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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213, 359, and 536

RINs 3206-AA21 and 3206-AA23

Removal From the Senior Executive Service

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations covering certain removals from the Senior Executive Service (SES). The regulations revise current regulations on removal of career appointees from the SES during the probationary period and for less than fully successful executive performance, as well as placement rights following removal. They also add provisions on removal and placement of career appointees as a result of reduction in force. In addition, the regulations cover the removal of noncareer and limited SES appointees, and reemployed annuitants holding any type of SES appointment. Note that disciplinary removals of career SES appointees who have completed the SES probationary period are covered in 5 CFR Part 752, Subpart F.

EFFECTIVE DATE: June 2, 1989.

FOR FURTHER INFORMATION CONTACT: Neal Harwood, (202) 632-4486.

SUPPLEMENTARY INFORMATION: On August 10, 1988, OPM published proposed regulations (53 FR 30061) on removal from the SES and guaranteed placement for certain employees following removal. The comment period, which was 60 days from the date of publication, ended on October 11, 1988. Comments were received from nine agencies and one executive organization. Comments are summarized below, along with any changes in, or clarifications of, the proposed regulations.

Removal of Career Appointees During Probation (Part 359, Subpart D)

Proposed § 359.402(b) stated the basis for action to remove a probationer for unacceptable performance.

One agency requested that typical causes or situations where removal action is appropriate be included. While we do not believe it would be useful to list typical causes or situations, since those will be specific to the individual probationer, we can point out that removal can be based on either unacceptable managerial or technical performance. It should be kept in mind that the probationary period is the final step in the examining process for initial career appointment to the SES. It allows the agency an opportunity to assess the new appointee's actual performance in an executive position and to remove the appointee without due formality should circumstances warrant.

The proposed regulations stated that removal "may, but need not, be based upon a final unsatisfactory rating under the agency's SES performance appraisal system." This language has been clarified to indicate that removal may take place at any time during the probationary period and is not dependent upon a formal rating under the agency's performance appraisal system.

If removal is based on a formal rating, however, the rating must follow all the requirements of the performance appraisal system, including an opportunity for a higher level review and review and recommendation by the Performance Review Board. One agency asked whether removal could be based on a formal rating above unsatisfactory. The answer is yes. Even if a formal rating would not be a basis for removal of an individual who has completed the probationary period (e.g., a single minimally satisfactory rating), that does not prevent the removal of a probationary employee. If removal is based on a formal rating, the removal still takes place under § 359.402 and not under Subpart E of Part 359, which covers performance removal of individuals who have completed the probationary period.

Proposed § 359.404(b)(2) stated that a probationary employee had to be given a reasonable time to reply to a notice of proposed removal based on conditions arising before appointment. An agency asked that the number of days be specified. We have not specified the number of days because the number could be dependent on how close the employee is to completing the probationary period. It should also be noted that there is no specific response time provided under § 315.805(b) for removal of probationers outside the SES for conditions arising before appointment.

As an exception to the normal moratorium on removal actions during the 120 days following the appointment of a new agency head or a new noncareer supervisor, proposed § 359.406 permitted an agency to proceed with a removal under certain emergency conditions. These conditions were similar to those provided in Part 752, Subpart F, which covers adverse actions against SES career appointees who have completed probation. The way in which the conditions were stated in § 359.406, however, differed somewhat from the way they were stated in Part 752. In the final regulations at § 359.406(c)(4), the conditions are not the same, so that a probationer can be removed when retention may pose a threat to the appointee or others, may result in loss of or damage to Government property, or may otherwise jeopardize legitimate Government interests.

Removal of Career Appointees for Less Than Fully Successful Executive Performance (Part 359, Subpart E)

Under current § 359.501(d), a career appointee must be removed from the SES after two annual summary ratings of unsatisfactory within five consecutive years or two annual summary ratings of less than fully successful (unsatisfactory or minimally satisfactory) within three consecutive years. 5 U.S.C. 4314(b)(1)(D) provides that an appraisal period "may be terminated in any case in which the agency making an appraisal determines that an adequate basis exists on which to appraise and rate the senior executive's performance." Proposed § 359.501(d) dropped the term "annual" ratings from the regulations to make clear that ratings based on a shortened appraisal period were still to be considered final ratings for removal purposes.

The executive organization stated, "If these proposed regulations are enacted allowing both ratings to be less than annual ratings, then the result could be that two periods of less than satisfactory employment covering ninety days each in a five year period would result in the removal of an employee from the SES." The organization recommended that at least one of the two ratings must be an "annual rating" and cover a one-year period.

We have retained the provision as stated in the proposed regulations. It is in accord with the law, and we believe there are advantages to both agencies and employees with this provision over the current regulations. If an agency was dissatisfied with an employee's performance and wanted to take some action before the end of the appraisal year, it might be willing to give an unsatisfactory or minimally satisfactory rating and allow the employee to stay in the SES provided that the agency could remove the employee before the end of a full year if the employee's performance did not improve. However, if the agency knew it would have to wait a full year before giving another rating that could result in removal, it might just give an unsatisfactory rating initially and remove the employee immediately without giving the employee a further chance. (Under 5 U.S.C. 4314(b)(3), a career appointee may be removed after a single unsatisfactory rating.)

It should be noted that any shortened appraisal period must meet the minimum appraisal period established in the agency's SES performance appraisal plan. The rating must also meet all other requirements of law and regulation, including opportunity for review by a higher-level executive and review and recommendation by the Performance Review Board. Further, if an employee receives a less than fully successful rating, the agency is required under 5 CFR 430.304(h) to assist the employee in improving performance before the next rating of record is given. We believe these provisions provide adequate safeguards for affected employees, and we will note them in the Federal Personnel Manual instructions.

One agency asked that OPM clarify in § 359.502(b) the role of the Merit Systems Protection Board in holding informal hearings following performance removals. This is not appropriate for these regulations, since MSPB has its own regulations on informal hearings (see 5 CFR 1201.141 and 1201.142). We will provide in the Federal Personnel Manual, however, further information on the hearing process.

Proposed § 359.503 covered the 120-day moratorium on the removal of a career SES member for performance following the appointment of a new agency head or the member's most immediate supervisor who was a noncareer appointee and had the authority to remove the member. One agency recommended that the definition of a "noncareer appointee" in § 359.503(b) be revised to include an appointee who is traditionally changed upon a change in Administration or a change in the agency head. We have not adopted this recommendation since such an appointee in most instances will be one of the noncareer appointees already listed in the section (e.g., a Presidential appointee or a noncareer SES appointee), but could be an SES or other career appointee, who would not be subject to the statutory moratorium in any event.

One agency recommended that proposed § 359.504 be revised to incorporate from § 359.505(b) of the current regulations the statement that an employee may submit a complaint to the Special Counsel of the Merit Systems Protection Board if an agency violates the 120-day moratorium on performance removals following the appointment of a new agency head or noncareer supervisor. An employee has such a right under 5 U.S.C. 1206 since any allegation of a prohibited personnel practice may be submitted to the Special Counsel. We deleted the provision from the regulations because we do not want to give the impression that an individual has a right to submit a complaint to the Special Counsel only when the right is specifically stated in the regulations.

Note that the 120-day moratorium applies to all performance removal actions unless the removal is based on an unsatisfactory performance rating issued before the appointment of the new agency head or noncareer supervisor.

Removal of Career Appointees as a Result of Reduction in Force (Part 359, Subpart F)

The executive organization recommended that probationary employees should be given a separate, lower retention standing than employees who have completed the probationary period during RIF competition and that employees who have completed the probationary period and have a fully successful rating or higher should be placed first in available positions if they are affected by a RIF. The organization stated, "The whole purpose of a RIF is to retain the most experienced, highly qualified within government."

Under 5 U.S.C. 3595(a), the competitive procedures in a RIF in the SES must be based primarily on performance, not on length of experience. Therefore, we do not believe the regulations should require that agencies give all probationary employees a lower retention standing than employees who have completed the probationary period, irrespective of the performance of the employees. We have revised § 359.602(a), however, to provide that if a probationary employee and an employee who has completed the probationary period have the same retention standing, the employee who has completed the probationary period must be retained over the probationary employee. For example, if employees were placed on the retention register based on their last SES performance rating of record and both a probationary employee and an employee who has completed the probationary period had an outstanding rating, the latter employee would be retained over the probationary employee.

We will also indicate in the Federal Personnel Manual that although they are not required to do so, agencies in their RIF plans may place all employees who have completed the probationary period, and who have a rating of fully successful or above, higher on the retention register than probationary employees.

As far as placement is concerned, under 5 U.S.C. 3595(b)(3)(A), if an employee has completed the probationary period and is affected by a RIF, the agency must place the employee in any vacant SES position for which the employee is qualified. There is no such requirement for a probationary employee affected by a RIF, although the agency may place the employee elsewhere in the SES if a vacant position is available. In accordance with the recommendation of the executive organization, we have revised the regulations to state that if both a probationary employee and an employee who has completed the probationary period are affected by a RIF and are qualified for a vacant SES position, the employee who has completed the probationary period must be placed in the position since that employee has a statutory entitlement to the position while the placement of the probationary employee is optional with the agency.

Guaranteed Placement and Saved Pay (Part 213, Section 3202; Part 359, Subpart G; Part 536, Subpart A)

Guaranteed placement, with saved pay, at GS-15 or higher is provided under Subpart G of Part 359 for certain career employees who are removed during their probationary period,

removed for performance reasons following the probationary period, or removed as the result of a reduction in force (RIF).

The proposed regulations provided that a career appointee removed from the SES as the result of RIF was entitled to SES pay retention under Part 359, section 359.705, and was not covered by the general pay retention provisions in Part 536. The regulations continued to permit agencies to exercise their discretionary authority in § 536.104(b), however, to grant pay retention in RIF situations when the individual was not entitled to pay retention under § 359.705. An agency asked for examples of when § 536.104(b) might be applicable. These include when an individual voluntarily accepts a GS–15 position following receipt of a general RIF notice or a notice of position abolishment, or accepts a position below GS–15 following a RIF.

An agency stated that pay savings under § 359.705, rather than Part 536, should be applicable if an employee voluntarily returns to the GS–15 level after receiving notice that his or her position is being abolished, even though there is no formal RIF. The statute is clear that position abolishment alone does not entitle an individual to guaranteed placement at GS–15 and pay savings under 5 U.S.C. 3594, but that the individual must be removed from the SES in a RIF action under 5 U.S.C. 3595(b) (4) or (5). (See 5 U.S.C. 3594(b)(2).) It may well be that there are other SES positions to which the individual could be assigned, and it would not be appropriate to require that the agency provide pay savings under 5 U.S.C. 3594 if the individual voluntarily decided to take a GS–15 position in lieu of accepting reassignment within the SES.

If an agency has no vacant position currently available at GS–15 or above for which the individual qualifies and cannot make a placement in another agency, the introductory material to the proposed regulations stated that the agency still must create a position to permit the fallback and should then continue its efforts to find an appropriate position for the individual either internally or in another agency. An agency stated that OPM "should establish some expressed limit on this continuing effort to avoid adverse impact as an agency seeks to recover the equilibrium lost after a RIF in its executive ranks."

As was pointed out when the proposed regulations were issued, if it does not prove possible to find the individual another position following fallback, an agency can conduct a further RIF under Part 351 RIF procedures; but this action may not be taken within three months of the removal from the SES. It was also pointed out that this is the same period provided in Part 351 (5 CFR 351.701(a)) as the minimum length of time a position must last when an employee is assigned to another position under RIF procedures outside the SES.

The executive organization argued that the three-month period did not provide sufficient protection to a former SES member. It was concerned that an agency might abolish a GS–15 position in which the individual was placed and conduct a RIF as soon as the period had ended, and it recommended that the agency be required to retain the individual in the position until another GS–15 or SES position could be found. It is not the intent of the law, however, that a former SES member be granted indefinite tenure at the GS–15 level. There may be legitimate situations where because of budgetary or other reasons an agency finds it necessary to conduct a RIF under Part 351 procedures at the GS–15 level, and it is not possible to find the former SES appointee another GS–15 position. Therefore, the final regulations do not require continued placement at GS–15 should a RIF be necessary at that level after the three months.

Proposed § 213.3202 established a new Schedule B appointing authority for those instances in which an individual entitled to guaranteed placement does not have reinstatement rights in the competitive service and cannot be placed under another excepted appointing authority. An agency recommended that a time limit be placed on how long the individual may stay under the Schedule B appointment and permit an agency to convert the employee noncompetitively to a career or career-conditional appointment in the same manner that PAC employees can now be converted. In order to provide for noncompetitive conversion to the competitive service for employees who do not have reinstatement eligibility, there must be an Executive Order, as was done for PAC employees, or legislative action. We will explore these possibilities, but in the meantime the final regulations contain the governmentwide Schedule B authority without time limitation.

E.O 12291, Federal Regulation

I have determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will only affect Government employees who are members of the Senior Executive Service.

List of Subjects

5 CFR Part 213

Government employees.

