column HPLC switching with UV detection. The validity is demonstrated by the acceptable accuracy and precision obtained on numerous procedural recovery samples (banana, tomatoes, cucumbers, and milk).

3. *Magnitude of residues*. This petition is supported by 17 field trials conducted on representative members of the brassica leafy vegetable crop groupings. All samples were analyzed for by the total residue method (AG-671A) to determine the combined residues of acibenzolar-S-methyl and metabolites which contain the benzo [1,2,3] thiadiazole-7-carboxylic acid (BTCA) moiety. In brassica leafy vegetables, the maximum residues found on representative commodities were 0.63 ppm, 0.57 ppm, 0.31 ppm, 0.64 ppm, and 0.80 ppm, for broccoli (flower, head and stem), cabbage head (with wrapper leaves), cabbage head (without wrapper leaves), cabbage wrapper leaves, and mustard greens leaves, respectively. A tolerance of 1.0 ppm for the brassica leafy vegetable crop group has been proposed. This petition is supported by 14 field trials conducted on bananas. Banana samples were analyzed for by the total residue method REM 17.11 to determine the combined residues of acibenzolar-S-methyl and metabolites which contain the benzo [1,2,3] thiadiazole-7-carboxylic acid (BTCA) moiety. The maximum residue found in bananas was 0.08 ppm. A tolerance of 0.1 ppm in bananas has been proposed.

B. Toxicological Profile

1. *Acute toxicity*. The risk from acute dietary exposure to acibenzolar-S-methyl is considered to be very low. CGA-245704 and the formulated 50 WG product have low orders of acute toxicity by the oral, dermal and inhalation exposure routes. Results from acute studies all fall within toxicity rating categories of III or IV. CGA-245704 technical has a low order of acute toxicity, is only slightly irritating to skin and eyes, but may cause sensitization by skin contact. An LD_{50} of greater than 5,000 milligrams/kilograms (mg/kg) was observed for the acute oral toxicity study in rats. The lowest no observed adverse effect level (NOAEL) in a short-term exposure scenario, identified as 50 mg/kg in the rabbit and rat teratology studies, is 10–fold higher than the chronic NOAEL. Based on worst case assumptions, the chronic exposure assessments (see below) did not result in any margin of exposure (MOE) less than 3,330 for even the most impacted population subgroup. Novartis believes the MOE is greater than 100 for any population subgroups; EPA considers MOEs of 100 or more as satisfactory. The following are results from the acute toxicity tests conducted on the technical material:

i. Rat oral $LD_{50} > 5{,}000$ mg/kg/bwt male/female (M/F) toxicity Category IV.

ii. Rat dermal $LD_{50} > 2{,}000$ mg/kg/bwt (M/F) toxicity Category III.

iii. Acute inhalation $LC_{50} > 5{,}000$ mg/L (M/F) toxicity Category IV.

iv. Rabbit eye irritation: Minimally irritating—toxicity Category III.

v. Rabbit dermal irritation: Slightly irritating—toxicity Category IV.

vi. Dermal sensitization: Sensitizer.

2. *Genotoxicty*. CGA-245704 technical was not mutagenic or clastogenic and did not provoke unscheduled DNA

synthesis when tested thoroughly in a battery of standard *in vivo*, and *in vitro* independent assays, using both eukaryotes and prokaryotes, and with or without metabolic activation. These tests are summarized below:

i. Microbial/Microsome Mutagenicity Assay: Non-mutagenic.

ii. Mammalian Cell Chinese Hampster Ovary (CHO) Mutagenicity Assay: Non-mutagenic; Non-clastogenic.

iii. Chinese Hampster (CH) Bone marrow: Non-clastogenic; negative for chromosome aberrations.

iv. Mouse Micronucleus Test: Non-clastogenic; negative for chromosome aberrations.

v. DNA Damage and Repair Rat hepatocyte: Negative.

3. *Reproductive and developmental toxicity*. Acibenzolar-S-methyl is not a teratogenic hazard except at, or close to, the maximum tolerated dose. In the rat multigeneration study, CGA-245704 (acibenzolar-S-methyl) technical had no effect on rat reproductive parameters including gonadal function, estrus cycles, mating behavior, conception, parturition, lactation, weaning, and sex organ histopathology. At 4,000 ppm, parental body weights (bwt) were reduced. This demonstrated by the results of the following studies:

i. Rat oral teratology—Maternal NOAEL of 200 mg/kg based on embryotoxicity and teratogenic effects; fetal NOAEL of 50 mg/kg.

ii. Rabbit oral teratology study—Maternal NOAEL of 50 mg/kg based on maternal toxicity and slightly delayed ossification; fetal NOAEL of 300 mg/kg based on changes in bwt.

iii. Rat 2-generation reproduction study—NOAEL of 25 mg/kg based on weight development in adults at 4,000 ppm and pups during lactation at 2,000 ppm and above. No adverse effects on reproduction or fertility.

4. *Subchronic toxicity*. No signs of neurotoxicity were noted with CGA-245704 in both acute and subchronic studies even at the highest dose levels of 800 mg/kg and 8,000 ppm, respectively. The evaluated parameters included functional observation battery, motor activity measurement and neurohistopathologic assessment. These tests are summarized below:

i. Rat 28-day dermal study—NOAEL of 1,000 mg/kg/day.

ii. Dog 90-day feeding study—NOAEL of 10 mg based on reduced bwt gain at 50 mg/kg/day.

iii. Mouse 90-day feeding—NOAEL of < 30 mg/kg based on reduced bwt development at 1,000 ppm and above.

iv. Rat 90-day feeding study—NOAEL of 25 mg/kg based on inappetence and reduced bwt development at higher dose levels (4,000, and 8,000 ppm).

5. *Chronic toxicity*. Based on the available chronic toxicity data, Novartis Crop Protection, Inc. believes the Reference Dose (RfD) for acibenzolar-S-methyl is 0.05 mg/kg/day. Acibenzolar-S-methyl is not oncogenic in rats or mice and is not likely to be carcinogenic in humans. No carcinogenic activity was detected in mice and rats at the Maximum Tolerated Dose (MTD). There was no evidence of carcinogenicity in an 18-month feeding study in mice and a 24-month feeding study in rats. Dosage levels in both the mouse and the rat studies were adequate for identifying a cancer risk. Novartis believes acibenzolar-S-methyl should be classified as a ''Not Likely'' carcinogen based on the lack of carcinogenicity in rats and mice.

6. *Animal metabolism*. Metabolism proceeded primarily via hydrolysis to form the corresponding carboxylic acid (BTCA) which was subsequently conjugated with several amino acids including glycine, lysine and ornithine. Elimination was rapid in all cases. Oxidation of the aromatic ring of the acid was a very minor pathway observed in goats. The metabolic fate of CGA-245704 in plants paralleled that observed in animals. The major metabolite in all test systems was the same hydrolysis product BTCA. Thus, the metabolism profile supports the use of an analytical enforcement method that accounts principally for parent and BTCA.

7. *Metabolite toxicology*. In short-term toxicity studies in rats, CGA-210007 was found to be of, at most, equal or less toxicity than the parent compound. As with parent CGA-245704, the subchronic NOAEL for CGA-210007 was 100 mg/kg bwt.

8. *Endocrine disruption*. Acibenzolar-S-methyl does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. Developmental toxicity studies in rats and rabbits and a reproduction study in rats gave no indication that acibenzolar-S-methyl might have any effects on endocrine function related to development and reproduction. Acibenzolar-S-methyl is not a teratogenic hazard except at, or close to, the maximum tolerated dose. The chronic studies also showed no evidence of a long-term effect related to the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. For the purposes of assessing the potential dietary exposure under the proposed tolerances, Novartis has estimated aggregate from the previously requested tolerances for the raw agricultural commodities: leafy vegetables (excluding spinach) at 0.25 ppm; spinach at 1.0 ppm; and fruiting vegetables at 1.0 ppm (PP 8F4974); and the requested tolerances for brassica leafy vegetables at 1.0 ppm and bananas at 0.1 ppm (PP 9F6004). Maximum expected chronic exposure to CGA-245704 in the diets of the most sensitive sub-population, children (1–6 years), was calculated to be 0.5% of the RfD. For the U.S. population (48 contiguous States) chronic exposure was 0.3% of the RfD. Acute dietary exposure is also minimal. Exposure to the most sensitive sub-population, children (1–6 years), was 2.17% of the acute RfD (aRfD). Acute exposure to the U.S. population was 1.2% of the aRfD. Dietary exposure analyses for CGA-245704 (and CGA-210007) were conducted using anticipated residues generated from field trials conducted at the maximum use rate and minimum pre-harvest interval (PHI). In addition, actual dietary exposure would be much less than the estimates made herein since significant residue reduction often takes place in commerce and during food preparation and cooking. Projected market share was included on all commodities except bananas. One hundred percent market share was assumed for bananas. These results (minimal exposure) show more than a reasonable certainty of no harm.

ii. *Drinking water*. The potential for exposure to CGA-245704 through drinking water (surface or ground water) is slight due to the minimal level of this chemical anticipated to reach these bodies of water. This expectation is based on the rapid degradation of CGA-245704 and the recommended low use rates that will further restrict the amount of chemical available for leaching or run-off. A Maximum Contaminant Level Goal (MCLG) of 350 parts per billion (ppb) has been calculated for CGA-245704. This calculated safe exposure value is substantially above the levels that are likely to be found in the environment under proposed conditions of use.

2. *Non-dietary exposure*. Novartis believes that the potential for non-occupational exposure to the general public is unlikely except for potential residues in food crops discussed above. The proposed uses for acibenzolar-S-methyl are for agricultural crops and the product is not used residentially in or around the home.

D. Cumulative Effects

Consideration of a common mechanism of toxicity is not appropriate

at this time since there is no information to indicate that toxic effects produced by acibenzolar-S-methyl would be cumulative with those of any other chemicals. Acibenzolar-S-methyl is a plant activator and no other compounds in this class are registered in the United States. Consequently, Novartis is considering only the potential exposure to acibenzolar-S-methyl in its aggregate risk assessment.

E. Safety Determination

1. *U.S. population*. For the U.S. population (48 contiguous States) chronic exposure was 0.3% of the RfD. Acute dietary exposure is also minimal. Acute exposure to the U.S. population was 1.2% of the aRfD. EPA usually has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Novartis concludes that there is a reasonable certainty that no harm will result from aggregate exposure to acibenzolar-S-methyl residues.

2. *Infants and children*. Embryotoxicity and fetotoxicity were apparent at maternally toxic doses of CGA-245704 technical in rats and rabbits. The lowest NOAEL for this effect was established in the 2-generation reproduction study at 25 mg/kg (200 ppm).

Maximum expected chronic exposure to CGA-245704 in the diets of the most sensitive sub-population, children (1–6 years), was calculated to be 0.5% of the RfD. Acute dietary exposure is also minimal. Exposure to the most sensitive sub-population, children (1–6 years), was 2.17% of the aRfD.

Additionally, CGA-245704 is not a reproductive toxin. Some signs of teratogenicity were found at, or close to, maternally toxic doses. No neurotoxic effects or oncogenic activity has been observed with CGA-245704. From these available toxicology data, no special susceptibility of infants or children is anticipated.

Dietary exposure analyses for CGA-245704 (and CGA-210007) were conducted using anticipated residues generated from field trials conducted at the maximum use rate and minimum pre-harvest interval (PHI). In addition, actual dietary exposure would be much less than the estimates made herein since significant residue reduction often takes place in commerce and during food preparation and cooking. Projected market share was included on all commodities except bananas. One hundred percent market share was assumed for bananas. These results (minimal exposure) show more than a reasonable certainty of no harm.

Acute Dietary Exposure for the U.S. Population and the Most Sensitive Population Sub-Groups at the 99.9th Percentile

Population Sub-group	% aRfD (Diet Only)
U.S. Population - 48 contiguous states - all seasons.	1.20%
All infants (<1 year)	1.54%
Nursing infants (<1year)	0.41%
Non-nursing infants (<1 year)	1.80%
Children (1–6 years)	2.17%
Children (7–12)	1.37%

Exposure to residues of CGA-245704 and CGA-210007 in consumed food is minimal. Both chronic and acute exposure estimates demonstrate the use of CGA-245704 on crops results in more than a reasonable certainty of no harm. The results herein are conservative since field trial residues utilized in these assessments were generated under maximum label use rates and minimum pre-harvest intervals.

F. International Tolerances

Codex maximum residue levels (MRLs) have not been established for residues of CGA-245704 in or on raw agricultural commodities from the fruiting vegetable and leafy vegetable crop groups. Maximum residue levels of 0.1 ppm have been established for CGA-245704 on wheat in Switzerland and Hungary. Proposed CODEX MRLs of 1.0 ppm on tomatoes and 0.1 ppm on bananas, cereals, wheat, spring barley, and rice have been proposed (Japan).

[FR Doc. 00–2484 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6533–5]

The QTRACER Program for Tracer-Breakthrough Curve Analysis for Karst and Fractured-Rock Aquifers; and A Lexicon of Cave and Karst Terminology with Special Reference to Environmental Karst Hydrology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of two final documents and CD–ROM.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces the availability of two final documents, The QTRACER Program for Tracer-Breakthrough Curve Analysis for Karst and Fractured-Rock Aquifers (EPA/600/R–98/156a, February 1999) and CD–ROM (EPA/600/R–98/156b, February 1999), and A Lexicon of Cave and Karst Terminology with Special Reference to Environmental Karst Hydrology (EPA/600/R–99/006, January 1999), prepared by the National Center for Environmental Assessment—Washington Office (NCEA–W), within the Office of Research and Development.

The QTRACER program was developed to provide a fast and easy method for evaluating tracer-breakthrough curves generated from tracing studies conducted in karst and fractured-rock aquifers. The results may then be applied in solute-transport modeling and risk assessment studies. The QTRACER document will serve as a technical guide to various groups who must address potential and/or existing ground-water contamination problems in karst and fractured-rock terranes. Tracing studies are always appropriate and probably necessary, but analyses can be difficult and tedious. This document and associated computer programs alleviate some of these problems.

A Lexicon of Cave and Karst Terminology with Special Reference to Environmental Karst Hydrology was prepared to satisfy the need to understand the terminology common to the field of karst. This document is a glossary of most terms that have some relationship to the field of environmental karst, as well as specific karst terms. It includes many foreign terms because much karst research is conducted in foreign countries and published using local terminology. In many instances common environmental terms are defined in such a way as to specifically reference karstic phenomena. This document will serve as a technical guide for those who must read the karst literature or hold discussion with karst researchers. It is intended to remove much of the confusion surrounding many karst terms.

ADDRESSES: These documents are being made available electronically from the NCEA web site at http://www.epa.gov/ncea. A limited number of copies of the printed and CD–ROM version of the QTRACER document is available from EPA's National Service Center for Environmental Publications (NSCEP) in Cincinnati, Ohio (telephone: 1–800–490–9198, or 513–489–8190; facsimile 513–489–8695). Please provide the title and EPA number when ordering from NSCEP. Paper copies of both documents also may be purchased from the National Technical Information Service

(NTIS) in Springfield, VA (1–800–553–NTIS[6847] or 703–605–6000; facsimile 703–321–8547). Please provide the following PB numbers when ordering from NTIS: The QTRACER Program for Tracer-Breakthrough Curve Analysis for Karst and Fractured-Rock Aquifers (PB99–151904), and A Lexicon of Cave and Karst Terminology with Special Reference to Environmental Karst Hydrology (PB2000–101071).

FOR FURTHER INFORMATION CONTACT: Malcolm Field, NCEA–W (8623D), U.S. Environmental Protection Agency, Washington, DC 20460; phone: 202–564–3279; facsimile: 202–565–0079; e-mail: field.malcolm@epa.gov.

Dated: January 19, 2000.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 00–2480 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6532–8]

Lakewood Battery Superfund Site Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of settlement.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Lakewood Battery Site in Atlanta, Fulton County, Georgia with the following Settling Parties: the 162 Milton Avenue Trust and Doris V. Henderson. The settlement requires the Settling Parties to pay a total of $25,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the Settling Parties pursuant to 42 U.S.C. 9607(a). EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from:Ms. Paula V. Batchelor,U.S. Environmental Protection Agency, Region IV,CERCLA Program Services Branch,Waste Management Division, 61 Forsyth Street, S.W., Atlanta, Georgia 30303,404/562–8887.

Written comments may be submitted to Ms. Batchelor at the above address within 30 days of the date of publication.

Dated: January 20, 2000.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–2482 Filed 2–3–00; 8:45 am]

BILLING CODE 6560–50–U

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, February 29, 2000 at 2:00 P.M. (Eastern Time). (This Meeting was rescheduled from Tuesday, January 25, 2000)

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW, Washington, DC 20507.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Closed Session

Review of Pending Litigation.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions). Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR FURTHER INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: February 2, 2000.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 00–2682 Filed 2–2–00; 1:39 pm]

BILLING CODE 6750–06–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 the Export-Import Bank of the United States is submitting to the Office of Management and Budget (OMB) a request to review and approve a revised exporter and banker survey which expired on February 28, 1999. The purpose of the survey is to fulfill a statutory mandate (the Export-Import Bank Act of 1945, as amended, 12 U.S.C. 635) which directs Ex-Im Bank to report annually to the U.S. Congress any action taken toward providing export credit programs that are competitive with those offered by official foreign export credit agencies. The Act further stipulates that the annual report on competitiveness should include the results of a survey of lending institutions to determine whether their export financing is competitive with that of their foreign counterparts.

Accordingly, Ex-Im Bank is requesting that the proposed survey (EIB No. 00–02) be sent to approximately 50 respondents, split equally between bankers and exporters. The new survey is the same as in previous years as it asks bankers and exporters to evaluate the competitiveness of Ex-Im Bank's programs vis-a-vis foreign export credit agencies. However, it has been modified in order to account for newer policies and to capture enough information to provide a better analysis of our competitiveness.

DATES: Written comments should be received on or before March 6, 2000.

ADDRESSES: Direct all written comments or requests for additional information to David Rostker, Office of Management and Budget, Information and Regulatory Affairs, New Executive Office Building, Washington, D.C. 20503, (202) 395–3897.

FOR FURTHER INFORMATION CONTACT: Carlista Robinson (202) 565–3351

SUPPLEMENTARY INFORMATION:

Type of Request: Revision.
Annual Number of Respondents: 50.
Annual Burden Hours: 50.
Frequency of Reporting or Use: Annual survey.

Dated: January 31, 2000.

Carlista Robinson,

Agency Clearance Officer.

[FR Doc. 00–2507 Filed 2–3–00; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes

and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 28, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Old Kent Financial Corporation, Grand Rapids, Michigan; to merge with Grand Premier Financial, Inc., Wauconda, Illinois, and thereby indirectly acquire Grand National Bank, Wauconda, Illinois.

Board of Governors of the Federal Reserve System, January 31, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–2454 Filed 2–3–00; 8:45 am]

BILLING CODE 6210–01–P

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 February 18, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480–2171:

1. Dakota Bancshares, Inc., Mendota Heights, Minnesota; and its subsidiary, Olivia Bancorporation, Inc., Olivia, Minnesota; to engage de novo through their subsidiary, American State Insurance Agency, Inc., Olivia, Minnesota, in general insurance agency activities in a place where the bank holding company has a lending office and that has a population not exceeding 5,000, pursuant to § 225.28(b)(11)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 31, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–2453 Filed 2–3–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System .

TIME AND DATE: 10:00 a.m., Wednesday, February 9, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters 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: February 2, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–2680 Filed 2–2–00; 1:19 pm]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10 a.m. (EST), February 14, 2000.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the January 10, 2000, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Labor Department audit briefing.
4. Investment policy review.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: February 1, 2000.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 00–2679 Filed 2–2–00; 1:19 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0087]

Draft Guidance for Industry on IND Meetings for Human Drugs and Biologics; Chemistry, Manufacturing, and Controls Information; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for

industry entitled ''IND Meetings for Human Drugs and Biologics; Chemistry, Manufacturing, and Controls Information.'' This draft guidance provides recommendations to industry on formal meetings between sponsors of investigational new drug applications (IND's) and the Center for Drug Evaluation and Research (CDER) or Center for Biologics Evaluation and Research (CBER) on chemistry, manufacturing, and controls (CMC) information.

DATES: Submit written comments on the draft guidance by May 4, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm, or http://www.fda.gov/cber/guidelines.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852–1488, FAX: 888–CBERFAX or 301–827–3844. Send one self-addressed adhesive label to assist the office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Stephen K. Moore, Center for Drug Evaluation and Research (HFD–501), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6430; or

Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–10), Bldg. N29B, 8800 Rockville Pike, Bethesda, MD 20892, 301–827–0373.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''IND Meetings for Human Drugs and Biologics; Chemistry, Manufacturing, and Controls Information.'' This draft guidance covers three kinds of meetings held between sponsors and the agency: (1) Pre-IND, (2) end-of-phase 2, and (3) pre-new drug application or pre-biologics license application. These meetings address questions and scientific issues that arise during the course of clinical investigations, aid in the resolution of problems, and facilitate evaluation of the drug. The meetings often coincide with critical points in the drug development and/or regulatory process. This draft guidance is intended to assist in making these meetings on CMC information more efficient and effective by providing information on the: (1) Purpose, (2) meeting request (3) information package, (4) format, and (5) focus of the meeting.

This Level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on ''IND Meetings for Human Drugs and Biologics; Chemistry, Manufacturing, and Controls Information.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the 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 are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 24, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–2436 Filed 2–3–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Loan Information System Records for the DHHS and DHUD Hospital Mortgage Insurance, Guarantee, and Direct Loan Programs (OMB 0915–0174)—Extension

The Division of Facilities Loans within the Health Resources and Services Administration monitors outstanding direct and guaranteed loans made under Section 621 of Title VI and Section 1601 of Title XVI of the Public Health Service Act, as well as loans insured under the Section 242 Hospital Mortgage Insurance Program of the National Housing Act. These programs were designed to aid construction and modernization of health care facilities by increasing the access of facilities to capital through the assumption of the mortgage credit risk by the Federal Government.

Operating statistics and financial information are collected annually from hospitals with mortgages that are insured under these programs. The information is used to monitor the financial stability of the hospitals to protect the Federal investment in these facilities. The form used for the data collection is the Hospital Facility Data Abstract. No changes in the form are proposed.

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Hospital Facility Data Abstract	150	1	1	150

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 28, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–2433 Filed 2–3–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds for Grants for the Community Access Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of $25 million to assist communities and their safety net providers in developing integrated health care delivery systems that serve the uninsured and underinsured with greater efficiency and improved quality of care. The $25 million in available funding has been appropriated under the FY 2000 HHS Appropriations Act.

In FY 2000, HRSA will provide funding for approximately 20 communities to further their development of integrated delivery systems for the uninsured and underinsured. Grants will vary in size, based on the scope of the project and the size of the service area.

During the first year of funding for this program, HRSA will support infrastructure development in communities that have already begun to reorganize and integrate their health care delivery systems. FY 2000 funding is not intended to support those communities that have not yet begun the planning and development of necessary organizational structure.

Up to 100 communities may ultimately be funded as part of this national program targeted by the Administration to spend $1 billion over five years. FY 2000 funded communities may be eligible for available FY 2001 funding (assuming continued appropriations) to support further infrastructure development and filling service gaps. In addition, using the experiences of the FY 2000 funded communities as potential models for adaptation, FY 2001 funding is anticipated for support of new communities for planning and system development. Thus, communities that have not yet begun the planning and development of necessary organizational structure should have an opportunity to apply in FY 2001.

Over the years that the program is funded, funds are anticipated to be available to fill service gaps within coordinated systems of care.

This program shares some of the same goals of the W.K. Kellogg Foundation's Community Voices Program and the Robert Wood Johnson Foundation's Communities in Charge Program. Thus, CAP will take into account the experiences of these foundations as well as other programs that promote the integration of services to the uninsured and underinsured.

DATES: The timeline for application submission, review, and award are as follows:

February 10, 2000: Application kits and additional guidance will be available through the HRSA Grants Application Center (GAC).

March 7–16, 2000: There will be a series of six pre-application workshops conducted across the country: Boston, MA—March 7, 2000; Atlanta, GA—March 8, 2000; Chicago, IL—March 9, 2000; Dallas, TX—March 14, 2000; Los Angeles, CA—March 15, 2000; Seattle, WA March 16, 2000.

June 1, 2000: Applications due.

July 3–17, 2000: Applications reviewed.

August 2000: Site visits to selected applicants.

September 2000: Grant awards announced.

ADDRESSES: To receive a complete application kit (*i.e.,* application instructions, necessary forms, and application review criteria), contact the HRSA GAC at: HRSA GAC, 1815 N. Fort Meyer Drive, Suite 300, Arlington, VA 22209, Phone: 1–877-HRSA–123, Fax: 1–877-HRSA–345, E-Mail: *hrsagac@hrsa.gov*

FOR FURTHER INFORMATION CONTACT: For further information, contact the Community Access Program Office: Community Access Program Office, Health Resources and Services Administration, Parklawn Building, Suite 9A–30, 5600 Fishers Lane, Rockville, MD 20857, Phone: (301) 443–0536, Fax: (301) 443–0248.

SUPPLEMENTARY INFORMATION: In 1998, 44.5 million people in the United States did not have health insurance. Of these, 24.6 million were employed—18.7 million worked full time and 5.9 million worked part time.

The uninsured and underinsured often have complex medical needs, remain outside organized systems of care, and have insufficient resources to obtain care. They may defer care or not receive needed services, and they are about half as likely to receive a routine check-up as insured adults. The uninsured and underinsured also rely heavily on expensive emergency rooms, and because they lack a routine source of care, they often do not receive needed follow-up services.

Many of the uninsured and underinsured rely on the nation's institutions, systems, and individual health professionals that provide a significant volume of health care services without regard for ability to pay. In many communities, these providers are struggling to care for the increasing numbers of uninsured and underinsured individuals. They face many challenges such as an uneven distribution of the burden of uncompensated care, the fragmentation of services for the uninsured, insufficient numbers of certain types of providers, reduced Medicaid revenues, and a growing need for mental health and substance abuse services.

While integration among these providers is critical to serve the uninsured and underinsured with greater efficiency and to improve quality of care, many of these providers are so pressured by basic caregiving tasks, that they need assistance to coordinate their efforts with other providers and to develop integrated community-based systems of care.

The Community Access Program

Program Purpose

The purpose of this program is to assist communities and consortia of

health care providers to develop the infrastructure necessary to fully develop or strengthen integrated health systems of care that coordinate health services for the uninsured and underinsured.

Program Goal

The coordination of services through the CAP grant will allow the uninsured and underinsured to receive efficient and higher quality care and gain entry into a comprehensive system of care. The system will be characterized by effective collaboration, information sharing, and clinical and financial coordination among all levels of care in the community network. The system will be committed to continuous performance improvement, implementation of best practices, staff development, and real-time feedback of outcomes of care. Care management (*e.g.,* case, disease) will be applied across the continuum for those with chronic illnesses, high-risk individuals, and high utilizers. The system will also strive to provide universal access to the target population, and to improve the health status of the community population.

This vision requires a re-thinking of the relationships, priorities, and desired outcomes for local or regional care delivery. It means adopting the philosophy that care for the ill and injured occurs within the context of a comprehensive system design of population health improvement.

The community being served should be actively involved in the system design. Broad understanding, two-way learning between providers and community, and participation in priority setting and governance by the community are essential components of this vision. This will reduce out migration for services in rural areas and assure sustainability of the system.

Program Description

In implementing a system of coordinated care for the uninsured and underinsured in a community, we are seeking to fund a variety of program models in communities that have an established track record for building partnerships and that have completed the basic planning necessary to implement a system. The successful applicant will design a program that builds upon its current capacities and strengths; brings the major players in the political and health delivery systems to the table; uses the federal funds available to plan a transition to an expanded and innovative approach that will ultimately be competitive within its own market; and, in any event, will sustain the delivery of services and funding after these federal grants no longer exist. The successful applicant will work with its county board, city council, state legislature, and state health programs to assure the coordination and efficient use of all available resources to achieve program goals.

There is no one successful model that we are trying to replicate. Rather, there are several models that already exist and that each community may draw from in creating a program to address its own needs.

In surveying innovative community approaches to the provision of safety net services, we have come across communities that have:

- combined the development of managed care networks for the indigent funded through local tax increases and the redirection of funds towards the care network and away from the support of tertiary care at public hospitals;
- Redistributed caseload to private providers because of the forced closure of public hospitals;
- Coordinated the provision of care through public hospitals, public health departments, and community health centers;
- Linked hospital and clinic services through state of the art data systems and are able to create seamless transitions between Medicaid, uninsured, and insured status for low income populations;
- Linked behavioral and acute care service provision; and
- Created networks to allocate uncompensated ambulatory care loads among physicians.

We are looking for applicants with clear goals, an operational plan for meeting those goals, a history of commitment to serving indigent populations, and enough of a track record to indicate a fair chance at being successful. Innovative proposals for sustaining the service delivery component of projects could include state redirection of DSH funds or general assistance funds, creative use of local or state taxing authorities, use of tobacco settlement funds, and creative partnerships with the provider and business communities. Applications will be judged from the perspective of whether the financing proposed is realistic—given state and community resources—and appropriate to the project proposed.

Funded Projects Will Contain Several Common Elements

Community Need: Communities funded through this program will have high or increasing rates of uninsured and underinsured and will have identified specific organizational needs within existing delivery systems. A ''community'' for the purpose of this program may be based on geography or a population group (e.g., the homeless) as defined by the people in the community.

Collaboration Among Safety Net Providers: The proposed system should build upon current investments in communities for serving these populations and include the safety net providers who have traditionally provided services without regard to the ability to pay. The coalition should be built upon formal arrangements among the partners that define the extent of the commitment and involvement in policy development and decision-making from each partner.

Comprehensive Services: The proposed system will include all partners necessary to assure access to a full range of services, including mental health and substance abuse treatment. It is anticipated that the health services (prevention, primary, and specialty) provided by Federally-supported programs that are present in the community will be part of this coalition of providers.

Coordination with Public Insurance Programs: The proposed system will demonstrate coordination with state (e.g., memorandum of agreements) programs to ensure that eligible beneficiaries are enrolled in public insurance programs (e.g., S–CHIP, Medicaid).

Community Involvement: There is strong community support for these efforts that provide a broad foundation of assistance to the provider community undertaking this project. Management and governance structures are in place that assure accountability to funders and define the community role in setting policy. The community involvement in the development, implementation, and governance of the project will be evident. This should include the leadership within the appropriate legislative and executive bodies, providers identified above, health plans and payers, and community leaders.

Sustainability: A plan for long-term sustainability is designed and has community consensus. There is evidence that the program is capable of leveraging other sources of funds and integrating current funding sources in a way to assure long-term sustainability of the project.

Eligible Applicants

To encourage the development of various types of system integration models, this program seeks a variety of

applicants representing all types of communities. Applicants who receive funding may be large health care systems or small organizations. Applications are encouraged from large urban areas, small rural communities, and tribal organizations.

Applications may be submitted by public, private, and non-profit entities that demonstrate a commitment to and experience with providing a continuum of care to uninsured individuals. Each applicant must represent a community-wide coalition that is committed to the project and includes safety net providers (where they exist) who have traditionally provided care to the community's uninsured and underinsured regardless of ability to pay. The community-wide coalition must consist of partners from all levels of care (*i.e.,* primary, secondary, tertiary) and partners who represent a range of services (*e.g.,* mental health and substance abuse treatment, maternal and child health care, oral health, HIV/AIDS).

Examples of eligible applicants who may apply on behalf of the community-wide coalition include but are not limited to:

- A consortium or network of providers (*e.g.,* public and charitable hospitals; community, migrant, homeless, public housing, and school-based health centers; rural health clinics; free health clinics; teaching hospitals and health professions education schools)
- Local government agencies (*e.g.,* local public health departments with service delivery components)
- Tribal governments
- Managed care plans or other payers (*e.g.,* HMOs, insurance companies)

Agencies of State governments, multi-state health systems, or special interest groups may submit applications on behalf of multiple communities if they demonstrate the ability to coordinate community health care delivery systems and bring resources to the community.

Competing applications for the same patient population will not be considered for funding; therefore, applicants from the same community are required to collaborate.

Funding Criteria

- Review criteria that will be used to evaluate applications include:
- Evidence of progress towards integration prior to application for funding
- Evidence that the target population has a high or increasing rate of uninsurance
- Evidence of established partnerships among a broad-based community consortium
- Appropriateness and quality of clinical services to be provided
- Commitments from local government agencies, public and private health care providers, community leaders
- Demonstration of existing and sustainable public and private funding sources
- Accountable management and budget plan
- Commitment to self evaluation and participation in a national evaluation

Program Expectations

Funding through this initiative may be used to support a variety of projects that would improve access to all levels of care for the uninsured and underinsured. While each community should design a program that best addresses the needs of the uninsured and underinsured, and the providers in their community, funding is intended to encourage safety net providers to develop coordinated care systems for the community's uninsured and underinsured.

Examples of activities that could be supported with this funding include:

- Offering a comprehensive delivery system for the uninsured and underinsured through a network of safety net providers. [Single registration, eligibility systems]
- Integrating preventive, mental health, substance abuse, HIV/AIDS, and maternal and child health services within the system. [Block grant funded services, other DHHS programs, state and local programs]
- Developing a shared information system among the community's safety net providers. [Tracking, case management, medical records, financial records]
- Developing and incorporating shared clinical protocols, quality improvement systems, utilization management systems, and error prevention systems.
- Sharing core management functions. [Finance, purchasing, appointment systems]
- Coordinating and strengthening priority services to specific targeted patient groups.
- Developing affordable pharmaceutical services.

Use of Grant Funds

Funding provided through this program may NOT be used to substitute for or duplicate funds currently supporting similar activities. Grant funds may support costs such as:

- Project staff salaries
- Consultant support
- Management information systems (*e.g.,* hardware and software)
- Project-related travel
- Other direct expenses necessary for the integration of administrative, clinical, information system, or financial functions
- Program evaluation activities

With appropriate justification on why funds are needed to support the following costs, up to 15 percent of grant funds may be used for:

- Alteration or renovation of facilities
- Primary care site development
- Service expansions or direct patient care

Grant funds may NOT be used for:

- Construction
- Reserve requirements for state insurance licensure

Expected Results

The integration and coordination of services among a community's safety net providers are expected to result in:

- A system of care that provides coordinated coverage to the target population.
- Increased access to primary care resulting in a reduction in hospital admissions for ambulatory sensitive conditions among the uninsured and underinsured.
- Elimination of unnecessary, duplicate functions in service delivery and administrative functions, resulting in savings to reinvest in the system.
- Increased numbers of low-income uninsured people with access to a full range of health services.

Dated: January 31, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–2567 Filed 2–3–00; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting; Correction

In **Federal Register** Document 00–1032 appearing on page 2634 in the issue for Tuesday, January 18, 2000, the February 10–11, 2000, meeting dates of the ''National Advisory Council on Migrant Health'' are incorrect. The meeting will be held on February 11–12, 2000; 9:00 a.m.–5:00 p.m.

All other information is correct as it appears.

Dated: January 28, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–2434 Filed 2–3–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This Notice is available on the internet at the following website: *http://wmcare.samhsa.gov*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

SPECIAL NOTE: Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories,8901 W. Lincoln Ave.,West Allis, WI 53227,414–328–7840/800–877–7016,(Formerly: Bayshore Clinical Laboratory).

Advanced Toxicology Network,3560 Air Center Cove, Suite 101,Memphis, TN 38118,901–794–5770/888–290–1150.

Aegis Analytical Laboratories, Inc.,345 Hill Ave.,Nashville, TN 37210,615–255–2400.

Alabama Reference Laboratories, Inc.,543 South Hull St.,Montgomery, AL 36103,800–541–4931/334–263–5745.

Alliance Laboratory Services,3200 Burnet Ave.,Cincinnati, OH 45229,513–585–9000,(Formerly: Jewish Hospital of Cincinnati, Inc.).

American Medical Laboratories, Inc.,14225 Newbrook Dr.,Chantilly, VA 20151,703–802–6900.

Associated Pathologists Laboratories, Inc.,4230 South Burnham Ave., Suite 250,Las Vegas, NV 89119–5412,702–733–7866/800–433–2750.

Baptist Medical Center—Toxicology Laboratory,9601 I–630, Exit 7,Little Rock, AR 72205–7299,501–202–2783,(Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab,8433 Quivira Rd.,Lenexa, KS 66215–2802800–445–6917.

Cox Health Systems, Department of Toxicology,1423 North Jefferson Ave.,Springfield, MO 65802,800–876–3652/417–269–3093,(Formerly: Cox Medical Centers).

Dept. of the Navy, Navy Drug Screening Laboratory,Great Lakes, IL,P.O. Box 88–6819,Great Lakes, IL 60088–6819,847–688–2045/847–688–4171.

Diagnostic Services Inc., dba DSI,12700 Westlinks Drive,Fort Myers, FL 33913,941–561–8200/800–735–5416.

Doctors Laboratory, Inc.,P.O. Box 2658,2906 Julia Dr.,Valdosta, GA 31604,912–244–4468.

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC,1229 Madison St., Suite 500, Nordstrom Medical Tower,Seattle, WA 98104,206–386–2672/800–898–0180,(Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof,Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc.,P.O. Box 2969,1119 Mearns Rd.,Warminster, PA 18974,215–674–9310.

Dynacare Kasper Medical Laboratories*,14940–123 Ave.,Edmonton, Alberta,Canada T5V 1B4,780–451–3702/800–661–9876.

ElSohly Laboratories, Inc.,5 Industrial Park Dr.,Oxford, MS 38655,601–236–2609.

Gamma-Dynacare Medical Laboratories*,A Division of the Gamma-Dynacare Laboratory Partnership,245 Pall Mall St.,London, ON,Canada N6A 1P4,519–679–1630.

General Medical Laboratories,36 South Brooks St.,Madison, WI 53715,608–267–6267.

Hartford Hospital Toxicology Laboratory,80 Seymour St.,Hartford, CT 06102–5037,860–545–6023.

Info-Meth,112 Crescent Ave.,Peoria, IL 61636,309–671–5199/800–752–1835,(Formerly: Methodist Medical Center Toxicology Laboratory).

Integrated Regional Laboratories,5631 NW 33rd Avenue,Fort Lauderdale, FL 33309,954–777–0018, 800–522–0232,(Formerly: Cedars Medical Center, Department of Pathology).

Kroll Laboratory Specialists, Inc.,1111 Newton St.,Gretna, LA 70053,504–361–8989/800–433–3823,(Formerly: Laboratory Specialists, Inc.).

Laboratory Corporation of America Holdings,1904 Alexander Drive,Research Triangle Park, NC 27709,919–572–6900/800–833–3984,(Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings,4022 Willow Lake Blvd.,Memphis, TN 38118,901–795–1515/800–233–6339,(Formerly: LabCorp Occupational Testing Services, Inc.,MedExpress/National Laboratory Center).

LabOne, Inc.,10101 Renner Blvd.,Lenexa, KS 66219,913–888–3927/800–728–4064,(Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings,69 First Ave.,Raritan, NJ 08869,908–526–2400/800–437–4986,(Formerly: Roche Biomedical Laboratories, Inc.)