5 CFR Part 359

Government employees.

5 CFR Part 536

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Part 213, 5 CFR Part 359, and 5 CFR Part 356 as follows:

PART 213—EXCEPTED SERVICE

1. The authority for Part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp. p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.102 also issued under 5 U.S.C. 1104, Pub. L. 94–454, sec. 3(5); § 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, 8337(h), and 8457.

2. Section 213.3202(m) is added to read as follows:

§ 213.3202 Entire executive civil service.

* * * * *

(m) Positions when filled under any of the following conditions:

(1) Appointment at grades GS–15 and above, or equivalent, in the same or a different agency without a break in service from a career appointment in the Senior Executive Service (SES) of an individual who:

(i) Has completed the SES probationary period;

(ii) Has been removed from the SES because of less than fully successful executive performance or a reduction in force; and

(iii) Is entitled to be placed in another civil service position under 5 U.S.C. 3594(b).

(2) Appointment in a different agency without a break in service of an individual originally appointed under paragraph (m)(1).

(3) Reassignment, promotion, or demotion within the same agency of an individual appointed under this authority.

PART 359—REMOVAL FROM THE SENIOR EXECUTIVE SERVICE; GUARANTEED PLACEMENT IN OTHER PERSONNEL SYSTEMS

3. The authority citation for Part 359 is revised to read as follows:

Authority: 5 U.S.C. 1302 and 3596, unless otherwise noted.

4. Subpart A is removed and reserved, Subpart C is reserved, Subpart B and D through G are revised, and Subpart I is added, to read as follows:

Subpart A—[Reserved]

Subpart B—General Provisions

Sec.
359.201 Regulatory requirements.
359.202 Definitions.

Subpart C—[Reserved]

Subpart D—Removal of Career Appointees During Probation

359.401 General exclusions.
359.402 Removal: Unacceptable performance.
359.403 Removal: Conduct.
359.404 Removal: Conditions arising before appointment.
359.405 Removal: Reduction in force.
359.406 Restrictions.
359.407 Appeals.

Subpart E—Removal of Career Appointees for Less Than Fully Successful Executive Performance

359.501 General.
359.502 Procedures.
359.503 Restrictions.
359.504 Appeals.

Subpart F—Removal of Career Appointees as a Result of Reduction in Force

359.601 General.
359.602 Agency reductions in force.
359.603 OPM priority placement.
359.604 Removal from the SES and placement rights outside the SES.
359.605 Notice requirements.
359.606 Appeals.
359.607 Records.
359.608 Transfer of function.

Subpart G—Guaranteed Placement

359.701 Coverage.
359.702 Placement rights.
359.703 Responsibility for placement.
359.704 Restrictions.
359.705 Pay.

* * * * *

Subpart I—Removal of Noncareer and Limited Appointees and Reemployed Annuitants

359.901 Coverage.
359.902 Conditions of removal.

Subpart A—[Reserved]

Subpart B—General Provisions

§ 359.201 Regulatory requirements.

This part contains the regulations of the Office of Personnel Management (OPM) that implement subchapter V of chapter 35 of title 5, United States Code, on the Senior Executive Service (SES).

§ 359.202 Definitions.

"Agency," "Senior Executive Service position," "senior executive," "career appointee," "limited emergency appointee," "limited term appointee," and "noncareer appointee," are defined in 5 U.S.C. 3132(a).

"Probation" and "probationary period" mean the 1-year probation required by 5 U.S.C. 3393(d) upon initial career appointment to the SES.

"Reemployed annitant" means an individual who is receiving an annuity under the Civil Service Retirement System or the Federal Employees' Retirement System on the basis of his or her former Federal service. A reemployed annuitant serves at the pleasure of the appointing authority.

Subpart C—[Reserved]

Subpart D—Removal of Career Appointees During Probation

§ 359.401 General exclusions.

This subpart does not apply to the removal of a career appointee during probation when—

(a) The action is initiated under 5 U.S.C. 1206(g) or 5 U.S.C. 7542; or

(b) The appointee is a reemployed annuitant. See subpart I of this part for removal of a reemployed annuitant.

§ 359.402 Removal: Unacceptable performance.

(a) *Coverage.* This section covers the removal of a career appointee from the SES during the probationary period for unacceptable performance.

(b) *Basis for action.* A removal under this section need not be based upon a final rating under the agency's SES performance appraisal system established under Subpart C of Part 430 of this chapter. Even if a removal is based on such a rating, the removal action is taken under this section.

(c) *Procedures.* The agency shall notify the appointee in writing before the effective date of the action. The notice shall, as a minimum—

(1) State the agency's conclusions as to the inadequacies of the appointee's performance;

(2) State whether the appointee has placement rights under § 359.701 and, if so, identify the position to which the appointee will be assigned; and

(3) Show the effective date of the action.

§ 359.403 Removal: Conduct.

(a) *Coverage.* (1) This section covers the removal of a career appointee from the SES during the probationary period for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

(2) This section does not apply, however, when the appointee was covered under 5 U.S.C. 7511 immediately before appointment to the SES. In that case, the removal is subject to the provisions of Part 752, Subpart F, of this chapter.

(b) *Procedures.* The agency shall notify the appointee in writing before the effective date of the action. The notice shall, as a minimum—

(1) State the basis for the removal action (including the act(s) of misconduct, neglect of duty, or malfeasance if those factors are involved); and

(2) Show the effective date of the action.

§ 359.404 Removal: Conditions arising before appointment.

(a) *Coverage.* (1) This section covers the removal of a career appointee from the SES during the probationary period when the action is based in whole or in part on conditions arising before the appointment.

(2) This section does not apply, however, when the career appointee was covered under 5 U.S.C. 7511 immediately before appointment to the SES. In that case, the removal is subject to the provisions of Part 752, Subpart F, of this chapter.

(b) *Procedures.* (1) The agency shall give the appointee an advance written notice stating the specific reasons for the proposed removal.

(2) The appointee shall be given a reasonable time to reply.

(3) The agency shall give the appointee a written decision showing the reasons for the action and the effective date. The decision shall be given to the appointee at or before the time the action will be made effective.

§ 359.405 Removal: Reduction in force.

(a) *Coverage.* This section covers the removal of a career appointee from the SES during the probationary period under a reduction in force.

(b) *Basis for Action.* The appointee must have been identified for removal from the SES under competitive

procedures established by the agency in accordance with the requirements of 5 U.S.C. 3595(a). Removal action shall be taken under 5 U.S.C. 3592(a).

(c) *Procedures.* The agency shall notify the appointee in writing before the effective date of the action. The notice shall state, as a minimum—

(1) Whether the appointee has placement rights under § 359.701 to a position outside the SES and, if so, the position to which the appointee will be assigned;

(2) The effective date of the action;

(3) The appointee's appeal rights, including the time limit for appeal and the location of the Merit System Protection Board office to which an appeal should be sent; and

(4) Such other information as may be required by OPM.

§ 359.406 Restrictions.

(a) Removal from the SES under §§ 359.402 through 359.404 may not be made effective within 120 days after—

(1) The appointment of a new agency head; or

(2) The appointment in the agency of the career appointee's most immediate supervisor who—

(i) Is a noncareer appointee; and

(ii) Has the authority to remove the career appointee.

(b) For purposes of this section, a noncareer appointee includes an SES noncareer or limited appointee, an appointee in a position filled by Schedule C or noncareer executive assignment, or an appointee in an Executive Schedule or equivalent position other than a career Executive Schedule or equivalent position.

(c) The restrictions in paragraph (a) of this section do not apply—

(1) When the career appointee has received a final rating of unsatisfactory under the performance appraisal system established by the agency under subchapter II of chapter 43 of title 5, United States Code, before the appointment of a new agency head or the appointment of the career appointee's most immediate noncareer supervisor who has the authority to remove the career appointee;

(2) To a disciplinary action initiated before the appointment of a new agency head or the appointment of the career appointee's most immediate noncareer supervisor who has the authority to remove the career appointee;

(3) To a disciplinary action when there is a reasonable cause to believe that the career appointee has committed a crime for which a sentence of imprisonment can be imposed; or

(4) To a disciplinary action when the circumstances are such that retention of the career appointee—

(i) May pose a threat to the appointee or others;

(ii) May result in loss of or damage to Government property; or

(iii) May otherwise jeopardize legitimate Government interests.

(d) The following procedures must be observed when an agency invokes an exception to the 120-day restriction under paragraphs (c)(3) or (c)(4) of this section:

(1) The agency shall include in the notice the reasons for invoking the exception.

(2) The appointee shall be given a reasonable time, but no less than 7 days, to respond regarding the propriety of the use of the exception.

(3) The agency shall give the appointee a notice of decision on the propriety of the use of the exception at or before the time the action will be effective.

(4) When circumstances require immediate action, the agency may place the appointee in a nonduty status with pay for such time as necessary to effect the action.

(e) The imposition of the 120-day moratorium does not extend the probationary period.

§ 359.407 Appeals.

(a) Removal under § 359.402, 359.403, or 359.404 is not appealable to the Merit Systems Protection Board under 5 U.S.C. 7701.

(b) Removal under § 359.405 is appealable to the Merit Systems Protection Board under 5 U.S.C. 7701 as to whether the reduction in force complies with the competitive procedures required under 5 U.S.C. 3595(a).

Subpart E—Removal of Career Appointees for Less Than Fully Successful Executive Performance

§ 359.501 General.

(a) *Coverage.* (1) This subpart covers—

(i) A career appointee who has completed the probationary period in the SES; and

(ii) A career appointee who is not required to serve a probationary period in the SES.

(2) This subpart does not cover, however, a career appointee who is serving as a reemployed annuitant. See Subpart I of this part for removal of a reemployed annuitant.

(b) *Definitions.* (1) "Final rating" means the rating of record made by an appointing authority under the SES performance appraisal system in accordance with the requirements of 5 U.S.C. 4314(c)(3) and Part 430, Subpart C, of this chapter.

(2) A "less than fully successful" final rating means a rating of unsatisfactory or minimally satisfactory.

(c) *Optional removal from the SES.* The agency may remove a career appointee from the SES after the appointee has been given one final rating of unsatisfactory.

(d) *Mandatory removal from the SES.* The agency must remove a career appointee from the SES after—

(1) The appointee has been given two final ratings of unsatisfactory within 5 consecutive years; or

(2) The appointee has been given two final ratings of less than fully successful within 3 consecutive years.

§ 359.502 Procedures.

(a) *Notice.* The agency shall notify the career appointee in writing at least 30 calendar days before the effective date of the action. The notice shall advise the appointee of—

(1) The basis for the action;

(2) The appointee's placement rights under Subpart G of this part—the position to which the appointee will be assigned shall be identified either in this advance notice or in a supplementary notice issued no later than 10 calendar days before the effective date of the action;

(3) The appointee's right to request an informal hearing from the Merit Systems Protection Board;

(4) The effective date of the removal action; and

(5) When applicable, the appointee's eligibility for immediate retirement under 5 U.S.C. 8336(h) or 8414(a).

(b) *Informal hearing.* (1) A career appointee being removed from the SES under this section shall, at least 15 days before the effective date of the removal, be entitled, upon request, to an informal hearing before an official designated by the Merit Systems Protection Board. The appointee shall submit the request for an informal hearing to the Board. This request may be made at any time after the appointee has received the notice described in paragraph (a) of this section, but no later than 15 days before the effective date of action. The informal hearing shall be conducted in accordance with the regulations and procedures established by the Board. See 5 CFR 1201.141, Right to hearing, and 5 CFR 1201.142, Hearing procedures; referral of the record.

(2) Neither the granting nor the conduct of an informal hearing shall provide a basis for appeal to the Merit

Systems Protection Board under 5 U.S.C. 7701. The removal action need not be delayed because of the granting of an informal hearing.

§ 359.503 Restrictions.

(a) Removal from the SES under this subpart may not be made effective within 120 days after—

(1) The appointment of a new agency head; or

(2) The appointment in the agency of the career appointee's most immediate supervisor who—

(i) Is a noncareer appointee; and

(ii) Has the authority to remove the career appointee.

(b) For purposes of this section, a noncareer appointee includes an SES noncareer or limited appointee, an appointee in a position filled by Schedule C or noncareer executive assignment, or an appointee in an Executive Schedule or equivalent position other than a career Executive Schedule or equivalent position.

(c) This restriction does not apply when the career appointee has received a final rating of unsatisfactory under the performance appraisal system established by the agency under subchapter II of chapter 43 of title 5, United States Code, before the appointment of a new agency head or the appointment of the career appointee's most immediate noncareer supervisor who has the authority to remove the career appointee.

§ 359.504 Appeals.

An action taken under § 359.501 is not appealable to the Merit Systems Protection Board under 5 U.S.C. 7701.

Subpart F—Removal of Career Appointees as a Result of Reduction in Force

§ 359.601 General.

(a) *Coverage.* (1) This subpart covers the removal of a career appointee from the SES as a result of a reduction in force.

(2) This subpart does not cover, however, a career appointee who is serving as a reemployed annuitant. See Subpart I of this part for removal of a reemployed annuitant.

(b) *Definitions* (1) "Probationary period" is defined in § 359.202 of this part.

(2) "Reduction in force" is defined in 5 U.S.C. 3595(d) as including "the elimination or modification of a position due to a reorganization, due to a lack of funds or curtailment of work, or due to any other factor."

(c) *Agency procedures.* An agency must have issued written procedures before conducting a reduction in force. A copy of the procedures shall be provided OPM upon issuance.

§ 359.602 Agency reductions in force.

(a) *Competitive procedures.* (1) This paragraph applies to all SES career appointees in the agency, including appointees serving a probationary period.

(2) An agency shall establish competitive procedures in writing to determine who will be removed from the SES in any reduction in force of career appointees within the agency. Such competitive procedures shall be based primarily on performance.

(3) An appointee who has completed the probationary period must be retained over an appointee who has not completed the probationary period if they both have the same retention standing.

(b) *Placement within the agency.* (1) This paragraph applies to any SES career appointee who has completed the probationary period, or was not required to serve a probationary period, and who has been identified for reduction in force under paragraph (a) of this section.

(2) The appointee is entitled to be offered any vacant SES position in the agency for which the appointee meets the qualifications requirements. If there is more than one vacancy, the agency has the option of which position to offer the appointee.

(3) An appointee covered by this paragraph is entitled to be placed in a vacant SES position over an appointee who is still serving a probationary period.

§ 359.603 OPM priority placement.

(a) *Agency certification.* (1) If there is no vacant SES position within the agency for which an appointee covered by § 359.602(b) is qualified, the agency head, or the acting agency head in the absence of the agency head, shall certify to OPM in writing that no such position is available. This certification may not be delegated below the agency head level.

(2) The 45-day period during which OPM will attempt to place the appointee begins on the day the certification is akcnowledged by OPM.

(3) It is the continuing responsibility of an agency that has a surplus career appointee to place the appointee in any vacant SES position in the agency for which the appointee is qualified, even after the appointee is certified to OPM.

(b) *OPM authority.* As provided by § U.S.C. 3595(b)(3), OPM may require an agency to take any action that OPM considers necessary to carry out a placement.

(c) *OPM referrals.* (1) OPM may formally refer a career appointee to an agency for a specific SES vacancy or general priority consideration. Such a referral may not become a part of the regular competitive staffing process. The appointee must be considered by the agency for a noncompetitive SES appointment.

(2) Any objection by the agency to the qualifications of the appointee must be based on the professional/technical qualifications in the standard for the position. An agency may not rely solely on lack of agency-specific experience for an objection based on lack of professional/technical qualifications if the appointee is otherwise qualified.

(d) *Agency response.* (1) In order to expedite placement of surplus career appointees, an agency shall respond to an OPM referral within the time period prescribed by OPM.

(2) If an agency fails to place a referred career appointee in an SES position because of objection to the appointee's qualifications or because of any other reason, the agency response must be in writing and must be signed by the agency head, or the acting agency head in the absence of the agency head. The response may not be delegated below the agency head level.

(e) *Corrective action.* If an agency fails to provide bona fide priority consideration, OPM may order appropriate corrective action.

(f) *Declination by employee.* A career appointee who declines a reasonable offer of placement may be removed from the SES.

§ 359.604 Removal from the SES and placement rights outside the SES.

(a) If a probationary appointee is identified for reduction in force under § 359.602(a), removal action is taken under § 359.405. Placement rights outside the SES are covered under subpart G of this part.

(b) If a career appointee who has completed the probationary period, or who did not have to serve one, is identified for reduction in force under § 359.602(a) and is not placed elsewhere in the SES under § 359.602(b) or § 359.603, or declines a placement offer under § 359.603, removal action is taken under § 359.604(b). Placement rights outside the SES are covered under subpart G of this part.

§ 359.605 Notice requirements.

(a) Each career appointee subject to removal under § 359.604(b) is entitled to a specific, written notice at least 45 calendar days before the effective date of the removal.

(b) The notice shall state, as a minimum—

(1) The action to be taken and its prospective effective date;

(2) The place where the appointee may inspect the regulations and records pertinent to the action;

(3) Placement right within the agency and through OPM;

(4) The appointee's appeal rights, including the time limit for appeal and the location of the Merit Systems Protection Board office to which an appeal should be sent; and

(5) Such other information as may be required by OPM.

§ 359.606 Appeals.

A career appointee may appeal to the Merit Systems Protection Board whether the reduction in force complies with the competitive procedures in § 359.602(a).

§ 359.607 Records.

Each agency shall maintain current records needed to determine the retention standing of its competing appointees. The agency shall allow the inspection of its retention registers and related records by an appointee to the extent that they have a bearing on the appointee's situation. The agency shall preserve intact all registers and records relating to a reduction-in-force action for at least 2 years from the effective date of the action.

§ 359.608 Transfer of function.

(a) "Transfer of function" means the transfer of the performance of a continuing function from one agency to one or more other agencies.

(b) A career appointee is entitled to accompany his or her function to the new agency without any change in tenure if the alternative is removal from the SES in the current agency under reduction in force.

Subpart G—Guaranteed Placement

§ 359.701 Coverage.

This subpart covers career appointees, other than reemployed annuitants, who are removed from the SES under any of the following conditions:

(a) Removal during the probationary period under Subpart D of this part for other than misconduct, neglect of duty, malfeasance, or other disciplinary reasons under § 359.403, § 359.404, or Part 752, Subpart F, of this chapter, if at the time of appointment to the SES the individual held a career or career-conditional appointment or an appointment of equivalent tenture, as determined by OPM. An appointment of equivalent tenure is considered to be an appointment in the excepted service other than an appointment—

(1) To a Schedule C position established under Part 213 of this chapter;

(2) To a position authorized to be filled by noncareer executive assignment under Part 305 of this chapter;

(3) To a position that meets the same criteria as a Schedule C position or a position authorized to be filled by noncareer executive assignment; or

(4) To a position where the incumbent is traditionally changed upon a change in Presidential Administrations.

(b) Removal for less than fully successful executive performance under Subpart E of this part if the appointee has completed the required probationary period under the SES or was not required to serve a probationary period.

(c) Removal as the result of a reduction in force under Subpart F of this part is the appointee has completed the required probationary period under the SES or was not required to serve a probationary period.

§ 359.702 Placement rights.

(a) An appointee covered by this subpart is entitled to be placed in a vacant civil service position (other than an SES position) in any agency that is—

(1) A continuing position at GS-15 or above, or equivalent, that will last at least three months; and

(2) A position for which the appointee meets the qualifications requirements.

(b) A probationary appointee, or a nonprobationary appointee who at the time of appointment to the SES held a career or career-conditional appointment (or an appointment of equivalent tenure, as defined in § 359.701(a)), is entitled to be placed in a position of tenure equivalent to that of the appointment held at the time of appointment to the SES. This tenure requirement does not apply—

(1) If the agency taking the removal action does not have a position of equivalent tenure for which the appointee meets the qualifications requirements; or

(2) If the appointee is willing to accept a position having a different tenure.

§ 359.703 Responsibility for placement.

The agency taking the removal action is responsible for placing the appointee in an appropriate position within the agency, or for arranging a transfer to an appropriate position in another agency. Any transfer must be mutually acceptable to the appointee and the gaining agency.

§ 359.704 Restrictions.

Placement of an appointee under this subpart shall not cause the separation or reduction in grade of any other employee.

§ 359.705 Pay.

(a) An appointee placed under this subpart is entitled to receive basic pay at the highest of—

(1) The rate of basic pay in effect for the position in which the appointee is being placed;

(2) The rate of basic pay currently in effect for the position that the appointee held in the civil service immediately before being appointed to the SES; or

(3) The rate of basic pay in effect for the appointee immediately before removal from the SES.

(b) An employee receiving basic pay under paragraph (a)(2) or (a)(3) of this section shall have future pay adjusted in accordance with 5 U.S.C. 3594(c)(2).

Subpart I—Removal of Noncareer and Limited Appointees and Reemployed Annuitants

§ 359.901 Coverage.

(a) This subpart covers the removal from the SES of—

(1) A noncareer appointee;

(2) A limited emergency or a limited term appointee; and

(3) A reemployed annuitant holding any type of appointment under the SES.

(b) Coverage does not include, however, a limited emergency or a limited term appointee who is being removed for disciplinary reasons and who is covered by 5 CFR 752.601(c)(2).

§ 359.902 Conditions of removal.

(a) *Authority.* The agency may remove an appointee subject to this subpart at any time.

(b) *Notice.* The agency shall notify the appointee in writing before the effective date of the removal.

(c) *Placement rights.* An appointee covered by this subpart is not entitled to the placement rights provided for career appointees under Subpart G of this part.

(d) *Appeals.* Actions taken under this subpart are not appealable to the Merit Systems Protection Board under 5 U.S.C. 7701.

PART 536—GRADE AND PAY RETENTION

5. The authority citation for Part 536 is revised to read as follows, and the authority citation following § 536.307 is removed:

Authority: 5 U.S.C. 5361-5366; section 536.307 is also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502.

6. Section 536.105 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 536.105 Exclusions.

(a) Grade and pay retention shall not apply to an employee who—

(1) Moves from a position that is not in an agency as defined in 5 U.S.C. 5102;

(2) Is identified under 5 U.S.C. 2105(c), except prevailing rate employees included under 5 U.S.C. 5361;

(3) Is reduced in grade or pay for personal cause or at the employee's request;

(4) Does not satisfactorily complete the probationary period prescribed by 5 U.S.C. 3321(a)(2), and, as a result, is removed from a supervisory or managerial position; or

(5) Is entitled to receive basic pay under 5 U.S.C. 3594(c) because of removal from the Senior Executive Service and placement in a civil service position (other than a Senior Executive Service position) under 5 U.S.C. 3594(b)(2).

* * * * *

(c) Grade retention under § 536.103 (a)(1) or (b) shall not apply to a member of the Senior Executive Service who is placed in a position in a covered pay schedule.

[FR Doc. 89-10549 Filed 5-2-89; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-88-105]

Tobacco Inspection; Fees and Charges for Inspection and Testing of Imported Tobacco

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Dairy and Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r) prohibits the importation of flue-cured and burley tobacco which contains prohibited pesticide residue(s) and establishes related certification and testing requirements. This final rule would increase the user fees charged to importers. The increased user fees are necessary in order to recover the Department's costs of providing services under the Act.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Ernest Price, Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456.

SUPPLEMENTARY INFORMATION: Notice was given (54 FR 05494, February 3, 1989), that the Department proposes to amend the regulations governing the inspection and grading of imported flue-cured and burley tobacco to increase the fees collected for testing of imported tobacco. The fees would as nearly as possible cover the costs of providing services, including administrative and supervisory costs. The authority for these regulations is contained in the Dairy and Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r).

User fees are assessed on imported flue-cured and burley tobacco to cover the cost of sampling and testing under current regulations. The fee for sampling and testing imported flue-cured and burley tobacco in accordance with these regulations is being raised from $.001 per pound to $.0035 per pound. The additional fee for sampling and testing imported flue-cured and burley tobacco not accompanied by a certification that it is free of prohibited pesticide residues is being raised from $.003 per pound to $.0035 per pound. A minimum fee of $162.00 is established for each lot.

Interested parties were given an opportunity to comment on the proposed rule. Seven comments were received. Three of the comments, from individuals, supported the increase in the fee. Four of the comments, from tobacco importers and a representative of manufacturers, suggested that the Department's costs, and thus the necessary level of the fee, could be reduced by reducing the frequency of sampling and testing. They also suggested that this would reduce delays in obtaining test results. However, the Department believes that current sampling and testing procedures are appropriate and necessary. In regard to delays in obtaining test results, a backlog of samples to be tested developed because of equipment failures at the laboratory. These problems have been corrected and the backlog has been eliminated. The Department will continue to monitor the situation and take further corrective action if necessary.

The revised fees were determined after a thorough review of the procedures currently being used, the average volume sampled and tested and the number of staff hours necessary to provide and supervise the testing service. The costs actually incurred by this relatively new program have been closely monitored. Based on this review and analysis, it has been determined that the cost of testing tobacco samples has risen by 35 percent since the program was instituted. It has been found that, for small lots, the fees per pound do not cover the cost of testing a sample. Accordingly, this final rule increases the per pound fees and establishes a minimum fee per lot.

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "nonmajor" because it does not meet any of the criteria established for major rules under the Executive order.

Additionally, in conformance with the provisions of Pub. L. 96-354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact on small business. Few, if any, of the firms which would be affected by these proposed regulations meet the definition of small business because of their individual size. The Administrator, Agricultural Marketing Service, has determined that these actions would have no significant economic impact upon any entity, small or large, and would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this revision would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and it would not alter the market share or competitive positions of small entities relative to large entities. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobacco inspection program.