Marshfield Laboratories,Forensic Toxicology Laboratory,1000 North Oak Ave.,Marshfield, WI 54449,715–389–3734/800–331–3734

MAXXAM Analytics Inc.*,5540 McAdam Rd.,Mississauga, ON,Canada L4Z 1P1,905–890–2555,(Formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory,Department of Pathology,3000

Arlington Ave.,Toledo, OH 43614,419–383–5213
MedTox Laboratories, Inc.,402 W. County Rd. D,St. Paul, MN 55112,651–636–7466/800–832–3244
MetroLab-Legacy Laboratory Services,1225 NE 2nd Ave.,Portland, OR 97232,503–413–5295/800–950–5295
Minneapolis Veterans Affairs Medical Center,Forensic Toxicology Laboratory,1 Veterans Drive,Minneapolis, Minnesota 55417,612–725–2088
National Toxicology Laboratories, Inc.,1100 California Ave.,Bakersfield, CA 93304,661–322–4250
NWT Drug Testing,1141 E. 3900 South,Salt Lake City, UT 84124,801–268–2431/800–322–3361,(Formerly: NorthWest Toxicology, Inc.)
One Source Toxicology Laboratory, Inc.,1705 Center Street,Deer Park, TX 77536,713–920–2559,(Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Oregon Medical Laboratories,P.O. Box 972,722 East 11th Ave.,Eugene, OR 97440–0972,541–687–2134
Pacific Toxicology Laboratories,6160 Variel Ave.,Woodland Hills, CA 91367,818–598–3110,(Formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories,11604 E. Indiana,Spokane, WA 99206,509–926–2400/800–541–7891
PharmChem Laboratories, Inc.,1505–A O'Brien Dr.,Menlo Park, CA 94025,650–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division,7606 Pebble Dr.,Fort Worth, TX 76118,817–215–8800,(Formerly: Harris Medical Laboratory)
Physicians Reference Laboratory,7800 West 110th St.,Overland Park, KS 66210,913–339–0372/800–821–3627
Poisonlab, Inc.,7272 Clairemont Mesa Blvd.,San Diego, CA 92111,619–279–2600/800–882–7272
Quest Diagnostics Incorporated,3175 Presidential Dr.,Atlanta, GA 30340,770–452–1590,(Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated,4444 Giddings Road,Auburn Hills, MI 48326,810–373–9120/800–444–0106,(Formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, National Center for Forensic Science,1901 Sulphur Spring Rd.,Baltimore, MD 21227,410–536–1485,(Formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated,8000 Sovereign Row,Dallas, TX 75247,214–638–1301,(Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated,4770 Regent Blvd.,Irving, TX 75063,972–916–3376/800–526–0947,(Formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated,801 East Dixie Ave.,Leesburg, FL 34748,352–787–9006,(Formerly: SmithKline Beecham Clinical Laboratories, Doctors & Physicians Laboratory)
Quest Diagnostics Incorporated,400 Egypt Rd.,Norristown, PA 19403,610–631–4600/800–877–7484,(Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated,875 Greentree Rd., 4 Parkway Ctr.,Pittsburgh, PA 15220–3610,412–920–7733/800–574–2474,(Formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated,506 E. State Pkwy.,Schaumburg, IL 60173,800–669–6995/847–885–2010,(Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)
Quest Diagnostics Incorporated,7470 Mission Valley Rd.,San Diego, CA 92108–4406,619–686–3200/800–446–4728,(Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics of Missouri LLC,2320 Schuetz Rd.,St. Louis, MO 63146,314–991–1311/800–288–7293,(Formerly: Quest Diagnostics Incorporated, Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated,One Malcolm Ave.,Teterboro, NJ 07608,201–393–5590,(Formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated,7600 Tyrone Ave.,Van Nuys, CA 91405,818–989–2520/800–877–2520,(Formerly: SmithKline Beecham Clinical Laboratories)
San Diego Reference Laboratory,6122 Nancy Ridge Dr.,San Diego, CA 92121,800–677–7995
Scientific Testing Laboratories, Inc.,463 Southlake Blvd.,Richmond, VA 23236,804–378–9130
Scott & White Drug Testing Laboratory,600 S. 25th St.,Temple, TX 76504,254–771–8379/800–749–3788
S.E.D. Medical Laboratories,5601 Office Blvd.,Albuquerque, NM 87109,505–727–6300/800–999–5227
South Bend Medical Foundation, Inc.,530 N. Lafayette Blvd.,South Bend, IN 46601,219–234–4176
Southwest Laboratories,2727 W. Baseline Rd.,Tempe, AZ 85283,602–438–8507
Sparrow Health System,Toxicology Testing Center,St. Lawrence Campus,1210 W. Saginaw,Lansing, MI 48915,517–377–0520,(Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory,1000 N. Lee St.,Oklahoma City, OK 73101,405–272–7052
Toxicology & Drug Monitoring Laboratory,University of Missouri Hospital & Clinics,2703 Clark Lane, Suite B, Lower Level,Columbia, MO 65202,573–882–1273
Toxicology Testing Service, Inc.,5426 N.W. 79th Ave.,Miami, FL 33166,305–593–2260
UNILAB,18408 Oxnard St.,Tarzana, CA 91356,818–996–7300/800–492–0800,(Formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC,10210 W. Highway 80,Midland, Texas 79706,915–561–8851/888–953–8851

The following laboratory is voluntarily withdrawing from the NLCP program, effective February 1, 2000: Quest Diagnostics LLC (IL), 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888, (Formerly: Quest Diagnostics Incorporated, MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–2461 Filed 2–3–00; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–05]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ENERGY: Mr. Tom Knox, Department of Energy, Office of Contract and Resource Management, MA–53, Washington, DC 20585; (202) 586–8715; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: January 28, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 2/4/00

Suitable/Available Properties

Buildings (by State)

Maryland

Bldg. 139
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200010032
Status: Utilized
Comment: 4950 sq. ft., possible asbestos/lead paint, most recent use—wind tunnel, off-site use only.

Washington

Moses Lake U.S. Army Rsv Ctr
Grant County Airport
Moses Lake Co: Grant WA 98837–
Landholding Agency: GSA
Property Number: 21199630118
Status: Surplus
Comment: 4499 sq. ft./2.86 acres, most recent use—admin., temporary permit from COE granted to an organization, FAA recommended land not be used for residential use due to aircraft noise problem, restriction
GSA Number: 9–D–WA–1141.

Unsuitable Properties

Buildings (by State)

Colorado

Bldg. 776
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 777
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 778
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Structure 712–712A
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010004
Status: Excess

Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Structure 713–713A
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010005
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Structure 771 TUN
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010006
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Structure 776A–781
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010007
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Florida

Bldg. A–952
Naval Air Station
Boca Chica
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200010034
Status: Unutilized
Reason: Extensive deterioration.

Bldg. A–962
Naval Air Station
Boca Chica
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200010035
Status: Unutilized
Reason: Extensive deterioration.

Bldg. A–1105
Naval Air Station
Boca Chica
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200010036
Status: Unutilized
Reason: Extensive deterioration.

Maryland

Bldg. 163
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200010033
Status: Unutilized
Reason: Extensive deterioration.

Mississippi

Bldg. 49
CBC Gulfport
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200010024
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 130
CBC Gulfport
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200010025
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 368
CBC Gulfport
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200010026
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 390
CBC Gulfport
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200010027
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Unsuitable Properties

Land (by State)

Maryland

Land—5000 sq. ft.
Naval Air Station
Patuxent River Co: MD 20670–1603
Landholding Agency: Navy
Property Number: 77200010023
Status: Unutilized
Reason: Secured Area.

New Hampshire

Parcel #4
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200010028
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Parcel #5
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200010029
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Parcel #6
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200010030
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Parcel #7
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200010031
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

[FR Doc. 00–2314 Filed 2–3–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

FISH AND WILDLIFE SERVICE

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan for Issuance of an Endangered Species Act Section 10(a)(1)(B) Permit for the Incidental Take of the Houston Toad During Construction of a Single Family Residence on Two Lots in the Circle D Country Acres Subdivision, Bastrop County, Texas

SUMMARY: Cornerstone Construction (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–021793. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston Toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence on Lot 17, Section 5 and Lot 21, Section 6 in the Circle D Country Acres Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before March 6, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, US Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request or by appointment only during normal business hours (8:00 to 4:30) at U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas at the above address. Please refer to permit number TE–021793 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

Cornerstone Construction plans to construct one single family residence each on Lot 17, Section 5 and Lot 21, Section 6 in the Circle D Country Acres Subdivision, Bastrop County, Texas. This action will eliminate less than one acre of habitat and result in an unquantifiable amount of indirect impact. The applicant proposes to compensate for this incidental take of the Houston Toad by contributing $3,000.00 ($1,500.00 for each homesite) to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible and alteration of the project design would not alter the level of impacts.

Thomas L. Bauer,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–2462 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan for Issuance of an Endangered Species Act Section 10(a)(1)(B) Permit for the Incidental Take of the Houston Toad During Construction of a Single Family Residence on 0.75-acre Lot 141 in the Pine View Estates Subdivision, Bastrop County, Texas

SUMMARY: Miguel Sanchez (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–021792. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston Toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence on Lot 141 in the Pine View Estates Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before March 6, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request or by appointment only during normal business hours (8:00 to 4:30) at U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas at the above address. Please refer to permit number TE–021792 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

Miguel Sanchez plans to construct one single family residence on 0.75 acres platted as Lot 141 in the Pine View Estates Subdivision, Bastrop County, Texas. This action will eliminate less than one acre of habitat and result in an unquantifiable amount of indirect impact. The applicant proposes to compensate for this incidental take of the Houston Toad by contributing $1,500.00 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible and alteration of the project design would not alter the level of impacts.

Thomas L. Bauer,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–2463 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for Incidental Take Permit for Houston Toad (Bufo houstonensis) During Construction of a Single Family Residence on 5.0 acres on Lot 6 in the Pine Ridge Farm Subdivision, Bastrop County, TX

SUMMARY: Cory Ehrler (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–021561–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction of a single family residence on Lot 6 in the Pine Ridge Farm Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c), of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before March 6, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box

1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Englehard, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas at the above address. Please refer to permit number TE–021561–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Englehard at the above Austin Ecological Services Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

Cory Ehrler plans to construct a single family residence on 5.0 acres platted as Lot 6 in the Pine Ridge Farm Subdivision, Bastrop County, Texas. This action will eliminate less than one acre of habitat. The applicant proposes to mitigate for this incidental take of the Houston toad by donating $1,500 into the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible and alteration of the project design would not alter the level of impacts.

Thomas L. Bauer,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–2464 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for Incidental Take Permit of the Houston Toad (Bufo houstonensis) During Construction of a Single Family Residence on 1.3 acres on Lot 51, Section 5 in the Circle D Country Acres Subdivision, Bastrop County, TX

SUMMARY: Dorathy Walters (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–021659–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction of a single family residence on Lot 51, Section 5 in the Circle D Country Acres Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before March 6, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Englehard, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas at the above address. Please refer to permit number TE–021659–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Englehard at the above Austin Ecological Services Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

Dorathy Walters plans to construct a single family residence on 1.03 acres platted as Lot 51, Section 5 in the Circle D Country Acres Subdivision, Bastrop County, Texas. This action will eliminate less than one acre of habitat. The applicant proposes to mitigate for this incidental take of the Houston toad by donating $1,500 into the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible and alteration of the project design would not alter the level of impacts.

Thomas L. Bauer,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–2465 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

San Dieguito Lagoon Restoration Plan Draft Environmental Impact Statement/Report

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of Draft Environmental Impact Statement/Report for the San Dieguito Lagoon Restoration Plan, San Diego County, California.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the Fish and Wildlife Service (FWS) announces the availability of a draft environmental impact statement/report (DEIS/R) for the San Dieguito Lagoon Restoration Plan, San Diego County, California.

DATES: A 45-day comment period will follow the Environmental Protection Agency's notice of availability of the DEIS/R on February 4, 2000. Comments

must be received no later than Monday, March 20, 2000. A Public Hearing to receive comments on the DEIS/R will be held on Monday, February 28, 2000 at 7:00 PM in the City of Del Mar City Hall Annex, 235 11th St., Del Mar, California.

ADDRESSES: Public reading copies of the DEIS/R will be available for review at:

Fish and Wildlife Service, 2730 Loker Ave. West, Carlsbad, California 92008

San Dieguito River Park, 18372 Sycamore Creek Rd., Escondido, California 92025

Del Mar Library, 1309 Camino del Mar, Del Mar, California

Carmel Valley Library, 3919 Townsgate Drive, San Diego, California

Solana Beach Branch Library, 981 Lomas Santa Fe Drive, Suite F, Solana Beach, California

SUPPLEMENTARY INFORMATION: This DEIS/R has been prepared and is being circulated in accordance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). This project involves the proposal to implement a comprehensive habitat restoration plan with a public access component for an approximately 400-acre area known as the San Dieguito Lagoon. The project site is in the western San Dieguito River Valley under the influence of the Pacific Ocean, within the northwestern-most portions of the City of San Diego and the City of Del Mar in San Diego County, CA.

A major component of this planning effort is a tidal restoration proposal to 1) restore the aquatic functions of the lagoon through permanent inlet maintenance and expansion of the lagoon's tidal prism and 2) create subtidal and intertidal habitats on both the east and west sides of Interstate 5, which bisects the project site. It is anticipated that tidal restoration would be accomplished primarily by Southern California Edison and partners (SCE), provided the restoration satisfies the conditions of the California Coastal Commission (CCC) permit for the construction and operation of the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3. Upland habitat restoration, non-tidal wetland restoration, endangered species habitat improvements, and public trails and interpretive facilities would be provided by the San Dieguito River Park in cooperation with other agencies and organizations including the Fish and Wildlife Service, Coastal Conservancy, Cities of Del Mar and San Diego, and others. The draft EIS/R analyzes six project alternatives including the Mixed Habitat, Maximum Tidal Basin, Maximum Intertidal, Hybrid, Reduced Berm, and No Action Alternatives. Potentially significant environmental impacts have been identified in the areas of land use, landform alteration/visual quality, hydrology/water quality, traffic circulation, noise, air quality, geology and soils, public utilities, biological resources, and natural resources. The project includes measures to mitigate some potential impacts, while other mitigation will be made conditions of subsequent permits.

FOR FURTHER INFORMATION CONTACT: Jack Fancher, Coastal Program Coordinator, Fish and Wildlife Service, 2730 Loker Ave. West, Carlsbad, California 92008, phone (760) 431–9440.

Dated: January 24, 2000.

Elizabeth H. Stevens,

Acting Manager, California-Nevada Office, Fish and Wildlife Service.

[FR Doc. 00–2214 Filed 2–3–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–190–98–1610–AF–24–1A]

Notice of Emergency Closure Policy and Procedures for Public Lands Managed by the Hollister Field Office, California

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Proposed Implementation Policy for Emergency Closures on an As Needed Basis for Public Lands Administered by the Hollister Field Office, California.

SUMMARY: In order to facilitate emergency operations and protect resources in the event of severe seasonal storms and/or natural disasters, the Hollister Field Officer is hereby serving notice that it will be adopting an emergency closure policy to be enacted on an as-needed basis when basic criteria are met. The closure will be invoked or lifted in public media such as Information Hot Lines, Press Releases, and on-the-ground postings. The lands covered by this emergency closure policy include all public lands administered by the Hollister Field Office. Public notices in the media and on recording information will specify which public lands will be temporarily closed, and will reflect local conditions. One of the following criteria shall be met: (1) State, County or Federal road access to the area is closed or restricted to residents and emergency personnel; (2) BLM or emergency response personnel cannot access and/or perform their duties in a given location; (3) Roads or trails are saturated with moisture to the point where vehicle traffic causes ruts or bogs leading to increased erosion. See attached moisture criteria supplement sheet.

The above policy is intended to allow the BLM flexibility in implementing emergency closure while also utilizing the most time-effective method of notifying the public. This will also facilitate management to minimize threats to public health and safety, as well as the potential for resource damage. Any time the closure policy is enacted, the following persons will be exempt:

(1) Federal, State, or Local Law Enforcement Officers, while engaged in the execution of their official duties.

(2) BLM personnel or their representatives while engaged in the execution of their official duties.

(3) Any member of an organized rescue, fire-fighting force, Emergency Medical Services organization while in the performance and execution of an official duty.

(4) Any member of a federal, state, or local public works department while in the performance of an official duty.

(5) Any person in receipt of a written authorization of exemption obtained from the Hollister Field Office.

(6) Local landowners, persons with valid existing rights or lease operations, or representatives thereof, who have a responsibility or need to access their property or to continue their operations on public land.

EFFECTIVE DATE: This policy will become effective March 6, 2000, and shall remain in effect until rescinded or modified by the Authorized Officer.

SUPPLEMENTARY INFORMATION: These closures and restrictions are under the authority of 43 CFR 8364.1 and 43 CFR 8341.2. Persons violating this closure shall be subject to the penalties provided in 43 CFR 8360.0–7 and 8340.0–7, including a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months. Parties exempt from the closure action shall be responsible for mitigating any resource damage caused by entering the closed area. Waivers can be granted for emergency circumstances, however in the event an emergency is caused by a negligent action, the responsible party would then be responsible for the mitigation.

FOR FURTHER INFORMATION CONTACT: Area Manager, Hollister Field Office, 20 Hamilton Court, Hollister, CA 95024, (831) 630–5000.

Dated: January 19, 2000.

Robert E. Beehler,

Hollister Field Manager.

Supplemental Soil Moisture Closure Criteria

Clear Creek Management Area

No action would be taken until the annual total precipitation exceeds 8 inches, the rain year would be the same as that used by the national weather service and rainfall data would be from the California Water Resources Board, nearest available rain gage. Once 8 inches of precipitation has been exceeded, the following would apply. Additional rainfall exceeding ½ inch within a 24 hour period, or 1 inch within a 72 hour period would result in a 3 day closure. Once the area has been closed a field inspection will be completed prior to reopening, and daily thereafter to determine suitability of road conditions. When recorded field observations show that road and trail surfaces have not dried sufficiently to allow traffic without damage to the surface, the area shall remain closed. Closure criteria may be amended or refined as results of area closures are evaluated. Specific criteria may be developed for other areas as needed.

[FR Doc. 00–2513 Filed 2–3–00; 8:45 am]

BILLING CODE 4310–40–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1492–ER]

DEPARTMENT OF DEFENSE

Navy Department

Notice of Availability for the Final Environmental Impact Statement, Bureau of Land Management Carson City and Battle Mountain, Nevada Field Offices and Department of the Navy, Naval Air Station Fallon, Nevada

AGENCY: Bureau of Land Management, Department of the Interior and Naval Air Station Fallon, Nevada, Department of the Navy.

COOPERATING AGENCIES: Federal Aviation Administration, U.S. Fish and Wildlife Service, U.S. Forest Service, Bureau of Indian Affairs, Yomba Shoshone Tribe, Fallon Paiute-Shoshone Tribe, Walker River Paiute Tribe, Nevada Division of Wildlife, Eureka, Lander, and Churchill County Commissions, and Kingston Town Board.

ACTION: Notice of availability of a final environmental impact statement (EIS) for the Naval Air Station Fallon's proposed Fallon Range Training Complex Requirements.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) and 40 CFR 1500–1508 Council on Environmental Quality Regulations (CEQ), notice is given that the Bureau of Land Management (BLM) Carson City and Battle Mountain, Nevada Field Offices and the Department of the Navy (Navy) Naval Air Station Fallon have jointly prepared, with the assistance of a third-party consultant, a Final EIS on the proposed Fallon Range Training Complex Requirements, and has made the document available for public and agency review.

DATES: Comments will be accepted until March 6, 2000.

ADDRESSES: Comments should be sent to: Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, Attn: Terri Knutson, Project Manager. Comments may also be sent via electronic mail to the following address: *tknutson@nv.blm.gov* or via fax: (775) 885–6147. A limited number of copies of the Draft EIS may be obtained at the above BLM Field Office in Carson City, NV, as well as, BLM Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, NV 89820. In addition, the Final EIS is available on the internet via the Carson City Field Office Home Page at: *www.nv.blm.gov/carson.*

Comments, including names and addresses of respondents, will be available for public review at the above address during regular business hours (7:30 a.m.—5:00 p.m.), Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. However, we will not consider anonymous comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Terri Knutson, Carson City BLM, at (775) 885–6156 or Gary Foulkes, Battle Mountain BLM, at (775) 635–4060, or John Smith, NAS Fallon, at (775) 426–2101.

After the review period ends for the Final EIS, comments will be analyzed and considered jointly by the BLM and the Navy in preparing the Record of Decision (ROD).

Dated: January 25, 2000.

John Singlaub,

Manager, BLM Carson City.

Dated: January 24, 2000.

RADM T.R. Beard,

Commander, Naval Strike and Air Warfare Center Fallon.

[FR Doc. 00–2223 Filed 2–3–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–00–2822–M948: GPO–0099]

Emergency Motor Vehicle Use Limitations; Lincoln Fire; Oregon

AGENCY: Bureau of Land Management, Vale District, Oregon, Department of the Interior.

ACTION: A temporary closure to motor vehicle use on public lands within the area of the Lincoln Fire (M948) administered by the Bureau of Land Management (BLM), Malheur Resource Area, Vale District, Oregon.

SUMMARY: One June 24, 1999 the Lincoln Fire burned 1415 acres of public and private land within T.19S., R.46E., Williamette Meridian, Sections 28, 29, 30, 31, 32, and 33. Because of the damage caused by the fire, this closure is necessary to prevent erosion and enhance the fire rehabilitation efforts within the burned area. The authorized officer has determined that vehicle use other than on designated routes will cause considerable adverse effects upon recovering soil and vegetation resources in the burned area and may also limit the successful establishment of desirable vegetation or other proposed rehabilitation actions.

Open roads within the fire area will be clearly identified. A map designating those routes which will remain open to vehicle use is included in the Vale District Bureau of Land Management, Lincoln Fire Rehabilitation Plan M948, Environmental Assessment (EA No. OR–030–99–021). The map and plan can be reviewed at: Vale District Office, USDI Bureau of Land Management, 100 East Oregon Street, Vale, Oregon 97918.

Prohibited Act: Pursuant to 43 CFR 8364.1, motorized vehicle use is prohibited on public land within the

boundaries of the Lincoln Fire (M948), except on designated roads.

Penalties: The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733 (a)) and 43 CFR 8360.0–7. Any person who knowingly and willfully violates this closure may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by Title 18 U.S.C. 3571.

DATES: This closure will take effect upon the published date of this notice and will continue for one year.

FOR FURTHER INFORMATION CONTACT: Roy L. Masinton, Field Office Manager, Malheur Resource Area, Vale District Office, 100 Oregon Street, Vale, OR 97914, Telephone—(541) 473–3144.

Dated: January 28, 2000.

Roy L. Masinton,

Field Office Manager, Malheur Resource Area.

[FR Doc. 00–2514 Filed 2–3–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW 114773]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW114773 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW114773 effective February 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 00–2512 Filed 2–3–00; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020–00–1430–01; AZA–31150]

Notice of Realty Action; Recreation and Public Purposes (R&PP) ActClassification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands, are located in Gila County, Arizona, and found suitable for lease or conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869,*et seq.*). The lands are not needed for federal purposes. Lease or conveyance is consistent with current Bureau of Land Management (BLM) land use planning and would be in the public interest.

AZA–31150

The following described lands, located near the Town of Globe, Gila County, have been found suitable for lease or conveyance to the Globe Unified School District #1 for public school buildings and supporting facilities.

Gila and Salt River Meridian, Arizona

T. 1 N., R. 15½ E.
Sec. 26, W½NE¼, NW¼SE¼, W½NE¼SE¼, W½SE¼NE¼.
Containing approximately 159.06 acres.

The lease or conveyance would be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

3. A right-of-way for ditches and canals constructed by the authority of the United States.

4. Those rights as Donald H. Harrington Estate, may have as to that portion of the Buckeye Mountain Grazing Allotment.

FOR FURTHER INFORMATION CONTACT: Angela Mogel at the PhoenixField Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027, (623) 580–5638.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this Notice, interested parties may submit comments regarding the proposed lease, conveyance or classification of the lands to the Field Office Manager, Phoenix Field Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

Classification Comments: Interested parties may submit comments involving the suitability of the land for: A public school facility, for Globe Unified School District #1. Comments on the classification are restricted to whether the land is physically suited for the proposals, whether the uses will maximize the future use or uses of the land, whether the uses are consistent with local planning and zoning, or if the uses are consistent with state and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific uses proposed in the applications and plans of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for proposed uses. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication in the **Federal Register**.

Dated: January 21, 2000.

Margo E. Fitts,

Assistant Field Manager.

[FR Doc. 00–2511 Filed 2–3–00; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–1430–ES; N–62870, N–62869]

Notice of Realty Action:

Segregation Termination, Lease/ conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, DOI.

ACTION: Segregation Termination, Recreation and Public Purpose Lease/ Conveyance.

SUMMARY: The following described public lands in Las Vegas, Clark County, Nevada were segregated on August 21, 1995 for exchange purposes under serial number N–60073, on December 01, 1996 for administrative purposes under serial number N–61855. The segregation on the subject lands will be terminated upon publication of this notice in the **Federal Register**.

The lands have been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Clark County School District proposes to use these lands for two elementary school sites.

Mount Diablo Meridian, Nevada

Case file No.	Legal description	Acres
N–62870	T. 22 S., R. 61 E., section 32: N½NW¼SW¼NW¼, SW¼NW¼NW¼	15
N–62869	T. 22 S., R. 60 E., section 36: SE¼NE¼NW¼SW¼, SW¼NW¼NE½SW¼,NE¼SE¼NW¼SW¼, NW¼SW¼NE¼SW¼, N½SE¼SE¼NW¼SW¼,N½SW¼SW¼NE¼SW¼.	12.5

Containing a total of 27.5 acres, more or less.

The land is not required for any federal purpose. The leases/conveyances are consistent with current Bureau planning for this area and would be in the public interest. The leases/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and each will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. Easements in favor of Clark County for roads, public utilities and flood control purposes in accordance with the Clark County Transportation Plan.

2. All valid and existing rights, which are identified in the respective case file.

The lands have been segregated from all forms of appropriation under the Southern Nevada Public Lands Management Act (P.L. 105–263).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for elementary school sites. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for the development of two elementary schools.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: January 14, 2000.

Cheryl A. Ruffridge,

Assistant Field Manager, Las Vegas, NV.

[FR Doc. 00–2228 Filed 2–3–00; 8:45 am]

BILLING CODE 1430–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–828 (Final)]

Bulk Acetylsalicylic Acid (Aspirin) From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–828 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of bulk acetylsalicylic acid (aspirin), provided for in subheadings 2918.22.10 and 3003.90.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: January 3, 2000.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting

[1] For purposes of this investigation, Commerce has defined the subject merchandise as ''bulk acetylsalicylic acid, commonly referred to as bulk aspirin, whether or not in pharmaceutical or compound form, not put up in dosage form (tablet, capsule, powders or similar form for direct human consumption).''

the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of bulk acetylsalicylic acid (aspirin) from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on May 28, 1999, by Rhodia, Inc., Cranbury, NJ.

Participation in the Investigation and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on May 5, 2000, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on May 18, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 10, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 15, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is May 12, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 25, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 25, 2000. On June 15, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 19, 2000, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: February 1, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–2525 Filed 2–3–00; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–377 (Review)]

Internal Combustion Industrial Forklift Trucks From Japan

AGENCY: United States International Trade Commission.

ACTION: Cancellation of the hearing and revision of the schedule of a full five-year review concerning the antidumping duty order on internal combustion industrial forklift trucks from Japan.

EFFECTIVE DATE: January 28, 2000.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by

accessing its internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background

On August 27, 1999 (64 FR 46952), the Commission published a notice in the **Federal Register** scheduling a full five-year review concerning the antidumping duty order on internal combustion industrial forklift trucks from Japan. The schedule provided for a public hearing on January 25, 2000. Requests to appear at the hearing were filed with the Commission on behalf of NACCO Materials Handling Group and on behalf of Clark Material Handling Co. However, the Federal Government was closed on January 25, 2000, because of snow and so the Commission hearing was not held as scheduled. Subsequently, each of the parties requesting to appear at the hearing withdrew their request. Since there are no current requests by interested parties to appear at a public hearing, the Commission determined to cancel, instead of reschedule, the public hearing on internal combustion industrial forklift trucks from Japan and provide those parties scheduled to appear an opportunity to present written testimony. The Commission unanimously determined that no earlier announcement of this cancellation was possible.

The Commission's new schedule for the review is as follows: the deadline for filing posthearing briefs is February 15, 2000; the Commission will make its final release of information on March 9, 2000; and final party comments are due on March 13, 2000.

For further information concerning the review, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and F (19 CFR part 207).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to sections 201.35 and 207.62 of the Commission's rules.

Issued: January 31, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–2524 Filed 2–3–00; 8:45 am]

BILLING CODE 7020–02–U

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

James Garvey Cavanagh, M.D.; Revocation of Registration

On August 5, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to James Garvey Cavanagh, M.D., of Hawthorne, Nevada, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AC9084485 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Nevada. The order also notified Dr. Cavanagh that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on August 21, 1999. No request for a hearing or any other reply was received by the DEA from Dr. Cavanagh or anyone purporting to represent him in this matter. Therefore the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Cavanagh is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 C.F.R. 1301.43(d) and (e) and 1301.46. This final order replaces and supersedes the final order issued on December 22, 1999, and published at 64 FR 73,586 (December 30, 1999).

The Deputy Administrator finds that Dr. Cavanagh currently possesses DEA Certificate of Registration AC9084485 issued to him in Nevada. The Deputy Administrator further finds that on March 18, 1999, the Board of Medical Examiners of the State of Nevada issued its Findings of Fact, Conclusions of Law, and Order revoking Dr. Cavanagh's license to practice medicine in the State of Nevada.

The Deputy Administrator concludes that Dr. Cavanagh is not currently licensed to practice medicine in Nevada, and therefore, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

Here it is clear that Dr. Cavanagh is not currently authorized to handle controlled substances in the State of Nevada. As a result, Dr. Cavanagh is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 USC 823 and 824 and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AC9084485, previously issued to James Garvey Cavanagh, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective March 6, 2000, and is considered the final agency action for appellate purposes pursuant to 21 U.S.C. 877.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2526 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–9]

Michael G. Dolin, M.D., Denial of Request for Modification of Registration

On December 17, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Michael Glen Dolin, M.D. (Respondent) of Rockville Center, New York, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AD4476378 pursuant to 21 U.S.C. 824(a)(4), and deny any pending applications for modification or renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that his registration would be inconsistent with the public interest.

On January 4, 1999, Respondent, through counsel, filed a request for a

hearing. Following prehearing proceedings, a hearing was held in New York City, New York on May 26, 1999, and continued on July 13, 1999, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence.

On July 9, 1999, prior to the second hearing session, the Government filed a Motion to Amend Prehearing Statement and to Reopen Record, which was granted at the hearing on July 13, 1999. The Government introduced evidence that the New York Department of Health, State Board for Professional Medical Conduct (Medical Board), had revoked Respondent's license to practice medicine in New York, and that the New York State Supreme Court, Appellate Division, Third Judicial Department (Appellate Division), stayed the revocation, but precluded Respondent from prescribing controlled substances. Based upon this evidence, the Government made an oral Motion for Summary Disposition at the July 13, 1999 hearing session.

After being given an opportunity to reply to the Government's motion, on August 23, 1999, Respondent filed a motion requesting that Judge Randall deny the Government's motion and adjourn these proceedings until the Appellate Division renders its decision on the Respondent's appeal of the Medical Board's revocation of his medical license.

On September 1, 1999, the Government filed a Renewed Motion for Summary Disposition, and sought to reopen the record to introduce evidence of the Appellate Division's decision lifting the temporary stay of the revocation of Respondent's New York medical license. The Government asserted that since Respondent is no longer authorized to handle controlled substances in New York, DEA cannot register him in that state. In a letter dated September 8, 1999, Respondent replied to the Government's Renewed Motion for Summary Disposition.

On September 28, 1999, Judge Randall issued her Opinion and Recommended Decision finding that Respondent lacks authorization to handle controlled substances in the State of New York; denying Respondent's Motion to Adjourn; granting the Government's Motion for Summary Disposition; and recommending that Respondent's request for modification of his DEA registration be denied. Neither party filed exceptions to her Opinion and Recommended Decision, and on November 4, 1999, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that Respondent was issued DEA Certificate of Registration AD4476378 at an address in North Carolina with an expiration date of June 30, 1998. On June 14, 1998, Respondent submitted an application to modify his registration with DEA. On the application, Respondent crossed out the registered address in North Carolina and hand wrote in an address in Rockville, New York. Pursuant to 21 CFR 1301.51, this request for modification is treated like a new application for registration.

The Deputy Administrator further finds that in a decision dated May 17, 1999, the Hearing Committee of the Medical Board revoked Respondent's license to practice medicine in the State of New York. On June 10, 1999, the Appellate Division temporarily stayed the revocation, pending Respondent's appeal of the Medical Board's decision. Subsequently, in a decision dated August 6, 1999, the Appellate Division lifted the temporary stay of the Medical Board's revocation of Respondent's license to practice medicine in New York.

In arguing against summary disposition and for an adjournment of these proceedings pending a ruling on his appeal, Respondent asserted that if the Government's motion is granted and Respondent ultimately wins his appeal of the Medical Board's revocation of his medical license, he would be without a DEA registration to handle controlled substances. Respondent further argued that the public interest would be protected by delaying a decision in this matter pending the outcome of the appeal in the Appellate Division since he is currently without a medical license and he has not written a controlled substance prescription since his DEA registration expired in 1998.

The Deputy Administrator concludes that Respondent is not currently authorized to practice medicine in the State of New York and it is therefore reasonable to infer that he is also not authorized to handle controlled substances in that state. The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Michael J. Pine, D.D.S., 64 FR 33318 (1999); Eric Jones, M.D., 63 FR 10042 (1998); Romeo J. Perez, M.D., 62 FR 16193 (1997).

Here, it is clear that Respondent is not authorized to practice medicine or handle controlled substances in New York, and therefore, he is not eligible to possess a DEA registration in that state. As Judge Randall noted, ''[a] pending judicial challenge to the Medical Board's decision does not alter Respondent's status in New York. The outcome of a potential judicial challenge to the Medical Board's action is speculative, and the decision of the Medical Board is final until otherwise overturned.'' Under these circumstances, Judge Randall found that it would be inappropriate to stay or adjourn these proceedings.

In light of the above, Judge Randall properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is currently unauthorized to handle controlled substances in New York. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Jesus R. Juarez, M.D., 62 FR 14945 (1997); Philip E. Kirk, M.D., 48 FR 32887 (1983), aff'd sub nom Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984).

The Deputy Administrator agrees with Judge Randall's conclusion that because Respondent lacks state authorization in New York, the state where he is seeking to be registered, it is unnecessary to address the other allegations raised in the Order to Show Cause.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the request of Michael G. Dolin, M.D. to modify his DEA Certificate of Registration AD4476378, dated June 14, 1998, be, and it hereby is, denied. The Deputy Administrator notes that DEA Certificate of Registration AD4476378 is no longer valid since it expired without being renewed or modified. This order is effective March 6, 2000.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2537 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–11]

Robert M. Golden, M.D.; Grant of Restricted Registration

On January 22, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert M. Golden, M.D. (Respondent) of Alpharetta, GA, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner under 21 U.S.C. 823(f), for reason that this registration would be inconsistent with the public interest.

By letter dated February 2, 1999, Respondent requested a hearing, and following prehearing procedures, a hearing was held in Atlanta, GA on June 9, 1999, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed finding of fact, conclusions of law and argument. On November 23, 1999, Judge Bittner issued her Opinion and Recommended Ruling, Findings, of Fact, Conclusions of Law and Decision (Opinion), recommending that Respondent's application for a DEA Certificate of Registration be granted in Schedules IV and V subject to several conditions. Neither party filed exceptions to Judge Bittner's Opinion and on December 23, 1999, she transmitted the record of these proceedings to the Office of the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon finding of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, with slight modifications to the recommended decision as noted below. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that Respondent previously possessed DEA Certificate of Registration AG6243125. On May 25, 1994, an Order to Show Cause was issued proposing to revoke that Certificate of Registration and alleging that Respondent's continued registration would be inconsistent with the public interest. Following a hearing before Administrative Law Judge Paul A. Tenney, the then-Deputy Administrator revoked Respondent's DEA registration effective June 17, 1996. See Robert M. Golden, M.D., 61 FR 24808 (May 16, 1996).

In that prior proceeding, the then-Deputy Administrator found that in April 1987, Respondent entered into a Consent Order with the Georgia State Board of Medical Examiners (Board) based upon allegations of recordkeeping violations, the prescribing or dispensing of controlled substances while not acting in the usual course of professional practice, and the prescribing or ordering of controlled substances for an illegitimate medical purpose, Respondent's medical license was placed on probation for four years, and he was prohibited from prescribing, administering or dispensing Schedule II and III controlled substances, except in an institutional setting; required, for at least one year, to personally maintain a log of all Schedule IV controlled substances that he prescribed, administered or dispensed in his office; and required to attend at least 100 hours of continuing medical education focusing on drug abuse and/or pharmacology. The Consent Order specified that it was ''not an admission of wrongdoing for any purpose other than resolving the matters pending before the Board.''

In addition in the prior proceeding, the then-Deputy Administrator found that in 1992 a confidential informant received prescriptions for Xanax, a Schedule IV controlled substance, from Respondent who issued the prescriptions using names other than that of the informant. Also, on two occasions in 1992, Respondent issued prescriptions for Xanax to an undercover police officer for no legitimate medical purpose. Further, Respondent increased the dosage strength of the controlled substances prescribed based upon the patient's demands rather than on his own medical judgment.

In his final order revoking Respondent's previous DEA Certificate of Registration, the then-Deputy Administrator found that Respondent's conduct ''demonstrate[s] a cavalier behavior regarding controlled substances''; and that ''Respondent did not acknowledge any possibility of questionable conduct in his prescribing practices.'' The then-Deputy Administrator found that he ''was provided no basis to conclude that Respondent would lawfully handle controlled substances in the future.''

On April 4, 1996, Respondent entered into another Consent Order with the Board wherein the Board contended that following the termination of Respondent's earlier probation in 1991, he ''prescribed and otherwise distributed controlled and/or dangerous substances without adequate medical justification.'' Respondent's license was placed on probation for a least four years and he was required to relinquish his right to prescribe, administer, dispense, order or possess Schedule I, II, IIN, III and IIIN controlled substances, as well as specifically named drugs to include the Schedule IV controlled substances Xanax and Stadol, and their generic equivalents. In addition pursuant to this Consent Order, Respondent is required to utilize triplicate prescriptions for all controlled substances prescribed by him; to maintain a contemporaneous log of his handling of controlled substances; and to successfully complete a specific continuing medical education course regarding the appropriate prescribing of controlled substances, as well as other continuing medical education.

On June 15, 1997, Respondent submitted an application for a new DEA Certificate of Registration. On January 9, 1998, DEA issued an Order to Show Cause proposing to deny this application and alleging that Respondent's registration would be inconsistent with the public interest. Respondent did not reply to the Order to Show Cause, and consequently the then-Acting Deputy Administrator deemed that Respondent had waived his right to a hearing. On July 10, 1998, the then-Acting Deputy Administrator issued a final order denying Respondent's application for registration effective August 17, 1998. See 63 FR 38669 (July 17, 1998).

In his final order denying Respondent's application, the then-Acting Deputy Administrator found that the circumstances had not changed sufficiently from the revocation of Respondent's previous DEA registration to warrant granting Respondent's application.

On October 12, 1998, Respondent submitted an application for a new DEA registration in Schedules II through V. Subsequently, Respondent's application was amended to seek registration in Schedules IV and V only. That application is the subject of these proceedings.

The Deputy Administrator concludes that the then-Deputy Administrator's findings in the 1996 final order revoking Respondent's previous DEA Certificate of Registration are res judicata since they were made following an evidentiary hearing. See Stanley Alan Azen, M.D., 61 FR 57893 (1996).

However, since the then-Acting Deputy Administrator's findings in the 1998 final order denying Respondent's previous application for registration were based on the investigative file and following an evidentiary hearing, res judicata does not apply and therefore, Respondent is not precluded from litigating the matters at issue in the 1998 proceeding.

Accordingly, the Deputy Administrator concludes that the critical consideration in this proceeding is whether the circumstances, which existed at the time of the 1996 revocation of Respondent's previous DEA Certificate of Registration, have changed sufficiently to support a conclusion that Respondent's registration with DEA would be in the public interest.

As discussed previously, Respondent is subject to a Consent Order with the Board until at least April 4, 2000. A DEA investigator testified at the hearing in this matter that Respondent has been in compliance with the terms of this Consent Order.

Respondent testified that he has been practicing medicine for approximately 20 years, and for most of that time he practiced general or family medicine. In or about 1995, he realized that he was not suited for that type of medical practice and changed his specialization to cosmetic surgery. Specifically, Respondent specializes in tumescent liposuction where the cosmetic surgeon uses local rather than general anesthesia during the procedure.

Respondent testified that in his current practice he needs to use Schedule IV and V controlled substances to effectively treat his patients. According to Respondent and his medical assistant, some patients have a heightened sense of anxiety that is not relieved by non-controlled sedatives. Respondent testified that if needed, he prefers to use Valium to help patients with anxiety pre-operatively, intra-operatively, and post-operatively. According to Respondent and literature in evidence, patients who undergo tumescent liposuction surgery experience minimal post-operative pain, and therefore do not need narcotic pain relievers. In those situations where a patient has needed some type of pain relief, Respondent has prescribed a non-controlled, non-sterodial, anti-inflammatory analgesic.

Respondent introduced evidence of his completion of a course in the proper handling of controlled substances. He testified that in the future, he is ''going to practice very defensive medicine.'' According to Respondent, ''[t]the old Dr. Robert Golden is dead and buried as far as I'm concerned.''

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989).

Regarding factor one, it is undisputed that until at least April 4, 2000, Respondent is subject to the terms of a Consent Order entered into with the Board. Pursuant to this Consent Order, Respondent is limited to handling Schedule IV and V controlled substances only and is further precluded from handling the Schedule IV controlled substances Xanax and Stadol, and their generic equivalents.