Therefore, the regulations in 7 CFR Part 29, Subpart B, are amended as follows:

PART 29—[AMENDED]

1. The authority citation for Part 29, Subpart B, continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

Subpart B—Regulations

2. In § 29.500, paragraph (b) is revised to read as follows:

§ 29.500 Fees and charges for inspection and testing of imported tobacco.

* * * * *

(b) The fee for sampling, testing and certification of imported flue-cured and burley tobacco for prohibited pesticide residues is $.0035 per pound, and shall be paid by the importer. The fee for testing imported flue-cured and burley tobacco not accompanied by a certification that it is free of prohibited

pesticide residues shall be an additional $.0035 per pound. The minimum fee assessed pursuant to this paragraph shall be $162.00 per lot. Fees for services rendered shall be remitted by check or draft in accordance with a statement issued by the Director, and shall be made payable to "Agricultural Marketing Service."

Dated: April 27, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89-10533 Filed 5-2-89; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1942

Loan and Grant Programs

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends the portion of its regulations governing Community Facility loans pertaining to insurance and fidelity bond coverage, provides additional guidance on defeasance of FmHA loans, and makes various minor corrections. The intended effects of issuance are to allow greater flexibility for borrowers required to carry insurance and fidelity bond coverage; provide current references to guidelines affecting FmHA-financed health care facilities; and stress the avoidance of defeasance provisions in loanmaking and servicing activities.

EFFECTIVE DATE: May 3, 1989.

FOR FURTHER INFORMATION CONTACT: Richard Kelly, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6334, Washington, DC 20250, telephone: (202) 382-9589.

SUPPLEMENTARY INFORMATION: this action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers; individual industries; Federal, State, or Local government agencies; or geographic regions. Furthermore, there will be no 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 or export markets. This action is not expected to substantially affect budget outlay or to affect more than one agency or to be controversial. The net result is expected to be to provide better service to rural communities.

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos. 10.418, Water and Waste Disposal Systems for Rural Communities, and 10.423, Community Facilities Loans, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and Local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983, and 7 CFR Part 1940, Subpart J, "Intergovernmental Review of Farmers Home Administration Programs and Activities").

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Discussion of Comments

FmHA published a proposed rule in the **Federal Register** on December 22, 1988 (53 FR 51563) inviting comments until January 23, 1989. No comments were received on the proposed changes to §§ 1942.18(d)(4) and 1942.19(h)(10)(iii).

Sixty-seven comments were received during the comment period on the proposed changes to § 1942.17(j)(3), and thirty-four more were received after the end of the comment period. Virtually all of the comments received suggested that FmHA requirements governing insurance and fidelity bond coverage for community facility borrowers should be relaxed even more than what would be accomplished if the language published as a proposed rule were adopted.

The major points which were most commonly covered in the comments and which have been incorporated in the revised regulation are listed below. Not all of the items have been addressed specifically. However, the revised requirements provide sufficient latitude to allow all of the matters in question to be dealt with.

1. Requiring fidelity bond coverage based on the maximum amount of funds on hand is excessive.
2. FmHA's requirements should be based only on the facility it financed.
3. The FmHA loan servicing official should have more flexibility in handling insurance and fidelity bond matters.
4. Requirements governing fidelity bond coverage, including deductible provisions, should not be more stringent than those governing insurance coverage.
5. Fidelity bond coverage should not be required on restricted funds or when two or more entity officials' signatures are required.
6. Requirements established by State statutes should be taken into account.
7. Establish a recommended or base amount, such as one month's collections or a multiple of the annual FmHA debt service requirements, for fidelity bond coverage.
8. Allow fidelity bond type coverage which names individual persons.

The major points which were most commonly covered in the comments and which have not been incorporated in the revised regulation are listed below with an indication of why the Agency did not feel they should be incorporated in the revised language.

1. Do not monitor insurance after the first year for nonprofit organizations, and not at all for public bodies. Since the loans in question are made to entities which are unable to obtain credit elsewhere at reasonable rates and terms, the Agency believes that at least a minimal level of monitoring is appropriate.
2. Allow only a minimal amount as a deductible for fidelity bonds, and establish a maximum amount which can be allowed. Due to the vast differences in circumstances from one borrower to another, the Agency did not feel that establishing fixed requirements at the National level was desirable.
3. Address the subject of self-insurance. The Agency is aware that providing insurance protection other than through commercial insurance coverage, including various types of State-sponsored programs, has become more common in recent years, and does not object to coverage being provided by such means if the protection provided is adequate to protect the government's interest. However, the Agency believes that attempting to define acceptable types of "self-insurance" from the National level would not be desirable, and any such proposals submitted by applicants/borrowers for FmHA review

should be judged on their individual merits by field office personnel.

4. Do not change fidelity bond coverage requirement more than every two years. Since the applicants/borrowers involved often have large fluctuations in the amount of funds available, the Agency believes that an annual review of the amount of coverage is appropriate.

5. Do not exceed State requirements for general obligation bonds. Since there are wide variations in State requirements, the Agency does not believe it would be appropriate in all cases to consider only such requirements when evaluating applicants/borrowers' situations.

6. Require no fidelity bond, or only a minimal amount, if the security for FmHA's loan is not revenue-based. The revised language does not specifically address this situation; however, the additional flexibility provided is sufficient to do so when it is determined appropriate by field office personnel.

List of Subjects in 7 CFR Part 1942

Community development, Community facilities, Loan programs—housing and community development, Loan security, Rural areas, Waste treatment and disposal—domestic, Water supply—domestic.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for Part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 16 U.S.C. 1005; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Community Facility Loans

2. Section 1942.17 is amended by revising paragraph (j)(3) to read as follows:

§ 1942.17 Community facilities.

* * * * *

(j) * * *

(3) *Insurance and fidelity bonds.* The purpose of FmHA's insurance and fidelity bond requirements is to protect the government's financial interest based on the facility financed. The requirements below apply to all types of coverage determined necessary. The National Office may grant exceptions to normal requirements when appropriate justification is provided establishing that it is in the best interest of the applicant/borrower and will not adversely affect the government's interest.

(i) *General.* (A) Applicants must provide evidence of adequate insurance and fidelity bond coverage by loan closing or start of construction, whichever occurs first. Adequate coverage in accordance with this section must then be maintained for the life of the loan. It is the responsibility of the applicant/borrower and not that of FmHA to assure that adequate insurance and fidelity bond coverage is maintained.

(B) Insurance and fidelity bond requirements by FmHA shall normally not exceed those proposed by the applicant/borrower if the FmHA loan approval or servicing official determines that proposed coverage is adequate to protect the government's financial interest. Applicants/borrowers are encouraged to have their attorney, consulting engineer/architect, and/or insurance provider(s) review proposed types and amounts of coverage, including any deductible provisions. If the FmHA official and the applicant/borrower cannot agree on the acceptability of coverage proposed, a decision will be made by the State Director.

(C) The use of deductibles, i.e., an initial amount of each claim to be paid by the applicant/borrower, may be allowed by FmHA providing the applicant/borrower has financial resources which would likely be adequate to cover potential claims requiring payment of the deductible.

(D) Borrowers must provide evidence to FmHA that adequate insurance and fidelity bond coverage is being maintained. This may consist of a listing of policies and coverage amounts in yearend reports submitted with management reports required under § 1942.17(q)(2) or other documentation. The borrower is responsible for updating and/or renewing policies or coverage which expire between submissions to FmHA. Any monitoring of insurance and fidelity bond coverage by FmHA is solely for the benefit of FmHA, and does not relieve the applicant/borrower of its obligation under the loan resolution to maintain such coverage.

(ii) *Fidelity bond.* Applicants/borrowers will provide fidelity bond coverage for all persons who have access to funds. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees and/or officials. An exception may be granted by the State Director when funds relating to the facility financed are handled by another entity and it is determined that the entity has adequate coverage or the government's interest would otherwise be adequately protected.

(A) The amount of coverage required by FmHA will normally approximate the total annual debt service requirements for the FmHA loans.

(B) Form FmHA 440–24, "Position Fidelity Schedule Bond" may be used. Similar forms may be used if determined acceptable to FmHA. Other types of coverage may be considered acceptable if it is determined by FmHA that they fulfill essentially the same purpose as a fidelity bond.

(iii) *Insurance.* The following types of coverage must be maintained in connection with the project if appropriate for the type of project and entity involved:

(A) Property insurance. Fire and extended coverage will normally be maintained on all structures except as noted in paragraphs (j)(3)(iii)(A) (*1*) and (*2*) below. Ordinarily, FmHA should be listed as mortgagee on the policy when FmHA has a lien on the property. Normally, major items of equipment or machinery located in the insured structures must also be covered. Exceptions:

(*1*) Reservoirs, standpipes, elevated tanks, and other structures built entirely of noncombustible materials if such structures are not normally insured.

(*2*) Subsurface lift stations except for the value of electrical and pumping equipment therein.

(B) Liability and property damage insurance, including vehicular coverage.

(C) Malpractice insurance. The need and requirements for malpractice insurance will be carefully and thoroughly considered in connection with each health care facility financed.

(D) Flood insurance. Facilities located in special flood- and mudslide-prone areas must comply with the eligibility and insurance requirements of Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2).

(e) Worker's compensation. The borrower will carry worker's compensation insurance for employees in accordance with State laws.

* * * * *

3. Section 1942.18 is amended by revising paragraph (d)(4) to read as follows:

§ 1942.18 Community Facilities—Planning, Bidding, Contracting, Constructing.

* * * * *

(d) * * *

(4) *Health Care Facilities.* The proposed facility must meet the minimum standards for design and construction contained in the American Institute of Architects Press Publication

No. ISBN 0-913962-96-1, "Guidelines for Construction and Equipment of Hospital and Medical Facilities," 1987 Edition. The facility must also meet the life/safety aspects of the *1985* edition of the National Fire Protection Association (NFPA) 101 Life Safety Code, or any subsequent code that may be designated by the Secretary of HHS. All publications referenced in this section are available in all FmHA State Offices. Under § 1942.17(j)(8)(ii) of this subpart, a statement by the responsible regulatory agency that the facility meets the above standards will be required. Any exceptions must have prior National Office concurrence.

* * * * *

4. Section 1942.19 is amended by revising paragraph (h)(10)(iii) to read as follows:

§ 1942.19 Information pertaining to preparation of notes or bonds and bond transcript documents for public body applicants.

* * * * *

(h) * * *

(10) * * *

(iii) Defeasance provisions in loan or bond resolutions. When a bond issue is defeased, a new issue is sold which supersedes the contractual provisions of the prior issue, including the refinancing requirement and any lien on revenues. Since defeasance in effect precludes FmHA from requiring graduation before the final maturity date, it represents a violation of the statutory refinancing requirement, therefore it is disallowed.

* * * * *

Dated: April 5, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-10600 Filed 5-2-89; 8:45 am]

BILLING CODE 3410-07-M

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7 CFR Part 1951

Account Servicing Policies

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Account Servicing regulation. This action is being taken to revise and renumber Form FmHA 451-7, "Request for change of Application." The intended effect of this action is to expedite processing of misapplied payments.

EFFECTIVE DATE: May 3, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Adams, System Accountant, Accounting Policy and Procedures Section I, USDA, Farmers Home Administration, 1520 Market Street, St. Louis, Missouri, telephone FTS 262-6024 or commercial 314-539-6024.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and, since this action has no impact on FmHA borrowers or other members of the public, it has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comments notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves internal Agency management and publication for comment is unnecessary.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, Environmental Program. It is the determination of FmHA that this action does not constitute a major Federal Action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

For the reasons set forth in the final rule related to notice 7 CFR Part 3015, Subpart V, (48 FR 29115, June 1983), this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. This action does not directly affect any FmHA programs or projects which are subject to intergovernmental consultation.

List of Subjects in 7 CFR Part 1951

Account servicing, Low and moderate income housing loans—Servicing Credit, Loan programs—Agriculture, Loan programs—Housing and community development.

Accordingly, Title 7, Chapter XVIII of the Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 7 CFR 2.70.

Subpart A—Account Servicing Policies

2. Section 1951.12(b) is revised to read as follows:

§ 1951.12 Changes in the application of loan payments.

* * * * *

(b) Form FmHA 1951-7, "Request for Change in Application." Requests for changes in application of payments will be made on Form FmHA 1951-7. For requests which County Supervisors or Assistant County Supervisors are authorized to approve, the County Supervisor or Assistant County Supervisor will sign the original of Form FmHA 1951-7 and forward it to the Finance Office. The Finance Office will send Form FmHA 451-26 to the County Office when the change is made on Finance Office records.

* * * * *

Date: March 24, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-10569 Filed 5-2-89; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL TRADE COMMISSION

16 CFR Part 3

Partial Settlements of Matters in Adjudication

AGENCY: Federal Trade Commission.

ACTION: Final rule, subject to reconsideration on the basis of public comment.

SUMMARY: The Federal Trade Commission is amending § 3.25 of its Rules of Practice to clarify that the agency may consider a proposed consent agreement affecting some charges in a complaint while other charges remain in litigation. The Commission also seeks public comment generally on the merits of its procedures for consideration of post-complaint partial settlements, including both settlements that would resolve only some of the charges against a particular respondent, and settlements that would resolve charges against only some of the respondents in a proceeding.

EFFECTIVE DATE: These amendments are effective May 3, 1989.

ADDRESS: Send comments to the Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Marc Winerman, Attorney, Office of the General Counsel, 202-326-2451.

SUPPLEMENTARY INFORMATION: Pursuant to Rule 3.25 of the Commission's Rules of Practice, 16 CFR 3.25, the Commission has occasionally withdrawn from adjudication portions of a matter that would be affected by a proposed consent settlement to resolve some, but not all, of the charges in a complaint with respect to particular respondents. *See Midcon Corp.*, D. 9198, Order Withdrawing Matter From Adjudication as to Allegation In Count II of Complaint, September 19, 1985; *Detroit Auto Dealers Ass'n*, D. 9189, Order Withdrawing Count Two from Adjudication As To Certain Respondents, June 25, 1985. In addition, a 1986 amendment to Commission rule 4.7(f), 16 CFR 4.7(f), provides that off-the-record communications between the Commission and complaint counsel respecting such proposed settlements do not violate the agency's general restrictions on *ex parte* contacts in adjudicative proceedings. *See* 51 FR 36901 (1986).

Rule 3.25 (as well as Rule 4.7(f)) already makes clear that the Commission will consider, under its post-complaint settlement procedures, settlements that are signed by some but not all of the respondents in a proceeding. Rule 3.25 does not, however, explicitly address settlement proposals that would resolve only some of the charges against the respondents who signed them. The purpose of this amendment is to clarify that such settlement proposals are covered by the Rule.

Because the amendment merely clarifies existing practice, it has been deemed a final rule. The Commission nonetheless invites public comment concerning its procedures for considering partial settlements. Specifically, the Commission invites public comment on its practice of withdrawing a matter from adjudication when a partial settlement is proposed, irrespective of whether the settlement is "partial" because it is not signed by all the respondents to the proceeding or because it does not resolve all the charges against the party or parties who signed it.

I. The Availability of Partial Settlements

The Commission believes that a partial settlement procedure can resolve portions of a case expeditiously and limit litigation, with its attendant costs, to issues that are really in dispute.

The Administrative Procedure Act, though not expressly requiring partial settlements, requires agencies to consider settlement proposals "when time, the nature of the proceeding, and the public interest permit * * *." 5 U.S.C. 554(c). Partial settlements are consistent with this mandate.

Further, although a partial settlement may expose the Commission to issues that remain in adjudication, such exposure does not preclude the agency from ruling on the subsequent matter. *See, e.g., Pangburn* v. *CAB*, 311 F.2d 349, 358 (1st Cir. 1962); *American Home Products*, 95 F.T.C. 381 (1980) (finding "without merit" the argument that consideration of settlement proposal would disqualify Commission from deciding appeal in a factually-related proceeding). Courts as well as the Commission may consider related cases sequentially. *Cf. Transeastern Shipping Corp.* v. *India Supply Mission*, 53 F.R.D. 204 (S.D.N.Y. 1971) (declining to consolidate cases involving same defendant and interpretation of substantially identical contracts, notwithstanding that cases would be decided sequentially, where cases were at different stages of pre-trial proceedings.) In the case of partial settlement proposals, which benefit the Commission, the settling respondents, and the public for the reasons set forth above, we believe such consideration is both lawful and appropriate.

II. Ex parte and Pendency Issues Raised by Withdrawing a Portion of a Matter from Adjudication, and Leaving the Remainder in Adjudication, When a Partial Settlement is Proposed

A. *Ex parte issues.* When a post-complaint settlement proposal is offered unilaterally by respondents, Rule 3.25(d) provides for withdrawal of the matter from adjudication only upon the issuance of an order by the Commission to do so. When a proposal is joined by complaint counsel, however, Rule 3.25(c) provides for automatic withdrawal of the matter from adjudication as to the respondents who signed the agreement. This provision has also been construed to authorize removal of particular counts of a matter from adjudication when a proposed settlement would resolve those counts, but not other pending counts, against a respondent.

Removal from adjudication, of course, terminates *ex parte* constraints with respect to communications about the portion of a matter that was thus withdrawn. Further, under Commission Rule 4.7(f), *ex parte* communications between staff and decisionmaking employees about the proposed consent are permitted even if they deal with matters that remain in adjudication, subject to a provision that such communications will be placed on the public record when the Commission determines that disclosure will serve the interest of justice.

The Commission believes that such communications are appropriate as a matter of law, for reasons set forth in the Federal Register notice announcing a 1986 amendment to the *ex parte* rule. *See* 51 FR 36802 (1986).

As a matter of policy, such communications enable staff to provide a candid assessment of both its litigation prospects and its reaction to public comments received, and a full explanation of its decision to recommend settlement. This information enhances the decisionmaking process and reduces the risk that the Commission will reject a consent, or accept one, based on inadequate or misleading information. Barring or publicly disclosing staff communications would only impede the flow of advice to the Commission. *See NLRB* v. *Sears Roebuck & Co.* 421 U.S. 132, 150 (1975) (disclosure of advice may inhibit communications). The Commission believes these advantages are present irrespective of whether a proposed consent would resolve all of a matter or only part of it.

The Commission has considered the possible appearance of unfairness in these communications. This problem would appear to be most acute when a proposal has been joined by only some of the respondents in a proceeding, and there is no consent to the *ex parte* communications by those who failed to join. However, the Commission does not believe that proposed partial settlements differ substantially from other situations in which *ex parte* communications are permitted. Under Rule 3.25, for example, the agency can reject a proposed settlement of an entire matter, and return the matter to adjudication, notwithstanding *ex parte*, post-complaint discussions that occurred while the matter had been withdrawn from adjudication. Similarly, under Rule 4.7(f), the Commission may conduct *ex parte* discussions with staff, notwithstanding the possible relevancy of such discussions to ongoing litigation, if the discussions concern "the initiation, conduct, or disposition of a separate investigation or proceeding." 16 CFR 4.7(f).

In view of these other situations, the Commission does not believe that partial settlement proceedings raise unique *ex parte* concerns, even from the perspective of the "appearance of unfairness." To the contrary, the nature of the Commission's functions will necessarily dictate, on occasion, that the agency review a matter in a prosecutorial (or administrative) capacity while a related matter is being considered in a quasi-judicial capacity.

When this occurs, the Commission believes the advantages of an *ex parte* procedure are likely to outweight its disadvantages.

Another possible disadvantage is that, if proposed settlement of some counts in a complaint permits *ex parte* communications, respondents may be deterred from entering partial settlements. The Commission has no reason to believe that this is a substantial problem, particularly because respondents, notwithstanding possible concerns about *ex parte* communications, share the Commission's interest in resolving litigation expeditiously and inexpensively through settlements.

B. *Continuing Litigation of the Portion of the Matter Not Subject to the Proposed Settlement.* To the extent that litigation of the remaining issues in a proceeding continues during consideration of a proposed partial settlement, an inefficiency may arise if the Commission ultimately rejects the consent. It may then be necessary to recall witnesses who had testified while the settlement was under consideration. However, the ALJ could presumably delay the reception of particular evidence in a case where the possibility of this problem appears serious. In any event, the Commission does not believe this problem is sufficiently common or grave to reject the use of partial settlements entirely.

III. Issues Raised by Automatic Withdrawal Under Rule 3.25(c)

The Commission has specifically determined, pending possible reconsideration following public comment, that Rule 3.25(c) will continue to provide for automatic removal of a matter from adjudication when complaint counsel join in a consent proposal, although a Commission order will continue to be required under Rule 3.25(d) before a matter is withdrawn from adjudication on the basis of a proposed consent in which complaint counsel do not join. The Commission has further determined, again pending possible reconsideration, that Rule 3.25 will continue to provide that this procedure is available for partial settlement proposals that are signed by only some of the parties to a proceeding and, as noted above, the Commission is amending the rule to clarify the availability of these procedures for partial settlements that would resolve only some charges against the parties who sign it.

Automatic removal, when complaint counsel join a settlement proposal, enables complaint counsel to explain candidly their recommendation that the Commission accept a proposed settlement that is before the agency under Rule 3.25(c). If the Commission has concerns with an automatic removal that has taken place, it may limit non-record communications before the fact, place them on the public record after the fact, *see* Rule 4.7(f), return the matter to adjudication, or some combination of the above.

List of Subjects in 16 CFR Part 3

Administrative practice and procedure, Investigations.

Accordingly, the Federal Trade Commission amends Title 16, Chapter I, Subchapter A, Part 3, of the Code of Federal Regulations as follows:

PART 3—INVESTIGATIONS

1. The authority for Part 3 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), *unless otherwise noted.*

2. Paragraphs (a) through (f) of § 3.25 are revised to read as follows:

§ 3.25 Consent agreement settlements.

* * * * *

(a) The Administrative Law Judge may, in his discretion and without suspension of prehearing procedures, hold conferences for the purpose of supervising negotiations for the settlement of the case, in whole or in part, by way of consent agreement.

(b) A proposal to settle a matter in adjudication by consent agreement shall be submitted by way of a motion to withdraw the matter from adjudication for the purpose of considering the proposed consent agreement. Any such motion shall be accompanied by a proposed consent agreement containing a proposed order executed by one or more respondents and conforming to the requirements of § 2.32; the proposed consent agreement itself, however, shall not be placed on the public record unless and until it is accepted by the Commission as provided herein. If the proposed consent agreement affects only some of the respondents or resolves only some of the charges in adjudication, the motion required by this subsection shall so state and shall specify the portions of the matter that the proposal would resolve.

(c) If the proposed consent agreement accompanying the motion has also been executed by complaint counsel, including the appropriate Bureau Director, the Secretary shall issue an order withdrawing from adjudication those portions of the matter that the proposal would resolve and all proceedings before the Administrative Law Judge shall be stayed with respect to such portions, pending a determination by the Commission pursuant to paragraph (f) of this section.

(d) If the proposed consent agreement accompanying the motion has not been executed by complaint counsel, the Administrative Law Judge may certify the motion and agreement to the Commission together with his recommendation if he determines, in writing, that there is a likelihood of settlement. The filing of a motion under this subsection and certification thereof to the Commission shall not stay proceedings before the Administrative Law Judge unless the Administrative Law Judge or the Commission shall so order. Upon certification of a motion pursuant to this subsection, the Commission may, if it is satisfied that there is a likelihood of settlement, issue an order withdrawing from adjudication those portions of the matter that the proposal would resolve, for the purpose of considering the proposed consent agreement.

(e) The Commission will treat those portions of a matter withdrawn from adjudication pursuant to paragraph (c) or (d) of this section as being in a nonadjudicative status. Portions not so withdrawn shall remain in an adjudicative status.

(f) After the matter has been withdrawn from adjudication, in whole or in part, the Commission may: (1) Accept the proposed consent agreement, (2) reject it and return to adjudication for further proceedings any portion of the matter previously withdrawn from adjudication, or (3) take such other action as it may deem appropriate. If a proposed consent agreement is accepted, the Commission will place it on the public record, together with any initial report of compliance submitted pursuant to § 2.33, and at the same time, will make available an explanation of the provisions of the order and the relief to be obtained thereby, and any other information which it deems helpful in assisting interested persons to understand the terms of the order. The Commission will publish the agreement, order, and explanation in the **Federal Register.** For a period of sixty (60) days after placement of the order on the public record and issuance of the statement, the Commission will receive and consider any comments concerning the order that may be filed by any interested person. Thereafter, the Commission may either withdraw its acceptance of the agreement and so notify the parties, in which event it will return the affected portions of the matter to adjudication for further proceedings or take such other action as it may

consider appropriate, or issue and serve its decision.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-10583 Filed 5-2-89; 8:45 am]

BILLING CODE 6750-01-M

BOARD FOR INTERNATIONAL BROADCASTING

22 CFR Part 1300

Rules of Procedure: Radio Free Europe/Radio Liberty, Inc.

AGENCY: Board for International Broadcasting.

ACTION: Final rule.

SUMMARY: These rules of procedure update and supersede those published in the **Federal Register** on March 18, 1980. They establish operational procedures and policies for the Board for International Broadcasting (BIB) and Radio Free Europe/Radio Liberty, Inc., (RFE/RL). The BIB has authority under the Board for International Broadcasting Act of 1973, as amended, to make grants to RFE/RL and to oversee its activities. These new rules are more concise than those previously published and more accurately represent current practice resulting from legislation passed since 1980.

EFFECTIVE DATE: June 2, 1989.

FOR FURTHER INFORMATION CONTACT: John A. Lindburg, General Counsel, Board for International Broadcasting, 1201 Connecticut Avenue, Suite 400, Washington, DC 20036. Tel. (202) 254-8040.