As to factors two and four, the then-Deputy Administrator found in the 1996 final order revoking Respondent's previous DEA Certificate of Registration that prior to 1993 Respondent prescribed controlled substances knowing that a person other than the one named on the prescription was the intended recipient of the controlled substances in violation of 21 CFR 1306.05, and that Respondent increased the strength of the medication prescribed based on the patient's request rather than using his professional medical judgment. The then-Deputy Administrator concluded that these prescriptions were not issued for a legitimate medical purpose in violation of 21 CFR 1306.04.

The Deputy Administrator finds that there was no evidence presented in this proceeding to warrant a finding that Respondent has improperly handled controlled substances since 1993. The Consent Order with the Board dated April 4, 1996, alleges that Respondent prescribed and otherwise distributed controlled and/or dangerous substances without adequate medical justification. However, the Consent Order also indicates that Respondent denies these allegations and no evidence of the underlying facts of these allegations was introduced by the Government at this hearing.

As to factor three, there is no evidence that Respondent has ever been convicted under State or Federal laws relating to controlled substances. Further, the record contains no evidence of other conduct that may threaten the public health and safety that would be considered under factor five.

Judge Bittner noted that Respondent's last application for registration was denied because he had not presented sufficient evidence to indicate that his registration with DEA would be in the public interest. However, she concluded that Respondent has now presented such evidence. Judge Bittner noted that ''Respondent has completed a six day seminar in the appropriate prescribing of controlled substances, he is in compliance with the Board's 1996 Consent Order, and he has changed his practice to a specialty in which the use of controlled substances is limited to very specific purposes and for specific periods of time.''

Judge Bittner found Respondent's testimony to be credible and concluded that Respondent ''now understands and accepts the responsibility inherent in a DEA registration.'' Therefore, she recommended that Respondent be issued a DEA registration limited to Schedule IV and V, with the exception of Xanax and Stadol, subject to the following conditions:

1. Respondent shall maintain accurate records showing all purchases, administering, and dispensing (including prescribing) of all controlled substances; and

2. Respondent shall submit copies of all such records to the Special Agent in Charge of the DEA's Atlanta office, or his designee, quarterly, for two years from the effective date of his registration.

The Deputy Administrator finds that the Government has established a prima facie case for denial of Respondent's application for registration. However, like Judge Bittner, the Deputy Administrator concludes that it would not be in public interest to deny Respondent's application, but rather to register him on a very limited a basis to give him the opportunity to demonstrate

that he can responsibly handle controlled substances.

Therefore, the Deputy Administrator concludes that Respondent should be issued a DEA Certificate of Registration in Schedules IV and V subject to the following restrictions for three years from the date of issuance of the DEA Certificate of Registration:

(1) While Respondent will be registered in Schedule IV, he shall not prescribe, dispense, administer, order or otherwise handle Xanax, Stadol, or their generic equivalents.

(2) Respondent shall send copies of records documenting all of his purchases of controlled substances to the Special Agent in Charge of the DEA Atlanta office, or his designee, on a quarterly basis.

(3) Respondent shall submit, on a quarterly basis, a log of all of the controlled substances he has prescribed, administered, or dispensed during the previous quarter, to the Special Agent in charge of the DEA Atlanta office, or his designee. The log shall include: the patient's name; the date that the controlled substance was prescribed, administered or dispensed; and the name, dosage and quantity of the controlled substance prescribed, administered or dispensed. If no controlled substances are prescribed, administered or dispensed during a given quarter, Respondent shall indicate that fact in writing in lieu of submission of the log.

(4) Respondent shall consent to random, unannounced inspections by DEA without requiring an Administrative Inspection Warrant.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration submitted Robert M. Golden, M.D., be, and it hereby is, granted in Schedules IV and V, subject to the above described restrictions. This order is effective upon the issuance of the DEA Certificate of Registration, but no later than March 6, 2000.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2539 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–10]

Wesley G. Harline, M.D.; Continuation of Registration With Restrictions

On October 27, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Wesley Harline, M.D. (Respondent) of Ogden, Utah, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AH1650248 and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(4), for reason that his continued registration would be inconsistent with the public interest.

By letter dated December 14, 1995, Respondent, through counsel, filed a request for a hearing, and following prehearing procedures, a hearing was held in Salt Lake City, Utah on April 1 through 3 and May 6 through 8, 1997, and by telephone in Salt Lake City and Arlington, Virginia, on August 18 through 21, 1997, before Administrative Law Judge Mary Ellen Bittner. At the hearing both parties called witnesses to testify and introduced documentary evidence. After the hearing both parties submitted proposed findings of fact, conclusions of law and argument.

In his brief, Respondent's counsel included findings based upon evidence that was not introduced at the hearing. On January 5, 1998, the Government filed a Motion to Strike Post Record Evidence from Respondent's Proposed Findings of Fact, Conclusions of Law and Argument. On January 21, 1998, Respondent filed his Opposition to Government's Motion to Strike Post Record Evidence, and in the alternative, Motion to Reopen the Record.

On April 2, 1999, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision (Opinion), granting the Government's motion to strike the additional evidence, denying Respondent's motion to reopen the record, and recommending that Respondent's DEA Certificate of Registration be revoked and any pending applications be denied. On June 14, 1999, Respondent filed exceptions to Judge Bittner's Opinion and on August 2, 1999, the Government filed its response to Respondent's exceptions. Thereafter, on August 10, 1999, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

While this matter was pending with the Deputy Administrator, Respondent submitted a letter dated November 4, 1999, responding to the Government's response to his exceptions and formally moving that the record be reopened to allow additional evidence to be considered. As will be discussed more fully below, the Deputy Administrator denies Respondent's motion to reopen the record and has not considered Respondent's letter dated November 4, 1999, in rendering his decision in this matter.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. This final order replaces and supersedes the final order issued on December 9, 1999, and published at 64 FR 72678 (December 28, 1999). The Deputy Administrator adopts, except as specifically noted below, the findings of fact set forth in Judge Bittner's Opinion, but does not adopt Judge Bittner's recommended conclusions of law and decision.

The Deputy Administrator finds that Respondent graduated from medical school in 1945. In or about 1953, Respondent joined a general surgery practice in Ogden, Utah. He has been a licensed physician in Utah since 1953 and has held state and Federal authorizations to handle controlled substances since approximately the time he obtained his medical license. According to Respondent, sometime in the 1980s, he virtually terminated his general surgery practice to concentrate on cosmetic surgery. Respondent testified that he considered weight control to be a part of cosmetic surgery, and as of 1997, he saw 15 to 20 weight control patients every weekday and a few weight control patients on Saturdays.

Primarily at issue in this proceeding is whether Respondent properly prescribed controlled substances to his weight control patients. Therefore, provisions of Utah law relating to this issue were placed into evidence. As of 1987 [1], the Utah Administrative Code (Administrative Code) authorized the Utah Division of Occupational and Professional Licensing (DOPL) to revoke a State license to handle controlled substances if the holder ''[p]rescribes or administers any controlled substance for weight control for more than 30 days in any 12 twelve-month period.'' Utah Admin. Code R153–38–8 (1987–1988).

[1] The Government did not provide any evidence of the statutory provisions relating to weight control in existence prior to 1987.

The Administrative Code also required that ''each prescription for a controlled substance and the number of refills authorized shall be documented in the patient records by the prescribing practitioner.'' Utah Admin. Code R153–37–10.D (1987–1988).

The 1989 Administrative Code generally provided that:

> Prescribing practitioners shall keep accurate records reflecting the examination, evaluation and treatment of all patients. Patient medical records shall accurately reflect the prescription or administration of controlled substances in the treatment of the patient, the purpose for which the controlled substances is utilized and information upon which the diagnosis is based.

Utah Admin. Code R153–37–9.A (1989). Further, Utah Admin. Code R153–37–10.H (1989), provided that Schedule II controlled substances could not be prescribed, dispensed or administered for weight reduction or control. In addition, section 10.J essentially provided that Schedule III and IV controlled substances could only be used for weight reduction in the treatment of obesity as an adjunct, in accordance with Food and Drug Administration approved labeling for the product, and in a regimen of caloric restriction provided that among other things the prescribing practitioner determines that the patient has made good faith efforts to lose weight in a structured treatment program and the program was ineffective, obtains a thorough history; performs a thorough physical examination; and rules out any contraindications to the use of controlled substances. This section precluded the prescribing of Schedule III and IV controlled substances for weight reduction for a period longer than 12 weeks in any one year period. Also pursuant to this section, a practitioner was required to discontinue prescribing controlled substances if the patient failed to lose weight while under treatment for a period of 28 days as determined by weighings of the patient at least every fourteenth day.

In 1991, the provision was reworded slightly but essentially was substantively unchanged, and remained so until January 16, 1996. As of that date, Utah Admin. Code R156–37–604 (1996) provided that Schedule II and III controlled substances shall not be prescribed, dispensed, or administered for purposes of weight reduction or control. Further, Schedule IV controlled substances can only be used in the treatment of excessive weight when certain conditions are met. However, this provision no longer imposed the 12 week limitation on the use of Schedule IV controlled substances.

On June 5, 1992, the DOPL issued an emergency order restricting Respondent's authority to perform certain types of surgery and ordering him to cease providing overnight patient care at his facility. On September 29, 1993, a Third Amended Petition was filed in that proceeding alleging, among other things, that Respondent prescribed a Schedule III anorectic controlled substance beyond the period of time permitted by Utah regulation to at least 13 patients and that the prescriptions did not bear the full names and addresses of the patients and the dates issued as required by law.

On December 10, 1996, Respondent executed a Stipulation and Order in which he denied all of the allegations of the Third Amended Petition but agreed to various terms and conditions. Specifically, the Stipulation and Order suspended Respondent's medical license for three months, but stayed enforcement of the suspension and placed his license on a five-year probation subject to various conditions including that he provide adequate means to permit patients to exercise informed consent with respect to medical and surgical procedures, anesthesia, and medications to be administered or dispensed; meet with the Physicians' Licensing Board (Board) quarterly for five years; allow a qualified physician to review records of 1.4 percent of his patients; and maintain prescription records in accordance with State and Federal law and make his prescription records available for inspection by the board and the DOPL upon request.

In the latter half of 1995, DEA conducted a pharmacy survey to determine whether Respondent was complying with various regulatory requirements. The survey revealed that Respondent had written prescriptions for anorectic controlled substances for more than 12 weeks in a year in violation of state law. The survey further revealed seven prescriptions that Respondent issued between 1993 and 1995 and 202 prescriptions that he issued between 1990 and 1992 that did not bear the patient's full name and/or date of issuance.

Respondent testified that he had written incomplete prescriptions, but that in discussions with other physicians he had learned that such prescriptions ''are a quite frequent occurrence.'' According to Respondent, he was told by a DOPL investigator that no more than 50% of prescriptions for Schedule III, IV and V controlled substances are properly filled out.

On May 11, 1995, DOPL subpoenaed records for 43 Respondent's patients. At issue in this proceeding is whether Respondent properly prescribed controlled substances to these patients for weight control. As a result, there was evidence presented by both the Government and Respondent regarding when an individual is considered obese or overweight, when the use of controlled substances is appropriate for weight control, and when such treatment is deemed effective. The Government offered the testimony of a physician who mainly treats chronic pain patients, but who was qualified as an expert in the legitimate use of anorectic controlled substances. Respondent testified on his own behalf and also offered the testimony of a physician whose practice prior to 1991 consisted of some weight management patients and since 1991 was solely weight management patients. Both parties offered extensive documentary evidence.

Evidence was presented that different methods are used to determine when a patient is considered obese or overweight. These include comparing the patient's height and weight to charts published by insurance companies, and calculating the individual's body mass index (BMI), which is the person's weight in kilograms divided by the square of his/her height in meters. The Government's expert as well as most of the documentary evidence regarding this issue cite BMI as the best general guideline. Judge Bittner went into great detail, which will not be repeated here, summarizing the various opinions in evidence regarding at what BMI an individual is considered obese or overweight. After reviewing all of the evidence, the Deputy Administrator finds that there seems to be disagreement within the medical community as to when an individual is considered obese or overweight using BMI as a guideline.

Respondent testified that his standard practice for weight control patients during the time period at issue was to use the life insurance tables, and that he was not aware of BMI as a criterion until the 1990s. He further testified that although BMI is ''helpful'' in determining whether or not to prescribe weight control medication, he found it cumbersome to use.

Judge Bittner concluded that:

> Based on my review of all the foregoing, and recognizing that there is some disagreement among the experts, I find that for purposes of this proceeding the [National Institute of Health's National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK)] definitions are the most appropriate standards. I therefore find that a person aged thirty-five or older is obese if he

or she has a BMI of 27 [kilograms/meters squared] or more, that a person age thirty-four or younger should be considered obese if he or she has a BMI of 25 [kilograms/meters squared] or more, and that a BMI greater than 30 [kilograms/meters squared] indicates moderate to severe obesity.

The Deputy Administrator disagrees with Judge Bittner that the NIDDK definitions are the most appropriate standards. The Deputy Administrator finds that given the disagreement within the medical community, he is not comfortable finding that one standard is more appropriate than another. In fact the NIDDK standard that Judge Bittner cites also noted that while BMI ''is the measurement of choice for many physicians and researchers studying obesity,'' it

poses some of the same problems as the height-for-weight tables. Doctors don't agree on the cutoff points for ''healthy'' versus ''unhealthy'' BMI ranges. BMI does not provide information on a person's percentage of body fat. However, like the height-for-weight table, BMI is a useful general guideline.

Understanding Adult Obesity, NIH Publication No. 94–3680, November 1993 <http://www.niddk.nih.gov/Aobesity/adultobe.htm>.

Therefore, the Deputy Administrator is reluctant to set an objective standard to determine when an individual is considered obese or overweight which might not necessarily be appropriate for each patient. Rather it appears that there are a number of different criteria that may be considered by a physician in determining whether an individual patient is obese or overweight.

Next, Judge Bittner addressed when it is appropriate to use controlled substances in a weight loss program. A consensus of the documentary evidence, as well as the testimony of both Respondent and the Government's expert, indicate that obesity is a chronic condition, and as such, using medication to treat it only for a short time is not effective. However, by virtue of the fact that the drugs at issue are controlled substances, it has already been determined that these drugs have some potential for abuse and that abuse would lead to some level of physical or psychological dependence.

The Physicians' Desk Reference (PDR) advises that these drugs should only be used for a few weeks. However, DEA has previously held that the PDR is not binding on a physician. See Paul W. Saxton, D.O., 64 FR 25073 (1999); Margaret E. Sarver, M.D., 61 FR 57896 (1996). Even the Government's expert testified that research has found that the Food and Drug Administration recommendations on which the PDR is based may be too restrictive, at least for some Schedule IV substances. The Government's expert further testified that the risks associated with the controlled substances at issue here are low and that the medications are reasonably safe drugs, but that they do have side effects and there is some potential for abuse, although low for Schedule IV substances. The Government's expert testified that the potential benefit of using controlled substances must be balanced against the potential risk.

Judge Bittner went into great detail, which will not be reiterated here, regarding the documentary evidence regarding tolerance and the abuse potential associated with anorectic controlled substances and as to their efficacy. After reviewing all of this evidence, the Deputy Administrator concludes that there have been few if any meaningful studies on the long-term use of anorectic controlled substances in the treatment of weight control.

However, the Deputy Administrator finds it noteworthy that in the prologue to the Anorectic Usage Guidelines adopted by the American Society of Bariatric Physicians on November 10, 1990 (1990 ASBP Prologue) it was reported that the reported incidence of serious side effects of Schedule III and IV anorectics ''is low indeed.'' The 1990 ASBP Prologue also stated, among other things, that short and long term studies have not documented concerns about the abuse potential of anorectics, and that a significant number of bariatric physicians reported that they maintained patients on anorectics for long periods of time without significant ill effects. The 1990 ASBP Guidelines stated that Schedule III and IV anorectics ''can often be useful in helping patients to lose weight and to maintain a reduced weight,'' and that these medications ''by definition have a low level of risk and little potential for addiction or psychologic dependence when carefully used by a physician in a properly supervised medical practice.''

The Deputy Administrator also finds it significant that in a 1996 article,[2] the National Task Force on the Prevention and Treatment of Obesity (National Task Force) advised that obesity is likely to require continued treatment, and that therefore drug treatment for only weeks or months is generally not warranted. The National Task Force warned that drug treatment might need to continue for years, even for the patient's lifetime, but that there were few published studies in which patients received these drugs for more than a year. Consequently, the Deputy Administrator is reluctant to find that long-term use of anorectic controlled substances is inappropriate.

Judge Bittner next addressed the criteria for an appropriate weight loss program utilizing controlled substances. The Government's expert and the documentary evidence suggest that controlled substances should only be used as part of an overall program including dietary modification, behavioral instruction and exercise. The Government's expert emphasized that the key determinant of a weight loss program's efficacy is whether the weight loss improves the patient's health. It was the opinion of the Government's expert that it is not appropriate to use controlled substances for weight loss in order to enhance a patient's self-image or for prophylactic use, for instance if other members of a patient's family are overweight. According to the Government's expert it is not appropriate to prescribe controlled substances for cosmetic purposes.

Respondent testified that in determining whether to prescribe medications for weight control he considered the patient's feelings about him or herself, whether he or she wanted to lose weight, how much the patient wanted to lose, and whether it was feasible for the patient to do so.

The Government's expert testified that a weight loss of at least 10% is considered a good sustained weight loss. Other evidence in the record indicates that some believe that a weight loss as low as 5% is considered good. The Government's expert testified that once a 10% weight loss has been achieved, that does not necessarily mean that controlled substances should be discontinued because the medication helps prevent regaining weight loss. But the expert further testified that there needs to be an ongoing review process to assess the efficacy of the use of controlled substances.

Judge Bittner went into great detail summarizing the documentary evidence relating to the criteria for determining when controlled substances should be utilized in a weight control program. After considering all of the evidence the Deputy Administrator concludes that there appears to be a difference of opinion within the medical community as to when it is appropriate to use controlled substances in a weight management program and when such use is considered effective.

[2] National Task Force on the Prevention and Treatment of Obesity, Long-term Pharmacotherapy in the Management of Obesity, 276 JAMA 1907 (1996).

The Deputy Administrator finds it significant that the 1990 ASBP Guidelines specify that the guidelines,

> provide suggestions regarding the use of the anorectics but they are not intended to and indeed cannot, replace the individual judgment of the treating bariatrician which remains and must remain paramount. Thus, the bariatrician must not rely on these guidelines, or on any other guidelines to provide an infallible blueprint for patient treatment. It is not the intent of these guidelines to limit the bariatricians' right to adjust the therapy based on the patient's condition, medical problems or therapeutic response.

The Government's expert testified that this statement should be interpreted in the context of a clear-cut treatment program with established goals.

Judge Bittner concluded that

> [i]n light of my findings above as to when a person should be considered obese, I further find that anorectic controlled substances should not be used in the treatment of a patient unless the individual is thirty-five or more years of age and has a BMI of at least 27 [kilograms/meters squared], or, if younger than thirty-five year of age, has a BMI of 25 [kilograms/meters squared] or more. I especially note that the evidence establishes that prescribing controlled substances to a patient for cosmetic purposes is not within the scope of legitimate medical practice.
>
> * * * Based on my review of the record and for purposes of this proceeding, I find that it is appropriate to continue prescribing anorectic controlled substances to those patients who initially are candidates for such treatment only if (a) the patient achieves a loss of five percent of body weight or a reduction in BMI by one or more units and maintains that loss for at least one year, or (b) if the patient achieves a significant clinical response as defined in the 1990 ASBP Guidelines, *i.e.,* (1) a loss of at least twelve pounds over the initial twelve weeks, and (2) a loss of at least four pounds for each additional four weeks of treatment, providing that if the patient has lost at least ten percent of his or her initial body weight, he or she may be considered to have reached [90% Target Weight] and may appropriately continue to be prescribed anorectics if needed. If the patient gains weight and exceeds that benchmark, the physician should cease prescribing the medications unless the patient again achieves the [90% Target Weight] benchmark in a period of time equaling one week for each pound above the benchmark. (Footnotes omitted).

The Deputy Administrator disagrees with these findings. There appears to be differing opinions within the medical community as to when it is appropriate to use controlled substances in weight management treatment and when such use is considered effective. As a result, the Deputy Administrator is not comfortable setting objective standards which might not necessarily be appropriate for each individual patient.

As to the 42 patients at issue in this proceeding, Judge Bittner went into great detail in her Opinion regarding their history of treatment with Respondent. She discussed the patient charts and patient summaries in evidence, the assessment of the Government's expert of each patient, Respondent's testimony regarding each patient, and the patient interviews conducted by DEA and/or the patients' testimony. Since the Deputy Administrator is adopting Judge Bittner's findings of fact except as specifically noted, there is no need for him to reiterate them. It should be noted that based upon the Deputy Administrator's rejection of certain of Judge Bittner's findings as noted above, the Deputy Administrator does not adopt any of Judge Bittner's findings regarding specific patients that use her objective standard to conclude that treatment with controlled substances was inappropriate or to assess whether or not treatment was successful.

The Deputy Administrator makes the following general findings regarding Respondent's treatment of the patients at issue. These patients were all being treated by Respondent for weight loss or management. There is no evidence that anorectic controlled substances were prescribed for other purposes, or that controlled substances received pursuant to Respondent's prescriptions were sold or in any other way diverted from the patients' use.

On the initial visit, the patient would be weighed, his/her height would be measured and blood pressure taken. A family/medical history would be taken and Respondent would perform a physical examination. Respondent would discuss goals and a target weight with the patient, give the patient a generalized diet, generally discuss exercise, lifestyle changes, and possible side effects of the controlled substances, and ask whether the patient had previously attempted to lose weight and by what methods.

Thereafter, Respondent would see the patient no more than once a month. In fact, several patients testified that they had tried to obtain their prescriptions earlier because they were going on vacation, but their requests were refused. At each visit the patient would be weighed and his/her blood pressure taken. The patient would always be seen by Respondent before any controlled substances would be prescribed. Respondent would admonish the patient if he/she were not losing weight. If the patient was not losing weight, Respondent would very rarely change the diet he had provided the patient because according to Respondent, more likely than not the patient was not following the diet. Respondent would remind the patient on follow-up visits of the importance of following the diet.

Respondent testified that he used the insurance company height and weight tables to determine whether to use controlled substances in the treatment of a patient. However, he also testified that he is now stricter in his approach to weight control treatment.

Respondent's office manager testified that although a patient's blood pressure was taken at each visit, the result was not always noted in the patient's chart unless it was abnormal. Respondent testified that he might not always note the responses to the medical/family history questions or the results of the physical examination in the patient's chart if the responses and/or findings were normal.

For the most part, the charts for the patients at issue here do not indicate the patient's target weight, medical history, or results of physical examinations, nor do the charts indicate whether the patient previously saw another physician for weight control or was ever enrolled in a formal weight control program. Also, for the most part, there is no indication in the charts that Respondent gave the patient diet or exercise information on an initial or subsequent visit, or that Respondent subsequently discussed these subjects with the patient or modified the recommended diet and exercise regimes. Also there were several instances where controlled substances were prescribed by Respondent but not noted in the patient charts. In addition, a number of the patients were prescribed benzodiazepines for extended periods of time with no reason for these prescriptions noted in the charts.

The Government's expert testified that Respondent's patient records did not comply with Utah requirements regarding patient histories and physical examinations, and characterized Respondent's records as ''grossly deficient * * * in terms of the evaluation of the patients.'' According to the Government's expert, as far as the patient records show, ''the patients came in, were weighed, were given a prescription and left * * *. That's all you can tell from the records. This isn't saying other things weren't done, but certainly they weren't documented if they were.''

Respondent testified that the medical records in evidence as Government exhibits were incomplete, and included only his handwritten notes, not all of the information in the patient charts, and that these notes were the only

portions of the charts that DEA investigators asked his staff to copy. However as Judge Bittner pointed out, Respondent did not object when the Government offered the charts into evidence, did not request that the Government be required to introduce other documents at that time, and did not offer the complete charts as his own exhibits. Regarding the benzodiazepine prescriptions, while the reasons for the prescriptions were not noted in the charts, Respondent and the patients who testified were able to give explanations for the prescriptions. Nonetheless, Respondent admitted at the hearing that his patient records were not as good as they could have been.

Respondent also admitted that with respect to all 42 patients at issue in this proceeding, he violated Utah law in existence at the time that limited the prescribing of Schedule III and IV anorectic controlled substances to no more than 12 weeks in a one-year period (12-week rule). Respondent testified that he did not agree with Utah's pre-1996 restriction because a weight control program for 12 weeks is not feasible and that the rule was not in the mainstream of medicine. According to Respondent, ''I thought I was still in the mainstream of medicine because most of my colleagues were violating the 12-week rule and certainly all of the drugstores were.'' Respondent asserted that ''that doesn't make me any less guilty, but it explains why I did it.'' Respondent testified that he should not have disobeyed the law but he felt that it was in the best interest of his patients. He further testified that his patients have been inconvenienced and embarrassed by their involvement in these proceedings, and that his health has suffered and he has been financially burdened due to his violation of the law.

In general, the Government's expert opined that it did not appear that Respondent monitored the patients' treatment; that the patient interviews failed to show that Respondent used any behavior therapy; that many of Respondent's patients did not qualify as candidates for treatment with anorectic controlled substances ''under any definition''; and that it did not appear that Respondent placed his patients on structured diet and exercise programs. The Government's expert testified that the lack of documentation in the patient charts raised questions about the quality of care that Respondent provided these patients.

For the most part, the Government's expert concluded that Respondent's treatment of the patients at issue with controlled substances was not appropriate. Respondent admitted that his treatment of 10 of the patients was failure. However, even the Government's expert conceded that Respondent's treatment of several of the patients was successful and he characterized Respondent's treatment of several others as minimally effective.

Respondent's treatment of one patient is of particular concern. From January 1993 to May 1995, the patient was prescribed Nardil, a non-controlled antidepressant, as well as anorectic controlled substances. The Government's expert characterized Nardil as a ''fairly dangerous medication,'' that is typically prescribed by psychiatrists. According to the Government's expert, even many psychiatrists are reluctant to prescribe Nardil because it interacts with a number of other drugs, particularly anorectics, and some foods which can lead to life threatening side effects. At the hearing in this matter, Respondent conceded that he made a mistake and should not have prescribed Nardil for this patient.

At the hearing in this matter, Respondent testified that he did not know when he became aware of the 12-week rule. He further testified that he was not aware of the change in Utah law effective January 16, 1996, which prohibited the prescribing of Schedule III controlled substances for weight control and which eliminated the 12-week rule for Schedule IV controlled substances, until he was personally advised of this change by a DOPL inspector in February 1996. A pharmacy survey revealed that Respondent had issued 16 prescriptions for Schedule III anorectics after the effective date of the law prohibiting such prescribing but before he was advised of the change in the law by the DOPL inspector.

There was also an allegation raised at the hearing that Respondent authorized a pharmacy to change a prescription that he had written on March 12, 1996 for a Schedule IV controlled substance to a Schedule III controlled substance. A DOPL investigator testified that a pharmacy technician indicated that the patient requested the change and that the pharmacy technician had gotten approval from someone at Respondent's office. Respondent testified that the individual at his office did not recall giving the pharmacy technician authorization to change the prescription. Respondent further testified that ''I'm not stupid. I have been notified months previous that this was no longer a drug that we prescribed,'' and that he would not have authorized such a change.

Evidence was presented by Respondent regarding his practice as of the date of the hearing. Respondent testified that his patient charts have been ''up to speed'' from the time he entered into the agreement with the state to undergo peer review. Also as of August 1997, he follows procedures specified in a document that was prepared with the assistance of counsel which includes a checklist for the physician on the initial consult, a medical history form, an informed consent form, and a follow-up consultation questionnaire. These forms all remain as part of each patient's permanent record. Respondent's office manager testified that weight control patients are now given a handbook which includes information on diet, exercise, and medication. Respondent testified that he is now complying with all State, Federal and local laws pertaining to controlled substances and would never violate a regulation in the future.

In this brief filed after the conclusion of the hearing, Respondent's counsel sought to introduce and rely upon evidence not admitted at the hearing. Respondent's counsel attached and discussed in his brief a letter dated October 2, 1997, from a physician who stated that he had conducted a random sampling of Respondent's charts for weight control patients. In a motion filed on January 5, 1998, the Government objected to consideration of this information arguing that Respondent did not move to reopen the record to receive additional evidence, and even if he had, the record should not be reopened because Respondent has not demonstrated that the evidence was previously unavailable and is material and relevant. See Robert M. Golden, M.D., 61 FR 24808 (1996). Further the Government asserted that at most, the letter shows that Respondent is complying with his probationary requirements with the Board, which is presumed, and that the letter raises issues of fact that would require further testimony and documentary evidence in this proceeding. On January 21, 1998, Respondent filed his opposition to the Government's motion in which he moved to reopen the record and argued that the letter meets the standard for reopening the record.

In her opinion, Judge Bittner granted the Government's motion to strike from Respondent's brief the October 2, 1997 letter and references to it. Judge Bittner found that to appropriately evaluate the assertions in the October 2, 1997 letter the record would have to be reopened for additional testimony and documentary evidence. Judge Bittner

further found that this is not warranted since, ''the most the letter adds to the record is an indication that Respondent is complying with his probation; [and] as the Government asserts, such compliance is presumed.''

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal of such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989).

Regarding factor one, Judge Bittner noted that Respondent entered into a Stipulation and Order with the DOPL in December 1996, but no restrictions were imposed on his state authorization to handle controlled substances. Judge Bittner concluded however, that ''inasmuch as State licensure is a necessary but not sufficient condition for DEA registration, this factor is not dispositive.'' In his exceptions to Judge Bittner's opinion, Respondent contended that the state ''is in the best position to judge Respondent's fitness to practice.'' Respondent argued that it is ''unfair and excessively punitive'' for DEA to seek to take action against Respondent above and beyond that taken by the state. The Deputy Administrator notes that the recommendation of the appropriate state licensing authority is but one factor to be considered in determining the public interest. However in this case, the Deputy Administrator does not find it significant that Utah did not restrict Respondent's ability to handle controlled substances after reviewing Respondent's treatment of his weight control patients, his documentation in his patient charts, and his failure to include all required information on controlled substance prescriptions.

As to factor two, Judge Bittner found that Respondent prescribed the patients at issue anorectic controlled substances for anywhere from a few months to twenty years, and that the vast majority were prescribed Schedule III controlled substances. Judge Bittner noted that ''[a]lthough Respondent introduced evidence on the long-term use of some Schedule IV medications, the record is devoid of such evidence with respect to Schedule III anorectics.'' Judge Bittner evaluated the treatment of these 42 patients and concluded that

> Respondent's treatment of all forty-two patients whose records are in evidence was inappropriate because he did not provide the comprehensive program required by good medical practice. In addition, twenty-six of the patients were not sufficiently overweight to justify treatment with controlled substances at the outset and eight of these became obese while taking the medications. Of the sixteen patients who may initially have been candidates for treatment with anorectic controlled substances, ten did not achieve a weight loss that met the standard of efficacy stated above.

Judge Bittner also found it significant that Respondent prescribed benzodiazepines to 14 patients for substantial periods of time without documenting the reasons for the prescriptions in the patient charts. As a result, Judge Bittner ''conclude[d] that this factor weighs strongly in favor of a finding that Respondent's continued registration would not be in the public interest.''

The Deputy Administrator finds that it does seem like Respondent issued a large number of prescriptions for anorectic controlled substances to the majority of these patients. However, the Deputy Administrator cannot find that Respondent's prescribing was inappropriate. While the record is devoid of much evidence regarding the long-term use of Schedule III anorectics, the Deputy Administrator is reluctant to find that such prescribing is inappropriate. In evaluating this case, it is apparent that there is a variety of opinions within the medical community as to when a person is considered obese or overweight and when it is appropriate to use controlled substances in the treatment of weight control.

DEA has been faced with an analogous situation when it sought to determine whether physicians' prescribing for chronic pain patients was appropriate. In one recent case, the Deputy Administrator quoted the Administrative Law Judge who stated that ''DEA is in a difficult position, for it is asked to determine appropriate prescribing practices in a treatment area in which the medical profession is not in accord. * * *'' Paul W. Saxton, D.O., 64 FR 25073 (1999). DEA has previously held that it is not DEA's role to resolve this disagreement. In William F. Skinner, M.D., 60 FR 62887 (1995), the then-Deputy Administrator found that, ''the conflicting expert opinion evidence presented leads to the conclusion that the medical community has not reached a consensus as to the appropriate level of prescribing of controlled substances in the treatment of chronic pain patients. * * * It remains the role of the treating physician to make medical treatment decisions consistent with a medical standard of care and the dictates of the Federal and State law.''

As previously noted, the Deputy Administrator does not agree with Judge Bittner's conclusion that a person is obese or overweight at a set BMI. While it is true that there is evidence in the record that BMI is a good, if not the best, measure of obesity, there are still other guidelines that may be considered. In addition there is conflicting evidence in the record as to when it is appropriate to use controlled substances. Consequently, the Deputy Administrator finds that it is not DEA's role to resolve these differences and set the standard for the medical community. This is not to say that physicians have free reign to prescribe anorectic controlled substances for non-legitimate reasons. But in this case, all of the patients at issue were seeking to control their weight and there is no evidence in the record that the controlled substances were diverted from this purpose.

While one might argue that Respondent did not individualize the treatment for these patients as the evidence suggests is appropriate, Respondent did meet with the patients before prescribing controlled substances and when necessary would discuss diet and exercise with the patients. On some occasions, Respondent would cease treatment when the patient failed to follow Respondent's weight control program. Judge Bittner took issue with the amount of time Respondent spent with the patients saying that it was not sufficient to provide individualized therapy. However, the Deputy Administrator is not in a position to find whether the amount of time spent with the patients was sufficient since no evidence was presented as to what is considered an appropriate amount of time.

As for Respondent's prescribing of benzodiazepines for extended periods of

time to some of these patients, it is true that Respondent may not have documented his reasons for these prescriptions in the patient charts. However at the hearing, Respondent and some of these patients testified as to why these controlled substances were prescribed. The Deputy Administrator concludes that he cannot find that these prescriptions were inappropriate based on the fact that the reasons for the prescriptions were not noted in the patient charts.

The Deputy Administrator finds that Respondent's prescribing of Nardil along with anorectic controlled substances to one patient was inappropriate. However, this is the only example of Respondent prescribing contraindicated drugs, and Respondent has admitted that he was wrong in so doing.

Regarding factor three, there is no evidence that Respondent has been convicted of any criminal charges under State or Federal laws relating to the manufacture, distribution, or dispensing of controlled substances.

As to factor four, Respondent's compliance with applicable laws, Respondent has admitted that he violated Utah law with respect to the 42 patients at issue in this proceeding by prescribing anorectic controlled substances to them for more than 12 weeks in one year period and by failing to properly document his treatment of these patients in their charts. The Deputy Administrator does not find that Respondent violated 21 CFR 1306.04, which states that controlled substances may only be prescribed for a legitimate medical purpose. As discussed above, given the difference of opinion in the medical community, the Deputy Administrator cannot find that Respondent issued controlled substance prescriptions to the patients at issue for no legitimate medical purpose.

As to factor five, Judge Bittner concluded that Respondent did not provide adequate assurances that he would properly document the treatment of his patients in their chards. However, the Deputy Administrator finds that pursuant to the Stipulation and Order with the state, Respondent's patient charts are currently reviewed on a periodic basis for completeness. As a result the Deputy Administrator finds that Respondent's documentation will be sufficiently monitored. Judge Bittner also concluded that Respondent showed no remorse for his violations of Utah law and continued to assert that despite the medical evidence to the contrary, there was no need to individualize the diet and exercise programs, and that behavioral counseling would be useless. The Deputy Administrator finds that Respondent did show some remorse for his violation of state law and indicated that he acknowledged that what he did was wrong and he would not violate the law in the future. The Deputy Administrator also finds that while Respondent appears reluctant to individualize his weight loss treatment programs as suggested by the medical literature, this does not warrant revocation of his DEA registration.

Judge Bittner concluded ''that the record as a whole establishes that Respondent is unwilling or unable to accept the responsibilities inherent in holding a DEA registration.'' As a result, Judge Bittner concluded that Respondent's continued registration would be inconsistent with the public interest and recommended that Respondent's DEA registration be revoked.

Respondent filed exceptions to Judge Bittner's Opinion and the Government filed a response to Respondent's exceptions which have all been considered by the Deputy Administrator in rendering his decision in this matter. Most of the arguments set forth in these filings have already been addressed in this final order, or it is not necessary to address them in light of the findings of the Deputy Administrator. However, Respondent does argue in his exceptions that Judge Bittner erroneously excluded the October 2, 1997 report of the physician who reviewed Respondent's charts pursuant to the terms of the Stipulation and Order with the state. In its response to Respondent's exceptions, the Government argues that Judge Bittner properly excluded the report since it added nothing to the record in this matter and in order to properly assess the value of the report, the reviewing physician would need to testify and be subjected to cross-examination. This issue will be discussed below.

On August 10, 1999, the record in this matter was transmitted to the Deputy Administrator. On November 4, 1999, Respondent sent a letter to the Deputy Administrator responding to the Government's response to his exceptions and attaching seven reports from the physician who reviewed Respondent's patient charts pursuant to the Stipulation and Order that were generated between October 2, 1997 and September 2, 1999. Respondent recognized that such a filing is not provided for in the regulations, but argued that consideration of it is necessary ''to avoid a gross miscarriage of justice.'' In addition, Respondent filed a formal motion to reopen the record.

The Deputy Administrator finds that Judge Bittner should have reopened the record to allow Respondent to introduce into evidence the October 2, 1997 report from the reviewing physician and to provide the Government with an opportunity to cross-examine the physician and/or introduce rebuttal evidence. Clearly, this report was not available to Respondent until October 2, 1997, after the conclusion of the hearing in this matter. In addition, the Deputy Administrator finds that this report is clearly material and relevant to the issue in this proceeding. Both Government counsel and Judge Bittner state that the report merely shows that Respondent is complying with the state's Stipulation and Order, which is presumed. However, the Deputy Administrator finds that this report also shows the extent of Respondent's compliance. The issue in this proceeding is whether Respondent's continued registration is inconsistent with the public interest. The state of Respondent's current practice is clearly relevant and this information was not available until after the conclusion of the hearing.

Nonetheless, the Deputy Administrator has decided not to remand this matter to the Administrative Law Judge and has further decided to deny Respondent's request to reopen the record dated November 4, 1999, to introduce the October 2, 1997 report of the reviewing physician as well as six subsequent reports. As the Government has stated, in order to admit these reports for reconsideration, the Government would need to be provided with an opportunity to cross-examine the reviewing physician and to possibly introduce rebuttal evidence, which would delay a final decision in this matter. In light of the findings and conclusions set forth in the final order, the Deputy Administrator does not believe that Respondent would want to delay issuance of this decision. Therefore, the seven reports of the reviewing physician attached to Respondent's November 4, 1999 letter have not been considered by the Deputy Administrator in rendering his decision in this matter.

The Deputy Administrator has not considered the other statements made by Respondent in the November 4, 1999 letter. First, such a filing is not permitted by the regulations, and second, they merely reiterate arguments already made by Respondent in his brief and exceptions.

After reviewing the entire record in this matter, the Deputy Administrator concludes that revocation of Respondent's DEA Certificate of

Registration is not warranted. The Deputy Administrator does not find that the patients at issue in this proceeding were prescribed controlled substances for no legitimate medical purpose. While Respondent may not have been as careful in prescribing controlled substances and in documenting the reasons for his prescribing, the Deputy Administrator does not believe that revocation is appropriate given the dispute within the medical community as to when it is proper to use controlled substances in weight control.

However, Respondent clearly violated state law by ignoring the 12-week rule and by failing to properly document the treatment of his patients. The Deputy Administrator does not condone Respondent's defiance of state law, but the Deputy Administrator finds it noteworthy that the state is currently monitoring Respondent's treatment of patients and documentation of this treatment; that the state did not restrict Respondent's ability to handle controlled substances based upon the same patient charts in evidence in this proceeding; and that Respondent has taken remedial steps to ensure that he practices in compliance with the law.

But given Respondent's admitted defiance of state law by ignoring the 12-week limitation on prescribing controlled substances for weight control that was in effect at the time of the events at issue, the Deputy Administrator finds that some controls are necessary to ensure that Respondent properly handles controlled substances in the future. Therefore, for two years from the effective date of this final order Respondent shall: (1) Forward to the DEA Salt Lake City office copies of the reports of the physician reviewing his charts pursuant to the Consent Order with the State of Utah; and (2) consent to unannounced inspections by DEA personnel without requiring an administrative inspection warrant.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AH1650248, previously issued to Wesley G. Harline, M.D., be and it hereby is continued, subject to the above described restrictions. This order is effective March 6, 2000, and is the final agency action for appellate purposes pursuant to 21 U.S.C. 877.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–16]

Judy L. Henderson, D.V.M.; Grant of Restricted Registration

On February 3, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Judy L. Henderson, D.V.M. (Respondent) of Corinth, Mississippi, notifying her of an opportunity to show cause as to why DEA should not deny her application for registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that her registration would be inconsistent with the public interest.

By letter dated March 3, 1998, Respondent requested a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held in Memphis, Tennessee on November 18, 1998, and April 20, 1999, before Administrative Law Judge Mary Ellen Bittner. At the hearing, the Government called witnesses and introduced documentary evidence and Respondent testified on her own behalf. After the hearing both parties submitted proposed findings of fact, conclusions of law and argument.

On September 21, 1999, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision (Opinion), recommending that Respondent's application for registration be granted limited to four specific substances and subject to two conditions. Neither party filed exceptions to Judge Bittner's Opinion, and on October 25, 1999, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts the findings of fact and conclusions of law of the Administrative Law Judge in their entirety, and adopts with several modifications, as noted below, the conclusion and recommended decision of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues or conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that Respondent is a veterinarian. At various times during her career she suffered from serious medical conditions which prevented her from practicing veterinary medicine.

In March 1987, a local pharmacist advised the Mississippi Bureau of Narcotics (MBN) that Respondent had used prescriptions and DEA order forms to obtain a large amount of Demerol, a Schedule II narcotic controlled substance, from the pharmacy. A subsequent pharmacy survey revealed a total of six prescriptions and eight order forms written by Respondent. The prescriptions were for a total of 30 dosage units of Ionamin, a Schedule IV controlled substance, 30 dosage units of diazepam, a Schedule IV controlled substance, six ampules of Demerol, one ounce of liquid Demerol, and 20 dosage units of Mepergan Fortis, a Schedule II narcotic controlled substance. The Ionamin and diazepam prescriptions listed Respondent as the patient, the prescription for six ampules of Demerol listed the clinic where Respondent worked and had the notation ''clinic use only,'' the Mepergan Fortis prescription was made out to Respondent's then-husband, and the prescription for one ounce of Demerol was made out in a dog's name. Each of the order forms was for one 30 cc. vial of Demerol.

On March 26, 1987, MBN agents interviewed Respondent who told the agents that she had obtained the various narcotics for her own use because she suffered from extremely painful medical conditions. The agents subsequently confirmed with Respondent's physician that he was treating Respondent for the medical conditions. However, the physician indicated that he did not know that Respondent was self-prescribing and that he would help her. No charges were filed against Respondent as a result of this investigation.

Respondent testified at the hearing in this matter that she was treated with intravenous Demerol for a painful kidney disorder. Following surgery for this disorder, Respondent experienced withdrawal from the Demerol. Respondent testified that she was ashamed that she had become dependent on the Demerol and attempted to wean herself off by taking oral Demerol intended for the animals she treated. This attempt was unsuccessful and in fact Respondent was taking more Demerol than she had before her surgery. According to Respondent she then began injecting herself with Demerol. Finally, at or about the end of November 1997, Respondent entered a 28-day treatment program and stopped using controlled substances.

As to the other prescriptions discovered during this investigation, Respondent testified that she purchased Ionamin to treat an obese dog, and that the Valium was for use in a clinic where she worked. Respondent further testified that she did not prescribe Mepergan Fortis for her then-husband, but that the prescription was for her then-mother-in-law's dog, who Respondent was treating for cancer.

The Government alleged that Respondent surrendered her DEA Certificate of Registration in 1987. However, the investigator who testified at the hearing indicated that she could not locate a copy of the surrender form. Respondent testified that at some point in 1987 the attorney for the Mississippi State Board of Veterinary Medicine (Veterinary Board) wrote to her recommending that she surrender her DEA registration, but that she did not respond to this letter since she was very ill and not working at the time. It was Respondent's recollection that she simply let her DEA registration expire. She testified that she still had the registration certificate in her possession the next time that she applied for a DEA registration. Judge Bittner found Respondent's testimony to be credible and therefore found that the evidence does not support a finding that Respondent's surrendered her DEA Certificate of Registration in 1987.

Respondent was issued DEA Certificate of Registration BE2196687 on March 20, 1990.

In October 1992, DEA was advised by Respondent's then-husband that Respondent was abusing controlled substances. A subsequent pharmacy survey did not reveal any controlled substance prescriptions issued by Respondent. DEA then contacted Respondent's drug distributor and discovered that Respondent had ordered 500 dosage units of lorazepam 2 mg., a Schedule IV controlled substance, and 2200 dosage units of hydrocodone with APAP, a Schedule III controlled substance, between March 4 and October 19, 1992.

A DEA investigator contacted two physician who had treated Respondent. One physician treated Respondent for painful medical conditions from 1989 until June 1992, and prescribed her Lortab 7.5 mg., a Schedule III controlled substance. The other physician indicated that he treated Respondent from February 1987 until March 1991, also for painful medical conditions. There is no indication in the record whether this physician prescribed Respondent any controlled substances.

On October 21, 1992, DEA agents met with Respondent at her home. Respondent told the agents that she had not been practicing veterinary medicine for a period of time because she was ill. She further told the agents that rather than filling the prescriptions that her physician issued to her, she was ordering the drugs using her DEA registration because it was less expensive to obtain the drugs that way. At this meeting, Respondent surrendered her DEA Certificate of Registration, order forms, and controlled substances in her possession.

Respondent testified at the hearing that in 1990 she developed an extremely painful medical condition that rendered her unable to work. She acknowledged that she ordered controlled substances during this period, and that at one point she bought Demerol from a hospital pharmacy. Respondent further testified that her physician did not know that she was ordering hydrocodone, and that although she know that ordering the drug for herself was an unethical use of her DEA registration, she had not thought that it was criminal conduct. Respondent testified that she ultimately recovered from this illness following radical surgery.

On March 1, 1996, Respondent executed an application for a new DEA Certificate of Registration. DEA sought a recommendation from the Veterinary Board as to whether this application should be granted. On June 10, 1996, the Veterinary Board responded, stating in pertinent part:

> While the granting or denial of [a DEA registration] is a determination to be made by your agency, the Mississippi Board of Veterinary Medicine cannot recommend unrestricted approval by your agency. While the Board is happy that [Respondent] has returned to practice, nevertheless, the Board feels that, at most, [Respondent's] purchases of controlled drugs should be limited to the purchase of euthanasia solutions and a limited number of purchases for anesthetics.

As a result of this letter, Respondent wrote to the Veterinary Board asking for its approval for her to use ketamine, at the time a non-controlled substance; Socumb, brand name for a product containing sodium pentobarbital, a Schedule II non-narcotic controlled substance; Valium, brand name for a product containing diazepam; Sodium Pentothal, trade name for thiopental, a Schedule III non-narcotic controlled substance; phenobarbital, a Schedule IV controlled substance; testosterone, a Schedule III controlled substance; and Winstrol-V, Telazol, and Tussigon, all controlled substances. By letter to Respondent dated October 28, 1996, the Veterinary Board recommended that she use ketamine, Rompun, acepromazine (or other tranquilizers), gas anesthesia, lidocaine (for local use), Torbutral, and Sodium Pentothal as a pre-anesthetic. Rompun, acepromazine, and lidocaine are not controlled substances. Ketamine was previously noncontrolled but was placed in Schedule III effective August 12, 1999. Torbutral is a controlled substance.

During the course of investigating Respondent's application for a DEA registration, DEA contacted the local sheriff. The local sheriff indicated that in 1993, Respondent was caught stealing ketamine from another veterinarian.

In explaining why she stole the ketamine, Respondent testified that after her radical surgery, she went through a very bitter divorce and custody proceeding, that she ''lost everything,'' and that her ex-husband made allegations about her to other veterinarians in the area that effectively prevented her from obtaining work. She further testified that her ex-husband was physically abusive and had threatened to kill her if she did not stop attempting to regain custody of their child. Respondent testified that upon the recommendation of a local police officer, she obtained a gun to protect herself from her ex-husband. According to Respondent, she ultimately realized that she would not be able to shoot her ex-husband if threatened and instead decided to obtain ketamine to use as a chemical immobilizer. Respondent testified that shortly before stealing the ketamine, her ex-husband had attacked her with a hammer, resulting in her being admitted to an emergency room.

Respondent testified that she stole ketamine from the other veterinarian twice. The first time, she took a total of two cc. of ketamine, but then decided that that would not be a sufficient quantity to subdue her ex-husband. Respondent testified that she then took a bottle that had held 10 cc. of ketamine and had about one cc. of the drug left in it, and she then added small quantities of ketamine that she took from other bottles, substituting saline in those bottles. Respondent acknowledged that what she did was wrong.

The other veterinarian decided not to press charges against Respondent provided that Respondent seek treatment. As a result, Respondent entered a treatment program to be treated for depression and tested for ketamine. According to Respondent, she stayed in that program for two weeks and then went to a program that treated health care professionals where she stayed for three to four months. Thereafter she moved to an outpatient facility. Respondent testified that she spent a total of five months in treatment for clinical depression and hydrocodone

addiction. According to Respondent, her treatment ended in February 1994. She testified that she has not taken any narcotic drug, except during surgery, since October 1993.

On November 5, 1996, a DEA investigator asked Respondent to send information regarding her rehabilitation and aftercare treatment. According to the investigator, Respondent did not send any such information. Respondent acknowledged that the DEA investigator had asked her to provide records of her treatment, but that she had substantial difficulty obtaining these records from the facilities.

Respondent testified that she eventually started her own veterinary practice, and that she was the only veterinarian in her town who was always available. According to Respondent, the majority of her practice is trauma emergency medicine, unlike other veterinarians.

In June 1997, Respondent contacted the DEA investigator and advised that the only drug she was using at that time was Socumb. The investigator asked Respondent how she obtained the Socumb since she was not registered with DEA to handle controlled substances at that time. Respondent indicated that she received a partial bottle from another veterinarian. The DEA investigator contacted the other veterinarian who indicated that he provided the sodium pentobarbital to Respondent after Respondent showed him a letter from the Veterinary Board stating that she could use the drug. Respondent told the other veterinarian that she had an animal in distress, so he gave her 10 to 20 cc. to euthanize the animal.

Respondent testified at the hearing that the dog she was treating had been poisoned, that the incident occurred late at night on a weekend, and that the dog was in intense pain. She contacted the other veterinarian who refused to put the dog to sleep himself, but offered to prescribe enough of the drug so Respondent could euthanize the dog. Respondent testified that because she was working under the other veterinarian she did not realize that she had done anything wrong. It is undisputed that after speaking to the DEA investigator, Respondent returned the remaining sodium pentobarbital to the other veterinarian.

Respondent asserted that since she is the only veterinarian in the area who handles emergencies after hours, she needs a DEA registration in order to care for her patients. Respondent testified that she needs to use sodium pentobarbital, butorphanol, and Valium in her practice. The sodium pentobarbital would be used to euthanize animals, the butorphanol to relive pain in the animals, and the Valium to control seizures and treat sick cats that refuse to eat. According to Respondent, she would be willing to install security measures, maintain whatever records are required, and be subject to random drug testing.

Respondent has acknowledged her mistakes. Respondent testified that she has ''suffered greatly because of this. And I expect to the rest of my life. This will be a great humiliation to me. But I truly—I truly don't believe it will ever happen again. I never have a desire to. I never had before these two instances and I never have since.''

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest.

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989).

As to factor one, the Veterinary Board recommended that Respondent not be given an unrestricted registration, however the Veterinary Board did recommend that Respondent be authorized to handle thiopental and ketamine, Schedule III controlled substances, and butorphanol, a Schedule IV controlled substance. Although Respondent has indicated that she also needs to be able to use sodium pentobarbital for euthanasia, the Veterinary Board did not mention this substance in its June 10, 1996 letter. The Deputy Administrator agrees with Judge Bittner that while the Veterinary Board's recommendations are not dispositive, they certainly weigh in favor of at the very least granting Respondent a DEA registration restricted to certain substances.

Regarding factor two, the evidence supports a finding that prior to 1987, Respondent abused her DEA registration by issuing prescriptions and using DEA order forms to obtain controlled substances for her own use. In 1992, Respondent again used her DEA registration to obtain controlled substances for her own use. Respondent also handled sodium pentobarbital in 1997, when she was not authorized to do so.

As to factor three, there is no evidence that Respondent has been convicted of any criminal charges relating to the manufacture, distribution or dispensing of controlled substances.

Regarding factor four, Respondent's compliance with applicable laws relating to controlled substances, it is undisputed that Respondent used DEA order forms in violation of 21 U.S.C. 828(e) to obtain controlled substances for her own use. In addition, Respondent issued prescriptions to obtain Demerol for her own use in violation of 21 U.S.C. 829 and 21 CFR 1306.04. The Deputy Administrator notes however that these violations occurred when Respondent was suffering from painful medical conditions and had become addicted to narcotic controlled substances. According to Respondent, these conditions are now under control, she has undergone treatment for her addiction, and she has not improperly obtained or personally used controlled substances, except as a result of surgery, since October 1993. As recently as 1997, Respondent handled sodium pentobarbital when she was not registered with DEA to do so in violation of 21 U.S.C. 841(a). While not condoning this violation, the Deputy Administrator does not find under the circumstances that this isolated incident warrants denying Respondent's application for registration.

As to factor five, the Deputy Administrator is troubled by Respondent's theft of ketamine in 1993. Although ketamine was not a controlled substance at the time, her stated purpose of immobilizing her ex-husband with the drug raises serious concerns about her fitness to handle controlled substances. However, the Deputy Administrator notes that this incident occurred in 1993, that Respondent has since undergone extensive treatment for depression and drug addiction, that Respondent has acknowledged the wrongfulness of this behavior, and that there is no evidence

of any similar type behavior since that time.

The Deputy Administrator also finds it relevant under this factor that Respondent was previously addicted to narcotic controlled substances. Respondent has acknowledged her past problems and appears to be remorseful. However, while Respondent asserts that she has undergone treatment and that she has not improperly used controlled substances since 1993, the Deputy Administrator is troubled by the lack of evidence in the record, other than Respondent's own testimony, regarding Respondent's treatment for her addiction. The record is also devoid of evidence of any continued monitoring of Respondent and any support network in place to help prevent a relapse.

The Deputy Administrator agrees with Judge Bittner that the Government has presented a prima facie case for the denial of Respondent's application for registration based upon Respondent's use of her previous DEA registrations to obtain controlled substances for her own use, her abuse of controlled substance, her violation of laws relating to controlled substances, her handling of sodium pentobarbital in 1997 when not authorized to do so, and her theft of a non-controlled substance in 1993 to be used to temporarily immobilize her ex-husband. However, Judge Bittner found credible Respondent's testimony that she has not used controlled substances since 1993 except as prescribed lawfully by a physician. Judge Bittner also found credible Respondent's testimony regarding the circumstances surrounding her theft to ketamine in 1993 and her 1997 handling of sodium penotobarbital, and that she regrets her misconduct, is willing to accept restrictions on her registration, and will not abuse her registration or controlled substances in the future.

Therefore, Judge Bittner concluded that it would not be inconsistent with the public interest to grant Respondent a DEA Certificate of Registration limited to the Schedule II controlled sodium pentobarbital, the Schedule III controlled substances ketamine and thiopental, and the Schedule IV controlled substance butorphanol subject to the following conditions:

(1) Respondent shall maintain accurate records showing all purchases, administering and dispensing (including prescribing) of all controlled substances; and

(2) Respondent shall submit copies of all such records to the Special Agent in Charge of DEA's New Orleans Office, or his designees, quarterly, for five years from the effective date of her registration.

The Deputy Administrator agrees with Judge Bittner that it is not in the public interest to deny Respondent's application for registration and basically agrees with Judge Bittner's recommended restrictions. However, the Deputy Administrator is extremely reluctant to grant Respondent the authority to handle ketamine, the very substance she admitted stealing in 1993 to potentially use to incapacitate her ex-husband. Nonetheless, the Deputy Administrator will do so given that the Veterinary Board recommended that Respondent be authorized to handle ketamine and the recommendation of the appropriate state licensing authority is one of the factors to be considered by the Deputy Administrator in determining the public interest. The Deputy Administrator is also troubled by the lack of evidence in the record, other than Respondent's own testimony, regarding her treatment and rehabilitation. Consequently, the Deputy Administrator finds it necessary to have safeguards in place to be certain that Respondent does not abuse controlled substances once she is issued a limited registration.

Therefore, the Deputy Administrator concludes that Respondent should be issued a DEA Certificate of Registration in Schedules II non-narcotic, III and IV subject to the following restrictions for three years from the date of issuance of the DEA Certificate of Registration:

(1) While Respondent shall be registered in Schedules II non-narcotic, III and IV, she shall only handle sodium pentobarbital, ketamine, thiopental, and butorphanol.

(2) Respondent shall send copies of records documenting all of her purchases of controlled substances to the Special Agent in Charge of the DEA New Orleans office, or her designee, on a quarterly basis.

(3) Respondent shall submit, on a quarterly basis, a log of all of the controlled substances she has prescribed, administered, or dispensed during the previous quarter, to the Special Agent in Charge of the DEA New Orleans office, or his designee. The log shall include: the patient's name; the date that the controlled substance was prescribed, administered or dispensed; and the name, dosage and quantity of the controlled substance prescribed, administered or dispensed. If no controlled substances are prescribed, administered or dispensed during a given quarter, Respondent shall indicate that fact in writing, in lieu of submission of the log.

(4) Respondent shall submit to random urinalysis, at her own expense, not less than one time per month. Within 30 days of the effective date of this order, Respondent shall notify the Special Agent in Charge of the DEA New Orleans office, or his designee, in writing, as to the identity of the laboratory or hospital that will be conducting the random urinalysis. Reports documenting the results of these tests shall be forwarded to the Special Agent in Charge of the DEA New Orleans office, or his designee.

(5) Respondent shall consent to random, unannounced inspections without the need for an Administrative Inspection Warrant.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration submitted by Judy L. Henderson, D.V.M., be, and it hereby is, granted in Schedules II non-narcotics, III and IV, subject to the above described restrictions. This order is effective upon the issuance of the DEA Certificate of Registration, but no later than March 6, 2000.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2540 Filed 2–3–00; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Archibald W. Hutchinson, M.D.; Revocation of Registration

On July 28, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Archibald W. Hutchinson, M.D., of Marietta, Ohio, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BH2898053 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Ohio. The order also notified Dr. Hutchinson that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent to Dr. Hutchinson at his registered location. DEA received a signed receipt indicating that it was received and signed for by an individual on November 3, 1999. The Order to Show

Cause was also sent to Dr. Hutchinson at his last known address in Illinois. The return receipt indicates that the Order to Show Cause was forwarded to another address in Illinois and was signed for on or about August 20, 1999. No request for a hearing or any other reply was received by the DEA from Dr. Hutchinson or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received concludes that Dr. Hutchinson is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) 1301.46. This final order replaces and supersedes the final order issued on January 3, 2000.

The Deputy Administrator finds that Dr. Hutchinson currently possesses DEA Certificate of Registration BH2898053 issued to him in Ohio. The Deputy Administrator further finds that on July 8, 1998, the State Medical Board of Ohio permanently revoked his license to practice medicine in the State of Ohio. Therefore, the Deputy Administrator concludes that Dr. Hutchinson is not currently licensed to practice medicine in Ohio, and as a result, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Romeo J. Perez, M.D.,* 62 FR 16,193 (1997); *Demetris A. Green, M.D.,* 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.,* 58 FR 51,104 (1993).

Here it is clear that Dr. Hutchinson is not currently authorized to handle controlled substances in the State of Ohio. As a result, he is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BH2898053, previously issued to Archibald W. Hutchinson, M.D., be, and it hereby is revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective March 6, 2000, and is considered the final agency action for appellate purposes pursuant to 21 U.S.C. 877.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2527 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99-36]

Kenneth Leroy Jones, M.D.; Revocation of Registration

On August 24, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Kenneth Leroy Jones, M.D. (Respondent) of Paintsville, Kentucky, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AJ1551399, and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(3). The Order to Show Cause alleged that Respondent was not currently authorized to handle controlled substances in the Commonwealth of Kentucky.

By letter dated September 17, 1999, Respondent requested a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On October 20, 1999, the Government filed a Motion for Summary Disposition, alleging that Respondent is currently registered with DEA to handle controlled substances in Kentucky, however, he is not currently authorized by the Commonwealth of Kentucky to handle controlled substances. Respondent was given until November 10, 1999, to file a response to the Government's motion. Respondent failed to file a timely response.

On November 18, 1999, Judge Bittner issued her Opinion and Recommended Decision finding that Respondent lacks authorization to handle controlled substances in the Commonwealth of Kentucky; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her Opinion and Recommended Decision, however on November 30, 1999, Respondent filed a letter with Judge Bittner indicating that he no longer wished to pursue this matter and asking that favorable consideration be given to any future applications for registration with DEA. On December 20, 1999, Judge Bittner transmitted the record of these proceedings to the Office of the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

As a preliminary matter, the Deputy Administrator has not considered Respondent's letter filed on November 30, 1999, since it was not timely filed and Respondent has not offered any explanation for the late filing.

The Deputy Administrator finds that Respondent possesses DEA Certificate of Registration AJ1551399, issued to him at an address in Paintsville, Kentucky. The Deputy Administrator further finds that on January 7, 1999, the Commonwealth of Kentucky, State Board of Medical Licensure ordered the revocation of Respondent's Kentucky medical license. Respondent did not dispute that he is not currently authorized to practice medicine in Kentucky.

Therefore, the Deputy Administrator finds that Respondent is not currently authorized to practice medicine in the Commonwealth of Kentucky. As a result, it is reasonable to infer that he is also not authorized to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Romeo J. Perez. M.D.,* 62 FR 16,193 (1997); *Demetris A. Green, M.D.,* 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.* 58 FR 51.104 (1993).

Here it is clear that Respondent is not licensed to handle controlled substances in Kentucky. Since Respondent lacks this state authority, he is not entitled to a DEA registration in that state.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is currently unauthorized to handle controlled substances in Kentucky. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving

evidence and cross-examination of witnesses is not obligatory. See Gilbert Ross, M.D., 61 FR 8664 (1996); Philip E. Kirk, M.D., 48 FR 32,887 (1983), aff'd sub nom *Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO,* 549 F.2d 634 (9th Cir. 1977).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.014, hereby orders that DEA Certificate of Registration AJ1551399, issued to Kenneth Leroy Jones, M.D. be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective March 6, 2000.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2528 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–31]

Richard Eaton Leach, M.D. Revocation of Registration

On August 5, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Richard Eaton Leach, M.D. (Respondent) of Lake Charles, Louisiana, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AL8792106, and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(3). The Order to Show Cause alleged that Respondent is not currently authorized to handle controlled substances in the State of Louisiana.

By letter dated August 19, 1999, Respondent filed a request for a hearing, listing a Lake Charles, Louisiana address. The matter was docketed before Administrative Law Judge Gail A. Randall. On September 1, 1999, Judge Randall issued an Order for Prehearing Statements. On September 23, 1999, the Government filed a Motion for Summary Disposition, alleging that Respondent is currently registered with DEA to handle controlled substances in Louisiana, however he is not currently authorized by the State of Louisiana to handle controlled substances. In addition, the Government requested that Judge Randall stay the proceedings pending her ruling on the Government's motion. In an order dated September 24, 1999, Judge Randall stayed the proceedings pending her ruling on the Government's motion and gave the Respondent an opportunity to file a response to the Government's motion.

Both the Order for Prehearing Statements and the September 24, 1999 order were mailed to Respondent at the address listed on his request for a hearing, however according to Judge Randall, both were returned to DEA with the notation ''moved left no address, unable to forward, return to sender.'' Then, according to Judge Randall, the two orders were sent to Respondent's registered location in Jonesville, Louisiana. The Order for Prehearing Statements was returned to DEA with a notation ''return to sender, not at this address,'' and the other order has not been returned.

On October 22, 1999, Judge Randall issued her Opinion and Recommended Decision finding that Respondent has waived his opportunity to reply to the Government's Motion for Summary Disposition. He is no longer receiving mail at his registered address nor at the address listed in his request for a hearing. Further he has failed to inform Judge Randall of any viable address. In her Opinion and Recommended Decision, Judge Randall also found that Respondent lacks authorization to handle controlled substances in the State of Louisiana; granted the Government's Motion for Summary Disposition; and recommended that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her Opinion and Recommended Decision, and on November 22, 1999, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. This final order replaces and supersedes the final order issued on January 3, 2000. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds based upon the evidence in the record that Respondent's license to practice medicine in Louisiana was indefinitely suspended on February 27, 1998. Additionally, by a letter dated April 20, 1998, Respondent was informed that his state license to possess, distribute, or prescribe controlled substances was suspended due to the loss of his medical license. No evidence was presented by Respondent to dispute that he is not currently authorized to handle controlled substances in the State of Louisiana. Therefore, the Deputy Administrator finds that Respondent is not currently authorized to handle controlled substances in Louisiana, the state in which he is registered with DEA.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

Here, it is clear that Respondent is not licensed to handle controlled substances in Louisiana. Since Respondent lacks this state authority, he is not entitled to a DEA registration in that state.

In light of the above, Judge Randall properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is currently unauthorized to handle controlled substances in Louisiana. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Philip E. Kirk, M.D. 48 FR 32,887 (1983), aff'd sub nom *Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO,* 549 F.2d 634 (9th Cir. 1977).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AL8792106, previously issued to Richard Eaton Leach, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective March 6, 2000, and is the final agency action for appellate purposes pursuant to 21 U.S.C. 877.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2529 Filed 2–4–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–33]

Brett L. Lusskin, M.D.; Revocation of Registration

On August 10, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Brett L. Lusskin, M.D. (Respondent), of Hallandale, Florida, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AL0133102, and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(3). The Order to Show Cause alleged that Respondent is not currently authorized to handle controlled substances in the State of Florida.

By letter dated September 8, 1999, Respondent, through counsel, filed a request for a hearing, and the matter was docketed before Administrative Law Judge Gail A. Randall. On October 7, 1999, the Government filed a Motion for Summary Disposition, alleging that Respondent is currently registered with DEA to handle controlled substances in Florida, however he is not currently authorized by the State of Florida to handle controlled substances. On November 1, 1999, Respondent filed a response to the Government's motion arguing that Judge Randall does not have sufficient evidence to support the allegation that Respondent lacks authorization to handle controlled substances in Florida.

On November 15, 1999, Judge Randall issued her Opinion and Recommended Decision finding that Respondent lacks authorization to handle controlled substances in the State of Florida; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her Opinion and Recommended Decision, and on December 14, 1999, Judge Randall transmitted the record of these proceedings to the Office of the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that Respondent currently possesses DEA Certificate of Registration AL0133102, issued to him at an address in Hallandale, Florida. The Deputy Administrator further finds that on May 7, 1998, the Medical Board of the State of Florida (Medical Board) issued a final order indefinitely suspending Respondent's medical license. In an Opinion filed on March 31, 1999, the District Court of Appeal of the State of Florida, Fourth District, granted Respondent a new hearing before the Medical Board but declined to stay the suspension of Respondent's medical license.

In his response to the Government's motion, Respondent argued that he is retired from the active practice of medicine, and therefore, his continued registration poses no risk to the public interest. Additionally, Respondent noted that he has filed an Amended Complaint with the Agency for Health Care Administration and expects a hearing in the near future.

In her Opinion and Recommended Decision, Judge Randall found that the Government presented credible evidence that Respondent's Florida medical license was indefinitely suspended, and the suspension has not been stayed. Respondent has presented no evidence to the contrary. As Judge Randall noted, ''[a] pending rehearing of the Medical Board's decision does not alter the Respondent's status in Florida. The outcome of a rehearing of the Medical Board's action is speculative, and the decision of the Medical Board is final until otherwise overturned.''

Therefore, the Deputy Administrator finds that Respondent is not currently authorized to practice medicine in the State of Florida and as a result, it is reasonable to infer that he is also not authorized to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

Here, it is clear that Respondent is not licensed to handle controlled substances in Florida. Since Respondent lacks this state authority, he is not entitled to a DEA registration in that state.

In light of the above, Judge Randall properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is currently unauthorized to handle controlled substances in Florida. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Gilbert Ross, M.D., 61 FR 8664 (1996); Philip E. Kirk, M.D., 48 FR 32,887 (1983), aff'd sub nom *Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO,* 549 F.2d 634 (9th Cir. 1977).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificates of Registration AL0133102, issued to Brett L. Lusskin, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective March 6, 2000.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2530 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Charles W. Marshall, D.P.M.; Revocation of Registration

On July 28, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Charles W. Marshall, D.P.M., of Chicago, Illinois, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BM2648472 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 8231(f), for reason that he is not currently authorized to handle controlled substances in the State of Illinois. The order also notified Dr.

Marshall that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on August 23, 1999. No request for a hearing or any other reply was received by the DEA from Dr. Marshall or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Marshall is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46. This final order replaces and supersedes the final order issued on January 3, 2000.

The Deputy Administrator finds that Dr. Marshall currently possesses DEA Certificate of Registration BM2648472 issued to him in Illinois. The Deputy Administrator further finds that on August 19, 1997, the State of Illinois, Department of Professional Regulation issued an order indefinitely suspending Dr. Marshall's license to practice podiatric medicine. Additionally, Dr. Marshall's state controlled substance license expired on January 31, 1999. Therefore, the Deputy Administrator concludes that Dr. Marshall is not currently licensed to handle controlled substances in Illinois.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

Here is clear that Dr. Marshall is not currently authorized to handle controlled substances in the State of Illinois. As a result, Dr. Marshall is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and) 0.104, hereby orders that DEA Certificate of Registration BM2648472, previously issued to Charles W. Marshall, D.P.M., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective March 6, 2000, and is considered the final agency action for appellate purposes pursuant to 21 U.S.C. 877.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2531 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Melvin John Miller, M.D.; Revocation of Registration

On August 5, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Melvin John Miller, M.D. of Ellijay, Georgia, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BM1167077 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Georgia. The order also notified Dr. Miller that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on August 16, 1999. No request for a hearing or any other reply was received by the DEA from Dr. Miller or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Miller is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 C.F.R. 1301.43 (d) and (e) and 1301.46. This final order replaces and supersedes the final order issued on January 3, 2000.

The Deputy Administrator finds that Dr. Miller currently possesses DEA Certificate of Registration BM1167077 issued to him in Georgia. The Deputy Administrator further finds that on July 10, 1997, Dr. Miller entered into a Consent Order with the Composite State Board of Medical Examiners for the State of Georgia wherein Dr. Miller agreed to the indefinite suspension of his medical license because he had ''relapsed and returned to the use of chemicals for which he has no legitimate and/or medical need.'' There is no evidence in the record to indicate that this indefinite suspension is no longer in effect.

Therefore the Deputy Administrator concludes that Dr. Miller is not currently licensed to practice medicine in Georgia, and as a result, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

Here it is clear that Dr. Miller is not currently authorized to handle controlled substances in the State of Georgia. As a result, Dr. Miller is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BM1167077, previously issued to Melvin John Miller, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective March 6, 2000, and is considered the final agency action for appellate purposes pursuant to 21 U.S.C. 877.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2532 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–38]

Theodore Neujahr, D.V.M.; Continuation of Registration

On July 16, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Theodore A. Neujahr, D.V.M. (Respondent) of Eatonville, Washington, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AN1015331, pursuant to 21 U.S.C. 824(a)(4), and deny any pending applications for renewal or modification of such registration as a practitioner under 21 U.S.C. 823(f), for reason that his registration is inconsistent with the public interest.

By letter dated July 28, 1998, Respondent filed a request for a hearing, and following prehearing procedures, a hearing was held in Tacoma, Washington on March 3, 1999, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law, and argument. On July 19, 1999, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision (Opinion), recommending that Respondent's registration be continued and any pending applications be granted. Neither party filed exceptions to Judge Bittner's Opinion, and on August 19, 1999, the record was transmitted to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. This final order replaces and supersedes the final order issued on December 14, 1999, and published at 64 FR 72362 (December 27, 1999). The Deputy Administrator adopts, with one noted exception, the Opinion of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that Respondent received his degree in veterinary medicine in 1979. In 1981, Respondent started his own practice in Eatonville, Washington, where he continues to practice.

Respondent testified that he developed a chemical dependency problem in 1988 or 1989 while going through a divorce. He further testified that ''I found that the pain relievers that I had purchased for animals helped to relieve some of my pain, and I found that the amphetamines made me feel better too.'' According to Respondent, he took approximately three Dexedrine 5 mg. tablets per week and two or three Percodan tablets per week for a period of more than a year. Both of these drugs are Schedule II controlled substances.

Respondent testified that he became concerned about his drug use and contacted a treatment program. On February 23, 1990, Respondent and his receptionist, who was also a close personal friend, met with the doctor in charge of the program. It was agreed that the doctor and Respondent's receptionist would monitor Respondent by requesting that Respondent submit to a urinalysis if they suspected that he had taken a mood altering substance.

In April 1990, a DEA investigator was reviewing DEA order forms used for purchasing Schedule II controlled substances and noticed that Respondent had purchased Dexedrine, which is not commonly used in veterinary practice, and Percodan, which is occasionally used in veterinary practice. On April 6, 1990, the DEA investigator and an investigator with the Washington Board of Pharmacy went to Respondent's office where they discovered that Respondent kept controlled substances in an unlocked drawer in his office and at his residence, which is an unregistered location. Initially, Respondent told the investigators that he was going to use the Dexedrine to treat obese dogs, but ultimately admitted that he had taken the Dexedrine himself. Respondent also said at some point that he had used the Percodan to treat dogs. However, the record does not indicate whether he admitted to the investigators during this meeting that he had taken the Percodan himself.

At the conclusion of this meeting, the DEA investigator gave Respondent the opportunity to voluntarily surrender his Schedule II and IIN privileges. Respondent signed the voluntary surrender form and checked the box that indicated that he was surrendering his DEA registration in Schedules II and IIN ''[i]n view of my alleged failure to comply with the Federal requirements pertaining to controlled substances, and as an indication of my good faith in desiring to remedy any incorrect or unlawful practices on my part.''

Respondent testified that at the time that he surrendered his Schedule II privileges, he was abstaining from controlled substances and alcohol, but that he felt threatened by the two investigators and signed the voluntary surrender form out of fear. Judge Bittner credited Respondent's testimony on this point and found that Respondent perceived that he was being threatened.

On May 23, 1990, Respondent began an outpatient treatment program which he completed on January 16, 1991. At the time Respondent entered the program, he had been drug-free for several months. This program consisted of random urinalysis which were all negative, and counseling sessions.

On January 7, 1991, the Washington State Veterinary Board of Governors (Veterinary Board) issued a Statement of Charges against Respondent seeking suspension or revocation of his license to practice veterinary medicine on grounds that he had possessed Schedule II controlled substances for other than legitimate or therapeutic purposes by possessing them for his own use. It is unclear from the record, but it appears that at some point Respondent entered into a stipulation with the Veterinary Board admitting that he possessed Schedule II controlled substances including, but not limited to, Dexedrine, Percodan, and oxycodone with aspirin for other than legitimate or therapeutic purposes. The Veterinary Board suspended Respondent's license to practice veterinary medicine for at least 24 months, but stayed the suspension subject to various terms of probation. Specifically, the Veterinary Board required Respondent to submit quarterly progress reports on his methods of handling stress, his use of and handling of drugs, his mental and physical health, his methods of dealing with legal charges, professional responsibilities and activities and personal activities relating to his practice; to attend at least two Narcotics Anonymous or Alcoholics Anonymous (12-step) meetings per week; to submit to random and observed biological fluid testing at least once per month; not to possess a Schedule II or IIN registration for two years; and not to submit a request for reinstatement of his license for at least two years.

On April 27, 1992, the Veterinary Board accepted a stipulation between Respondent and the State of Washington Department of Health which provided, among other things, that Respondent would sign a contract with the Washington Health Professional Services (WHPS) program and comply with the terms and conditions of that contract, and that if Respondent failed

to comply with that contract his license would be subject to disciplinary action by the Veterinary Board.

The WHPS is a division of the Washington Department of Health and is a monitoring program that provides an alternative to license discipline for various health care professions. The WHPS referred Respondent to a chemical dependency and family therapist who reported to the WHPS monthly on Respondent's progress. The therapist testified that he did not recall making any adverse reports regarding Respondent; that he felt that Respondent ''was doing all of the things that a person who is successful in recovery does;'' that he did not violate any of the rules of the program; that he was convinced that Respondent was continuing his recovery and was stable in his lifestyle; and that he thought it would be in the public interest for Respondent to have a DEA registration.

Respondent's case manager with WHPS from December 1993 until November 1994 testified that Respondent complied with his contract with the WHPS; that he consistently attended more 12-step meetings than required; and that all of his urinalyses were negative.

On October 5, 1992, Respondent executed a renewal application for his DEA registration, answering ''No'' to the question, hereinafter referred to as the liability question, which asks, ''Has the applicant ever been convicted of a crime in connection with controlled substances under State or Federal law, or ever surrendered or had a Federal controlled substance registration revoked, suspended, restricted or denied, or ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?'' Respondent testified while he knew that he had surrendered a portion of his DEA registration in 1990, he did not know how to answer the liability question. According to Respondent, he asked the instructors at continuing education courses that, ''if you voluntarily give up a portion of your DEA registration is that for cause and does that mean that you have to answer that question 'yes' and they told me that it was not true if you voluntarily give it up.'' Respondent also testified that he relied upon statements of the investigators that his ''license'' would not be affected if he signed a confession and if he did whatever the treatment program told him to do; that he tended to confuse his license to practice veterinary medicine that his DEA registration; and that the investigators also told him that he could reapply for registration to handle Schedule II and IIN substances later.

Respondent testified that he was ''quite nervous'' when he sent off his application but that when he received his updated Certificate of Registration, he concluded that he had answered the question properly. On September 30, 1995, Respondent executed another renewal application for his DEA registration and answered ''No'' to essentially the same liability question. Respondent testified that in executing this application, he did not give the question ''any thought at all'' because he knew how he had answered the similar question on the 1992 application and it had been granted with no difficulty. In 1995, Respondent sought registration in Schedules II, IIN, III, IIIN, IV and V.

On November 3, 1995, another DEA investigator telephoned Respondent to verify information on his 1995 renewal application. The investigator testified that she read the liability question from the 1995 application to Respondent and that Respondent said that the answer to the question was ''No.'' According to the investigator, she then asked Respondent, ''[Y]ou've never had any action taken?'' and Respondent again stated ''No.''

Respondent testified that the investigator caught him off guard and he was convinced that he had answered the liability question on the 1992 and 1995 renewal applications correctly. Respondent further testified that after he hung up with the investigator he realized that he had made a mistake, but he did not know how to contact the investigator. Respondent also testified that if he remains registered with DEA, he would find someone to help him answer the liability questions properly on his next renewal application.

At the hearing, Respondent testified that he has not had any relapses since he stopped using controlled substances in 1990, and that he has a good support network in place. Respondent's case manager with the WHPS testified that completing an adequate number of years in a monitored recovery program greatly decreases the likelihood of a relapse, and that she was not aware of any reason that Respondent should not be authorized to handle controlled substances.

Pursuant to 21 U.S.C. 824(a)(1), the Deputy Administrator may revoke a DEA Certificate of Registration upon a finding that the registrant has materially falsified an application for registration. DEA has previously held that in finding that there has been a material falsification of an application, it must be determined that the applicant knew or should have known that the response given to the liability question was false. See Martha Hernandez, M.D., 62 FR 61145 (1997); *Herbert J. Robinson, M.D.,* 59 FR 6304 (1994).

It is undisputed that Respondent answered ''No'' to the liability question on his 1992 and 1995 renewal applications despite the fact that his state veterinary license was placed on probation and he had surrendered his Schedule II and IIN privileges. Respondent testified that he did not know how to answer the question, since he did not think that he had surrendered his Schedule II privileges ''for cause.'' However, there is no indication that Respondent even attempted to contact the DEA investigator who obtained the surrender from Respondent for guidance. Yet, even if one were to accept Respondent's explanation, it would not explain why Respondent did not disclose that his state veterinary license was placed on probation.

The Deputy Administrator finds that Respondent knew or should have known that his responses were false. Answers to the liability question are always material because DEA relies on the answers to these questions to determine whether it is necessary to conduct an investigation prior to granting an application. *See Bobby Watts, M.D.,* 58 FR 46995 (1993); *Ezzat E. Majd Pour, M.D.,* 55 FR 47547 (1990). DEA has previously held that it is the registrant's ''responsibility to carefully read the question and to honestly answer all parts of the question.'' *Martha Hernandez, M.D.,* 62 FR 61147. Therefore, grounds exist to revoke Respondent's DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(1).