SUPPLEMENTARY INFORMATION: These rules of procedure were adopted unanimously by the Board for International Broadcasting during its meeting on February 6, 1989. They are published as final rule-making without previous publication in proposed form because they are interpretive rules, involve a foreign affairs function, and relate to agency management and personnel, and to a public grant. Furthermore, RFE/RL management commented on the proposed rules and approved the final rules. Therefore, the requirement of publication for proposed rule-making purposes under 5 U.S.C. 553(b) is not applicable to these regulations.

Part 1300 of Title 22 of the Code of Federal Regulations is revised to read as follows:

John A. Lindburg,

General Counsel.

PART 1300—RULES OF PROCEDURE

Sec.
1300.1 Purpose.
1300.2 Organization of the Board for International Broadcasting.
1300.3 Staff of the Board.
1300.4 Annual report.
1300.5 RFE/RL, Inc. and U.S. Foreign Policy objectives.
1300.6 The RFE/RL professional code.
1300.7 Personnel
1300.8 Research reports..
1300.9 Budget development and execution.
1300.10 Financial oversight.
1300.11 Procurement and ownership of equipment.
1300.12 Assistance with Congressional inquiries.
1300.13 Access to information and premises.
1300.14 RFE/RL organization.
1300.15 Government relations.
1300.16 Relations with Foreign Governments.

Authority: Pub. L. 93-129, as amended; 22 U.S.C. 2873 (a) (10).

§ 1300.1 Purpose.

(a) These regulations are adopted by the Board for International Broadcasting (BIB) pursuant to authority granted to it by Pub. L. 93-129, 87 Stat. 456, approved October 19, 1973; 22 U.S.C. 2873 et seq., as amended. Grant funds shall be transferred to Radio Free Europe/Radio Liberty, Inc. (RFE/RL, Inc.) only on condition of compliance with the pertinent parts of these regulations. Exceptions to this condition may be made by the BIB.

(b) These regulations are based on the statutory mandate of the BIB:

(1) to make grants to RFE/RL, Inc.;

(2) to review and evaluate the mission and operation of RFE/RL, Inc., and to assess the quality, effectiveness, and professional integrity of its broadcasting within the broad foreign policy objectives of the United States;

(3) to encourage the most efficient utilization of available resources by RFE/RL, Inc., and to undertake, or request that RFE/RL, Inc. undertake, such studies as may be necessary to identify areas in which the operations of RFE/RL, Inc. may be made more efficient and economical;

(4) to develop and apply such financial procedures, and to make such audits of RFE/RL, Inc., as the Board may determine are necessary, to assure that grants are applied in accordance with the purposes for which such grants are provided;

(5) to develop and apply such evaluative procedures as the Board may determine are necessary to assure that grants are applied in a manner not inconsistent with the broad foreign policy objectives of the U.S. Government; and

(6) to prescribe such regulations as the Board deems necessary to govern the manner in which its functions shall be carried out.

(c) In carrying out the foregoing functions, the Board will respect the integrity and professional independence of RFE/RL, Inc.

§ 1300.2 Organization of the Board for International Broadcasting.

(a) The Board for International Broadcasting is composed of ten members, one of whom—the President and Chief Operating Executive of RFE/RL, Inc.—is an ex officio member. As such, the President of RFE/RL, Inc. may participate in the activities of the Board, but may not vote in the determinations of the Board.

(b) The President of the United States appoints, by and with the advice and consent of the Senate, nine voting members, one of whom he designates as Chairman. By law, the Board's membership must be bipartisan, with no more than five seats reserved for any one political party. The voting members are appointed for a term of three years. A member whose term has expired may continue to serve until his or her successor has been appointed and confirmed.

(c) The nine voting members and the ex officio member of the BIB serve concurrently as the Board of Directors of RFE/RL, Inc. Unless specifically noted otherwise, all meetings of the Board are considered joint meetings of the Board for International Broadcasting and of the Board of Directors of RFE/RL, Inc. The Board of Directors make all major policy determinations governing the operation of RFE/RL, Inc., and appoints and fixes the compensation of managerial officers and employees of RFE/RL, Inc.

(d) The Chairman of the Board, or his designee, shall:

(1) Call and preside at all meetings of the Board;

(2) Appoint standing or ad hoc committees of the Board;

(3) Direct the work of the BIB professional staff, evaluate the performance of the Executive Director, and review the performance of the senior officers;

(4) Represent the Board in all matters pertaining to the U.S. Congress;

(5) Represent the Board in all matters requiring conferences or communications with officers, departments, or agencies of the U.S. Government and foreign governments.

(e)(1) The Board, unless it votes otherwise, shall hold formal meetings no fewer than three times in a calendar year. Two of these meetings normally will be held in the United States; and

one in Europe in connection with the annual meeting of the Corporation.

(2) Five voting members constitute a quorum for the conduct of business. Actions of the Board shall be taken by a vote of at least five of the voting members. Members absent from a meeting may register their agreement or disagreement with the Board decisions in writing or by telephone to be included in the minutes of the meeting. The Chairman may, from time to time as events may require, solicit Board approval of decisions by telephone in the absence of a regularly scheduled meeting.

(3) The BIB staff, under the direction of the Executive Director, shall be responsible for preparing for the Board meetings in the United States, including notification of members, physical arrangements, preparation of briefing books and a written agenda. The President of RFE/RL, Inc., coordinates the preparation of the European meeting of the Board, which normally is held at RFE/RL's Munich headquarters.

(4) While attending meetings of the Board or engaged in activities directly related to the BIB or RFE/RL, Inc., the voting members of the Board are entitled to receive compensation equal to the daily equivalent of that prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code. While away from home on BIB business, members are entitled to travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5703) for persons in the Government service who are employed intermittently.

(f) Committees of the Board meet periodically during the year. Agendas for these meetings are prepared with the assistance of the BIB staff.

§ 1300.3 Staff of the Board.

(a) The Board appoints staff personnel according to provisions of Title 5, United States Code, governing appointments in the competitive service.

(b) The staff members are career Federal employees. The office is headed by an Executive Director; he is assisted by a Deputy Executive Director. Other senior officers include, but are not limited to, a Director of Financial and Congressional Affairs and a General Counsel.

(c) The Chairman of the Board may delegate authority to his staff, through the Executive Director, to act on matters which do not require the formal action of the Board. The BIB staff reports to and coordinates its activities with the Chairman on a regular basis.

(d) With the approval of the Chairman the senior staff conducts regular reviews of RFE/RL programming, research, administration, finance, and engineering work. The BIB staff commissions outside independent evaluations of RFE/RL programming and other functional areas as required. It communicates the results of these evaluations to the Board members and the President of RFE/RL, Inc. At least once a year, the staff commissions and outside audit of RFE/RL finances.

(e) The BIB staff coordinates all contacts with the U.S. Congress, U.S. Government agencies, and foreign governments. Senior staff members maintain regular ties with Congressional staffers and with officers at the Department of State, United States Information Agency, Office of Management and Budget, the Federal Communications Commission, and other government agencies. When serious issues arise, the staff refers them to the Chairman, who consults with the Board as appropriate.

(f) The duties of each staff member are described in a position description which is maintained on file in the Board's offices.

§ 1300.4 Annual Report.

The BIB publishes an annual report, submitted to the President and the Congress, on or before the 31st day of January, that summarizes the activities of the Board during the fiscal year ending the preceding September 30th and reviews and evaluates the operation of RFE/RL, Inc.

§ 1300.5 RFE/RL, Inc. and U.S. Foreign Policy objectives.

(a) The Board shall develop and apply such evaluative procedures as necessary to ensure that RFE/RL's programming and operations are not inconsistent with the broad foreign policy objectives of the United States.

(b) To assist the Board in carrying out its functions, the Secretary of State or his designee shall provide the Board with such information regarding the foreign policy of the United States as he deems appropriate. The Secretary or his designee shall report regularly to the Board on the impact of broadcasts by RFE/RL, Inc. in Eastern Europe and the Soviet Union. The BIB shall convey this information to the President of RFE/RL. The management of RFE/RL, Inc. is expected to take appropriate action based on this information. The BIB shall not impose any prior constraint on programming, the preparation of broadcast materials, or the manner in which those materials are broadcast by RFE/RL.

(c) RFE/RL, Inc. shall maintain regular liaison with the U.S. Consulate in Munich for the discussion of developments in Eastern Europe and the Soviet Union. To the extent that important policy issues arise during these discussions, they shall be brought to the attention of the BIB.

(d) Although RFE/RL, Inc. may maintain informal contacts with the U.S. missions in Europe and elsewhere, it is to remain an independent journalistic organization. RFE/RL, Inc. does not speak on behalf of the U.S. Government.

§ 1300.6 The RFE/RL professional code.

(a) The Board of RFE/RL, Inc. is required by the BIB to prepare the RFE/RL Code: a statement defining the mission of RFE/RL and setting forth its policy guidelines. It is distributed publicly and is reprinted in the Annual Report.

(b) RFE/RL management is required by the BIB to be responsible for assuring compliance of its operations with the policy guidelines and shall promptly inform the BIB of any violations of the policy guidelines, and of the remedial actions it has taken.

(c) This code shall serve as the basic framework for all evaluations of RFE/RL programming. The BIB shall commission reviews of programs by noted scholars and journalists in the United States and Western Europe; RFE/RL shall conduct regular program reviews in-house. There shall be written reports of all evaluations which specify how programs conform to the guidelines set forth in the Code.

(d) After approval by the BIB, this code is incorporated by reference in these regulations as if fully set out herein.

§ 1300.7 Personnel.

(a) RFE/RL Inc. shall be solely responsible for the appointment, assignment, promotion, and separation of its employees, and such personnel actions, with the exceptions noted in paragraphs (b) (1) and (2) of this section, shall not require the concurrence of the BIB.

(b)(1) The President of RFE/RL shall inform the Chairman of the BIB of his intention to appoint or terminate the employment of senior executives. The positions are: Executive Vice President for Programs and Policy, the Directors of RFE and RL, the Vice Presidents for Finance, Management, and Engineering; the Directors of Information Systems, Corporate Affairs, Central News, RFE Research, RL Research, Broadcast Analysis, Soviet Area Audience and Opinion Research, East European Audience and Opinion Research, and the major language services.

(2) Appointments to the above-named positions require concurrence of the Board (except in the case of acting appointments) which shall have the opportunity to review the qualifications of the candidates and to interview them in person. Major changes in the functions of these positions or the establishment of new positions at comparable levels of responsibility, also require concurrence of the Board.

(3) All personnel actions of RFE/RL, Inc., shall be in accordance with pertinent laws prohibiting discrimination on the basis of race, color, sex, age, religion, or national origin.

(c) On or before January 1st each year, RFE/RL shall make available for examination by the BIB a complete roster of all personnel employed by RFE/RL, stating position, title, grade level, citizenship, date of birth, date of hire, and total remuneration, including all allowances and special benefits. For foreign locations, the report shall provide current information about appropriate local currencies, with dollar equivalents calculated at the established exchange rates.

(d) RFE/RL shall make available to the BIB copies of any documents of a substantive policy nature issued to management, employees, and outside organizations, as well as general announcements to employees by labor unions, works councils, and other employee organizations. RFE/RL shall also make available to the BIB copies of all union contracts.

§ 1300.8 Research reports.

The BIB may direct RFE/RL to undertake such studies as in the judgment of the BIB may identify areas where operations may be made more efficient and economical.

§ 1300.9 Budget development and execution.

(a) Sixteen months preceding the beginning of the fiscal year to which the budget applies (for example, by June 1, 1989 for the FY 1991 budget), RFE/RL shall propose to the BIB the financial assumptions to be used in determining the base budget level and highlight desired enhancements or reductions. This proposal should be in writing, followed by a verbal discussion at the staff level. The Chairman's approval is required of the financial assumptions and any proposed enhancements or reductions.

(b) The budget presentation specified in paragraph (a) of this section shall be consistent with guidelines presented to RFE/RL by the BIB, based on the ceiling established by the Office of Management and Budget (OMB).

(c) Based on the BIB guidelines, the OMB ceiling, and the budget decisions resulting from the presentation specified in paragraph (a) of this section RFE/RL shall submit to the BIB a formal budget request no later than August 1 of each year, and the BIB shall arrange for RFE/RL to present its budget to the Chairman and to members of the BIB, as appropriate. Final decisions by the Board shall be communicated to RFE/RL which shall revise the budget request accordingly.

(d) The BIB shall present the budget to OMB for approval and subsequently to the authorization and appropriations committees of Congress. In making such presentations, representatives of the BIB will be accompanied when feasible by the President of RFE/RL or his designee, and any additional RFE/RL staff as requested.

(e) Expenditures during a fiscal year by RFE/RL shall correspond to the final budget as approved by the Congress. On or before October 1 of each year, RFE/RL shall submit to BIB a fiscal year financial plan which provides on a monthly basis projected expenditures by object class for each of its programs and activities.