Also, pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See Henry J. Schwarz, Jr., M.D.,* 54 FR 16422 (1989).

As to factor one, it is undisputed that Respondent's state veterinary license was suspended for 24 months, with the suspension stayed and his license placed on probation subject to various conditions. It is also undisputed that Respondent entered into a Stipulation with the state whereby he agreed to enter into a contract with the WHPS. However, his state license is now unrestricted and he is authorized to handle controlled substances in the State of Washington. But as Judge Bittner noted, ''inasmuch as State authorization is a necessary but not sufficient condition for a DEA registration, * * * this factor is not determinative.''

Regarding factor two, it is undisputed that Respondent used his DEA Certificate of Registration and official order forms to obtain Schedule II controlled substances which he then abused himself for about a year in 1988 or 1989. However, this behavior was a result of Respondent's chemical dependency for which he has received treatment. He has not abused controlled substances since 1990, and he has a good support network in place to help prevent any relapse. There is no other evidence that Respondent has improperly dispensed controlled substances.

As to factor three, there is no evidence that Respondent has ever been convicted under State or Federal laws relating to the manufacture, distribution, or dispensing of controlled substances.

Regarding factor four, there is evidence in the record that Respondent has failed to comply with applicable laws relating to controlled substances. By furnishing false information on his applications for DEA registration, Respondent violated 21 U.S.C. 843(a)(4)(A). By using DEA order forms to obtain controlled substances for his own use, Respondent violated 21 U.S.C. 828(e), and by dispensing controlled substances for other than legitimate medical purposes, Respondent violated 21 U.S.C. 841(a)(1). Further, Respondent violated 21 CFR 1301.75(b) by failing to maintain adequate physical security of controlled substances. It also appears from evidence in the record that Respondent violated various provisions of Washington state law.

As to factor five, other than Respondent's material falsification of his applications for registration, there is no evidence that Respondent has engaged in any other conduct that may threaten the public health and safety.

The Deputy Administrator agrees with Judge Bittner's conclusion that the Government has made a *prima facie* case that Respondent's continued registration would be inconsistent with the public interest. Respondent used his privileges as a DEA registrant to obtain controlled substances to support his chemical dependency, and he materially falsified his 1992 and 1995 renewal applications.

However, he has undergone treatment for his chemical dependency and has not abused controlled substances since 1990. Further, evidence in the record suggests that there is little likelihood of Respondent relapsing. The Deputy Administrator finds it noteworthy that Respondent first sought treatment for his chemical dependency on his own and not at the direction of another.

Judge Bittner also found it significant that ''there is no evidence that [Respondent] improperly handled controlled substances in any way since 1992, when he regained a DEA registration.'' However, the Deputy Administrator can find no evidence in the record that Respondent ever completely lost his DEA privileges. But it appears from the evidence in the record that Respondent has had a DEA registration since 1981. Therefore, the Deputy Administrator finds it significant that there is no evidence that Respondent has improperly handled controlled substances in any way since 1990.

Regarding the material falsification of Respondent's renewal applications, the Deputy Administrator agrees with Judge Bittner who noted that ''Respondent acknowledged that he falsified his applications, he apparently regretted that conduct, and I believe that he will not repeat it.''

Judge Bittner concluded ''that the evidence that Respondent has remained drug free for more than eight years prior to the hearing and is remorseful about his prior behavior weighs in favor of continuing his registration.'' As a result, Judge Bittner recommended that Respondent's DEA registration be continued. The Deputy Administrator agrees.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AN1015331, previously issued to Theodore Neujahr, D.V.M., be, and it hereby is, continued and renewed in Schedules II, IIN, IIIN, IV and V. This final order is the final agency action for appellant purposes pursuant to 21 U.S.C. 877.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2534 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–1]

Michael Alan Patterson, M.D.; Grant of Restricted Registration

On September 23, 1998, the Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration (DEA), issued an Order to Show Cause to Michael Alan Patterson, M.D. (Respondent) of Memphis, Tennessee, notifying him of an opportunity to show causes as to why DEA should not deny his application for registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that his registration would be inconsistent with the public interest.

By letter dated October 22, 1998, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held in Nashville, Tennessee on March 10, 1999, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument. On August 11, 1999, Judge Randall issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision (Opinion), recommending that Respondent's application for registration be granted subject to various conditions. Neither party filed exceptions to Judge Randall's Opinion, and on September 15, 1999, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. This final order

replaces and supersedes the final order issued on December 22, 1999, and published at 64 FR 73,587 (December 30, 1999). The Deputy Administrator adopts, with specifically noted exceptions, the Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administration Law Judge. His adoption is in no manner diminished by any recitation of facts, issues or conclusions herein, or of any failure to mention a matter of factor or law.

The Deputy Administrator finds that Respondent admits to a history of drug and alcohol abuse, beginning with marijuana and beer on the weekends as a teenager. When Respondent entered college in 1980, he used cocaine sporadically after being introduced to the drug by one of his brothers.

Respondent received his medical degree in 1983, and from July 1983 through June 1986, Respondent was a resident in family practice in Florida. During his residency Respondent used a DEA certificate of Registration issued to him in Florida that expired on March 31, 1987. As a resident, his drug use remained sporadic but became more frequent.

In 1986, Respondent moved to Mississippi to fulfill an obligation to the National Health Service Corps. Respondent obtained medical licenses in both Mississippi and Tennessee. Ultimately, Respondent was issued DEA Certificate of Registration in both states.

In order to earn additional income, Respondent also worked for an emergency room service and for a freestanding urgent care center from 1986 through 1989. During this time he worked approximately 80 to 100 hours per week. According to Respondent, in 1986 his drug use ''progress[ed] to heavy,'' and the use of cocaine helped him stay awake so he could continue working.

Respondent testified that financial, marital, and work-related stress contributed to his drug use. He further testified that he began staying out late at night, if he returned home at all, and he frequented topless clubs. He failed to show up for work, and if he did show up, he was too ''crashed out'' to be productive. Eventually, Respondent's former wife notified his employer that Respondent had a cocaine problem.

As a result, the then-medical director the Tennessee Medical Foundation, Physicians Health Program (PHP), set up an intervention with Respondent, and Respondent entered treatment on March 16, 19990. According to Respondent he was very resistant to treatment at that time and fought it ''tooth and nail.'' Respondent completed the four-month treatment program in July or August 1990; however, he did not enter into an ongoing contract with the treatment center at that time.

After his treatment, Respondent returned to work part-time at the freestanding urgent care center, and later in 1990, he began a second job working full-time at a 24-hour minor medical emergency center. Additionally, in November or December 1991, Respondent began working at a hospital center. Respondent's employers were aware of his drug abuse problems and treatment.

In the spring or summer of 1991, Respondent began drinking again, and allowed his DEA registrations to expire. Although he had been sent notices to renew his registrations, Respondent testified that he ''avoid[ed] the mail'' during this time because he owed debts to several bill collectors. By January 1992, Respondent began using cocaine and crack cocaine again. As a result of his relapse, Respondent was fired from the 24-hour minor medical emergency center in March 1992.

Respondent was not aware that he had let his DEA registrations lapse until the hospital where he was working requested a copy of his current DEA registration. Respondent attempted to renew his registration in Tennessee, but he inadvertently sent the wrong form to DEA with the fee. When the incorrect form and money were returned to Respondent, he spent the money on cocaine and failed to renew his registration. Since he still needed to have a current registration to submit to the hospital, Respondent's then-girlfriend altered his expired DEA Certificate of Registration to reflect a 1995 expiration date instead of the actual 1991 expiration date. This forgery resulted in the hospital terminating Respondent's employment on September 15, 1992. At the hearing Respondent testified that he was abusing drugs and alcohol at the time of the alteration of his Certificate of Registration, and that ''there's no real justification to give you, other than I was sick and irresponsible.''

Respondent's substance abuse worsened, and during this time he was arrested and charged with the misdemeanors of drunk driving, reckless driving, public intoxication and possession of drug paraphernalia. Respondent pled guilty to two of the charges. In addition, from the summer of 1991 to November 1992, Respondent prescribed controlled substances without a valid registration and exchanged prescriptions for discounts on the cost of cocaine.

An investigation of Respondent began in 1992 based upon information from a confidential informant that she received controlled substance prescriptions from Respondent for no legitimate medical reason. On February 16, 1993, Respondent voluntarily met with law enforcement personnel. At this time, Respondent was currently undergoing inpatient treatment at a halfway house for his addiction. Respondent cooperated and provided full disclosure during this meeting, as well as subsequent meetings.

The investigation of Respondent, as well as his own admissions, revealed that Respondent had written controlled substance prescriptions to a number of individuals for no legitimate medical reason. He exchanged these prescriptions for services to include topless or private dances. He traded cocaine for sex and private dances, and he used cocaine and marijuana with these dancers.

Respondent acknowledged his prior behavior, his activity regarding his relationship with these individuals, and his unlawful prescribing of controlled substances. Respondent has accepted responsibility for his actions.

Subsequently, Respondent agreed to cooperate with the local police department. He provided a list of people that he had written controlled substance prescriptions to for no legitimate medical purpose. He also provided the names of individuals from whom he had purchased drugs from in the past and indicated from whom he thought he could buy drugs from in the future. Respondent agreed to work with the local police department to make telephone calls and contacts in an effort to set up undercover buys for drugs. Respondent was not very successful in gaining evidence against others since it was known that Respondent was in trouble. Respondent's cooperation with the local police department continued until August 1993.

Respondent entered treatment for a second time in November 1992, this time voluntarily. Respondent testified that he realized that his first attempt at treatment was ''a half-hearted effort'' and that at that time he was in denial of his addiction. By the time of his second attempt at treatment he had essentially lost everything. He testified, ''if I didn't get into treatment at that time, I really didn't think I would be here much longer.'' Respondent was in inpatient treatment for three weeks and then continued to undergo inpatient treatment at a halfway house for impaired professionals until June 1993.

While in treatment, Respondent's Tennessee medical license expired on

December 31, 1992. Respondent did not submit a renewal application for this license until March 23, 1993 and did not pay the license fee until May 11, 1993. Respondent continued to practice medicine even though his license had not been renewed. Respondent explained that when he returned to work in 1993, he thought his medical license was in a ''grace period.''

After completing his treatment in June 1993, Respondent returned to work at the 24-hour minor medical emergency center and for the emergency room service, both of which were aware of Respondent's prior drug treatments. On his application for employment with the emergency room service submitted on September 29, 1993, Respondent indicated that his privileges or professional services at any hospital had never been revoked, even though his privileges at the hospital center had been revoked in September 1992. At the hearing, Respondent admitted that this mistake was an oversight and that ''[he] had no reason to intentionally try and mislead or lie on that application.''

Respondent has maintained a contract with the PHP since March 3, 1993. After treatment, the PHP coordinates and monitors physicians' recovery process for a minimum of two years. As part of this contract with the PHP physicians agree to attend weekly peer group meetings and monthly meetings with PHP personnel, to undergo random drug testing, to attend Alcoholics Anonymous or Narcotics Anonymous meetings, and to participate in individualized therapy.

After fulfilling the terms of his initial two-year contract with the PHP, Respondent has continued to renew his contract. Respondent has complied with the terms of his contract.

As a result of Respondent's past behavior, the Tennessee Board of Medical Examiners (Board) sought to take action against Respondent's Tennessee medical license. Respondent failed to appear for a scheduled hearing before the Board on June 21, 1994. According to Respondent he never received notice from the Board that the hearing was going to take place. As a result, on June 22, 1994, the board entered a Default Order revoking Respondent's Tennessee medical license and assessing a $4,300 civil penalty. The Board found among other things that Respondent had lied on his Tennessee medical license renewal form and on his employment application dated September 29, 1993, that he engaged in unprofessional, dishonorable or unethical conduct, that he was habitually intoxicated which affected his ability to practice medicine, and that he dispensed controlled substances not in the course of professional practice. Respondent stopped practicing medicine when he received written notification in July 1994 of the Board's action.

Based upon his conduct in 1991 and 1992, Respondent was indicted on July 19, 1995, in the United States District Court for the Western District of Tennessee, and charged with 387 felony counts related to his handling of controlled substances. On November 18, 1996, Respondent pled guilty to 17 counts of the unlawful distribution of controlled substances in violation of 21 U.S.C. 841(a)(1). On March 27, 1997, Respondent was sentenced to three years probation, 2,000 hours of community service, and assessed a fine of $850. As conditions of his probation, Respondent is required to submit a random drug screens and to meet monthly with his probation officer. As of the date of the hearing Respondent had completed 1,500 to 1,600 hours of his community service obligation and had complied with all of the conditions of his probation.

On July 1, 1995, Respondent began a three-year psychiatry residency program at the University of Tennessee. He was selected for the position of Chief Resident in psychiatry by his fellow residents and faculty. During his residency, Respondent used the institutional DEA numbers of the institutions where he worked as a resident. No questions were ever raised by any official or representative at the University of Tennessee regarding Respondent's handling of controlled substances.

After his indictment and while in his residency program, Respondent assisted DEA in undercover activities for close to a year. Respondent's assistance produced four controlled substance buys, two of which resulted in convictions.

Effective October 6, 1997, the Board reinstated Respondent's medical license, finding that ''[t]he [Respondent] has been monitored by the Tennessee Medical Foundation's Physician Health Program and is currently in good standing with the program. He presented evidence of five (5) years of sobriety.'' The Board placed several restrictions on Respondent's medical license including that he maintain an affiliation with the PHP for five years to include at least five unannounced drug screens per year; that he only apply for a DEA registration in Schedules III, IV and V; and that he only practice in a supervised setting under a licensed physician acceptable to the Board until his criminal probation is lifted, but for not less than two years.

Respondent has been in compliance with the Board's restrictions. On average, Respondent is tested for drugs eight to ten times per year. According to Respondent, he plans to maintain a lifetime relationship with the PHP, not just the five years imposed by the Board.

The medical director of the PHP testified at the hearing that he has been in frequent contact with Respondent for over three and a half years. He believes that Respondent's prognosis for continued recovery from his drug addiction is excellent. The medical director testified that he does not have any reservations concerning Respondent's ability to handle Schedules III, IV and V controlled substances and that he ''fully support[s]'' the granting of Respondent's application. However, both Respondent and the medical director testified that Respondent may benefit from a course on the proper handling of controlled substances.

Respondent testified that he has been sober since November 6, 1992. He further testified that he would pay greater attention to detail about his registration status, and the proper maintenance and renewal of his DEA and state registration ''won't be a problem in the future at any time.'' He feels that he is ''much more responsible'' now. Respondent is ashamed of his previous conduct. He testified however that ''today I know that I'm not the same person that I was six, seven, eight years ago * * * who was sick and addicted.'' Respondent testified that he understands the consequences of a relapse.

Since 1998, Respondent has been employed at a treatment facility where, for the most part, he practices addiction medicine. Presently, if Respondent's treatment of a patient requires the use of controlled substances, one of Respondent's supervisors writes the prescription. The Board has approved Respondent's employment at the treatment facility and any change in employment would require additional Board approval.

On October 28, 1997, Respondent executed the application for registration that is the subject of these proceedings. Respondent applied to be registered in Schedules III, IV and V and provided his home address as his ''Proposed Business Address.'' Respondent testified that he does not intend to handle controlled substances at his residence and that the address on his application should be modified to reflect the address at the treatment facility where he is currently employed.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989).

As to factor one, the Board revoked Respondent's Tennessee medical license in June of 1994. However, three years later the Board reinstated Respondent's license subject to various restrictions. In reinstating Respondent's license, the Board recognized that Respondent had been drug-free for five years and was in good standing with the PHP. Therefore, it is undisputed that Respondent is currently authorized to handle controlled substances in Tennessee.

While state licensure is a prerequisite for a DEA registration, it is not dispositive of whether Respondent's registration would be in the public interest. However, it is noteworthy that the Board stated that ''[a]ny DEA certificate that the [Respondent] shall apply for shall be limited to Schedule III, IV and V.'' The Deputy Administrator agrees with Judge Randall that, ''[a]lthough this restriction is not an endorsement by the Board for issuing a DEA registration to the Respondent, at a minimum, this statement expresses the Board's confidence in the Respondent's ability to handle the responsibilities of a DEA registrant, particularly regarding the Respondent's ability to handle Schedules III, IV and V controlled substances.''

Respondent's experience in dispensing controlled substances and his compliance with laws related to controlled substances may be considered under factors two and four. The Deputy Administrator finds that Respondent's handling of controlled substances was abysmal during his active drug abuse. Respondent violated 21 U.S.C. 843(a)(2) by prescribing controlled substances without a valid DEA registration. He caused his expired DEA Certificate of Registration to be altered. In addition, Respondent violated 21 U.S.C. 841(a)(1) by prescribing controlled substances to individuals for no legitimate medical purpose. He wrote these prescriptions in exchange for discounts on his cocaine and crack purchases and in exchange for topless dances from women.

The Deputy Administrator finds this conduct to be reprehensible, and certainly could justify denying Respondent's application for registration. However, all of this conduct occurred when Respondent was heavily involved in substance abuse. Respondent has been drug-free since November 1992. He underwent intensive treatment and is still actively participating in aftercare treatment.

Also of concern is that Respondent continued to practice medicine in 1993 after he failed to timely renew his state medical license. However, this occurred when Respondent was undergoing substance abuse treatment and he thought his license was subject to a grace period.

Other than his practice of medicine without a current state license, there is no evidence that Respondent improperly handled controlled substances after he entered treatment in November 1992. In fact, Respondent handled controlled substances without question from July 1, 1995 to June 30, 1998 when using institutional numbers issued to him by the University of Tennessee during his residency.

Regarding factor three, it is undisputed that when Respondent was abusing drugs and alcohol, he was arrested for drunk driving, reckless driving, public intoxication and possession of drug paraphernalia. He pled guilty to two of these charges. In addition, on November 18, 1996, Respondent pled guilty to 17 counts of unlawful distribution of controlled substances. Respondent was sentenced to three years probation and 2,000 hours of community service. Evidence in the record indicates that Respondent has complied with the terms of his probation. While such convictions clearly could justify denying Respondent's application for registration, the Deputy Administrator finds it significant that these convictions resulted from Respondent's behavior when he was addicted to drugs and alcohol, and as has been previously discussed, Respondent has been drug-free for seven years and his prognosis for continued recovery is excellent.

As to factor five, other conduct which may threaten the public health and safety, it is undisputed that Respondent was previously addicted to alcohol and drugs, including marijuana, cocaine and crack cocaine. According to Respondent, his conduct was ''dangerous, illegal, [and] irresponsible'' when he was addicted. However, Respondent has under gone intensive treatment for his substance abuse and his treatment is ongoing.

It is true that Respondent previously had undergone treatment but had relapsed. However, Respondent admits that he was resistant to treatment at that time. The second time that Respondent entered treatment, he did so voluntarily and is committed to such treatment. The evidence suggests that his chances of relapse are slight. He understands the consequences of a relapse. He intends to maintain a lifetime relationship with the PHP and he currently works with others who are addicted to drugs and alcohol.

Judge Randall also found it significant under this factor that Respondent incorrectly listed his home address on his application for registration. However, she further found that it was not so egregious as to warrant a denial of Respondent's application for registration. The Deputy Administrator agrees that this incorrect listing of his business address does not warrant denial of Respondent's application.

Judge Randall concluded, and the Deputy Administrator agrees, that the Government has made a prima facie case for denial of Respondent's application. Respondent unlawfully prescribed controlled substances, altered his DEA Certificate of Registration, abused alcohol and drugs, and was convicted of offenses relating to controlled substances. However, it is not in the public interest to deny Respondent's application.

Respondent has acknowledged his past unlawful behavior and has accepted responsibility for his conduct. Respondent had a serious addiction to drugs and alcohol during his unlawful conduct. He has been sober since November 1992 and his chances of continued recovery are excellent. He intends to maintain a lifetime relationship with the PHP and he is currently still being monitored by the State of Tennessee. The evidence suggests that Respondent is clearly committed to his recovery and is seeking to help others with substance abuse problems by predominantly

practicing addiction psychiatry. Judge Randall also found it significant that Respondent cooperated with law enforcement by fully disclosing his unlawful conduct, by providing information against others, and by assisting in undercover buys.

Therefore, the Deputy Administrator agrees with Judge Randall that it would not be in the public interest to deny Respondent's application. However given the egregiousness of Respondent's past behavior, Judge Randall recommended that restrictions be imposed on Respondent's registration that would ''add a measure of protection to the public interest, while affording [Respondent] the opportunity to demonstrate his ability and willingness to handle controlled substances responsibly in his medical practice.'' Judge Randall recommended that Respondent's application for registration be granted subject to the following restrictions:

(1) The Respondent must resubmit a registration application reflecting his ''Proposed Business Address'' as required by regulation;

(2) The Respondent be granted a Certificate of Registration only for Schedules III, IV and V;

(3) By not later than two years after the date of the final order, the Respondent shall submit to the local DEA office evidence of successful completion, after August of 1999, of formal training in the proper handling or prescribing of controlled substances. Such training should be provided by an accredited institution at the Respondent's own expense;

(4) For three years after the effective date of the final order in this case, the Respondent shall submit, on a quarterly basis, a log of all of the controlled substances he has prescribed, administered or dispensed during the previous quarter, to the Special Agent in Charge of the nearest DEA office, or his or her designee. The log should include: the patient's name; the date that the controlled substance was prescribed, administered or dispensed; and the name, dosage and quantity of the controlled substance prescribed, administered or dispensed. If no controlled substances are prescribed, administered or dispensed during a given quarter, the Respondent shall indicate that fact in writing, in lieu of submission of the log. Review of such a log should provide adequate assurances for his future responsible conduct as a registrant.

The Deputy Administrator agrees with Judge Randall that Respondent's application for registration should be granted and that it is appropriate to impose restrictions on such registration. However, the Deputy Administrator finds it unnecessary to require Respondent to resubmit an application listing his proper business address. At the hearing in this matter, Respondent requested that his application be modified to reflect the address of his current place of employment. The Deputy Administrator finds that this request is sufficient to modify his application and a new application for registration is not required. However, if Respondent's place of employment has changed from that represented at the hearing, a new written request for modification of the address on his application must be submitted.

In addition, the Deputy Administrator disagrees with Judge Randall's recommendation that Respondent be given two years to present evidence of successful completion of formal training in the proper handling or prescribing of controlled substances. Given the nature of Respondent's past conduct, the Deputy Administrator finds that it is in the public interest for such training to be completed within one year of being issued his DEA registration.

Finally, the Deputy Administrator believes that it is prudent to require Respondent to continue his affiliation with the PHP for three years regardless of whether such affiliation is required by the Board.

Therefore, the Deputy Administrator concludes that Respondent should be granted a DEA Certificate of Registration in Schedules III, IV and V subject to the following restrictions:

(1) By not later than one year after the Certificate of Registration is issued, Respondent shall submit to the DEA office in Nashville, Tennessee evidence of successful completion, after August of 1999, of formal training in the proper handling or prescribing of controlled substances. Such training should be provided by an accredited institution at the Respondent's own expense.

(2) For three years after the issuance of the Certificate of Registration, Respondent shall submit, on a quarterly basis, a log of all of the controlled substances he has prescribed, administered, or dispensed during the previous quarter, to the Resident Agent in Charge of the DEA office in Nashville, Tennessee, or his or her designee. The log should include: The patient's name; the date that the controlled substance was prescribed, administered or dispensed; and the name, dosage and quantity of the controlled substance prescribed, administered, or dispensed. If no controlled substances are prescribed, administered or dispensed during a given quarter, the Respondent shall indicate that fact in writing, in lieu of submission of the log.

(3) Respondent shall continue his affiliation with the Tennessee Medical Foundation's Physicians' Health Program for at least three years from the issuance of the Certificate of Registration, regardless of whether such affiliation is required by the Tennessee Board of Medical Examiners.

Accordingly, the Deputy administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration submitted by Michael Alan Patterson, M.D., be, and it hereby is, granted subject to the above described restrictions. This order is effective upon the issuance of the DEA Certificate of Registration, but no later than March 6, 2000, and is the final agency action for appellate purposes pursuant to 21 U.S.C. 877.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2541 Filed 2–3–00; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–41]

Paul W. Saxton, D.O.; Denial of Application for Fees and Expenses Under the Equal Access to Justice Act

On July 15, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Paul W. Saxton, D.O. (Respondent), proposing to revoke his DEA Certificate of Registration AS9420059, and to deny any pending application for renewal of such registration. The Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest pursuant to 21 U.S.C. 823(f) and 824(a)(4).

Following a lengthy hearing and post-hearing filings, Administrative Law Judge Gail A. Randall issued her Recommended Rulings, Findings of Fact, Conclusions of Law and Decision on October 6, 1998, recommending that no adverse action be taken against Respondent's DEA registration. On November 5, 1998, Respondent's counsel filed an Application for Attorney's Fees and Expenses (Application), under the Equal Access to Justice Act, 28 U.S.C. 2412.

On November 19, 1998, Judge Randall transmitted the record, including Respondent's Application, to the then-Acting Deputy Administrator for final agency action. After a careful review of the entire record, the Deputy Administrator issued his final order in this matter on May 3, 1999, adopting, in full, the Administrative Law Judge's findings of fact and conclusions of law, and continuing Respondent's registration without taking any adverse action. See Paul W. Saxton, D.O., 64 FR 25073 (May 10, 1999). In his final order, the Deputy Administrator denied Respondent's application for attorney's fees finding that Respondent's Application was premature because ''such a request may only be filed after a party has prevailed in an action brought by DEA.'' *Id.* at 25074.

On May 18, 1999, after issuance of the final order, Respondent's counsel filed a letter requesting to renew his Application filed on November 5, 1998, since the agency's final order had now been entered. On June 17, 1999, the Government filed an Answer in Opposition to Respondent's Application for Attorneys' Fees and Expenses Under the Equal Access to Justice Act. Judge Randall then provided Respondent an opportunity to respond to the Government's submission, and on July 19, 1999, Respondent filed a Response to the Government's Answer.

On September 22, 1999, Judge Randall issued her Supplemental Decision: Recommended Decision, Findings and Conclusions of the Administrative Law Judge Concerning the Respondent's Application for Fees and Expenses Under the Equal Access to Justice Act (Supplemental Decision), recommending that Respondent's Application be denied. Neither party filed exceptions to Judge Randall's Supplemental Decision and on October 25, 1999, the record concerning Respondent's Application was forwarded to the Deputy Administrator.

Pursuant to 28 CFR 24.307, the ''decision of the adjudicative officer will be reviewed to the extent permitted by law by the Department in accordance with the Department's procedures for the type of proceeding involved. The Department will issue the final decision on the application.'' ''Department'' is defined as ''the relevant departmental component which is conducting the adversary adjudication (*e.g.,* Drug Enforcement Administration * * *.)'' See 28 CFR 24.102. Therefore, the Deputy Administrator hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. This final order replaces and supersedes the final order issued on December 22, 1999. The Deputy Administrator adopts, in full, the Supplemental Decision: Recommended Decision, Findings and Conclusions of the Administrative Law Judge Concerning the Respondent's Application for Fees and Expenses Under the Equal Access to Justice Act. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that a party may file a claim for attorney's fees and other expenses under the Equal Access to Justice Act (EAJA), 28 U.S.C. 2412. Pursuant to 5 U.S.C. 504(a)(1), which incorporates the EAJA into the Administrative Procedure Act, an agency that conducts adversary adjudications shall award fees and expenses if: (1) The claimant is a prevailing party in the underlying action; (2) the position of the Government was not substantially justified; and (3) there were no special circumstances that would make an award against the Government unjust. An administrative hearing to revoke a DEA Certificate of Registration to dispense controlled substances is considered an ''adversary adjudication'' covered by the EAJA. See 28 CFR 24.103(a)(1).

The Deputy Administrator concludes that Respondent is a prevailing party and has therefore met the initial qualifying threshold for an award of fees and expenses under the EAJA. A ''prevailing party'' is one who can be found to have essentially succeeded on the claims for relief. See *Brown* v. *Secretary of Health and Human Servs.* 747 F.2d 878, 883 (3rd Cir. 1984). In the underlying matter upon which this Application is based, Respondent contended that his continued registration would not be inconsistent with the public interest, and that his DEA registration should not be revoked. The Deputy Administrator agreed with Respondent and ordered that no adverse action be taken against Respondent's DEA registration. See Saxton, 64 FR at 25080. Therefore, the Deputy Administrator concludes that Respondent has succeeded on his claims for relief.

In addition, for a claimant to be considered a prevailing party eligible for an award of attorney's fees and other expenses the claimant must be an individual whose net worth does not exceed $2,000,000 at the time the adversary adjudication was initiated. See 5 U.S.C. 504(b)(1)(B). In his Application, Respondent asserts that he has a net worth of less than $2,000,000. The Government does not dispute Respondent's assertion. Therefore, the Deputy Administrator concludes that Respondent has met the initial threshold that he is a prevailing party eligible for attorney's fees and other expenses under the EAJA.

Next, it must be determined whether the position of the Government was substantially justified. A presumption exists that a prevailing party may recover an EAJA award, unless the position of the Government was substantially justified. See 28 U.S.C. 2412(d)(1)(A); 28 CFR 24.106(a). Once alleged by the claimant that the position of the Government was not substantially justified, the burden of proof shifts to the Government to demonstrate by a preponderance of the evidence that its position was substantially justified and that attorney's fees and other expenses should not be awarded. See *United States* v. *One Parcel of Real Property,* 960 F.2d 200, 208 (1st Cir. 1992).

The ''position of the United States'' is defined as being that position ''in addition to the position taken by the United States in the civil action, the action or failure to act by the agency upon which the civil action is based.'' 28 U.S.C. 2412(d)(2)(D). Although ''position'' encompasses the Government's prelitigation conduct and subsequent litigation position, only one determination of substantial justification to the entire matter should be made. See *Commissioner, INS* v. *Jean,* 496 U.S. 154, 160–62 (1990) (''While the parties' postures on individual matters may be more or less justified, the EAJA—like other fee-shifting statutes—favors treating a case as an inclusive whole, rather than as atomized line-items.'') Therefore, the Deputy Administrator concludes that the Government's position as a whole must be considered in determining whether there was substantial justification for that position.

The test for substantial justification is whether a reasonable person would find that the Government's position was reasonable in both fact and law. See *Derickson Co.* v. *NLRB,* 774 F.2d 229, 232 (8th Cir. 1985); *Enerhaul, Inc.* v. *NLRB,* 710 F.2d 748, 750, reh'g denied, 718 F.2d 1115 (11th Cir. 1983); *see also* H.R. Conf. Rep. No. 96–1434 at 22 (1980). To meet its burden of demonstrating the substantial justification for its position, the Government must make a ''strong showing'' and must demonstrate that it ''had a reasonable basis for the facts alleged, that it had a reasonable basis in law for the theories it advanced, and that the former supported the latter.'' One Parcel of Real Property, 960 F.2d at

208 (quoting *Sierra Club* v. *Secretary of the Army,* 820 R.2d 513, 517 (1st Cir. 1987)).

Also, it is noteworthy that pursuant to 28 CFR 24.105(c), ''[n]o presumption arises that the agency's position was not substantially justified simply because the agency did not prevail.'' See also, Griffon v. *Department of Health and Human Servs.,* 832 F.2d 51, 52 (5th Cir. 1987). As Judge Randall noted, ''the government may demonstrate that its position was substantially justified, even though it was a losing one.''

In this case, the Deputy Administrator agrees with Judge Randall's conclusion that ''an evaluation of the record as a whole supports the position that the Government was substantially justified in initiating and pursuing the underlying cause of action.'' As noted by Judge Randall, ''the final order recognized, '[w]ithout a doubt, the Government had legitimate concerns as a result of its initial investigation of the Respondent and his prescribing practices' '' See Saxton, 64 FR at 25079.

Judge Randall concluded that both the Government and Respondent incorrectly reargued the evidence regarding each of the five public interest factors in asserting whether the Government's position was substantially justified. The test is not whether each individual litigated claim was substantially justified, but rather oversell, whether the Government's litigation and prelitigation position was substantially justified. See Jean, 496 U.S. at 160–62. As further support, the Government's ''position,'' in the singular, suggests that only one finding concerning substantial justification need by made. See *id.* at 159. After evaluating the record in this matter, Judge Randall concluded ''that in the eyes of a reasonable person, the Government's position was reasonable both in fact and in law.''

The state agency responsible for regulating health-care professionals had received complaints over the years regarding Respondent's prescribing practices. An initial evaluation of patient profiles showed that Respondent's prescribing practices exceeded the recognized prescribing standards established by the Physician's Desk Reference (PDR). While the PDR does not establish binding standards on physicians, exceeding those standards is a sufficient indicator that further investigation into the physician's prescribing is warranted. See *Saxton,* 64 FR at 25078; *see also Margaret E. Sarver, M.D.,* 61 FR 57896, 57900 (1996). An expert in pain management reviewed Respondent's prescribing patterns and patient charts for the Government and found ''consistent patterns supporting the contention that [Respondent] has been inappropriately and excessively prescribing controlled substances, particularly opioids.'' See *Saxton,* 64 FR at 25074. Also, Respondent failed to inventory his controlled substances properly and failed to retain the required records needed to ensure accountability for the controlled substances maintained and dispensed in his medical practice. See *id.* at 25079. Failure to maintain proper records has previously been a basis for revocation of a DEA Certificate of Registration. See *Farmacia Ortiz,* 61 FR 726, 727–728 (1996); *Harlan J. Borcherding, D.O.,* 60 FR 28796, 28798 (1995). Finally, at the time the Government initiated its action against Respondent, it had evidence that Respondent had prescribed anabolic steroids for muscle enhancement in violation of state and Federal law. See *Saxton,* 64 FR at 25074, 25079.

Thus, the Deputy Administrator finds that the Government was substantially justified in pursuing the revocation of Respondent's DEA Certificate of Registration. Respondent ultimately prevailed because of the evidence that he presented at the hearing.

Respondent presented evidence that the medical community was in disagreement over the use of controlled substances in the treatment of chronic pain patients. Respondent's two experts testified that Respondent's method of pain management was a medically recognized form of chronic pain treatment. See *id.* at 25075. As Judge Randall stated, ''[t]he Respondent prevailed only after exploring and presenting evidence on the split in the medical community concerning the prescribing of controlled substances for chronic pain. The Respondent's witnesses were found to be more persuasive than those of the Government; yet, this does not mean that the Government was not substantially justified in its position or its case presentation.''

As to Respondent's recordkeeping violations, the Deputy Administrator concluded that revocation was not warranted not because the Government failed to prove its case, but because Respondent presented significant evidence of rehabilitation and remedial training. See *id.* at 25079. Judge Randall noted that ''this evidence does not eradicate the Respondent's prior wrongdoing, on which the Government's position was based; rather, this evidence of remedial action merely added weight in favor of the Respondent and enabled the Deputy Administrator, in his discretionary authority, to find for the Respondent.''

Regarding Respondent's illegal prescribing of anabolic steroids, the Deputy Administrator agrees with Judge Randall that ''Respondent ultimately prevailed, not because the Government failed to prove its case, but because the Deputy Administrator, in his discretionary authority, found persuasive the Respondent's rehabilitation evidence that he had ceased his unlawful prescribing of anabolic steroids.''

Therefore, Judge Randall found that ''the Government's actions in preparing and pursuing the revocation of the Respondent's DEA Certificate of Registration were substantially justified.'' The Deputy Administrator agrees. While Respondent ultimately prevailed in the underlying matter, the Government's position was reasonable and therefore substantially justified.

The Deputy Administrator finds that neither party alleged that special circumstances exist that would make an award of attorney's fees and other expenses under the EAJA unjust.

Judge Randall noted that the parties argued about the appropriate amount of attorney's fees to be awarded. However, Judge Randall found it unnecessary to decide this issue since she found that the Government's position was substantially justified and therefore recommended that no fees be awarded.

The Deputy Administrator agrees. While Respondent ultimately prevailed and his registration was not revoked, the Government's position was substantially justified. Therefore, Respondent's application for attorney's fees and other expenses must be denied.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 28 U.S.C. 2412, 5 U.S.C. 504, and 28 CFR 24.307, 0.100(b) and 0.104 hereby orders that the Application for Fees and Expenses under the Equal Access to Justice Act submitted by Paul W. Saxton, D.O., be, and it hereby is, denied. This final order is considered the final agency action for purposes of appellate review pursuant to 5 U.S.C. 504(c)(2) and 21 U.S.C. 877.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

C. Van Nostrand-Perkins, M.D.; Revocation of Registration

On August 5, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to C. Van Nostrand-Perkins, M.D., of Huntington Beach, California, notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration BP3939165 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that she is not currently authorized to handle controlled substances in the State of California. The order also notified Dr. Van Nostrand-Perkins that should no request for a hearing be filed within 30 days, her hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on or about August 13, 1999. No request for a hearing or any other reply was received by the DEA from Dr. Van Nostrand-Perkins or anyone purporting to represent her in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Van Nostrand-Perkins is deemed to have waived her hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 C.F.R. 1301.43(d) and (e) and 1301.46. This final order replaces and supersedes the final order issued on January 3, 2000.

The Deputy Administrator finds that Dr. Van Nostrand-Perkins currently possesses DEA Certificate of Registration BP3939165 issued to her in California. The Deputy Administrator further finds that effective August 14, 1997, the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs, State of California revoked Dr. Van Nostrand-Perkins' license to practice medicine. The Deputy Administrator concludes that Dr. Van Nostrand-Perkins is not currently licensed to practice medicine in California, and therefore it is reasonable to infer that she is not currently authorized to handle controlled substances in that state.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which she conducts her business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51, 104 (1993).

Here it is clear that Dr. Van Nostrand-Perkins is not currently authorized to handle controlled substances in the State of California. As a result, she is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BP3939165, previously issued to C. Van Nostrand-Perkins, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective March 6, 2000, and is considered the final agency action for appellate purposes pursuant to 21 U.S.C. 877.

Dated: January 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–2533 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

TIME AND DATE: 7:30 a.m. to 5 p.m. on Monday, March 6, 2000 and 8:30 a.m. to 12 noon to Tuesday, March 7, 2000.

PLACE: Westin Hotel—Seattle, 1900 Fifth Avenue, Seattle, Washington 98101.

STATUS: Open.

MATTERS TO BE CONSIDERED: Tours/Presentations Concerning King County Crisis Triage Unit/Pre-Booking Diversion, Seattle Police Department Crisis Intervention Team, King County Mental Health Court Proceedings and Post-Booking Diversion Proceedings; Updates on Mentally Ill in Prisons and Jails, the NIC Strategic Plan, Interstate Compact Activities, Advisory Board Hearings; Reports by Program Divisions; FY 2001 Service Plan Recommendations; and FY 2002 Budget Recommendations.

CONTACT PERSON FOR MORE INFORMATION: Larry Solomon, Deputy Director, (202) 307–3106, ext. 155.

Morris L. Thigpen,

Director.

[FR Doc. 00–2515 Filed 2–3–00; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission of OMB Review; Comment Request

February 2, 2000.

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. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@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 Agency (ESA).

Title: Equal Opportunity Survey.

OMB Number: 1215–ONEW.

Frequency: Annually.

Affected Public: Business or other for-profit; Not-for-profit institutions; and State, Local or Tribal Government.

Number of Respondents: 60,000.

Estimated Time Per respondent: 12 hours.

Total Burden Hours: 720,000.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $180,000.

Description: Government contractors provide information on their personnel activities and the results of their affirmative efforts to employ and promote minorities and women. This information is used to select specifically identified contractors for compliance evaluations and technical assistance.

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 00–2654 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–45–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,000 and NAFTA–3402]

Barry Callebaut, USA, Incorporated Van Leer Division Jersey City, New Jersey; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of January 13, 2000, petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance and North American Free Trade Agreement, Transitional Adjustment Assistance, applicable to workers and former workers of the subject firm. The denial notices were signed on November 15, 1999. The notice for TA–W–37,000 was published in the **Federal Register** on December 28, 1999 (64 FR 72691). The notice for NAFTA–3402 will soon be published in the **Federal Register**.

The petitioners present information regarding company imports of chocolate products and related ingredients and a shift in production of certain articles from Jersey City, New Jersey to Canada.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 24th day of January 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–2497 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of adjustment assistance for workers (TA–W) issued during the period of January, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–37,011; Cooper Energy Service, Grove City, PA

TA–W–37,065; Svedala Grinding Hodge Foundry, Greenville, PA

TA–W–37,099; Schuylkill Haven Bleach & Dye Works, Inc., Schuylkill Haven PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–37,074; American Pharmaceutical Co., Fairfield, NJ

TA–W–37, 103 & A; Alaska Anvil, Inc., Consulting Engineers, Anchorage, AK and Kenai Office, Kenai, AK

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–36,909; Topcraft Precision Molders, Inc., Warminster, PA

TA–W–36,684; Pacific Scientific, HTL Kin/Tech Facility, Yorba Linda, CA

TA–W–37,035; Court Metal Finishing, Inc., Flint, MI

TA–W–37,091; Morgan Adhesives Co. d/b/a Mactac, Stow, OH

TA–W–36,873; Hunting Oilfield Service, Landell Div., Spring, TX

TA–W–36,776; Westwood LLC, Southridge, MA

TA–W–36,978; Curtis Wright Flight Systems, Inc., Fairfield, NJ

TA–W–37,145; HCC, Inc., Earlville, IL

TA–W–37,188; Jet Sew Technologies, Barneveld, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–37,192; West Coast Forest Products, Arlington, WA

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–36,915; Voith Sulzer Paper Technoligy, Monroe, OH: September 27, 1998.

TA–W–37,073; Fedders North America, Inc., Effingham, IL: November 1, 1998.

TA–W–37,020; Motorola Corp., Motorola Cable Products Div., Motorola ING, Mansfield, MA: October 18, 1998.

TA–W–36,999; Drew Shoe Corp., Lancaster, OH: October 14, 1998.

TA–W–36,934; ColumbiaKnit, Portland, OR: September 23, 1998.

TA–W–37,084; The Stanley Works, Tools Div., Stanley Tools Plant, New Britain, CT: October 26, 1998.

TA–W–37,037; Falk Corp., Milwaukee, WI: November 8, 1998.

TA–W–37,167; GL&V/Dorr Oliver, Inc., Hazleton, PA: November 23, 1998.
TA–W–37,212; Young Generations, Inc., Hendersonville, NC: December 9, 1998.
TA–W–37,193; Russell Corp, Russell Athletic, Columbia, AL and Crestview, FL: December 10, 1998.
TA–W–37,150; SRC Vision, Medford, OR: November 22, 1998.
TA–W–36,945; Moll Industries, Inc., Anchor Advanced Products, Cosmetic Packaging Div., Morristown, TN: September 23, 1998.
TA–W–36,949; Spring Ford Industries, Inc., Plant #1, and Plant #2, Chilhowie, VA: September 28, 1998.
TA–W–37,133; Fuchs Systems, Inc., Salisbury, NC: November 22, 1998.
TA–W–37,213; U.S. Forest Industries, Inc., White City, OR: December 13, 1998.
TA–W–37,127; Carter Footwear, Inc., Wilkes Carre, PA: January 31, 2000.
TA–W–37,111; Crown Cork & Seal Co., Inc., Closures Div., South Connellsville, PA: November 12, 1998.
TA–W–37,207; Tultex Corp., Roanoke, VA: December 9, 1998.
TA–W–37,208; Tultex Corp., South Boston, VA: December 16, 1998.
TA–W–37,081; Joy Mining Machinery, A Div. of Harnischfeger Industries, Franklin, PA: November 3, 1998.
TA–W–36, 81; Temco Fireplace Products, A Div. of Temtex Industries, Perris, CA: September 9, 1998.
TA–W–37,171; Sims Manufacturing Co., Inc., Payne, OH: December 7, 1998.
TA–W–36,922; West Coast Circuits, Watsonville, CA: September 23, 1998.
TA–W–36,947; Smurfit-Stone Container Corp., El Paso, TX: September 27, 1998.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 205(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of January 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–03402; Barry Callebaut USA, Inc., Van Leer Div., Jersey City, NJ
NAFTA–TAA–03549; Competitive Edge Sportswear, Fall River, MA
NAFTA–TAA–03551; Joy Mining Machinery, A Div. of Harnischfeger Industries, Franklin, PA
NAFTA–TAA–03617; Altec International, La Crosse, WI
NAFTA–TAA–03566; Morgan Adhesives Co., d/b/a Mactac, Stow, OH
NAFTA–TAA–03540; ColumbiaKnit, Portland OR
NAFTA–TAA–03369; Superior-Essex, Pauline, KS
NAFTA–TAA–03527; Cooper Energy Services, Grove City, PA
NAFTA–TAA–03560; Schuylkill Haven Bleach & Dye Works, Inc., Schuylkill Haven, PA
NAFTA–TAA–03519; Piezo Crystal, Carlisle, PA
NAFTA–TAA–03602; HCC, Inc., Earlville, IL
NAFTA–TAA–03344; Flynt Fabrics, Inc., Wadesboro, NC
NAFTA–TAA–03647; Jet Sew Technologies, Barneveld, NY
NAFTA–TAA–03562; Steeltech, Milwaukee, WI
NAFTA–TAA–03649; Fogel Neckwear Corp., New York, NY
NAFTA–TAA–03515 A, B, C; Bayer Clothing Group, Inc., Target Square Facility, Clearfield, PA, Fletcherville Facility, Clearfield, PA, Hyde Facility, Hyde, PA and Kent Facility, Curwensville, PA
NAFTA–TAA–03345; Pacific Scientific HTL Kin/Tech Facility, Yorba Linda, CA

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–3622; American Meter Co., Industrial Products Business Unit, Erie, PA

The investigation revealed that criteria (2) has not been met. Sales or Production, or both, of such firm or subdivision did not decrease absolutely.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–03610; GL&V/Dorr-Oliver, Inc., Hazleton, PA: November 23, 1998.
NAFTA–TAA–03583; Crown Cork & Seal Co., Inc., Closures Div., South Connellsville, PA: November 12, 1998.
NAFTA–TAA–03585; AlliedSignal, Inc., Emlenton Refinery, Emlenton, PA: November 12, 1998.
NAFTA–TAA–03596; Elinco, Inc., A Div. of Eastern Air Devices, Waterbury, CT: November 22, 1998.
NAFTA–TAA–03604; Elinco, Inc., A Div. of Eastern Air Devices, Stamford, CT: November 30, 1998.
NAFTA–TAA–03590; U.S. Forest Industries, Inc., White City, OR: October 30, 1998.
NAFTA–TAA–03625; Master Form, Inc., North Hollywood, CA: November 9, 1998.
NAFTA–TAA–03456; TAB Products Co., Turlock, CA: September 3, 1998.
NAFTA–TAA–03518; Temco Fireplace Products, A Div. of Temtex Industries, Perris, CA: October 6, 1998.
NAFTA–TAA–03627; Tultex Corp., South Boston, VA December 9, 1998.
NAFTA–TAA–03633; Tultex Corp., Roanoke, VA: December 15, 1998.
NAFTA–TAA–03629; Russell Corp., Russell Athletic, Crestview, FL: December 10, 1998.
NAFTA–TAA–03628; Russell Corp., Russell Athletic, Columbia, AL: December 10, 1998.
NAFTA–TAA–03451; NEC Technologies, Inc., Georgia Plant, McDonough, GA: September 17, 1998.
NAFTA–TAA–03614; Sims Manufacturing Co., Inc., Payne, OH: December 1, 1998.
NAFTA–TAA–03594; Workpros, Inc., Div. of Crystal Art, Maspeth, NY: November 3, 1998.

NAFTA–TAA–3631; Rebound Manufacturing, New London, NC: December 7, 1998.
NAFTA–TAA–03657; A & B; Third Generation, Inc., Latta, SC, Ware Shoals, SC and Honea Path, SC: January 4, 1999.
NAFTA–TAA–03623; & A; Tultex Corp., Roxboro, NC and Longhurst, NC: December 15, 1998.
NAFTA–TAA–03639; Dana Corp., Parish Light Vehicle Structures Div., Reading, PA: January 23, 2000.
NAFTA–TAA–03476; Smurfit-Stone Container Corp., El Paso, TX: September 27, 1998.

I hereby certify that the aforementioned determinations were issued during the month of January 2000. Copies of these determinations are available for inspection in Room C–4138, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 28, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–2493 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,258 and TA–W–36,258A]

Burlen Corporation, Fitzgerald Plant, Fitzgerald, Georgia and Burlen Corporation, Tifton Plant, Tifton, Georgia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on September 20, 1999, applicable to workers of Burlen Corporation, Fitzgerald Plant, Fitzgerald, Georgia. The notice was published in the **Federal Register** on October 14, 1999 (64 FR 55751).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of women's underwear. New information shows that workers were separated in December, 1999 at the Tifton Plant, Tifton, Georgia location of Burlen Corporation. The workers are engaged in the production of women's underwear and provide distribution and shipping services for the subject firms' production facility in Fitzgerald, Georgia which closed in July, 1999.

Accordingly, the Department is amending the certification to cover the workers of Burlen Corporation, Tifton Plant, Tifton, Georgia.

The intent of the Department's certification is to include all workers of Burlen Corporation who were adversely affected by increased imports.

The amended notice applicable to TA–W–36,258 is hereby issued as follows:

''All workers of Burlen Corporation, Fitzgerald Plant, Fitzgerald, Georgia (TA–W–36,258) and Tifton Plant, Tifton, Georgia (TA–W–36,258A) who became totally or partially separated from employment on or after May 14, 1998 through September 20, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 19th day of January, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–2504 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,004]

Chester County Sportswear Including Workers of SkilStaf, Inc., Henderson, TN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 10, 1999, applicable to workers of Chester County Sportswear, located in Henderson, Tennessee. This notice was published in the **Federal Register** on December 28, 1999 (64 FR 72692).

At the request of the Company, the Department reviewed the certification for workers of the subject firm. New information shows that workers at Chester County Sportswear are considered to be employees of SkilStaf, Inc. The workers were engaged in employment related to the production of men's casual slacks and various sportswear.

Based on these findings, the Department is amending the certification to include workers of SkilStaf, Inc. employed at the Henderson, Tennessee facility of the subject firm.

The intent of the Department's certification is to include all workers of the subject firm adversely affected by increased imports.

The amended notice applicable to TA–W–37,004 is hereby issued as follows:

All workers of Chester County Sportswear, including workers employed SkilStaf, Inc. employed at Chester County Sportswear, Henderson, Tennessee who became totally or partially separated from employment on or after October 15, 1998 through November 10, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 14th day of January, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–2501 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 14, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment

Assistance, at the address shown below, not later than February 14, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 10th day of January, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON JAN. 10, 2000

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,224	Foster Wheeler (Wkrs)	Playas, NM	01/03/2000	Copper.
37,225	Middle Bay Oil (Co.)	Wichita, KS	12/22/1999	Crude Oil.
37,226	Burgett Geothernal (Co.)	Animas, NM	12/01/1999	Cut Roses.
37,227	Nobleville Casting (UAW)	Nobleville, IN	12/29/1999	Iron Ductile Castings.
37,228	Third Generation, Inc (Co.)	Latta, SC	12/22/1999	Ladies' Apparel.
37,229	L.G.&E. Natural Gatherin (Wkrs)	Hobbs, NM	12/20/1999	Natural Gas (Methane).
37,230	Elizabethtown Sportswear (UNITE)	Elizabethtown, KY	12/21/1999	Men's Tailored Trousers.
37,231	Laurel Mold (Wkrs)	Jeannette, PA	12/15/1999	Glass Moulds.
37,232	Thomas Bradford Shirt (UNITE)	Huntingdon, TN	12/23/1999	Woven Shirts for Men, Women, Children.
37,233	Dana Corporation (USWA)	Reading, PA	12/14/1999	Light Duty Pick-Up Trucks.
37,234	Seagate (Wkrs)	Oklahoma City, OK	12/17/1999	Computer Hardare and Software.
37,235	Angelica Image Apparel (Wkrs)	Ackerman, MS	12/10/1999	Polo Shirts.
37,236	Chicago Pneumatic Tool (Co.)	Rock Hill, SC	12/15/1999	Air Powered Hand Tools.
37,237	International Paper (Wkrs)	Natchez, MS	12/13/1999	Dissolving Wood Pulp (DWP).
37,238	Harborside Graphics (Co.)	Belfast, ME	12/10/1999	Printed and Emboidered T-Shirts.
37,239	Dezurik (Wkrs)	McMinnville, TN	12/13/1999	Frame Fabs Super-structures.
37,240	Chevron Products Co (Wkrs)	Roosevelt, UT	01/04/2000	Pipeline Distsribution of Crude Oil.
37,241	Contour Energy Co (Wkrs)	Houston, TX	12/30/1999	Drill Natural Gas.
37,242	Wardson, Inc (Co.)	Adamsville, TN	12/28/1999	Sewing Thread for Apparel.
37,243	Whizard Protective Wear (Wkrs)	Birmingham, OH	12/06/1999	Resistant Gloves.

[FR Doc. 00–2495 Filed 2–3–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 14, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 14, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 3rd day of January, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

PETITIONS INSTITUTED ON 01/03/2000

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,214	Fox Point Sportswear (UNITE)	Merrill, WI	12/20/1999	Sports Apparel.
37,215	Item House (UFCW)	Tacoma, WA	12/15/1999	Men's and Women's Outerwear.
37,216	AK Steel Corp (Wrks)	Dover, OH	12/20/1999	Galvanized Steel.
37,217	Penguin Putnam Inc (Wrks)	Newbern, TN	12/14/1999	Distribution Center.
37,218	Bausch & Lomb (Wrks)	Rochester, NY	12/09/1999	Contact Lens.

PETITIONS INSTITUTED ON 01/03/2000—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,219	Boeing Co. (The) (UAW)	Melbourne, AR	12/20/1999	Aircrafts.
37,220	Owenby Co. (The) (Comp)	Tellico Plains, TN	12/21/1999	T-Shirts and Polo Shirts.
37,221	Weigh-Tronix, Inc (Comp)	Fairmont, MN	12/22/1999	Postal Scale Systems.
37,222	Wagener Mfg Co (Wrks)	Wagener, SC	12/09/1999	Robes, Wraps, Beachwear.
37,223	Linden Apparel (Comp)	Allentown, PA	12/22/1999	Men's, Ladies' & Children's Knitwear.

[FR Doc. 00–2500 Filed 2–3–00 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,592]

Guidant Intermedics, Cardiac Pacemakers, Inc. (CPI), Angleton, Texas; Amended Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance on August 4, 1999, applicable to workers of Guidant Intermedics, Angeleton, Texas. The notice was published in the **Federal Register** on September 29, 1999 (64 FR 52540).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of pacemakers and defibrillators, associated leads for the pacemakers and defibrillators and a personnel computer specifically designed for the programming of the pacemakers and defibrillators. Findings show that Cardiac Pacemakers, Inc. (CPI) is a wholly owned subsidiary of Guidant Intermedics. Findings also show that some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Cardiac Pacemakers, Inc., Angleton, Texas.

The intent of the Department's certification is to include all workers of Guidant Intermedics who were adversely affected by increased imports. Accordingly, the Department is amending the Notice of Determinations to reflect this matter.

The amended notice applicable to TA–W–36,592 is hereby issued as follows:

''All workers of Guidant Intermedics, Cardiac Pacemakers, Inc., (CPI), Angleton, Texas engaged in employment related to the production of pacemakers and defibrillators who became totally or partially separated from employment on or after July 13, 1998 through August 4, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

''I further determine that all workers at Guidant Intermedics, Cardiac Pacemakers, Inc., (CPI), Angleton, Texas engaged in activities related to the production of leads, hybrid circuits and PC's for the programming of pacemakers are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 19th day of January, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–2503 Filed 2–3–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitions or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than February 14, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 14, 2000.

The petition filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 18th day of January, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 01/18/2000]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,244	Motorola, Inc. (Wkrs)	Arlington, IL	12/10/1999	Printed Circuit Boards.
37,245	Pioneer Wear (Wkrs)	Albuquerque, NM	12/30/1999	Westernwear.
37,246	Epperheimer, Inc. (Wkrs)	Kenai, AK	12/14/1999	Painters.

APPENDIX—Continued

[Petitions Instituted on 01/18/2000]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,247	ON Semiconductor (Co.)	Phoenix, AZ	01/06/2000	Semiconductors.
37,248	First Fleet (Wkrs)	Harlingen, TX	01/01/2000	Provide Equipment for Distribution.
37,249	Snap-On-Tool (Wkrs)	Ottawa, IL	01/05/2000	Distribution Center.
37,250	BP Amoco Refinery (Wkrs)	Texas City, TX	12/29/1999	Gasoline.
37,251	Beloit Mill Production (Wkrs)	Hattiesburg, MS	12/02/1999	Paper Making Machinery.
37,252	Hampton Industries (Wkrs)	Martinsville VA	12/28/1999	Sleepwear and Bathrobes.
37,253	Tab Products (Wkrs)	Turlock, CA	12/16/1999	Business File Folders.
37,254	Sony Electronics (Co.)	Frankville, PA	01/06/2000	Audio Speakers.
37,255	Otis Elevator (IUE)	Bloomington, IN	01/07/2000	Elevator Fixtures, Finals Sheetmetal.
37,256	ABB Automation (Wkrs)	Williamsport, PA	01/07/2000	Cable Harnesses and Assembles.
37,257	Great American Knitting (Co.)	Pottstown, PA	01/07/2000	Men's Gold Toe Socks.
37,258	IPM Service (Co.)	Dallas, TX	12/20/1999	Testers for Alternator & Starters.
37,259	ASC Automotive Specialist (Wkrs)	Raucho Dominque, CA	01/05/2000	Convertible Automobiles.
37,260	L.P.F. Apparel Corp (Wkrs)	New York, NY	01/06/2000	Ladies' Better Suits.
37,261	Ithaca Industries (Co.)	Glennville, GA	01/06/2000	Men's T-Shirts and Underwear.

[FR Doc. 00–2496 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,841]

Sony Magnetic Products Inc. of America, Dothan, Alabama; Notice of Revised Determination on Reopening

By letter postmarked January 5, 2000, a company official requested administrative reconsideration of the Department's notice of negative determination regarding eligibility to apply for worker adjustment assistance applicable to workers of the subject firm.

On December 21, 1999, workers of Sony Magnetic Products Inc. of America producing VHS videocassettes were denied TAA eligibility based on the finding that criterion (3) of Section 222 of the worker group eligibility requirements of the Trade Act of 1974 was not met. The notice was published in the **Federal Register** on January 14, 2000 (65 FR 2432). A survey was conducted by the Department of the subject firms' major declining customers. None of the respondents increased import purchases while reducing business with Sony. Although Sony Magnetic Products Inc. of America was shifting production of VHS videocassettes from Dothan, Alabama to a foreign country, imports had not yet been returned to the U.S.

The Department has obtained new information from the company documenting that the company has received VHS videocassette imports and the reliance on imports will continue as production decreases at the Dothan, Alabama plant.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with VHS videocassettes produced by the subject firm contributed importantly to the decline in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

''All workers of Sony Magnetic Products Inc. of America, Dothan, Alabama, engaged in employment related to the production of VHS videocassettes, separated from employment on or after September 2, 1998 through two years from the issuance of this determination, are eligible to apply for worker adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 24th day of January, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–2505 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,995]

Whistler Corporation of Massachusetts, Whistler Auto-Mation Products, Novi Electronics Facility, Novi, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 25, 1999, in response to a worker petition which was filed by the company on behalf of its workers at Whistler Corporation of Massachusetts, Whistler Auto-Mation Products, Novi, Michigan, located in Novi, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 7th day of January, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–2502 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States: 2000 Adverse Effect Wage Rates, Allowable Charges for Agricultural and Logging Workers' Meals, and Maximum Travel Subsistence Reimbursement

AGENCY: U.S. Employment Service, Employment and Training Administration, Labor.

ACTION: Notice of adverse effect wage rates (AEWRs), allowable charges for meals, and maximum travel subsistence reimbursement for 2000.

SUMMARY: The Administrator, Office of Workforce Security, announces 2000 adverse effect wage rate (AEWRs) for employers seeking nonimmigrant alien (H–2A) workers for temporary or seasonal agricultural labor or services, the allowable charges employers seeking nonimmigrant alien workers for temporary or seasonal agricultural labor or services or logging work may levy upon their workers when they provide three meals per day, and the maximum travel subsistence reimbursement which a worker with receipts may claim in 2000.

AEWRs are the minimum wage rates which the Department of Labor has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant alien agricultural workers (H–2A visaholders). AEWRs are established to prevent the employment of these aliens from adversely affecting wages of similarly employed U.S. workers.

The Administrator also announces the new rates which covered agricultural and logging employers may charge their workers for three daily meals.

Under specified conditions, workers are entitled to reimbursement for travel subsistence expense. The minimum reimbursement is the charge for three daily meals as discussed above. The Administrator here announces the current maximum reimbursement for works with receipts.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Grace A. Kilbane, Administrator, Office of Workforce Security, U.S. Department of Labor, Room S–4231, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone: 202–219–7831 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Attorney General may not approve an employer's petition for admission of temporary alien agricultural (H–2A) workers to perform agricultural labor or services of a temporary or seasonal nature in the United States unless the petitioner has applied to the Department of Labor (DOL) for an H–2A labor certification. The labor certification must show that: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188.

DOL's regulations for the H–2A program require that covered employers offer and pay their U.S. and H–2A workers no less than the applicable hourly adverse effect wage rate (AEWR). 20 CFR 655.102(b)(9); see also 20 CFR 655.107. Reference should be made to the preamble to the July 5, 1989, final rule (54 FR 28037), which explains in great depth the purpose and history of AEWRs, DOL's discretion in setting AEWRs and the AEWR computation methodology at 20 CFR 655.107(a). See also 52 FR 20496, 20502–20505 (June 1, 1987).

A. Adverse Effect Wage Rates (AEWRs) for 2000

Adverse effect wage rates (AEWRs) are the minimum wage rates which DOL has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant (H–2A) agricultural workers. DOL emphasizes, however, that such employers must pay the highest of the AEWR, the applicable prevailing wage or the statutory minimum wage, as specified in the regulations. 20 CFR 655.102(b)(9). Except as otherwise provided in 20 CFR Part 655, Subpart B, the regionwide AEWR for all agricultural employment (except those occupations deemed inappropriate under the special circumstances provisions of 20 CFR 655.93) for which temporary alien agricultural labor (H–2A) certification is being sought, is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA does not provide data on Alaska). 20 CFR 655.107(a).

The regulation at 20 CFR 655.107(a) requires the Administrator, Office of Workforce Security, to publish USDA field and livestock worker (combined) wage data as AEWRs in a **Federal Register** notice. Accordingly, the 2000 AEWRs for work performed on or after the effective date of this notice, are set forth in the table below:

TABLE.—2000 ADVERSE EFFECT WAGE RATES (AEWRS)

State	2000 AEWR
Alabama	$6.72
Arizona	6.74
Arkansas	6.50
California	7.27
Colorado	7.04
Connecticut	7.68
Delaware	7.04
Florida	7.25
Georgia	6.72
Hawaii	9.38
Idaho	6.79
Illinois	7.62
Indiana	7.62
Iowa	7.76
Kansas	7.49
Kentucky	6.39
Louisiana	6.50
Maine	7.68
Maryland	7.04
Massachusetts	7.68
Michigan	7.65
Minnesota	7.65
Mississippi	6.50
Missouri	7.76
Montana	6.79
Nebraska	7.49
Nevada	7.04
New Hampshire	7.68
New Jersey	7.04
New Mexico	6.74
New York	7.68
North Carolina	6.98
North Dakota	7.49
Ohio	7.62
Oklahoma	6.49
Oregon	7.64
Pennsylvania	7.04
Rhode Island	7.68
South Carolina	6.72
South Dakota	7.49
Tennessee	6.39
Texas	6.49
Utah	7.04
Vermont	7.68
Virginia	6.98
Washington	7.64
West Virginia	6.39
Wisconsin	7.65
Wyoming	6.79

B. Allowable Meal Charges

Among the minimum benefits and working conditions which DOL requires employers to offer their alien and U.S. workers in their applications for temporary logging and H–2A agricultural labor certification is the provision of three meals per day or free and convenient cooking and kitchen facilities. 20 CFR 655.102(b)(4) and

655.202(b)(4). Where the employer provides meals, the job offer must state the charge, if any, to the worker for meals.

DOL has published at 20 CFR 655.102(b)(4) and 655.111(a) the methodology for determining the maximum amounts covered H–2A agricultural employers may charge their U.S. and foreign workers for meals. The same methodology is applied at 20 CFR 655.202(b)(4) and 655.211(a) to covered H–2 logging employers. These rules provide for annual adjustments of the previous year's allowable charges based upon Consumer Price Index (CPI) data.

Each year the maximum charges allowed by 20 CFR 655.102(b)(4) and 655.202(b)(4) are changed by the same percentage as the twelve-month percent change in the CPI for all Urban Consumers for Food (CPI–U for Food) between December of the year just past and December of the year prior to that. Those regulations and 20 CFR 655.111(a) and 655.211(a) provide that the appropriate Regional Administrator (RA), Employment and Training Administration, may permit an employer to charge workers no more than a higher maximum amount for providing them with three meals a day, if justified and sufficiently documented. Each year, the higher maximum amounts permitted by 20 CFR 655.111(a) and 655.211(a) are changed by the same percentage as the twelve-month percent change in the CPU–U for Food between December of the year just past and December of the year prior to that. The regulations require the Administrator, Office of Workforce Security, to make the annual adjustments and to cause a notice to be published in the **Federal Register** each calendar year, announcing annual adjustments in allowable charges that may be made by covered agricultural and logging employers for providing three meals daily to their U.S. and alien workers. The 1999 rates were published in a notice on February 10, 1999 at 64 FR 6689.

DOL has determined the percentage change between December of 1998 and December of 1999 for the CPI–U for Food was 2.1 percent.

Accordingly, the maximum allowable charges under 20 CFR 655.102(b)(4), 655.202(b)(4), 655.111, and 655.211 were adjusted using this percentage change, and the new permissible charges for 2000 are as follows: (1) For 20 CFR 655.102(b)(4) and 655.202(b)(4), the charge, if any, shall be no more than $8.00 per day, unless the RA has approved a higher charge pursuant to 20 CFR 655.111 or 655.211(b); for 20 CFR 655.111 and 655.211, the RA may permit an employer to charge workers up to $9.90 per day for providing them with three meals per day, if the employer justifies the charge and submits to the RA the documentation required to support the higher charge.

C. Maximum Travel Subsistence Expense

The regulations at 20 CFR 655.102(b)(5) establish that the minimum daily subsistence expense related to travel expenses, for which a worker is entitled to reimbursement, is the employer's daily charge for three meals or, if the employer makes no charge, the amount permitted under 20 CFR 655.104(b)(4). The regulation is silent about the maximum amount to which a qualifying worker is entitled.

The Department, in Field Memorandum 42–94, established that the maximum is the meals component of the standard CONUS (continental United States) per diem rate established by the General Services Administration (GSA) and published at 41 CFR Ch. 301. The CONUS meal component is now $30.00 per day.

Workers who qualify for travel reimbursement are entitled to reimbursement up to the CONUS meal rate for related subsistence when they provide receipts. In determining the appropriate amount of subsistence reimbursement, the employer may use the GSA system under which a traveler qualifies for meal expense reimbursement per quarter of a day. Thus, a worker whose travel occurred during two quarters of a day is entitled, with receipts, to a maximum reimbursement of $15.00. If a worker has no receipts, the employer is not obligated to reimburse above the minimum stated at 20 CFR 655.102(b)(4) as specified above.

Signed at Washington, DC, this 31st day of January, 2000.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

Timothy F. Sullivan

Chief, U.S. Employment Service/ALMIS.

[FR Doc. 00–2547 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03188]

Philips Electronics North America Corporation Philips Components Division Departments 133, 134, 136, 400, 630, 420, 240, 261, 266 and 430 Saugerties, New York; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on June 25, 1999, applicable to workers of Philips Electronics North America Corporation, Philips Components Division, Departments 133, 134, 136, 400, 630, 420, 240, 261 and 266, Saugerties, New York. The notice was published in the **Federal Register** on July 20, 1999 (64 FR 38922).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at Philips Components Division, Department 430 of Philips Electronics North America Corporation, Saugerties, New York. The workers are engaged in the production of soft ferrites (''back end''—*i.e.* grinding, toroids and inspect and pack, and related support departments).

The intent of the Department's certification is to include all workers of Philips Electronics North America Corporation, Philips Components Division who were adversely affected by the shift in production to Mexico.

Accordingly, the Department is amending the certification to cover the workers of Philips Electronics North America Corporation, Philips Components Division, Department 430, Saugerties, New York.

The amended notice applicable to NAFTA–03188 is hereby issued as follows:

All workers of Philips Electronics North America Corporation, Philips Components Division, Departments 133, 134, 136, 400, 630, 420, 240, 261, 266 and 430, Saugerties, New York who became totally or partially separated from employment on or after May 19, 1998 through June 25, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 28th day of January, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–2498 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Public Law 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Public Law 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of OTAA not later than February 14, 2000.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than February 14, 2000.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 28th day of January, 2000.

Grant D. Beale,

Program Manager,Office of Trade Adjustment Assistance.

Appendix

Subject firm	Location	Date received at governor's office	Petition No.	Articles produced
Tultex Corporation (Co.)	Roxboro, NC	12/15/1999	NAFTA–3,623	sweatshirts.
Tultex Corporation (Co.)	Longhurst, NC	12/15/1999	NAFTA–3,623	sweatshirts.
Ritvik Holdings (Wkrs)	Lakeville, MA	12/16/1999	NAFTA–3,624	plastic toy blocks.
Master Foam (Co.)	North Hollywood, CA	12/14/1999	NAFTA–3,625	foam for packaging.
Russell Manufacturing—Movie Star (Co.).	Lebanon, VA	12/15/1999	NAFTA–3,626	ladies clothing.
Tultex Corporation (UNITE)	South Boston, VA	12/15/1999	NAFTA–3,627	fleece activewear.
Russell Corporation (Co.)	Columbia, AL	12/15/1999	NAFTA–3,628	sweatshirts and t-shirts.
Russell Corporation (Co.)	Crestview, FL	12/16/1999	NAFTA–3,629	sweatshirts and t-shirts.
Allied Signal (Co.)	Ocala, FL	12/13/1999	NAFTA–3,630	heat transfer and fan aerospace hardware.
Rebound Manufacturing (Co.)	New London, NC	12/13/1999	NAFTA–3,631	t-shirts.
Belmont Garment Dyers (Wkrs)	Reading, PA	12/17/1999	NAFTA–3,632	dyer of garments.
Tultex Corporation (UNITE)	Roanoke, VA	12/16/1999	NAFTA–3,633	fleece activewear.
General Electric Capital (Wkrs)	Brookfield, WI	12/10/1999	NAFTA–3,634	service collectors.
Whistler Corporation of Massachusetts (Co.).	Novi, MI	10/01/1999	NAFTA–3,635	circuit boards.
Cooper Standard Automotive (Wkrs).	Gaylord, MI	12/21/1999	NAFTA–3,636	seals for car windows.
Laurel Mold, Inc. (Wrks)	Jeannette, PA	12/21/1999	NAFTA–3,637	Glass Molds.
Fox Point Sportswear ( )	Merrill, WI	12/23/1999	NAFTA–3,638	Apparel.
Dana Corporation (USWA)	Reading, PA	12/23/1999	NAFTA–3,639	light duty pickup truck frames.
Boeing Co. (The) ( )	Melbourne, AR	12/27/1999	NAFTA–3,640	Boeing Aircraft Assemblies.
Thomas Bradford Shirt (UNITE)	Huntington, TN	12/27/1999	NAFTA–3,641	woven shirts.
Dezurik—General Signal (Wkr)	McMinnville, TN	12/27/1999	NAFTA–3,642	eccentric gate and butterfly valves.
Republic Builders Products (Wkrs)	McKenzie, TN	12/27/1999	NAFTA–3,643	frames for commercial doors.
Penguin Putnam (Wkrs)	Newbern, TN	12/28/1999	NAFTA–3,644	book distribution center.
Yates Industries—Circuit Foil (IUE).	Bordentown, NJ	12/21/1999	NAFTA–3,645	electro deposited copper foil.
Seagull Lighting (Wkrs)	Philadelphia, PA	12/29/1999	NAFTA–3,646	lighting fixtures.
Jet Sew Technologies (Wkrs)	Barneveld, NY	12/28/1999	NAFTA–3,647	industrial sewing machines.
Wardson (Co.)	Adamsville, TN	01/03/2000	NAFTA–3,648	sewing thread.
Fogel Neckwear (Wkrs)	New York, NY	12/28/1999	NAFTA–3,649	men's and boys' neckwear.
Ball Foster Glass Container (GMPPA).	Marion, IN	01/03/2000	NAFTA–3,650	glass containers for beverages.
IPM Service (Co.)	Dallas, TX	01/07/2000	NAFTA–3,651	testers.
ABB Automotive (Wkrs)	Williamsport, PA	01/07/2000	NAFTA–3,652	cable, harnesses and assemblies.
Goss Graphics Systems (Wkrs)	Wyomissing, PA	01/05/2000	NAFTA–3,653	printing presses.
Porta Systems—North Hills Electronics (Co.).	Glen Cove, NY	01/05/2000	NAFTA–3,654	transformers.
Broan Nutone (Co.)	Coppell, TX	01/05/2000	NAFTA–3,655	rangehood.
Bailey Creation (Wkrs)	York, AL	12/21/1999	NAFTA–3,656	baby clothes, children clothes.
Third Generation (Co.)	Latta, SC	01/04/2000	NAFTA–3,657	ladies apparel.

Subject firm	Location	Date received at governor's office	Petition No.	Articles produced
Third Generation (Co.)	Ware Shoals, SC	01/04/2000	NAFTA–3,657	ladies apparel.
Third Generation (Co.)	Honea Path, SC	01/04/2000	NAFTA–3,657	ladies apparel.
Martin Mills (Fruit of the Loom) (Wkrs).	St. Martinville, LA	01/06/2000	NAFTA–3,658	t-shirts and briefs.
First Fleet (Wkrs)	Murfreesboro, TN	01/10/2000	NAFTA–3,659	trucking service.
Sony Electronics (Co.)	Frackville, PA	01/11/2000	NAFTA–3,660	audio speakers.
Fasco Motors Group (Wrks)	Eldon, MO	01/12/2000	NAFTA–3,661	Fractional Horsepower Motors.
Gatesville Walls Industries (Comp)	Gatesville, TX	01/12/2000	NAFTA–3,662	Insulated Clothing.
Walls Industries, Inc (Comp)	Carthage, MO	01/12/2000	NAFTA–3,663	Insulated Clothing.
Snap-On, Inc. (Wrks)	Ottawa, IL	01/12/2000	NAFTA–3,664	Electrical Harnesses.
Cooper Lighting ( )	Elk Grove Village, IL	01/12/2000	NAFTA–3,665	Lighting Fixtures.
Otis Elevator ( )	Bloomington, IN	01/11/2000	NAFTA–3,666	Fixtures.
Winpak Portion Packaging ( )	Bristol, PA	01/13/2000	NAFTA–3,667	Single Service Dairy Containers.
Barrick Goldstrike (Wrks)	Elko, NV	01/13/2000	NAFTA–3,668	Gold.
Mineral Ridge Resources, Inc. (Comp).	Silver Peak, NV	01/11/2000	NAFTA–3,669	Gold Mine.
PacifiCorp (Wrks)	Portland, OR	01/14/2000	NAFTA–3,670	Power Electricity.
Southeast Stevedoring Corp (Wrks).	Ketchikan, AK	01/13/2000	NAFTA–3,671	Hire Longshoremen.
Miller International, Inc (Comp)	Rocky Ford, CO	01/18/2000	NAFTA–3,672	Ladies' Jeans and Vests.
Apparel Specialist (Co.)	Green Bay, WI	01/21/2000	NAFTA–3,673	embroidered and screen print on clothes.
Florence Eiseman (Wkrs)	Milwaukee, WI	01/21/2000	NAFTA–3,674	girls dresses, coats and baby clothes.
KTI Energy of Martinsville (Co.)	Martinsville, VA	01/18/2000	NAFTA–3,675	steam.
BICC General (Wkrs)	Williamstown, MA	01/13/2000	NAFTA–3,676	cord sets.
American Timber (Wkrs)	Olney, MT	01/14/2000	NAFTA–3,677	stud lumber and byproducts.
John Plant Company (The) (Co.)	Ramseur, NC	01/14/2000	NAFTA–3,678	lightweight industrial gloves.
Nordic Group (The) (Wkrs)	Hubbard, OR	01/18/2000	NAFTA–3,679	outerwear.
Sause Bros./Southern Oregon Maine (Wkrs).	Coos Bay, OR	01/14/2000	NAFTA–3,680	repair maintenance.
Smiley Container—Russell Stover Candies (PACE).	Poplar Bluff, MO	01/25/2000	NAFTA–3,681	boxes, bows and ribbons.
Colorado Greenhouse (Co.)	Westminster, CO	01/19/2000	NAFTA–3,682	tomatoes.
Nova Bus (Wkrs)	Roswell, NM	01/19/2000	NAFTA–3,683	large commercial buses.
Allied Signal—Honeywell (Wkrs)	Torrance, CA	01/18/2000	NAFTA–3,684	automotive turbo chargers.
ASC (Wkrs)	Rancho Domingez, CA	01/19/2000	NAFTA–3,685	convertible tops.
General Electric (IUE)	Tell City, IN	08/26/1999	NAFTA–3,686	industrial motors.
Hewlett Packard (Wkrs)	Vancouver, WA	01/24/2000	NAFTA–3,687	inkjet printers for computers
Motor Coils (IUE)	Emporium, PA	01/24/2000	NAFTA–3,688	rebuilt traction motor.

[FR Doc. 00–2499 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3635]

Whistler Corporation of Massachusetts, Whistler Auto-Mation Products, Novi Electronics Facility, Novi, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 14, 1999, in response to a worker petition which was filed by a company official on behalf of its workers at Whistler Corporation of Massachusetts, Whistler Auto-Mation Products, Novi Electrics Facility, located in Novi, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 24th day of January, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–2494 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hours Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the

foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

VOLUME I

None.

VOLUME II

None.

VOLUME III

None.

VOLUME IV

None.

VOLUME V

None.

VOLUME VI

None.

VOLUME VII

None.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 27th day of January 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–02053 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. CONSOL of Kentucky, Inc.

[Docket No. M–1999–143–C]

CONSOL of Kentucky, Inc., Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its Rhoades Branch H–4 Mine (I.D. No. 15–18212) located in Lechter County, Kentucky. The petitioner proposes to use a diesel-generated source of low and medium voltage, three-phase electrical power during transportation of certain mobile equipment underground. The petitioner has listed in this petition specific terms and conditions for using the generator system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

2. CONSOL of Kentucky, Inc.

[Docket No. M–1999–144–C]

CONSOL of Kentucky, Inc., Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.901(a) (protection of low- and medium-voltage three-phase circuits used underground) to its Rhoades Branch H–4 Mine (I.D. No. 15–18212) located in Lechter County, Kentucky. The petitioner proposes to use a diesel-generated source of low- and medium-voltage, three-phase electrical power during transportation of certain mobile equipment underground. The petitioner proposes to derive a low-and medium-voltage, three-phase, alternating current for use underground from a portable, diesel-driven generator. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

3. CONSOL of Kentucky, Inc.

[Docket No. M–1999–145–C]

CONSOL of Kentucky, Inc., Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1101–8 (water sprinkler systems; arrangement of sprinklers) to its Rhoades Branch H–4 Mine (I.D. No. 15–18212) located in Lechter County, Kentucky. The petitioner proposes to use a single line of automatic sprinklers for its fire protection system on main and secondary belt conveyors. The

petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

4. Old Ben Coal Company

[Docket No. M–1999–146–C]

Old Ben Coal Company, P.O. Box 397, 13101 Zeigler Road, Coulterville, Illinois 62237 has filed a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its Zeigler #11 Mine (I.D. No. 11–02408) located in Randolph County, Illinois. The petitioner requests a modification of the mandatory safety standard to permit the use of an alternative method for ground check monitoring. The petitioner proposes that the ground monitor would open a vacuum contactor instead of a circuit breaker in all combination stationary belt starters at the Zeigler #11 Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

5. Old Ben Coal Company

[Docket No. M–1999–147–C]

Old Ben Coal Company, P.O. Box 397, 13101 Zeigler Road, Coulterville, Illinois 62237 has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Zeigler #11 Mine (I.D. No. 11–02408) located in Randolph County, Illinois. The petitioner requests that Item #1 of its previous petition for modification, docket number M–96–147–C, be amended to read as follows: The petition for modification shall apply to the requirement for under-voltage protection and grounded phase protection for three-phase circuits supplying stationary belt drive installations presently in use or installed in the future. The petitioner asserts that this amendment would provide at least the same measure of protection as the previous petition.