(1) For each object class line item of more than $250,000 in RFE/RL's financial plan, any reprogramming of funds in excess of $250,000, or 10% of the budgeted amount for that item, whichever is less, shall require prior approval of the BIB. In this event, RFE/RL shall submit a request for reprogramming authority or a plan for offsetting the deviation in succeeding fiscal quarters.

(2) Quarterly financial reports to the BIB shall indicate all object class line item expenditures which deviated from the budgeted amount by more than $250,000 or 10% of the budgeted amount, whichever is less, and will include an explanation for the deviations.

§ 1300.10 Financial oversight.

(a) BIB shall grant funds to RFE/RL to support international radio broadcasting activities, and all expenditures by RFE/RL under such grants shall be made in accordance with appropriate requirements of Office of Management and Budget Circulars No. A-110 and A-122.

(b) RFE/RL shall adhere to sound accounting practices and shall maintain records fully disclosing the amount and disposition of funds granted by the BIB, including the total costs of RFE/RL programs for which grants are provided, and that portion of its expenditures supported by other sources of funds. RFE/RL will keep all financial records required by the BIB and will also submit periodic reports on the expenditures of funds, as requested.

(c) RFE/RL shall submit to the BIB copies of draft proposals for capital expenditures, consultant or professional services, or lease arrangements in all cases where the following criteria apply:

(1) When a given contract or proposal for a capital expenditure exceeds $100,000 in any fiscal year; or when any proposed lease arrangement for business premises, in the United States or overseas, will last for a period of more than two years or at an annual rental exceeding $100,000.

(2) When any individual solicitation by RFE/RL of consultant or professional services, and draft contracts for such services, including legal, actuarial and other noneditorial services with any person or organization exceed $50,000 in any single fiscal year.

(d)(1) No contract described in subparagraphs (c) (1) and (2) of this section shall be entered into by RFE/RL without prior written approval of the BIB.

(2) The dollar limitations in subparagraphs (c) (1) and (2) of this section may be revised periodically by BIB.

(e) Reports on the management of foreign currency shall be governed by special agreement between the Board and the Office of Management and Budget, and RFE/RL shall comply fully and promptly with all requirements of such agreement.

(f) Copies of all annual, quarterly, monthly or other periodic financial report, projection, statement or audit prepared by or on behalf of RFE/RL shall be made available to BIB upon issuance.

(g) RFE/RL shall make available for public inspection during normal business hours at its principal offices in the United States, a complete list of every person, organization, and government making a contribution to RFE/RL during the preceding fiscal year, the address of the person, organization, or government making the contribution, and the date the contribution was made.

(h) The Comptroller General of the United States or his representative shall have access for the purpose of audit and examination to any book, document, paper and record of RFE/RL.

§ 1300.11 Procurement and ownership of equipment.

The BIB is authorized under 22 U.S.C. 2872(c) to procure supplies, services and other personal property, including specialized electronic equipment. As

appropriate, BIB will use its authority to purchase electronic equipment for RFE/RL, title to which shall remain with the United States Government.

§ 1300.12 Assistance with Congressional inquiries.

Upon request, RFE/RL management shall promptly provide the BIB with any information necessary for the BIB to respond satisfactorily to inquiries raised by committees of Congress or individual Members or their staffs.

§ 1300.13 Access to information and premises.

RFE/RL shall keep complete records, as prescribed by law and regulations, concerning its operations, including but not limited to information on corporate, financial, personnel, engineering, research, programming, and technical matters. Board members and senior staff shall have access to any information in the records of RFE/RL and access to RFE/RL premises or sites.

§ 1300.14 RFE/RL organization.

(a) RFE/RL management shall submit to the BIB any proposed major changes in the organization (as defined in paragraph (b) of this section) of offices, programs, or other activites. These changes shall be presented by the BIB to the OMB and the relevant Congressional Committees.

(b) Major organizational changes in RFE/RL shall include the addition or elimination of broadcast languages, significant altering of broadcast transmitter time or power allocation among the languages, structural reorganization including the addition or elimination of departments, divisions, or functions and any substantial relocation of offices, broadcast services, or other significant activities.

§1300.15 Government relations.

(a) Relations with the Executive Branch, the Congress, and foreign governments arising under the Board for International Broadcasting Act are the primary responsibility of the BIB and shall be carried out by the BIB.

(b) The BIB recognizes that in the normal course of business RFE/RL management will have contacts with members and staff of Congress, officials of Federal agencies, U.S. diplomatic personnel overseas, and representatives of foreign governments in order to further the mission of RFE/RL. The BIB further recognizes that the operational requirements of RFE/RL, Inc., necessitate a close working relationship with various overseas governmental and private business organizations such as the German Bundespost and the Portuguese and Spanish PTTs. RFE/RL, Inc., shall keep the Chairman of the Board and the Executive Director of BIB apprised of any such contacts that may affect the interests of the United States Government.

(c) Nothing herein shall be construed to limit the normal exercise of professional duties by RFE/RL news, research, and program personnel. The BIB supports, and when requested shall attempt to facilitate, full and unimpeded access by such personnel to officials of the Executive Branch and the Congress for interviews, news conferences, background briefings, and all other legitimate journalistic purposes.

§1300.16 Relations with Foreign Governments.

Relationships with foreign governments or international organizations, except for routine daily operating matters, is reserved to the BIB.

[FR Doc. 89-10487 Filed 5-2-89; 8:45 am]
BILLING CODE 6155-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 990

[Docket No. R-89-1400; FR-2437]

Performance Funding System; Insurance Costs; Revised Effective Date

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of revised effective date.

SUMMARY: The Department of Housing and Urban Development Act requires HUD to wait thirty calendar days of continuous session of Congress before it makes a published rule effective. The Department computed and announced, at the time of publication, the effective date for the final rule that revised the Performance Funding System (PFS) to accurately reflect the increase in insurance costs incurred by Public Housing Agencies (PHAs), including Indian Housing Authorities (IHAs). Because Congress has recessed earlier than scheduled for a "conditional adjournment", the Department must revise its previously published effective date. This document announces the new date.

EFFECTIVE DATE: May 10, 1989.

FOR FURTHER INFORMATION CONTACT: Theodore R. Daniels, Director, Project Financial Management and Occupancy Division, Office of Public Housing, Room 4208, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-8145. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 15, 1989 (54 FR 10657), the Department published in the **Federal Register**, a final rule that revised the Performance Funding System (PFS) to accurately reflect the increase in insurance costs incurred by Public Housing Agencies (PHAs), including Indian Housing Authorities (IHAs). The effective date of that rule was May 1, 1989.

Section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)) requires HUD to delay effectiveness of a published rule until thirty days of continuous session of Congress have elapsed. HUD computes the effective date for a particular rule by counting thirty session days of Congress (which excludes recesses for holidays) from the day after the date of publication of the final rule. This method relies on the published schedule of Congress. This year, Congress decided to recess for a "conditional adjournment" for longer than the published schedule. For this reason, HUD must delay the effective date for this final rule.

Accordingly, in 24 CFR Part 990, the effective date for the final rule published March 15, 1989 (54 FR 10657), is revised to read, "Effective Date: May 10, 1989".

Dated: April 27, 1989.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 89-10547 Filed 5-1-89; 8:45 am]
BILLING CODE 4210-33-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket 87-29; RM-4941 and RM-5399]

Radio Broadcasting Services; Greenup, Kentucky and Athens, OH

AGENCY: Federal Communications Commission.

ACTION: Final Rule/Reconsideration.

SUMMARY: On reconsideration, the Commission grants the request of WATH, Inc. to substitute Channel 289B1 for Channel 288A at Athens, Ohio and modify its license for Station WXTQ-FM to operate on Channel 289B1. This channel can be allotted to Athens in compliance with the Commission's minimum distance separation

requirements using a site located at coordinates North Latitude 39-20-31 and West Longitude 89-09-54. The Commission found that a southward relocation of an existing station and use of the correct primary service contour of 1.0 mV/m would result in WXTQ-FM's providing a second aural service to a new area with a significantly sized population. Accordingly, the Commission reverses its prior Order granting a similar channel substitution and license modification for Station WLGC-FM at Greenup, Kentucky. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 87-29, adopted April 11, 1989, and released April 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-10588 Filed 5-2-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-209; RM-5700, RM-5768, RM-5926, RM-6079, and RM-6080]

Radio Broadcasting Services; Huntsville, TX, et al.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants the petition filed by Hicks Communications, Inc. requesting reconsideration of the Report and Order in MM Docket 87-209 to the extent it allotted Channel 235A to Huntsville, Texas. The petition requested that the Channel 235A allotment be rescinded so that it might be considered for allotment to College Station, Texas in MM Docket No. 88-48. In evaluating the petition, we agreed with petitioner's claim that Channel 259A can be substituted for Channel 235A at Huntsville and provide equivalent service. Since the only party opposing the petition expressed no objection to this channel substitution, the Commission determined that it was in the public interest to grant the petition to the extent of the substitution of Channel 259A for Channel 235A at Huntsville, while otherwise not addressing the merits of the petition. The Commission ordered that the Secretary of the Commission send by certified mail, return receipt requested, a copy of this Order to the following parties that have applied to operate on Channel 235A at Huntsville:

Helen Maryse Casey, Route 2, Box 213, Huntsville, TX 77340

Mildred D. Hall, 1636 Whiskey Creek Drive, Fort Myers, FL 33919.

With this action, this proceeding is terminated.

EFFECTIVE DATE: June 12, 1989.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-205, adopted, April 11, 1989, and released, April 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Texas, by removing Channel 235A at Huntsville and adding Channel 259A at Huntsville.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-10589 Filed 5-2-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-07; Notice 3]

RIN 2127-AB12

Federal Motor Vehicle Safety Standards Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice makes several amendments to Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*. First, the test rig used to test the pneumatic timing of trailers is modified to better simulate the performance of actual tractors. Second, the standard's maximum application and maximum release timing requirements for trailers are revised, both to reflect the modified test rig and, for towing trailers and dollies, to ensure faster application and release timing. Third, new requirements are established to address the timing of the interface (gladhand) between towing vehicles and trailers. The purpose of the gladhand timing requirements is to ensure that the air delivery from towing vehicles to towed vehicles is fast enough to apply the brakes of all vehicles in the combination at approximately the same time, thereby avoiding a reduction in combination stability (e.g., trailer bumping) caused by a slow gladhand.

DATES: The amendments made by this rule to the Code of Federal Regulations are effective June 2, 1989. The amendments require mandatory compliance effective May 3, 1991. Between those dates, manufacturers have three options for meeting maximum application and maximum release timing requirements for trailer brake chamber timing: (1) Meeting the existing requirements, using the existing test rig, (2) meeting the new requirements, using the new test rig, or (3) meeting requirements approximately equivalent to the existing requirements, using the new test rig. Petitions for reconsideration must be received on or before June 2, 1989.

ADDRESS: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Carter, Office of Vehicle Safety Standards, National Highway

Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC (202-366-5274).

SUPPLEMENTARY INFORMATION:

Background

Pneumatic timing is an important factor in air brake system performance. The time required for a vehicle's service brake chambers to reach a relatively high pressure level after actuation of the brake control by the driver is referred to as "pneumatic application time." Since the generation of brake torque, and therefore braking force, is directly related to the air pressure available in the brake chambers, pneumatic application time affects vehicle stopping distance. As a general matter, the shorter the pneumatic application time, the shorter the vehicle's stopping distance.

For combination vehicles, pneumatic application timing can affect stability. If a trailer's brakes apply more slowly than the towing vehicle's brakes, the trailer can bump the towing vehicle, applying an excessive compressive force on the kingpin connecting the trailer to the towing vehicle. If the brakes are applied during a turn and the road is wet, this force may reduce the stability of the combination and contribute to a jackknife accident.

"Pneumatic release timing", the time required for the pressure in the brake chambers to fall from a relatively high pressure to a relatively low pressure after the driver releases the brake control, also affects braking performance. If a vehicle's wheels lock as the driver is attempting to stop, the vehicle will skid. If the driver is to regain control of the vehicle in this situation, immediate release of the brakes is necessary.

For combination vehicles, pneumatic release timing can affect stability. If a towing vehicle's brakes release more slowly than the trailer's, destabilizing forces may increase at the kingpin.

Standard No. 121, *Air Brake Systems,* specifies certain requirements for pneumatic timing. Section S5.3.3 provides that the brake actuation (application) time for trucks, buses, and trailers must not exceed specified periods of time. Section S5.3.4 provides that the brake release time for these vehicles must not exceed specified periods of time.

The timing tests for trailers, including trailer converter dollies, are not conducted with the trailer connected to an actual tractor. Instead, the trailer's brake system is connected to a test rig. The test rig, which is commonly referred to as the "121 mini-tractor," delivers air to, and releases air from, the trailer during the timing test. The timing tests for vehicles designed to tow trailers are conducted with a 50-cubic-inch reservoir connected to the control line coupling. This reservoir represents the control line volume of the towed trailer.