6. Consolidation Coal Company

[Docket No. M–1999–148–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Shoemaker Mine (I.D. No. 46–01436) located in Marshall County, West Virginia. Due to deteroriating roof conditions in certain areas of the return air course, the petitioner proposes to establish two check points that will be maintained in safe condition at all times, and to have a certified person test for methane and the quantity of air at both check points on a weekly basis. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

7. Fork Creek Mining Company

[Docket No. M–1999–149–C]

Fork Creek Mining Company, Fork Creek Mine Road, P.O. Box 24, Alum Creek, West Virginia 25003 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Fork Creek No. 1 Mine (I.D. No. 48–08763) located in Kanawha County, West Virginia. The petitioner proposes to use air coursed through the belt haulage entry to ventilate active working places. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to carry intake air to a working place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

8. Perry County Mining Company

[Docket No. M–1999–150–C]

Perry County Mining Company, P.O. Box 5002, Hazard, Kentucky 41701 has filed a petition to modify the application of 30 CFR 75.364(b)(1) (weekly examination) to its Eas #1 Mine (I.D. No. 15–02085) located in Perry County, Kentucky. Due to deteriorating roof conditions in certain areas of the intake air course, the petitioner proposes to establish four check points as air measurement stations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

9. The DOE Run Company

[Docket No. M–1999–021–M]

The DOE Run Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 57.11052 (refuge areas) to its West Fork Mine (I.D. No. 23–01787) located in Reynolds County, Missouri. The petitioner requests a modification of the mandatory safety standard to permit an alternative method of compliance with the requirements for refuge chambers. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard and that application of the existing standard will result in a diminution of safety.

10. The DOE Run Company

[Docket No. M–1999–022–M]

The DOE Run Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 57.11052 (refuge areas) to its Fletcher Mine and Mill (I.D. No. 23–00409) located in Reynolds County, Missouri. The petitioner requests a modification of the mandatory safety standard to permit an alternative method of compliance with the requirements for refuge chambers. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard and that application of the existing standard will result in a diminution of safety.

11. The DOE Run Company

[Docket No. M–1999–023–M]

The DOE Run Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 57.11052 (refuge areas) to its Brushy Creek Mine/Mill (I.D. No. 23–00499) located in Reynolds County, Missouri. The petitioner requests a modification of the mandatory safety standard to permit an alternative method of compliance with the requirements for refuge chambers. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard and that application of the existing standard will result in a diminution of safety.

12. The DOE Run Company

[Docket No. M–1999–024–M]

The DOE Run Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 57.11052 (refuge areas) to its Buick Mine/Mill (I.D. No. 23–00457) located in Reynolds County, Missouri. The petitioner requests a modification of the mandatory safety standard to permit an alternative method of compliance with the requirements for refuge chambers. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard and that application of the existing standard will result in a diminution of safety.

13. The DOE Run Company

[Docket No. M–1999–025–M]

The DOE Run Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 57.11052 (refuge areas) to its Sweetwater Mine/Mill (I.D. No. 23–00458) located in Reynolds County, Missouri. The petitioner requests a modification of the mandatory safety standard to permit an alternative method of compliance with the requirements for refuge chambers. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard and that application of the existing standard will result in a diminution of safety.

14. The DOE Run Company

[Docket No. M–1999–026–M]

The DOE Run Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 57.11052 (refuge areas) to its No. 35 Mine (Casteel) (I.D. No. 23–01800) located in Iron County, Missouri. The petitioner requests a modification of the mandatory safety standard to permit an alternative method of compliance with the requirements for refuge chambers. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard and that application of the existing standard will result in a diminution of safety.

15. The DOE Run Company

[Docket No. M–1999–027–M]

The DOE Run Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 57.11052 (refuge areas) to its No. 28 Mine/Mill (I.D. No. 23–00494) located in Iron County, Missouri. The petitioner requests a modification of the mandatory safety standard to permit an alternative method of compliance with the requirements for refuge chambers. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard and that application of the existing standard will result in a diminution of safety.

16. The DOE Run Company

[Docket No. M–1999–028–M]

The DOE Run Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 57.11052 (refuge areas) to its No. 29 Mine (I.D. No. 23–00495) located in Iron County, Missouri. The petitioner requests a modification of the mandatory safety standard to permit an alternative method of compliance with the requirements for refuge chambers. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard and that application of the existing standard will result in a diminution of safety.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov,'' or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 6, 2000. Copies of these petitions are available for inspection at that address.

Dated: January 27, 2000.

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 00–2516 Filed 2–3–00; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Company and Midamerican Energy Company Quad Cities Nuclear Power Station, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Section 50.60(a) for Facility Operating Licenses Nos. DPR–29 and DPR–30, issued to Commonwealth Edison Company (ComEd, or the licensee) for operation of the Quad Cities Nuclear Power Station, Units 1 and 2 (Quad Cities), located in Cordova, Illinois.

Environmental Assessment

Identification of the Proposed Action

10 CFR Part 50, Appendix G, requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR Part 50, Appendix G, states, ''The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions.'' Appendix G of 10 CFR Part 50 specifies that the requirements for these limits are the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code), Section XI, Appendix G Limits.

To address provisions of amendments to the technical specifications (TS) P–T limits, the licensee requested in its submittal dated November 12, 1999, that the staff exempt Quad Cities from application of specific requirements of 10 CFR Part 50, Section 50.60(a) and Appendix G, and substitute use of ASME Code Cases N–588 and N–640. Code Case N–588 permits the postulation of a circumferentially-oriented flaw (in lieu of an axially-oriented flaw) for the evaluation of the circumferential welds in RPV P–T limit curves. Code Case N–640 permits the use of an alternate reference fracture toughness (K_{IC} fracture toughness curve instead of K_{Ia} fracture toughness curve) for reactor vessel materials in determining the P–T limits. Since the pressure stresses on a circumferentially-oriented flaw are lower than the pressure stresses on an axially-oriented flaw by a factor of 2, using Code Case N–588 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G and, therefore, an exemption to apply the Code Case would be required by 10 CFR 50.60. Likewise, since the K_{IC} fracture toughness curve shown in ASME Section XI, Appendix A, Figure A–2200–1 (the K_{IC} fracture toughness curve) provides greater allowable fracture toughness than the corresponding K_{Ia} fracture toughness curve of ASME Section XI, Appendix G, Figure G–2210–1 (the K_{Ia} fracture toughness curve), using Code Case N–640 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G and, therefore, an exemption to apply the Code Case would also be required by 10 CFR 50.60. It should be noted that, although Code Case N–640 was incorporated into the ASME Code recently, an exemption is still needed because the proposed P–T limits (excluding Code Cases N–588 and N–640) are based on the 1989 edition of the ASME Code.

The proposed action is in accordance with the licensee's application for exemption dated November 12, 1999.

The Need for the Proposed Action

ASME Code Case N–588 and Code Case N–640 are needed to revise the method used to determine the RCS P–T limits, since continued use of the present curves unnecessarily restricts the P–T operating window. Since the RCS P–T operating window is defined by the P–T operating and test limit curves developed in accordance with the ASME Section XI, Appendix G procedure, continued operation of Quad Cities with these P–T curves without the relief provided by ASME Code Case N–640 would unnecessarily require the RPV to maintain a temperature exceeding 212 degrees Fahrenheit in a limited operating window during the pressure test. Consequently, steam vapor hazards would continue to be one of the safety concerns for personnel conducting inspections in primary containment. Implementation of the proposed P–T curves, as allowed by ASME Code Case N–640, does not significantly reduce the margin of safety and would eliminate steam vapor hazards by allowing inspections in primary containment to be conducted at lower coolant temperature.

In the associated exemption, the staff has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served by the implementation of these Code Cases.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the exemption described above would provide an adequate margin of safety against brittle failure of the Quad Cities reactor vessels.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological environmental impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, there are no significant nonradiological impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Quad Cities Nuclear Power Station, Units 1 and 2, dated September 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on January 28, 2000, the staff consulted with the Illinois State official, Frank Niziolek of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 12, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 31st day of January 2000.

For the Nuclear Regulatory Commission.

Anthony J. Mendiola,

Chief, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–2522 Filed 2–3–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331]

IES Utilities Inc.; Duane Arnold Energy Center; Notice of Consideration of Approval of Transfer of Operating Authority Under Facility Operating License and Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of operating authority under Facility Operating License No. DPR–49 for the Duane Arnold Energy Center (DAEC), currently held by IES Utilities Inc. The transfer would be to a new operating company called Nuclear Management Company, LLC (NMC). The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

By application dated November 24, 1999, seeking approval of the transfer, the Commission was informed that IES Utilities Inc., has entered into a Nuclear Power Plant Operating Services Agreement with NMC. Under this Agreement, NMC would assume exclusive responsibility for the operation and maintenance of DAEC. Ownership of DAEC will not be affected by the proposed transfer of operating authority; IES Utilities Inc., the Central Iowa Power Cooperative, and the Corn Belt Power Cooperative will retain their respective current ownership interests, according to the application. Likewise, the three owners' entitlement to capacity and energy from DAEC will not be affected by the proposed transfer of operating authority. No physical changes to the facility or operational changes are being proposed in the application.

The proposed amendment would reflect the transfer of authority under the license to operate DAEC from IES Utilities Inc., to NMC.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By February 24, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Alvin H. Gutterman, counsel for IES Utilities Inc., at Morgan, Lewis & Bockius LLP, 1800 M Street, NW, Washington, DC 20036–5869 (tel: 202–467–7468; fax: 202–467–7176; e-mail: ahgutterman@mlb.com); and the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by March 6, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated November 24, 1999, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 31st day of January 2000.

For the Nuclear Regulatory Commission.

Claudia M. Craig,

Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–2520 Filed 2–3–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Docket No. 40–8084

Rio Algom Mining Corporation; Request to Revise a Site-Reclamation Milestone

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of a request from Rio Algom Mining Corporation to revise a site-reclamation milestone in License No. SUA–1119 for the Lisbon, Utah, facility and notice of opportunity for a hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated October 23, 1998 and subsequent telephone conversation, a request from Rio Algom Mining Corporation (Rio Algom) to amend License Condition (LC) 55 A.(3) of Source Material License SUA–1119 for the Lisbon, Utah, facility. The license amendment request proposes to modify LC 55 A.(3) to change the completion date for placement of the final radon barrier on the pile to December 31, 2000 for the area not covered by the evaporation pond. Due to continuing use of the evaporation pond, the final radon barrier at the pond location will be completed by 2014.

FOR FURTHER INFORMATION CONTACT: Jill Caverly, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555. Telephone (301) 415–6699.

SUPPLEMENTARY INFORMATION: The portion of LC 55 A.(3) with the proposed change would read as follows:

A. To ensure timely compliance with target completion dates established in the Memorandum of Understanding with the Environmental Protection Agency (56 FR 55432, October 25, 1991), the licensee shall complete reclamation to control radon emissions as expeditiously as practicable, considering technological feasibility, in accordance with the following schedule:

(3) Placement of final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m^2 sec above background—December 31, 2000 for areas not covered by the evaporation ponds and by December 31, 2014 for the area under the evaporation ponds.

Rio Algom's request to amend LC 55 A.(3) of Source Material License SUA–1119, which describes the proposed changes to the license condition and the reason for the request, is being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal**

Register. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Rio Algom Corporation, 6305 Waterford Blvd., Suite 325, Oklahoma City, Oklahoma 73118, Attention: William Paul Goranson; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Dated at Rockville, Maryland, this 28th day of January 2000.

For the U.S. Nuclear Regulatory Commission.

Thomas H. Essig,

Chief, Uranium Recovery and Low Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–2523 Filed 2–3–00; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301]

Wisconsin Electric Power Company Point Beach Nuclear Plant, Units 1 and 2; Notice of Consideration of Approval of Transfer of Operating Authority Under Facility Operating Licenses and Conforming Amendments, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of operating authority under Facility Operating Licenses Nos. DPR–24 and DPR–27 for the Point Beach Nuclear Plant, Units 1 and 2, currently held by Wisconsin Electric Power Company (WEPCo), as owner and licensed operator of Point Beach, Units 1 and 2. The transfer would be to a new operating company called Nuclear Management Company, LLC (NMC). The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer. If authorized to operate the facility, NMC, according to the application, will also act as the general licensee for the Independent Spent Fuel Storage Installation at Point Beach, Units 1 and 2, pursuant to 10 CFR 72.210.

By application dated November 24, 1999, seeking approval of the transfer, the Commission was informed that WEPCo has entered into a Nuclear Power Plant Operating Services Agreement with NMC. Under this Agreement, NMC is to assume exclusive responsibility for the operation and maintenance of Point Beach, Units 1 and 2. WEPCo's ownership of Point Beach, Units 1 and 2, will not be affected by the proposed transfer of operating authority, according to the application. Likewise, WEPCo's entitlement to capacity and energy from Point Beach, Units 1 and 2, will not be affected by the transfer of operating authority. No physical changes to the facility or operational changes are being proposed in the application.

The proposed amendments would reflect the transfer of authority under the licenses to operate Point Beach, Units 1 and 2, from WEPCo to NMC.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By February 24, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure

to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon John H. O'Neill, Jr., counsel for WEPCo, at Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037 (tel: 202–663–8148; fax: 202–663–8007; e-mail: john.o'neill@shawpittman.com); and the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by March 3, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated November 24, 1999, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland this 31st day of January 2000.

For the Nuclear Regulatory Commission.

Claudia M. Craig,

Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–2521 Filed 2–3–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Wisconsin Public Service Corporation, Wisconsin Power and Light Company, Madison Gas and Electric Company, Kewaunee Nuclear Power Plant; Notice of Consideration of Approval of Transfer of Operating Authority Under Facility Operating License and Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of operating authority under Facility Operating License No. DPR–43 for the Kewaunee Nuclear Power Plant, currently held by Wisconsin Public Service Corporation (WPSC), Wisconsin Power and Light Company (WP&L), and Madison Gas and Electric Company (MGE), as owners and licensed operators of Kewaunee. The transfer would be to a new operating company called Nuclear Management Company, LLC (NMC). The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

By application dated November 24, 1999, as supplemented December 7, 1999, seeking approval of the transfer, the Commission was informed that WPSC, on behalf of itself and WP&L and MGE, has entered into a Nuclear Power Plant Operating Services Agreement with NMC. Under this Agreement, NMC would assume exclusive responsibility for the operation and maintenance of Kewaunee. Ownership of Kewaunee by the current co-owners, WPSC, WP&L, and MGE, will not be affected by the proposed transfer of operating authority, according to the application. Likewise, the current owners' entitlement to capacity and energy from Kewaunee will not be affected by the transfer of operating authority. No physical changes to the facility or operational changes are being proposed in the application.

The proposed amendment would reflect the transfer of authority under the license to operate Kewaunee from the current licensees to NMC.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By February 24, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or

petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon David J. Molzahn, licensing representative for WPSC, at Wisconsin Public Service Corporation, 700 North Adams Street, P.O. Box 19001, Green Bay, WI 54307–9001 (tel: 920–433–1308; fax: 920–433–5544; e-mail: dmolzah@wspr.com); and the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by March 6, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated November 24, 1999, as supplemented December 7, 1999, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 31st day of January 2000.

For the Nuclear Regulatory Commission

Claudia M. Craig,

Chief, Section 1,Project Directorate III,Division of Licensing Project Management,Office of Nuclear Reactor Regulation.

[FR Doc. 00–2519 Filed 2–3–00; 8:45 am]

BILLING CODE 7590–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. on February 10, 2000.

PLACE: The Commission's National Office at One Lafayette Centre, 1120 20th St., N.W., 9th Floor, Washington, DC 20036–3419.

STATUS: Pursuant to 29 CFR § 2203.3(a) this meeting will be open to the public.

MATTERS TO BE CONSIDERED: The meeting previously scheduled for February 10, 2000 will be opened to allow the Commission to discuss the evaluation of the Commission's pilot program for the Settlement Part (29 CFR § 2200.120) and of E–Z Trial (29 CFR §§ 2200.200–211). The Commission also will consider whether to extend the pilot program for the Settlement Part in order to complete the evaluation.

CONTACT PERSON FOR MORE INFORMATION: Earl R. Ohman, Jr., General Counsel, (202) 606–5410.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 00–2596 Filed 2–1–00; 4:18 pm]

BILLING CODE 7600–01–M

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 February 7, 2000, at 3:30 p.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: January 28, 2000.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00–2466 Filed 2–3–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24268]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

January 28, 2000.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of January, 2000. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 2000, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. For Further Information, Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW, Washington, DC 20549–0506.

Sefton Funds Trust [File No. 811–8948]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 22, 1999, applicant transferred its assets to Kayne Anderson Mutual Funds based on net asset value. Expenses of $119,500

incurred in connection with the reorganization were paid by Kayne Anderson Investment Management, LLC, Investment adviser to the acquiring fund.

Filing Dates: The application was filed on January 3, 2000, and amended on January 20, 2000.

Applicants Address: 2550 Fifth Avenue, Suite 808, San Diego, California 92103.

State Street Research Portfolios, Inc. [File No. 811–6375]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 1, 1999, applicant transferred its assets to State Street Research International Equity Fund, a series of State Street Research Financial Trust, based on net asset value. Expenses of $67,250 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on January 7, 2000.

Applicant's Address: One Financial Center, Boston, Massachusetts 02111.

The Universal Funds [File No. 811–9627]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made public offering of its securities and does not propose to make any public offering or engage in business of any kind.

Filing Date: The application was filed on January 6, 2000.

Applicant's Address: Via Mizner Financial Plaza, 700 South Federal Highway—Suite 300, Boca Raton, Florida 33432.

AIM Eastern Europe Fund [File No. 811–5978]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 10, 1999, applicant transferred its assets to AIM Developing Markets Fund, a series of AIM Investment Funds, based on net asset value. Expenses of $125,730 incurred in connection with the reorganization were paid by AIM Advisors, Inc., applicant's investment adviser.

Filing Date: The application was filed on December 29, 1999.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, Texas 77046–1173.

Cadre Network Health Financial Services Trust [File No. 811–6567]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By May 1, 1999, all shareholders of applicant had redeemed their shares at net asset value. Expenses of $3,888 incurred in connection with the liquidation will be paid by applicant.

Filing Dates: The application was filed on November 24, 1999, and amended on December 22, 1999.

Applicant's Address: 905 Marconi Avenue, Ronkonkoma, New York 11779.

Latin America Smaller Companies Fund, Inc. [File No. 811–7197]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 24, 1999, applicant made a final liquidating distribution to its shareholders based on net asset value. Expenses of $111,388 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on November 23, 1999, and amended on January 7, 2000.

Applicant's Address: 101 Federal Street, 6th Floor, Boston, Massachusetts 02110.

Merrill Lynch Technology Fund, Inc. [File No. 811–6407]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 20, 1999, applicant transferred its assets to Merrill Lynch Global Technology Fund, Inc. based on net asset value. Expenses of $299,965 incurred in connection with the reorganization were paid by the surviving fund.

Filing Dates: The application was filed on December 22, 1999, and amended on January 19, 2000.

Applicant's Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

Trust for Return and Income [File No. 811–6617]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering on engage in business of any kind.

Filing Dates: The application was filed on December 6, 1999, and amended on January 10, 2000.

Applicant's Address: 125 Broad Street, New York, New York 10004–2708.

American Equity Life Variable Account [File No. 811–8643]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made any public offering of its securities, is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Date: The application was filed on December 17, 1999.

Applicant's Address: 5000 Westown Parkway, Suite 440, West Des Moines, Iowa 50266.

Farm Bureau Life Annuity Account III [File No. 811–8975]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made any public offering of its securities, is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Date: The application was filed on December 20, 1999.

Applicant's Address: 5400 University Avenue, West Des Moines, Iowa 50266.

General American Life Insurance Company Separate Account Two [File No. 811–9387]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made any public offering of its securities, is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Date: The application was filed on July 26, 1999.

Applicant's Address: 700 Market Street, St. Louis, Missouri 63101.

PFL Wright Variable Annuity Account [File No. 811–7688]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. There are no remaining policyholders.

Filing Date: The application was filed on September 2, 1999.

Applicant's Address: 4333 Edgewood Road, N.E., Cedar Rapids, IA 52499–0001.

Alexander Hamilton Variable Insurance Trust [File No. 811–8682]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 5, 1997 and December 12, 1997, applicant made liquidating distributions to its shareholders based on net asset value per share. Applicant incurred $16,995 in legal expenses regarding an order of substitution granted by the SEC that is connected to the liquidation.

Filing Date: The application was filed on September 13, 1999.

Applicant's Address: 100 North Greene Street, Greensboro, NC 27401.

Astra Strategic Investment Series [File No. 811–0038], Astra Global Investment Series [File No. 811–4468], Astra Institutional Securities Trust [File No. 811–6408] and Astra Institutional Trust [File No. 811–6518]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. By December 29, 1997, each applicant had made a final liquidating distribution to its shareholders based on net asset value. Shareholder Communications Corporation, a professional pre-escheat service provider, has been retained to search for shareholders whose whereabouts could not be ascertained. Astra Strategic Investment Series paid approximately $90,271 in expenses in connection with its liquidation. Each of the remaining applicants paid approximately $23,798 in expenses in connection with their liquidations.

Filing Dates: Each application was filed on January 3, 2000, and amended on January 21, 2000.

Applicant's Address: c/o PFPC, Inc., 103 Bellevue Parkway, Wilmington, Delaware 19809.

American Skandia Life Assurance Corporation Variable Account C [File No. 811–5676]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made any public offering of its securities and does not propose to make any public offering or engage in business of any kind.

Filing Dates: The application was filed on January 4, 2000 and amended on January 18, 2000.

Applicant's Address: One Corporate Drive, Shelton, CT 06484.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–02448 Filed 2–3–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24270, 812–11778]

HT Insight Funds, Inc., et al., Notice of Application

January 28, 2000.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of an application for an order under section 17(b) of the Investment Company Act of 1940 (''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain series of Harris Insight Funds Trust (''HIFT'') to acquire all of the assets and liabilities of all of the series of HT Insight Funds Inc. (''HTIF'') (the ''Reorganization''). Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: HIFT, HTIF, and Harris Trust and Savings Bank (''Harris Bank'').

FILING DATES: The application was filed on September 17, 1999, and amended and restated on January 18, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. HIFT and HTIF, Four Falls Corporate Center, 6th Floor, West Conshohocken, Pennsylvania, 19428–2961. Harris Bank, 111 West Monroe Street/6W, Chicago, Illinois, 60603.

FOR FURTHER INFORMATION CONTACT: Paula L. Kashtan, Senior Counsel, at (202) 942–0615, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. HTIF, a Maryland corporation, is registered under the Act as an open-end management investment company and is comprised of five series, Harris Insight Equity Fund, Harris Insight Short/Intermediate Bond Fund, Harris Insight Money Market Fund, Harris Insight Government Money Market Fund, and Harris Insight Tax-Exempt Money Market Fund (the ''Acquired Funds'').

2. HIFT, a Massachusetts business trust, is registered under the Act as an open-end management investment company and is currently comprised of thirteen series. As part of the Reorganization, HIFT is organizing the following five new shell series: Harris Insight Equity Fund, Harris Insight Short/Intermediate Bond Fund, Harris Insight Money Market Fund, Harris Insight Government Money Market Fund, and Harris Insight Tax-Exempt Money Market Fund (the ''Acquiring Funds,'' collectively with the Acquired Fund, the ''Funds''). [1] Applicants state that the investment objectives and policies of the Acquiring funds are substantially similar to those of the corresponding Acquired Funds.

3. Harris Bank serves as investment adviser to the Acquired Funds and is exempt from registration under the Investment Advisers Act of 1940. Harris Bank will act as the investment adviser to the Acquiring Funds. Harris Investment Management, Inc. (''HIM''), an affiliate of Harris Bank, is registered as an investment adviser under the Advisers Act, and serves as subadviser to four of the Acquired Funds and will serve as subadviser to the four corresponding Acquiring Funds. Harris Bank and HIM are each wholly-owned subsidiaries of Harris Bankcorp, Inc. Currently, Harris Bank, HIM and/or certain of their affiliates that are under common control (the ''Harris Group'') hold of record, in their names or in the names of their nominees, in excess of 25% of the outstanding voting securities of each of the Acquired Funds. All of these securities are held for the benefit of others in a trust, agency, custodial or other fiduciary or representative capacity.

4. On July 29, 1999, the board of directors of HTIF (the ''Board'' or ''HTIF'') and the board of trustees of HIFT, none of whom are ''interested persons'' as defined in section 2(a)(19) of the Act (''Disinterested Directors/Trustees''), approved the Reorganization pursuant to which the assets and liabilities of each of the Acquired Funds will be transferred to the corresponding Acquiring Fund in exchange for shares of designated classes of the corresponding Acquiring Fund

[1] A registration statement for the five shell Acquiring Funds is expected to be filed in February, 2000, and it is anticipated that it will be declared effective on or before May 1, 2000. The Acquiring funds are expected to commence operations upon the consummation of the Reorganization.

(''Reorganization Plan'').[2] Shareholders of each of the Acquired Funds will receive shares of the corresponding Acquiring Fund having an aggregate net asset value equal to the aggregate net asset value of the Acquired Fund's shares held by each shareholder, as determined on the closing date of the Reorganization, currently anticipated to occur on May 2, 2000. The value of the assets of the Funds will be determined in the manner set forth in the Funds' then current prospectuses and statements of additional information. As soon as practicable after the closing date, the Acquiring Fund shares received by each Acquired Fund will be distributed *pro rata* to the shareholders of the Acquired Fund and each Acquired Fund will liquidate and dissolve.

5. The Acquired Funds and the Acquiring Funds fall into two categories. First, there are two non-money market funds that offer or, after the Reorganization, will offer shares in three classes (a shares, N shares and Institutional shares) (''Non-Money Market Funds''). Second, there are three Money Market Funds that offer or, after the Reorganization, will offer shares in two classes (N shares and Institutional shares) (''Money Market Funds'').

6. Class A shares of the Funds are subject to a maximum front-end sales load of 5.50%, a maximum contingent deferred sales charge (''CDSC'') of 1.00%, and a maximum .35% rule 12b–1 fee. Class N shares of the Funds are subject to a maximum .25% service fee, and class N shares of the Money Market Funds have a maximum .10% rule 12b–1 fee. None of the class N shares is subject to a front-end sales charge of CDSC. Institutional shares are offered without service fees, front-end sales charges, CDSCs or 12b–1 fees. For purposes of calculating the CDSCs on class A shares, shareholders of class A shares of each of the Non-Money Market Acquired Funds will be deemed to have held the class A shares of the corresponding Acquiring Fund since the date the shareholders initially purchased the Class A shares of the Acquired Fund. Shareholders of the Acquired Funds will not incur any sales charges in connection with the Reorganization. Harris Bank assumed approximately one half of the proxy costs, and the shareholders of the Acquired Funds will pay the remainder of the Reorganization expenses, as determined by the Board of each Acquired Fund.

7. The Board of each Acquired Fund, consisting solely of Disinterested Directors, found that the Reorganization is in the best interests of the Acquired Fund, and that the interests of existing shareholders of the Acquired Fund will not be diluted as a result of the Reorganization. During its deliberations, the Board reviewed, among other things: (a) the terms and conditions of the Reorganization; (b) the investment advisory and other fees projected to be paid by the Acquiring Fund, and the projected expense ratio of the Acquiring Fund as compared to that of the Acquired Fund; (c) the investment objectives, strategies, investment risks, policies and limitations of the Acquiring Fund and their compatibility with those of the Acquired Fund; (d) the potential economies of scale to be gained from combining the assets of the Acquired Fund into the Acquiring Fund; and (e) the anticipated tax-free nature of the Reorganization.

8. The Reorganization is subject to a number of conditions precedent, including that: (a) the shareholders of each of the Acquired Funds will have approved the Reorganization Plan; (b) applicants will have received exemptive relief from the SEC; (c) a registration statement under the Securities Act of 1933 for the Acquiring Funds will have become effective; and (d) an opinion of counsel is received with respect to the tax-free nature of the Reorganization. The Reorganization Plan may be terminated by mutual written consent of the Boards of HTIF and HIFT at any time prior to the closing. Applicants agree not to make any material changes to the Reorganization Plan without prior SEC approval.

9. The definitive proxy statement was filed with the SEC on October 25, 1999. A special meeting of the shareholders of the Acquired Funds was held on November 29, 1999, at which the shareholders approved the Reorganization Plan.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person, and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Funds may be deemed affiliated persons and thus the Reorganization may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. Applicants believe that they may not rely on rule 17a–8 in connection with the Reorganization because the Funds may be deemed to be affiliated for reasons other than those set forth in the rule. By virtue of the direct or indirect ownership by the Harris Group of more than 25% of the outstanding voting securities of each of the Acquired Funds, each of the Acquired Funds may be deemed an affiliated person of an affiliated person of each of the corresponding Acquiring Fund. In addition, because of this ownership, the Funds may be deemed to be under common control, and thus affiliated persons under Section 2(a)(3)(C) of the Act.

3. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit applicants to consummate the Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants state that the Board of HTIF, including a majority of its Disinterested Directors, found that participation in the Reorganization is in the best interests of each of the Acquired Funds, and that the interests of the existing shareholders will not be diluted as a result of the Reorganization. Applicants also note that the exchange of the Acquired

[2] Prior to the implementation of the Reorganization Plan, the Acquired Funds intend to discharge substantially all of their liabilities. Each Acquiring Fund will assume all remaining liabilities of the corresponding Acquired Fund.

Funds' assets for shares in the Acquiring Funds will be based on the Funds' relative net asset values.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2449 Filed 2–3–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24269; 812–11630]

Salomon Smith Barney Inc., et al.; Notice of Application

January 28, 2000.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(3) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) certain series of unit investment trusts to invest up to 10.5%, certain other series to invest up to 15.5%, and certain other series to invest up to 20.5% of their respective total assets in securities of issuers that derived more than 15% of their gross revenues in their most recent fiscal year from securities related activities; and (b) certain series to sell portfolio securities to certain new series.

APPLICANTS: Salomon Smith Barney Inc. (the ''Sponsor''), The Uncommon Values Trust, Equity Focus Trusts, Angels with Dirty Faces Trust, The CountryFund Opportunity Trust, Robinson-Humphrey Annual Themes Series and certain other future unit investment trusts sponsored by the Sponsor (collectively, the ''Trusts'' and the various series of the Trusts, each a ''Series'').

FILING DATES: The application was filed on May 26, 1999. Applicants have agreed to file an amendment to the application during this notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 2000; and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549–0609. Applicants, 7 World Trade Center, 36th Floor, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Michael W. Mundt, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each Trust is a unit investment trust registered under the Act with multiple series. Each Trust is created by a trust indenture between the Trust, the Sponsor, and the Chase Manhattan Bank, which is a bank within the meaning of section 2(a)(5) of the Act that satisfies the criteria in section 26(a) of the Act and is unaffiliated with the Sponsor (the ''Trustee''). Applicants also request belief for any future Trust sponsored by the Sponsor.[1]

2. Certain Series of the Trusts will hold a portfolio of common stocks of growth companies (each such Series, a ''Growth Series''). The investment objective of each Growth Series is to seek capital appreciation. Other Series (each an ''Index Series'') will hold a portfolio of common stocks which represent a portion of a specific index. The investment objective of each Index Series is to seek a greater total return than that achieved by the stocks comprising the entire related index over the life of the Index Series.

3. Certain of the Index Series (each, a ''Ten Series'') will invest approximately 10%, but no more than 10.5% of their total assets in each of the ten common stocks in the Dow Jones Industrial Average (''DJIA''), the Financial Times Industrial Ordinary Share Index (''FT Index''), the Nikkei 225 Index (the ''Nikkei Index''), or the Hang Seng Index (each an ''Index,'' and together the ''Indexes''), as the case may be, having the highest dividend yields no more than three business days prior to the Ten Series' initial date of deposit. Certain other Index Series (each, a ''Five Series'') will invest approximately 20%, but in no event more than 20.5%, of their total assets in each of the five lowest dollar price per share stocks of the ten common stocks in one of the Indexes, as the case may be, having the highest dividend yields no more than three business days prior to the Five Series' initial date of deposit. The other Index Series (each a ''Ten/A+ Series'') will invest approximately 50% of their total assets in the ten common stocks contained in the DJIA having the highest dividend yields and 50% in the common stocks contained in the DJIA having a quality ranking of A+ by Standard & Poor's (''S&P'') no more than three business days prior to the Ten/A+ Series initial date of deposit.[2]

4. Applicants state that each of the Indexes is a recognized indicator of the stock market in its respective country, and that S&P has been ranking common stock for quality since 1956.[3] The publishers of the Indexes and S&P are not affiliated with any Index Series or the Sponsor, and do not participate in any way in the creation of any Index Series or the selection of its stocks. The common stocks included in the Indexes may include stocks of issuers that derive more than 15% of their gross revenues from securities related activities, as that term is defined in rule 12d3–1 under the Act, as discussed below (''Securities Related Issuers'').

5. The securities deposited in each Index Series will be chosen solely according to the formulas described below, and will not necessarily reflect the research opinions or buy or sell recommendations of the Sponsor. The Sponsor is authorized to determine the date of deposit, to purchase securities for deposit in the Index Series, and to

[1] All existing Trusts that intend to rely on the order are named as applicants. Any existing of future Trust that relies on the order in the future will comply with the terms and conditions of the application.

[2] Applicants state that the number of common stocks listed on the DJIA that have received S&P ratings of A+ has ranged from six to eleven stocks over the past 25 years.

[3] The DJIA, which is owned by Dow Jones & Company, Inc., comprises 30 widely-held common stocks listed on the New York Stock Exchange, which are chosen by the editors of The Wall Street Journal. The FT Index comprises 30 widely-held common stocks listed on the London Stock Exchange, which are chosen by the editors of The Financial Times. The Nikkei Index comprises 225 common stocks listed on the Tokyo Stock Exchange. The Hang Seng index comprises 33 common stocks listed on the Stock Exchange of Kong, Ltd. ''A+'' is the highest S&P ranking for earning and dividends of common stock and is based on per-share earnings and dividend records of the most recent ten years.

supervise each Index Series' portfolio. The Sponsor will have no discretion as to which securities are purchased.

6. The Index Series' portfolios will not be actively managed. Sales of portfolio securities will be made in connection with redemptions of units, payment of expenses, and the termination of an Index Series. The Sponsor has no discretion as to when securities will be sold except that it is authorized to sell securities in extremely limited circumstances, such as when an issuer defaults on the payment of any outstanding obligations, or when the price of a security has declined to such an extent or other credit factors exist so that in the opinion of the Sponsor, it would be detrimental to the Index Series to retain the securities. The adverse financial condition of an issuer will not necessarily require the sale of its securities from an Index Series' portfolio.

7. Certain Series have either (i) a contemplated date (''Rollover Date'')on which unitholders in a terminating Series (''Terminating Series'') may at their option redeem their units and receive units of a subsequent Series of the same type (''New Series''), which will be created on or about the Rollover Date or (ii) a contemplated date or dates (an ''Exchange Date'') on which unitholders in an existing series (the ''Exchange Series'') may at their option redeem their units and receive units of a New Series which is created on or about the Exchange Date (the Terminating Series and Exchange Series collectively, the ''Rollover Series'').

8. Certain Rollover Series may have a portfolio containing equity securities many, if not all, of which are either (i) listed by the Sponsor on a ''top picks'' list disseminated to customers and the general public as securities recommended for purchase (''Top Picks Securities'') and that have (a) a minimum market capitalization of U.S. $1 billion and (b) had an average daily trading volume in the preceding 60 trading days of at least 50,000 shares equal in value to at least U.S. $250,000 on a Qualified Exchange (defined below), or (ii) are not Top Picks Securities and are actively traded (*i.e.,* have had an average daily trading volume in the preceding six months of at least 500 shares equal in value to at least U.S. $25,000) on an exchange (a ''Qualified Exchange'') which is either (a) a national securities exchange which meets the qualifications of Section 6 of the Securities Exchange Act of 1934, (b) a foreign securities exchange (a ''Qualified Exchange'') which meets the qualifications set out in the proposed amendment to Rule 12d3–1(d)(6) under the Act as proposed by the SEC[4] and which releases daily closing prices or (c) the Nasdaq-National Market System (''Nasdaq-NMS'') (securities meeting the preceding tests in (i) and (ii) above are referred to as ''Qualified Securities'').

9. Applicants state that there is normally some overlap form one year to the next in the stocks having the highest dividend yields in each of the Indexes, as well as the DJIA stocks rated A+ by S&P. The Sponsor anticipates that there will be some overlap from one year to the next in the stocks selected for the portfolios of a Growth Series that is a Rollover Series and a Growth Series that is a New Series. Absent the requested relief, each Rollover Series would sell all of its securities and each New Series investing in any of theses securities would acquire them on the applicable Qualified Exchange. This procedure would result in the unitholders of both the Rollover Series and the New Series incurring brokerage commissions on the same securities.

Applicants' Legal Analysis

A. Purchases of Stocks of Securities Related Issuers in Excess of Rule 12d3–1 Limits

1. Section 12(d)(3) of the Act, with limited exceptions, prohibits an investment company form acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the Act exempts the purchase of securities of a Securities Related Issuer, provided that, among other things, immediately after the acquisition, the acquiring company has invested not more than five percent of the value of its total assets in securities of the Securities Related Issuer.[5]

2. As noted above, applicants state that some of the stocks comprising the Indexes include securities of Securities Related Issuers. Applicants assert that, in order to comply with rule 12d3–1, absent the requested relief, each Index Series may be precluded from most effectively implementing its investment objective.

3. Under section 6(c), SEC may exempt classes of transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request an exemption under section 6(c) from section 12(d)(3) to permit a Ten Series to invest up to approximately 10%, but in no event more than 10.5%, of the value of its total assets in securities of a Securities Related Issuer, to permit a Ten/A+ series to invest up to 15%, but in no event more than 15.5% of the value of its total assets in securities of a Securities Related Issuer, and to permit a Five Series to invest up to approximately 20%, but in no event more than 20.5%, of the value of its total assets in securities of a Securities Related Issuer.

5. Applicants state that the proposed transactions satisfy the requirements of section 6(c). Applicants state that section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, to prevent potential conflict so interest, and to eliminate certain reciprocal practices between investment companies and securities related businesses. One potential conflict could occur if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicants state that this concern does not arise in connection with the Index Series because the selection of securities is based on certain set formulas, and neither the Index Series nor the Sponsor has discretion in choosing the securities of a Securities Related Issuer or the amount purchased.

6. Applicants also state that the effect of an Index Series' purchase on the stock of a Securities Related Issuer would be de minimis. Applicants assert that the Securities Related Issuers represented in the Indexes are widely held and have active markets, and that potential purchases by any Index Series would represent an insignificant amount of the outstanding common stock and trading volume of any of these Securities Related Issuers.

7. Another potential conflict of interest could occur if an investment

[4] Investment Company Act Release No. 17096 (Aug. 3, 1989) (proposing amendments to rule 12d3–1). The proposed amended rule defined a ''Qualified Foreign Exchange'' to mean a stock exchange in a country other than the United States where (a) trading generally occurred at least four days a week; (b) there were limited restrictions on the ability of acquiring companies to trade their holdings on the exchange; (c) the exchange had a trading volume in stocks for the previous year of at least U.S. $7.5 billion; and (d) the exchange had a turnover ratio for the preceding year of least 20% of its market capitalization. The version of the amended rule that was adopted did not include the part of the proposed amendment defining the term ''Qualified Foreign Exchange.''

[5] Under rule 12d3–1, a Securities Related Issuer is a person that derives more than 15% of its gross revenues from activities as a broker, dealer, underwriter, investment adviser registered under the Investment Advisers Act of 1940, or investment adviser to a registered investment company.

company directed brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though that broker-dealer may not offer the best price and execution. To preclude this type of conflict, applicants agree, as a condition to the order, that no company held in a portfolio of an Index Series, nor any affiliated person of the company, will act as a broker for any Index Series in the purchase or sale of any security for such Series' portfolio.

B. Purchases and Sales Between Series

1. Section 17(a) of the Act prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an 'affiliated person'' of another person to include, in pertinent part, any person directly or indirectly controlling, controlled by, or under common control with, the other person. Each Series will have a common sponsor. Since the Sponsor of a series may be deemed to control the Series, all of the series may be deemed to be under common control and affiliated persons of each other.

2. Rule 17a–7 under the Act permits registered investment advisers, directors, and/or officers, to purchase securities from, or sell securities to, one another at an independently determined price, provided certain conditions are met. Applicants represent that they will comply with all of the provisions of rule 17a–7, other than paragraph (e).

3. Paragraph (e) of the rule requires an investment company's board of directors to adopt and monitor certain procedures to assure compliance with the rule. Since a unit investment trust does not have a board of directors, the Series would be unable to comply with this requirement.

4. Section 17(b) of the Act provides that the SEC will exempt a proposed transaction from section 17(a) if evidence establishes that: (a) that terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. As noted above, section 6(c) of the Act provides that the SEC may exempt classes of transactions if the exemption is necessary or appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request relief under sections 6(c) and 17(b) to permit any Rollover Series to sell Qualified Securities to a New Series, and to permit the New Series to purchase the Qualified Securities.

5. Applicants state that the proposed transactions satisfy the standards of sections 6(c) and 17(b). Applicants represent that purchases and sales between Series will be consistent with the policy of each Series. Applicants state that the Qualified Securities to be sold to a New Series will be Qualified Securities that are available fro a Rollover Series by reason of units tendered for redemption that day or termination of the Rollover Series. Applicants note that the Trustee will continue its general practice of redeeming units of an Exchange Series by selling securities in a manner that maintains the same portfolio composition, and in the same proportions, as prior to the sale. Applicants further state that permitting the proposes transactions would result in savings on brokerage fees for the Series.

6. Applicants state that the condition that the Qualified Securities must be actively traded on a Qualified Exchange protects against overreaching. In addition, applicants state that the Sponsor will make an initial determination that the Rollover Series and the New Series are on the opposite side of a transaction in Qualified Securities. The Sponsor then will certify to the Trustee, no later than the close of business on the business day following each sale from a Rollover series to a New Series: (a) that the transaction is consistent with the investment objective and policies of both the Rollover Series and the New Series, as recited in their respective registration statements and reports filed under the Act, (b) the reason that the Rollover Series is selling the Qualified Securities, (c) the date of the transaction, (d) how the securities being sold meet the definition of Qualified Securities set forth in the requested order, and (e) the closing sale price of the Qualified Securities on the Qualified Exchange for the date the Qualified Securities are sold to the New Series (''Sale Date''). The Trustee will then countersign the certificate, unless, in the event that the Trustee disagrees with the closing sales price listed on the certificate, the Trustee immediately informs the Sponsor orally of any such disagreement and returns the certificate within five days to the Sponsor with corrections duly noted. Upon the Sponsor's receipt of a corrected certificate, if the Sponsor can verify the corrected price by reference to an independently published list of closing sales prices for the date of the transaction, the Sponsor will ensure that the price of the units of the New Series, and distributions to holders of the Rollover Series with regard to redemption of their units or termination of the Rollover Series, accurately reflect the corrected price. To the extent that the Sponsor disagrees with the Trustee's corrected price by reference to a mutually agreeable, independently published list of closing sales prices for the date of the transaction.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

A. Purchases of Stocks of Securities Related Issuers in Excess of Rule 12d3–1 Limits

No company held in a Ten Series portfolio, a Five Series portfolio, or a Ten/A+Series portfolio, nor any affiliated person of the company, will act as broker for any Ten Series, any Five Series or any Ten/A+Series in the purchase or sale of any security for such Series' portfolio.

B. Purchases and Sales Between Series

1. Each sale of Qualified Securities by a Rollover to a New Series will be effected at the closing price of the Qualified Securities sold on a Qualified Exchange on the Sale Date, without any brokerage charges or other remuneration except customary transfer fees, if any.

2. The nature and conditions of such transactions will be fully disclosed to investors in the prospectus of each Rollover Series and New Series.

3. The Trustee of each Rollover Series and New Series will review the procedures relating to the sale of securities from a Rollover Series and the purchase of those securities for deposit in a New Series, and make such changes to the procedures as the Trustee deems necessary to ensure compliance with paragraphs (s) through (d) of rule 17a–7.

4. A written copy of these procedures and a written record of each transaction effected pursuant to the order will be maintained as provided in rule 17a–7(f).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2450 Filed 2–3–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of February 7, 2000.

A closed meeting will be held on Wednesday, February 9, 2000 at 11:00 a.m.

Commissioner Unger, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

Commissioner Unger, as duty officer, voted to consider the item listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, February 9, 2000 is: **amicus participation.**

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The office of the Secretary at (202) 942–7070.

Dated: February 2, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–2721 Filed 2–2–00; 4:02 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42366; File No. SR–DTC–00–01]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Interpretation of an Existing Rule Pertaining to the Direct Registration System

January 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 20, 2000, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interest parties.

I. Self-Regulatory Organization's Statement of the Terms of substance of the Proposed Rule Change

The proposed rule change provides an interpretation of DTC's rule relating to the Profile Modification System feature of the Direct Registration System facility.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide an interpretation with respect to the meaning of DTC's current rule relating to the administration of the Direct Registration System (''DRS'') facility and the Profile Modification System (''Profile''), a specific feature of the DRS facility.[3] Under DTC's rule, only those DRS limited participants[4] who ''implement Profile'' are allowed to make additional securities eligible for inclusion in DRS.[5] With this filing, DTC is interpreting the phrase ''implements Profile'' to be satisfied when a DRS limited participant enters into a written agreement with DTC stating that the DRS limited participant will continue to use DRS, including Profile, when Profile becomes operational. DTC will make Profile operational using either an electronic medallion program[6] or a screen-based indemnity.[7]

In the case of a screen-based indemnity, before an instruction relating to a customer's DRS position is permitted to be sent via DRS to the DRS limited participant, a DTC participant would have to agree to a screen-based indemnity in substantially the following form:

(1) Participant represents that it has customer authority for the request appearing on the following screen and that all information shown is accurate and complete, except that, with respect to the taxpayer identification number included in such information, to the best knowledge of participant, such information is accurate and complete; and

(2) Participant indemnifies the issuer and its transfer agent against any breach of such representations in connection with the transaction that is the subject of such request.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[8]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] For a description of the DRS facility administered by DTC, see Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996) [File No. SR–DTC–96–15] (order relating to the establishment of DRS); Securities Exchange Act Release No. 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999) [file No. SR–DTC–99–16] (order relating to implementation of the Profile Modification System).

[4] A DRS Limited Participant is a transfer agent who is permitted under DTC rules to facilitate DRS transactions. Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996) [File No. SR–DTC–96–15].

[5] *Id.*

[6] Representatives of the New York Stock Exchange, which operates the Medallion Stamp Program (a signature guarantee program), the Securities Transfer Association, the Securities Industry Association, and issuers have been negotiating in order to implement an electronic medallion program. Such an electronic medallion program would operate under a mutually agreed-upon indemnification agreement that would address the risks undertaken by the respective parties participating in transferring customer positions in DRS.

[7] DTC will be to submitting to the Commission in the near future a proposed rule change to implement Profile.

[8] 15 U.S.C. 78q–1.

and the rules and regulations thereunder applicable to DTC because it clarifies DTC's interpretation of its rule, thereby eliminating confusion in the industry relating to the implementation of the Profile feature and providing for more expeditious implementation of Profile. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change has been developed through discussions with several DTC participants and DRS limited participants. Written comments relating to the proposed rule change have not yet been solicited or received on the proposed rule change. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) [9] of the Act and Rule 19b–4(f)(1) [10] promulgated thereunder because the proposal interprets the meaning of an existing rule. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views,and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–00–01 and should be submitted by February 25, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2487 Filed 2–23–00; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42363; File No. SR–NASD–00–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to a Notice to Members on Extended Hours Trading

January 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), [1] and Rule 19b–4 thereunder, [2] notice is hereby given that on January 11, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation has designated this proposal as one constituting a stated policy and interpretation with respect to the meaning of an existing rule under Section 19(b)(3)(A)(i) of the Act [3] and Rule 19b–4(f)(1) [4] thereunder, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is issuing a Notice of Members reminding members of their obligation under just and equitable principles of trade and the advertising rules to disclose to customers the material risks of extended hours trading. The text of the Notice to Members is provided below.

* * * * *

NASD Notice to Members

Disclosure To Customers Engaging In Extended Hours Trading
Suggested Routing
Legal & Compliance; Senior Management
Executive Summary

NASD Regulation, Inc. (NASD Regulation) reminds members of their obligation under just and equitable principles of trade and the advertising rule to disclose to customers the material risks of extended hours trading.

A model disclosure statement is included with this *Notice* in Attachment A.

Questions concerning this *Notice* may be directed to Gary L. Goldsholle, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728–8104.

Background and Discussion

A number of member firms recently have started offering their retail customers various opportunities to trade stocks after regular market hours in what is known as ''extended hours trading.'' An even greater number of member firms have announced plans to offer extended hours trading in coming months.

The growth of extended hours trading provides retail customers with greater opportunities to trade securities and manage their portfolios, and in so doing, provides access to markets that were previously limited to institutional customers. Participation in extended hours trading may offer certain benefits to retail customers, but entails several material risks. Depending on the particular extended hours trading environment, these risks may include:

- lower liquidity
- high volatility
- changing prices
- unlinked markets
- an exaggerated effect from news announcements; and
- wider spreads.

In light of these risks, members have an obligation to their retail customers to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

disclose the material risks of extended hours trading to customers before permitting them to engage in extended hours trading. NASD Regulation commends the many members that have already provided detailed disclosures about the risks of extended hours trading. This *Notice* is a reminder that these disclosures are not only a laudable business practice, but are a regulatory requirement under just and equitable principles of trade.

To assist members with their disclosure obligation, NASD Regulation has developed a series of model disclosures dealing with the risks of extended hours trading. Members are free to develop their own disclosures or modify these model disclosures to meet their particular disclosure needs. In some cases, members may need to develop additional disclosures to address such issues as options trading, options exercises, the effect of stock splits, dividend payments, as well as any additional risks that may arise in the future.

In addition, members are reminded that Rule 2210 requires that all communications with the public shall be based on principles of fair dealing and good faith, and that exaggerated, unwarranted, or misleading statements are prohibited. Members should use caution in communications with the public about their extended hours trading systems to ensure that these requirements are satisfied. Members describing the benefits of extended hours trading must also describe the material risks.

Finally, members are also reminded that in *Notice of Members* 99–11, NASD Regulation described the types of general disclosure that firms may use to inform their customers about the risks associated with stock volatility. In preparing disclosures regarding extended hours trading, members may wish to review the types of disclosure suggested in that *Notice*.

Attachment A

Model Extended Hours Trading Risk Disclosure

• *Risk of Lower Liquidity*. Liquidity refers to the ability of market participants to buy and sell securities. Generally, the more orders that are available in a market, the greater the liquidity. Liquidity is important because with greater liquidity it is easier for investors to buy or sell securities, and as a result, investors are more likely to pay or receive a competitive price for securities purchased or sold. There may be lower liquidity in extended hours trading as compared to regular market hours. As a result, your order may only be partially executed, or not at all.

• *Risk of Higher Volatility*. Volatility refers to the changes in price that securities undergo when trading. Generally, the higher the volatility of a security, the greater its price swings. There may be greater volatility in extended hours trading than in regular market hours. As a result, your order may only be partially executed, or not at all, or you may receive an inferior price in extended hours trading than you would during regular market hours.

• *Risk of Changing Prices*. The prices of securities traded in extended hours trading may not reflect the prices either at the end of regular market hours, or upon the opening the next morning. As a result, you may receive an inferior price in extended hours trading than you would during regular market hours.

• *Risk of Unlinked Markets*. Depending on the extended hours trading system or the time of day, the prices displayed on a particular extended hours trading system may not reflect the prices in other concurrently operating extended hours trading systems dealing in the same securities. Accordingly, you may receive an inferior price in one extended hours trading system than you would in another extended hours trading system.

• *Risk of News Announcements*. Normally, issuers make news announcements that may affect the price of their securities after regular market hours. Similarly, important financial information is frequently announced outside of regular market hours. In extended hours trading, these announcements may occur during trading, and if combined with lower liquidity and higher volatility, may cause an exaggerated and unsustainable effect on the price of a security.

• *Risk of Wider Spreads*. The spread refers to the difference in price between what you can buy a security for and what you can sell it for. Lower liquidity and higher volatility in extended hours trading may result in wider than normal spreads for a particular security.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections, A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

A number of member firms have recently started offering their retail customers opportunities to trade stocks after traditional market hours in what is known as ''extended hours trading.'' An even greater number of member firms have announced plans to offer extended hours trading in the next several months.

The growth of extended hours trading provides retail customers with greater opportunities to trade securities and manage their portfolios, and in so doing, provides access to markets that were previously limited to institutional customers. Participation in extended hours trading may offer certain benefits to retail customers, but entails several material risks. Depending on the particular extended hours trading environment, these risks may include: (1) lower liquidity; (2) higher volatility; (3) changing prices; (4) unlinked markets; (5) an exaggerated effect from news announcements; and (6) wider spreads. In light of these risks, NASD Regulation believes that members have an obligation to their retail customers to disclose the material risks of extended hours trading before permitting them to engage in extended hours trading.

The Notice to Members states that just and equitable principles of trade (NASD Rule 2110) require members to disclose to customers the material risks of extended hours trading. The Notice to Members also states that the advertising rule (NASD Rule 2210) requires that all communications with the public shall be based upon principles of fair dealing and good faith, and that members describing the benefits of extended hours trading must also describe the material risks.

The Notice to Members does not require any standardized disclosure. However, to assist members with their disclosure obligations, NASD Regulation staff has developed model extended hours trading risk disclosures that address each of the six factors identified above. The model disclosures are provided as guidance only. Members will be free to modify the model disclosures or draft their own disclosures, so long as all of the material risk factors are addressed.

2. Statutory Basis

NASD Regulation believes that the Notice to Members is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that member firms that permit customers to engage in extended hours trading have an obligation under just and equitable principles of trade to disclose to such customers the material risks of extended hours trading. Similarly, members that advertise the opportunities and benefits of extended hours trading must also disclose the materials risks. NASD Regulation believes that this Notice to Members is an important element to protect investors and the public interest with respect to extended hours trading.[6]

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[7] and Rule 19b–4(f)(1)[8] in that it constitutes a stated policy and interpretation with respect to the meaning of an existing rule.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[5] 15 U.S.C. 78o–3(b)(6).

[6] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.196–4(f)(1).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the purposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–01 and should be submitted by February 25, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2486 Filed 2–3–00; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Office of Visa Services

[Public Notice 3211]

30-Day Notice of Information Collection; Petition to Classify Special Immigrant Under INA 203(b)(4) as an Employee Or Former Employee of the U.S. Government Abroad, Form DS–1884

SUMMARY: The Department of State has submitted the following information to the Office of Management and Budget(OMB) in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement of Form.

Originating Office: CA/VO/F/P.

Title of Information Collection: Petition to ClassifySpecial Immigrants Under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad.

Frequency: 500.

Form Number: DS–1884.

Respondents: Foreign Applicants.

Estimated Number of Respondents: 500.

Average Hours Per Response: .5 hours.

Total Estimated Burden: 250 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection 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, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Daria Darnell, U.S. Department of State, 2401E ST NW, RM L–703, Washington, DC 20520, Tel: 202–663–1253.Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB),Washington, DC 20530, (202) 395–5871.

Dated: January 12, 2000.

Nancy H. Sambaiew,

Deputy Assistant Secretary of State for Visa Services.

[FR Doc. 00–2549 Filed 2–3–00; 8:45 am]

BILLING CODE 4710–06–U

DEPARTMENT OF STATE

[Public Notice No. 3189]

Secretary of State's Advisory Committee on Private International

Law: Study Group Related to the Protection of Children Conventions and Agreements; Meeting notice

There will be a public meeting of a Study Group of the Secretary of State's Advisory Committee on Private International Law on Saturday, February 26, 2000, to discuss international protection of children issues. The meeting will be held from 9:30 to 4:30

p.m. in room 208 Vanderbilt Hall, New York University School of Law, 40 Washington Square South, New York, New York 10012. The meeting is scheduled to follow the Sixth Annual Herbert and Rose L. Rubin Symposium on International Law taking place at the School of Law on Friday, February 25, 2000, presented by the Journal of International Law and Politics: ''Celebrating Twenty Years: The Past and Promise of the 1980 Hague Convention on the Civil Aspects of International Child Abduction.''

The purpose of the Study Group meeting is to assist the State Department develop United States policy in regard to existing and possible future international arrangements governing the protection of children. Discussions will center on the 1980 Hague Convention on the Civil Aspects of International Child Abduction; the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children; United States bilateral arrangements for the enforcement of family support obligations, state arrangements for the enforcement of family support obligations, the 1956 United Nations Convention on the Recovery of Maintenance Abroad, and the proposed development of a new Hague convention on the enforcement of maintenance obligations.

Presentations by experts, both domestic and foreign, at the New York University symposium on Friday will provide a comprehensive background on the 1980 Abduction and 1996 Protection Conventions. In particular, the Study Group will consider the advisability of seeking signature and ratification of the 1996 Convention. The issues covered by these conventions are also related to the extent and effectiveness of international maintenance enforcement and the feasibility of the United States concluding bilateral arrangements. The experience of the United States at the federal and state level with bilateral arrangements will affect the policy positions to be taken by the United States in its continuing consideration of such arrangements and in participating in the development of a new multilateral maintenance convention by the Hague Conference on Private International Law.

Persons interested in the Study Group or in attending the February 26 meeting in New York may request copies of the conventions to be discussed, the United States legislation authorizing bilateral arrangements and the report of the 1999 Hague Conference meeting on maintenance conventions. These documents may be requested from Ms. Rosie Gonzales by fax at (202) 776–8482, by telephone at (202) 776–8420 (you may leave your request, name, telephone number and mailing address on the answering machine) or by email to [pildb@his.com].

The Study Group meeting is open to the public up to the capacity of the meeting room. Persons who wish to attend the meeting should notify Ms. Gonzales no later than February 23, and also provide their company or organization affiliation, mailing and email addresses and fax and telephone numbers. Any person who is unable to attend, but wishes to have his or her views considered, may send comments to Ms. Gonzales at the above fax number or email address or may address them to the office of the Assistant Legal Adviser for Private International Law (L/PIL), Suite 203, South Building, 2430 E Street, NW, Washington, DC 20037–2856.

Persons who are also interested in and want information about the symposium on Friday, February 25 should contact Ms. Karin Wolfe, Senior Symposium Editor, Journal of International Law and Politics, New York University School of Law, 110 West Third Street, New York, NY 10012–1074; phone: (212) 998–6520, fax: (212) 995–4032.

Jeffrey D. Kovar,

Assistant Legal Adviser for Private International Law.

[FR Doc. 00–2548 Filed 2–3–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Port Columbus International Airport, Columbus, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Columbus Municipal Airport Authority for Port Columbus International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is January 3, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Jagiello, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–670.1, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (734) 487–7296.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Port Columbus International Airport are in compliance with applicable requirements of Part 150, effective January 3, 2000.

Under Section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as the ''Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and related description submitted by the Columbus Municipal Airport Authority for Port Columbus International Airport. The specific maps under consideration are the noise exposure maps:

Figure 3.4, ''1998 Existing Condition Noise Exposure Map'', and Figure 4.4, ''2003 Future Condition Noise Exposure Map'' of the submission. The FAA has determined that these maps for Port Columbus International Airport are in compliance with applicable requirements. This determination is effective on January 3, 2000. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part

150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through the FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Great lakes Region, Airports Division Office, 2300 East Devon Avenue, Room 269, Des Plaines, Illinois 60018

Federal Aviation Administration, Detroit Airports District Office, Willow Run airport, East, 8820 Beck Road, Belleville, Michigan 48111

Columbus Municipal Airport Authority, Port Columbus International Airport, 4600 International Gateway, Columbus, Ohio 43219

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, on January 3, 2000.

James M. Opatrny,

Acting Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 00–2565 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at McAllen International, McAllen, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Miller International under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATE: Comments must be received on or before March 6, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Derald Lary of Miller International at the following address: Mr. Derald Lary, Director of Aviation, Miller International Airport, 2500 S. Bicentenial Blvd., Suite 100, McAllen, TX 78503–3140.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Miller International under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 13, 2000 the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 15, 2000.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2002.

Proposed charge expiration date: September 1, 2004.

Total estimated PFC revenue: $2,424,500.

PFC application number: 00–02–C–00–MFE.

Brief description of proposed project(s):

Projects To Impose and Use PFC'S

Improve Runway 31 Safety Area.

Acquire Passenger Lift Device.

Acquire Aircraft Rescue and Fire Fighting Vehicle.

Construct Blast Pads for Runway 13/31.

Conduct Master Plan Update and Terminal Area Study.

Passenger Facility Charge Administrative Fees.

Proposed Class or Classes of Air Carriers To Be Exempted From Collecting 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, Southwest Region, Airports Division, Planning and Programming Branch, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Miller International.

Issued in Fort Worth, Texas on January 13, 2000.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 00–2563 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

TSO–C77b, Gas Turbine Auxiliary Power Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed Technical Standard Order and request for public comment.

SUMMARY: This notice announces the availability of draft Technical Standard Order (TSO), C77b. This proposed TSO pertains to minimum performance standards that gas turbine auxiliary power units (APUs), commonly used in commercial aircraft, must meet in order to be identified with the proposed TSO marking.

DATES: Comments must identify the TSO file number and be received on or before May 4, 2000.

ADDRESSES: Send all comments on the proposed TSO to the Federal Aviation Administration, Attn: Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, MA, 01803–5299. Comments must identify the TSO file number.

FOR FURTHER INFORMATION CONTACT: Mr. Mark A. Rumizen, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299, telephone (781) 238–7113, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft TSO may be obtained by contacting the person named under **FOR FURTHER INFORMATION CONTACT.** Interested persons are invited to comment on the proposed TSO, and to submit such written data, views, or arguments as they desire. Commenters must identify the TSO file number, and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the Engine and Propeller Directorate, Aircraft Certification Service, before issuance of the final TSO.

Background

The standards of this TSO would apply to all APUs used for any new application submitted after the effective date of this TSO. APUs currently approved under TSO–C77 or TSO–C77a authorization may continue to be manufactured under the provisions of their original approval. However, under § 21.611(b) of the Federal Aviation Regulations, any major design change to an APU previously approved under TSO–C77 or TSO–C77a would require a new authorization under this TSO. The general layout of this document complies with the updated TSO format.

How To Obtain Copies

A copy of the proposed TSO–C77b may be obtained via Internet (http:/www.faa.gov/avr/air/air100/100home.htm) or on request from the office listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, MA on January 7, 2000.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–2564 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Washington and Benton Counties, Arkansas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed intermodal highway project in Washington and Benton Counties, Arkansas.

FOR FURTHER INFORMATION CONTACT: Elizabeth Romero, Environmental Specialist, Federal Highway Administration, 3128 Federal Office Building, Little Rock, Arkansas 72201–3298, Telephone: (501) 324–5625; or Brenda Price, Environmental Scientist, Environmental Division, Arkansas State Highway and Transportation Department, Post Office Box 2261, Little Rock, Arkansas 72203, Telephone (501) 569–2281; or Uvalde Lindsey, Northwest Arkansas Regional Airport Authority Staff Consultant, 100 West Center Street, Suite 300, Fayetteville, Arkansas 72701, Telephone (501) 582–2100.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Arkansas Department of Transportation and the Northwest Arkansas Regional Airport Authority, will prepare an environmental impact statement (EIS) on a proposal to construct a new intermodal access road to the Northwest Arkansas Regional Airport. It is intended that the access road be a toll road. The proposed construction would involve a new intermodal toll road from either US 71 or US 412 on the existing Federal Highway System and connect to the Northwest Arkansas Regional Airport, for a distance of approximately eight to twelve miles (13 to 19 kilometers).

The new access road is considered necessary to provide for existing and projected traffic demand to the airport. Bridges and water crossings will be required, the number and location depending upon the exact route. Alternatives under consideration include (1) taking no action, (2) improving the existing highways, and (3) constructing a new access road at a new location. Several location alternatives will be considered.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in the proposal. A formal public Scoping meeting will be held on March 28, 2000, between the hours of 4:00 p.m. and 7:00 p.m. at the City Hall, Elm Springs, Arkansas. A series of public meetings will be held in the project area during the course of the Study. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: January 24, 2000.

Elizabeth Romero,

Environmental Specialist,Federal Highway Administration,Little Rock, Arkansas.

[FR Doc. 00–2517 Filed 2–3–00 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than April 4, 2000.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 17, Washington, D.C. 20590, or Ms. Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 35, Washington, D.C. 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130—New. Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or E-mail to Mr. Brogan at robert.brogan@fra.dot.gov, or to Ms. Deal at dian.deal@fra.dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 17, Washington, D.C. 20590 (telephone: (202) 493–6292) or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 35, Washington, D.C. 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. §§ 3501–3520), and its implementing regulations, 5 C.F.R. Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. § 3506(c)(2)(A); 5 CFR §§ 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. § 3506(c)(2)(A)(I)–(iv); 5 CFR § 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. § 3501.

Below is a brief summary of proposed new information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Rail-Equipment Accident/Incident Cost Analysis Study.

OMB Control Number: 2130—New.

Abstract: The collection of information proposes a new method to calculate dollar damages in the event of a railroad accident/incident. The current method of calculating damages yields accurate but widely varying results for accidents of approximately equal severity. The information collected will be used for a one-time six-month study. Participation on the part of railroads is completely voluntary. If the statistical analysis from this study provides valid results, then FRA will produce an Notice of Proposed Rulemaking (NPRM) to modify the current reporting system.

Form Number(s): FRA F 6180.105.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

Estimated Annual Burden: 1,150 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR §§ 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. §§ 3501–3520.

Issued in Washington, D.C. on February 1, 2000.

Margaret B. Reid,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 00–2552 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than April 4, 2000.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert

Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590, or Ms. Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0500. Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or E-mail to Mr. Brogan at robert.brogan@fra.dot.gov, or to Ms. Deal at dian.deal@fra.dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. §§ 3501–3520), and its implementing regulations,5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. § 3506(c)(2)(A); 5 CFR §§ 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. § 3506(c)(2)(A)(i)–(iv); 5 CFR § 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. § 3501.

Below is a brief summary of currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Accident/Incident Reporting and Recordkeeping.

OMB Control Number: 2130–0500.

Abstract: The collection of information is due to the railroad accident reporting regulations set forth in 49 CFR Part 225 which require railroads to submit monthly reports summarizing collisions, derailments, and certain other accidents/incidents involving damages above a periodically revised dollar threshold, as well as certain injuries to passengers, employees, and other persons on railroad property. Because the reporting requirements and the information needed regarding each category of accident/incident are unique, a different form is used for each category.

Form Number(s): FRA F 6180.33; 54; 55; 55A; 56; 57; 78; 81; 97; and 98.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion

Reporting Burden:

CFR Section	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Total annual burden cost
225.21—Railroad Injury and Illness Summary (Form FRA F 6180.55.	685 railroads	8,148 forms	45 minutes	6,111 hours	$171,108
225.19/21—Form FRA 6180.55A—Continuation Sheet.	685 railroads	12,000 forms	30 minutes	6,000 hours	168,000
225.21—Rail Equipment Accident/Incident Report—Form FRA F 6180.54.	685 railroads	3,000 forms	3 hours	9,000 hours	252,000
225.19/21—Rail-Highway Grade Crossing Accident/Incident Report—Form FRA F 6180.57.	685 railroads	3,500 forms	3 hours	10,500 hours	294,000
225.21—Annual Railroad Report of Employee Hours and Casualties, By State—Form FRA F 6180.56.	685 railroads	700 forms	3 hours	2,100 hours	58,000
225.9—Telephone Reports of Certain Accidents/Incidents.	685 railroads	300 phone reports	15 minutes	75 hours	2,100
225.21/25—Railroad Employee Injury and/or Illness Record—Form FRA F 6180.98.	246 railroads	30,108 forms	30 minutes	15,054 hours	466,674
—Copies of Forms to Employees	246 railroads	903 form copies	2 minutes	30 hours	840
225.25(h)—Posting of Monthly Summary.	685 railroads	8,220 lists	16 minutes	2,192 hours	61,376
219.209(b)—Doubtful Cases & Refusal to Be Tested; Alcohol or Drug Involvement.	685 railroads	80 reports	15 minutes	20 hours	560

CFR Section	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Total annual burden cost
225.21—Employee Human Factor Attachment—Form FRA F 6180.81.	685 railroads	1,013 forms	15 minutes	253 hours	7,084
225.12/21—Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor—Form FRA F 6180.78 (Part I).	685 railroads	1,013 notices	30 minutes	507 hurs	14,196
—Employee Statement Supplemental Railroad Accident Report—Form FRA F 6180.78 (Part II).	685 railroads	101 statements	2 hours	202 hours	6,262
225.12(C)—Railroad Consultation in Joint Operations Accidents/Incidents.	685 railroads	30 requests	1 hour	30 hours	840
225.12(g)(3)—Employee Confidential Letter.	30 Employees	30 letters	2 hours	60 hours	1,860
225.12—Railroad Review of Statement	685 railroads	101 supplements/25 reports.	1.5 hours/4 hours	252 hours	7,056
225.37—Batch Control Form—FRA F 6180.99.	8 railroads	96 forms	10 minutes	16 hours	448
225.21—Initial Rail Equipment Accident/Incident Record—Form FRA F 6180.97.	433 railroads	12,095 forms	30 minutes	6,048 hours	169,344
225.33—Internal Control Plans	246 railroads	246 contrll plans	Varies	2,101 hours	58,828
—Intimidation/Harrassment Policies—Model Statements.	433 railroads	433 statements	30 minutes	217 hours	6,076
—Subsequent Years—Internal Control Plan.	1 railroad	1 control plan	14 hours	14 hours	392
—Amendments to Internal Control Plan.	246 railroads	50 amendments	1 hour	50 hours	1,400
225.25(h)(15)—Written Request by Employee Not to Post their Injury/Illness.	685 railroads	25 requests	1 hour	25 hour	700

Total Responses: 82,218.

Estimated Total Annual Burden: 60,857 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. § 3501–3520.

Issued in Washington, D.C. on February 1, 2000.

Margaret B. Reid,

Acting Director Office of Information Technology and Support SystemsFederal Railroad Administration.

[FR Doc. 00–2553 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–1999–6404]

Extension of Comment Period; Petition for Grandfathering of Non-Compliant Equipment; National Railroad Passenger Corporation

On October 18, 1999, the National Railroad Passenger Corporation (Amtrak) petitioned the Federal Railroad Administration (FRA) for grandfathering of non-compliant passenger equipment manufactured by Renfe Talgo of America (Talgo) for use on rail lines between Vancouver, British Columbia and Eugene, Oregon; between Las Vegas, Nevada and Los Angeles, California; and between San Diego, California and San Luis Obispo, California. Notice of receipt of such petition was published in the **Federal Register** on November 2, 1999, at 64 FR 59230. Interested parties were invited to comment on the petition before the end of the comment period of December 2, 1999.

Through published notice in the **Federal Register**, FRA has extended the comment period in this proceeding and explained the reasons therefor. FRA most recently extended the comment period until January 31, 2000. See 65 FR 2223; Jan. 13, 2000. By this notice, FRA is further extending the comment period until February 22, 2000. This extension will allow FRA to resolve an ongoing Freedom of Information Act (FOIA) request for information related to this proceeding, see 65 FR 2223, and permit the requester sufficient time in which to analyze any further documents that may be released by FRA. FRA will place in the docket a copy of any documents provided to the FOIA requester. FRA expects that further extensions of the comment period will not be necessary.

Comments received after February 22, 2000, will be considered to the extent possible. Amtrak's petition, documents inserted in the docket, and all written communications concerning this proceeding are available for examination during regular business hours (9:00 a.m. to 5:00 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, D. C. on January 28, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–2551 Filed 2–3–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33833 (Sub–No. 1)]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption— Union Pacific Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 33833 [1] to permit the trackage rights to expire on February 7, 2000, in accordance with the agreement of the parties.

DATES: This exemption is effective on February 7, 2000.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33833 (Sub-No. 1) must be filed with the Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioners' representatives (1) Yolanda Grimes Brown, The Burlington Northern and Santa Fe Railway Company, 2500 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039, and (2) Robert Opal, Esq., Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD for the hearing impaired (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da-To-Da Office Solutions, Suite 210, 1925 K Street, N.W., Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services 1–800–877–8339.]

[1] On December 29, 1999, BNSF filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by Union Pacific Railroad Company (UP) to grant temporary overhead trackage rights to The Burlington Northern and Santa Fe Railway Company over UP's rail line between Stockton, CA, in the vicinity of UP's milepost 82.3 (Fresno Subdivision), and Fresno, CA, in the vicinity of UP's milepost 207.0 (Fresno Subdivision). *See The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company,* STB Finance Docket No. 33833 (STB served Jan. 18, 2000). The trackage rights operations under the exemption became effective and were scheduled to be consummated on January 15, 2000.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: January 28, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–2566 Filed 2–3–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; 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 comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on Deposits and Electronic Banking.

DATES: Submit written comments on or before April 4, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0092. Hand deliver comments to the Public Reference Room, 1700 G Street, NW., lower level, from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mails to ''public.info@ots.treas.gov'', and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. N.W., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Mary Gottlieb, Regulations and Legislation, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7135.

SUPPLEMENTARY INFORMATION:

Title: Deposits and Electronic Banking.

OMB Number: 1550–0092.

Form Number: Not applicable.

Abstract: 12 CFR Part 557 relies on the disclosure requirements applicable to savings associations under the Federal Reserve Board's Regulation DD (12 CFR Part 230). The information required by Regulation DD is needed by OTS in order to supervise savings associations and develop regulatory policy.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 1104.

Estimated Time Per Respondent: 1,484 hours.

Estimated Total Annual Burden Hours: 1,638,704 hours.

Request for Comments: The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment 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; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 31, 2000.

John E. Werner,

Director, Information & Management Services Division.

[FR Doc. 00–2446 Filed 2–3–00; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; 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 comment on proposed and continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on General Reporting and Recordkeeping by Savings Associations.

DATES: Submit written comments on or before April 4, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0011. Hand deliver comments to the Public Reference Room, 1700 G Street, NW., lower level, from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mails to ''public.info@ots.treas.gov'', and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. NW, from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Joseph Casey, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–5741.

SUPPLEMENTARY INFORMATION:

Title: General Reporting and Recordkeeping by Savings Associations.

OMB Number: 1550–0011.

Form Number: Not applicable.

Abstract: This collection of information allows management of savings associations to exercise prudent controls and to provide OTS with a means of determining the integrity of savings association records and operations when examining for safety, soundness, and regulatory compliance.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Recordkeepers: 1,104.

Estimated Time Per Recordkeepers: 2,649 average hours.

Estimated Total Annual Burden Hours: 3,718,911 hours.

Request for Comments: The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment 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; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 31, 2000.

John E. Werner,

Director, Information & Management Services.

[FR Doc. 00–2447 Filed 2–3–00; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Friday,
February 4, 2000

Part II

The President

Directive of January 31, 2000—Resolution Regarding Use of Range Facilities on Vieques, Puerto Rico (Referendum)

Directive of January 31, 2000—Resolution Regarding Use of Range Facilities on Vieques, Puerto Rico (Community Assistance)

Federal Register
Vol. 65, No. 24
Friday, February 4, 2000

Presidential Documents

Title 3—

The President

Directive of January 31, 2000

Resolution Regarding Use of Range Facilities on Vieques, Puerto Rico (Referendum)

Directive to the Secretary of Defense [and] Director, Office of Management and Budget

By virtue of the authority vested in me and in order to further the interests of national security and to address the legitimate interests and concerns of the residents of Vieques and the people of Puerto Rico, I hereby direct the following:

1. The future of Navy training on Vieques will be determined by a referendum of the registered voters of Vieques, using Puerto Rico electoral laws and regulations as they exist as of the date of this directive. This referendum will occur on May 1, 2001, or 270 days prior to or following May 1, 2001, the exact date to be specified on the request of the Department of the Navy. (This specified date and the terms of the referendum must be requested at least 90 days in advance of the referendum.) It is understood that the full implementation of this directive is contingent upon the Government of Puerto Rico authorizing and supporting this referendum, and the cooperation of the Government of Puerto Rico as specified in paragraph 5(a).

2. This referendum will present two alternatives. The first shall be that the Navy will cease all training not later than May 1, 2003. The second will permit continued training, to include live fire training, on terms proposed by the Navy. Live fire training is critical to enhance combat readiness for all our military personnel and must occur in some location.

3. In the event the referendum selects the option of termination of Navy activities, then

(a) Navy lands on the Eastern side of Vieques (including the Eastern Maneuver Area and the Live Impact Area) will be transferred within 1 year of the referendum to the General Services Administration (GSA) for disposal under the Federal Property and Administrative Services Act, except for conservation zones, which will be transferred to the Department of the Interior for continued preservation.

(b) The GSA will supervise restoration of the lands described in section 3(a) consistent with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) before it is further transferred under the Federal Property and Administrative Services Act, except that the Live Impact Area will be swept for ordnance and fenced to meet the same range standards used after the closure of the live impact area used by Naval Air Station, South Weymouth, Massachusetts. The Government of Puerto Rico may request transfer of the restored lands in accordance with the Federal Property and Administrative Services Act.

(c) Under no conditions will the land described in this section be returned to the Department of Defense or used for military training.

4. In the event the referendum selects the option of continued training submitted by the Navy, the Office of Management and Budget will request congressional funding to further provide for the enhancement of infrastructure and housing on the Western portions of Vieques in the amount of $50 million.

5. Between the date of this directive and the referendum, the following will occur:

(a) The Department of Defense and the Government of Puerto Rico will work in cooperation with relevant Federal authorities to ensure the integrity and accessibility of the range is uninterrupted and trespassing and other intrusions on the range cease entirely by providing complementary support among Federal and Puerto Rican jurisdictions.

(b) Navy training on Vieques will recommence, but it shall not exceed 90 days per calendar year and will be limited to nonexplosive ordnance, which may include spotting devices.

(c) The Navy will ensure procedures are in place that will enhance safety and will position ships to reduce noise in civilian areas whenever possible.

(d) Before any major training occurs on the range, the Government of Puerto Rico, through its Secretary of State, will be given 15 days notification under the terms of the Memorandum of Understanding of 1983.

(e) The Office of Management and Budget will initiate a funding request to the Congress:

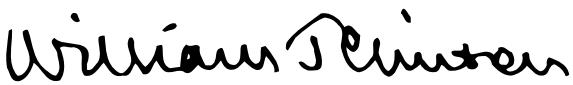
(1) to fund a Public Health Service study in coordination with appropriate agencies to review health concerns raised by the residents of Vieques.

(2) to complete the conveyance of 110 acres of Navy property to extend the runway at the Vieques Municipal Airport to accommodate larger passenger aircraft; and for the Navy to provide training and supplemental equipment to bolster the airport fire, safety, and resource capability.

(3) to maintain the ecosystem and conservation zones and implement the sea turtle, sea mammal, and Brown Pelican management plans as specified in the Memorandum of Understanding of 1983.

(f) Within 30 days of this directive, the Navy will submit legislation to the Congress to transfer land on the Western side of Vieques surrounding the Naval Ammunition Facility (except 100 acres of land on which the ROTHR and Mount Pirata telecommunications sites are located). The legislation submitted will provide for land transfer not later than December 31, 2000. This transfer will be to the Government of Puerto Rico for the benefit of the municipality of Vieques as determined by the Planning Board of the Government of Puerto Rico. This land shall be restored consistent with CERCLA standards prior to transfer.

6. The Director of OMB shall publish this directive in the **Federal Register**.



THE WHITE HOUSE,
Washington, January 31, 2000.

[FR Doc. 00–2750
Filed 2–3–00; 11:22 am]
Billing code 3110–01–M

Presidential Documents

Directive of January 31, 2000

Resolution Regarding Use of Range Facilities on Vieques, Puerto Rico (Community Assistance)

Directive to the Secretary of Defense [and] Director, Office of Management and Budget

By separate directive I have addressed the resumption of Navy and Marine Corps training on the island of Vieques.

1. Provided that training opportunity has resumed and is continuously available on Vieques, then within 90 days of this directive, I direct the Office of Management and Budget (OMB) to request authority and funding (which with funding for projects described in paragraph 5(e) of the previously referenced directive will total $40 million) from the Congress for the following projects:

(a) To support the construction of a new commercial ferry pier and terminal by the Army Corps of Engineers.

(b) To establish an artificial reef construction and fish aggregation program to create substantial new commercial fishing areas for Vieques fisherman. Until such time as these new fishing grounds are operational, this legislation will authorize direct payments of an amount (to be determined by the National Marine Fisheries Services) to be paid to registered Vieques commercial fishermen for each day they are unable to use existing waters because the Navy is training.

(c) To support expanding or improving the major cross-island roadways and bridges on Vieques.

(d) To establish an apprenticeship/training program for young people on Vieques to facilitate participation in small-scale civic construction projects.

(e) To establish a program with the Government of Puerto Rico to preserve the Puerto Mosquito Vieques bioluminescent bay and to commit Federal resources to its preservation.

(f) To establish a professional economic development office for Vieques for the purpose of promoting Vieques and attracting jobs to the island.

2. The Director of OMB shall publish this directive in the **Federal Register**.

THE WHITE HOUSE,
Washington, January 31, 2000.

[FR Doc. 00–2751
Filed 2–3–00; 11:22 am]
Billing code 3110–01–M

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the **Federal Register** on December 30, 1999.

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