The May 1985 NPRM

On May 14, 1985, NHTSA published in the **Federal Register** (50 FR 20113) an NPRM to amend the pneumatic timing requirements of Standard No. 121, for the purpose of improving the timing balance of combination vehicles. The proposal was largely based on research conducted at the agency's Vehicle Research Test Center (VRTC). On July 1, 1985, NHTSA published in the **Federal Register** (50 FR 27032) a notice extending the comment period by six months to permit commenters more time to analyze the agency's data and to conduct their own testing.

First, NHTSA proposed to modify the test rig used to test the pneumatic timing of trailers. The existing test rig, which is shown as Figure 1 in Standard No. 121, was derived from SAE Recommended Practice J982. At first, the standard did not specify performance characteristics for the test rig. However, after petitions pointed out that the agency's compliance tests might prove inconclusive if a manufacturer could show conformity on a faster test rig, NHTSA adopted the actuation and release times suggested by the petitioners. These times, which are specified in section S6.1.13, reflected the performance of test rigs then in use by manufacturers.

NHTSA's research since Standard No. 121 was issued has indicated, however, that some current truck tractors and towing straight trucks have apply and release times that are much slower than the test rig. As a result, the timing of trailers with the test rig is not necessarily representative of timing of the trailers when towed by actual tractors.

This has resulted in trailer plumbing that is optimized for the test rig and not necessarily optimized with actual tractors. In particular, some trailer manufacturers use control line tubing with an exterior diameter of one-half inch because it produces faster application times during Standard No. 121's tests than smaller tubing. NHTSA's research indicated, however, that the half-inch tubing usually produces *slower* actuation times than three-eighths-inch tubing on trailers connected to actual tractors.

Based on its research, NHTSA proposed modifications in the test rig to bring its performance more in line with that of actual tractors. In place of the rapid application and release times of the existing test rig (0.06 and .22 seconds), the agency proposed nominal application time of 0.35 second and a nominal release time of 0.70 second. NHTSA also proposed a more detailed layout for the test rig, including metering valves and other plumbing changes to permit better calibration of the trailer test rig. Finally, in the interest of clarifying test conditions, the agency proposed to specify the reservoir pressures in the test rig during brake testing.

A second aspect of the proposal concerned vehicle timing requirements. NHTSA proposed to establish new requirements to address the timing of the interface (gladhand) between towing vehicles and trailers, and to amend the maximum application and maximum release timing requirements for trailers and other vehicles.

The purpose of the proposed gladhand timing requirements was to ensure that the air delivery from towing vehicles to towed vehicles is fast enough to apply the brakes of all vehicles in the combination at approximately the same time, thereby avoiding combination instability (e.g., trailer overrun) that might be caused by a slow gladhand.

The proposed changes in Standard No. 121's application and release times for trailers were in part to account for the slower timing of the modified test rig. Given the 0.29 second slower application time for the modified test rig, it would be necessary to increase the current 0.30 second maximum application time for trailers by roughly that amount (i.e., to approximately 0.60 second) in order to maintain an equivalent requirement. However, NHTSA proposed a maximum time of 0.50 second, as its research indicated that this time was easily obtainable with the modified test rig. The faster time was desired to shorten stopping distances and improve vehicle stability (e.g., reduce trailer bumping) caused by slow trailer braking. NHTSA also proposed to lengthen the maximum release time from 0.65 second to 1.0 second. Given the 0.48 second slower release time for the test rig, this represented a proposal to require faster trailer release timing.

NHTSA also proposed changes in the timing requirements for trailer converter dollies and trucks designed to tow other air braked vehicles. For trailer converter dollies, NHTSA proposed to lengthen the maximum application time from 0.35 second to 0.50 second, and the maximum release time from 0.65 second to 1.00 second. The proposed maximum

application and release times for trailer converter dollies were thus the same as for trailers. NHTSA also proposed to lengthen the maximum application time for trucks designed to tow other air-braked vehicles, from 0.45 second to 0.50 second.

Comments were received from the Motor Vehicle Manufacturers Association (MVMA), Truck Trailer Manufacturers Association (TTMA), individual truck and trailer manufacturers, brake and brake component manufacturers, the American Trucking Associations (ATA), and the Insurance Institute for Highway Safety (IIHS). The vast majority of the commenters supported modification of the test rig and the establishment of gladhand timing requirements. However, a number of commenters opposed various aspects of the proposed maximum application and maximum release times for trailers, trucks designed to tow other vehicles, and gladhands. Several commenters also requested establishment of a minimum time for tractor brake application, in order to prevent combination balance problems caused by overly fast tractors. A detailed discussion of the issues raised by the commenters is provided below.

Modified Test Rig

The first aspect of NHTSA's proposal to improve the timing balance of combination vehicles was to modify Standard No. 121's test rig in order to better simulate tractors. Commenters generally supported this aspect of the proposal. MVMA, for example, stated that modification of the current mini-tractor would be a significant step toward improving brake application and release timing between tractors and trailers. That organization stated that it agrees that the trailer test rig, as well as current timing requirements, need to be modified to more closely simulate today's equipment. General Motors (GM) commented that it believes that the proposed modification of the mini-tractor is appropriate and will significantly improve the real-world relevancy of the tests for which it is employed. That company stated that since trailer brake systems must currently be tuned to achieve compliance with the unrealistically fast test rig, this change alone should significantly improve the standard.

While supporting modification of the test rig, a number of commenters questioned the proposed specification of test rig componentry. As indicated above, the NPRM proposed a more detailed layout for the test rig, including metering valves and other plumbing changes to provide trailer test rig calibration.

Some commenters recommended dropping the proposed component specifications and instead specifying more complete pressure versus time characteristics. Midland Brake commented that the proposal specified part of the components and the end points of the pressure versus time characteristics, which it contended allows a multitude of pressure versus time characteristics which may result in a great variation of trailer timing results depending upon the pressure versus time characteristics of the particular test rig. Midland stated that there are two means to accomplish the intended result: specifying the exact full characteristics of each component or instead specifying the pressure versus time characteristics. That commenter recommended specifying the pressure versus time characteristics. According to Midland, there is no reason to specify any of the components, since timing values for 0 to 60 psi apply and 95 to 5 release can be specified without specifying components. Midland stated that the proposal would unnecessarily require manufacturers to include each component in their test rigs, adding cost without benefits. GM similarly commented that the proposed componentry specifications are inherently incapable of assuring specific performance levels and suggested that a pressure versus time curve should instead be specified.

Other commenters recommended adopting the proposed component specifications while also specifying more complete pressure versus time characteristics. Fruehauf commented that it built two different mini-tractors, substantiating that a mini-tractor built around the guidelines presented in the docket is obtainable and that the repeatability of mini-tractors is acceptable if the calibration curves are similar. Fruehauf also stated that it agrees with the proposed mini-tractor schematics but believes that a calibration curve should be provided. Theurer similarly commented that the lack of a pressure-time pulse for the test rig is a shortcoming of both the existing rule and the proposal. TTMA stated that it supports the recommendations of Fruehauf and Theurer that Standard No. 121 specify the performance of the test rig by providing a pressure-time application and release curve.

ATA commented that the mini-tractor must be consistent regardless of who builds it, in order to ensure that all trailers are tested in a like manner. It recommended that detailed specifications be given for the test rig's quick release valve. Echlin commented that it strongly suggests that the plumbing details of the test rig be omitted in view of the confusion generated by the details. That company stated that to control the build-up and decay characteristic of the test rig to any greater degree than the proposed limits of .35 second and .70 second appears to lead to greater confusion than gain.

Two commenters, Ford and International Harvester (IH), recommended slower test rig timing. Ford recommended that the proposed test rig actuation time be extended from 0.35 second to 0.45 second, and that the proposed test rig release time be extended from 0.70 second to 0.85 second. That commenter stated that it had analyzed the control line coupling (gladhand) application timing of 21 tractor vehicles tested at VRTC and calculated the mean value at 0.308 second with a range from 0.22 second to 0.44 second. Ford stated that based on this small sample, approximately 16 percent of all tractors may be expected to exceed 0.37 (one standard deviation above the mean) second and 2.3 percent of all tractors may be expected to exceed 0.42 second (two standard deviations above the mean). Ford stated that for gladhand release timing, the mean value of the VRTC sample is 0.68 second with a range from 0.47 second to 0.98 second. That commenter stated that approximately 16 percent of all trailers may be expected to exceed 0.85 second (one standard deviation above the mean), and 2.3 percent may be expected to exceed 1.02 seconds (two standard deviations above the mean). Ford argued that its recommended actuation and release times would be more representative. IH recommended test rig application and release times of 0.50 second and 0.90 second, respectively.

After considering the comments, NHTSA has decided to adopt a modified test rig along the lines of the proposal, while specifying both a layout of test rig componentry and pressure versus time application and release curves. The agency believes that the times suggested by Ford and IH are less representative than those of typical tractors. In both instances, the times are further away from the mean values of the data cited by Ford than those of the proposal.

NHTSA agrees with commenters that specification of pressure versus time application and release curves, which can be used to calibrate the test rig, will help ensure repeatability of test results. The curves adopted in Figure 3 of this notice are based on the performance of

VRTC's test rig, which was built to the specifications of the proposal. The agency is not adopting the recommendation of some commenters that tolerances be established for the application and release curves, since the inclusion of tolerances in the standard would increase the variability of test results obtained using equipment specified by the standard. This allows manufacturers leeway in building their test rigs and eliminates the need to specify the performance of each component. It has never been the agency's policy to specify performance curve tolerances in any of its rules. The normal compliance test convention implicit in the single specification as shown in Figure 3 is that the manufacturers would set the performance of their new mini-tractor equal to or slower than the performance curves (to the right or to the adverse side), while the agency would set its compliance mini-tractor equal to or faster than the curve (to the left or favorable side). If a manufacturer's trailer brake chamber timing passed with a slower mini-tractor they could be assured that their trailer would pass with a faster compliance mini-tractor. A tolerance boundary as suggested by GM and others would create the need for multiple testing which can be very burdensome.

The agency believes that it is appropriate to specify generic test rig componentry as well as application and release curves. By providing a layout of componentry, the public is informed how to build a test rig that can produce the performance specified in the curves. Also, as a practical matter, it is necessary to use componentry similar to that of the proposal in order to obtain the performance reflected in the curves. Since the component specifications are generic, they are not restrictive with respect to which manufacturer's components are used.

In response to comments, NHTSA is adopting several minor changes in the component specifications. The California Highway Patrol (CHP) and Bendix noted that the test procedure for brake release times specifies 95 psi while the legend in Figure 1, Trailer Test Rig, listed only the 100 psi application pressure setting. The figure is changed to specify that the test rig's regulator is set at 100 psi for the application time test and 95 psi for the release time test.

Bendix also recommended that reservoir volume should be specified as 1000–1500 cubic inches to allow use of standard size air brake reservoirs, that the supply connection be moved between the check valve and regulator to prevent loss of reservoir pressure on disconnection of the gladhand, and that a means to shut off shop air be provided. While small differences in reservoir volume would not make any appreciable difference in test results, the wide range of sizes suggested by Bendix could have an effect on those results. While this might be controlled by the calibration curves, NHTSA believes that the purpose of the component specifications is best served by specifying a single reservoir volume that can easily produce the required test rig performance. On the other hand, the agency does not believe it is necessary to further define quick release valve or coiled tubing, as suggested in comments, since any effect on performance caused by the use of slightly different components can easily be accounted for by adjusting the test rig in accordance with the calibration curves. The agency notes that while the reservoir used in the mini-tractor was nominally meant to be 1000 cubic inches, the NPRM specified a 1015 cubic inch size because that was the size used in VRTC testing. For the final rule, NHTSA is specifying 1000 cubic inches. If a production tank of slightly larger volume is used, epoxy can be poured into the tank to bring it down to the specified volume.

NHTSA agrees with Bendix' suggestion that a means should be provided to prevent loss of reservoir pressure upon disconnection of the gladhand. Rather than move the supply connection between the check valve and the regulator, however, the agency is specifying the addition of a shut-off valve to the test rig supply line. This makes the test rig easier to use and also results in greater utility for the device. The agency notes that the Society of Automotive Engineers is considering using the mini-tractor in a new recommended practice for determining trailer reservoir volume, which would require the trailer supply line to receive air from the mini-tractor with the shop air disconnected. NHTSA does not find it necessary to specify a means for shutting off shop air, since a check valve is already included between the shop air and reservoir (see Figure 1).

While NHTSA would use test rigs meeting Standard No. 121's component specifications in its enforcement testing, it notes that the National Traffic and Motor Vehicle Safety Act does not require particular testing by manufacturers. Instead, manufacturers must exercise due care in certifying that their vehicles meet applicable safety standards. If a manufacturer is able to obtain a test rig that is different than that specified by Standard No. 121 but produces the same performance, the manufacturer is free to use that rig in its testing. Therefore, component specifications do not result in any increased or unnecessary costs for manufacturers.

Some commenters expressed concern about possible difficulties in obtaining modified test rigs. TTMA stated that suppliers of previous test rigs no longer manufacture them and that the requirements would necessitate more than the usual difficulty in finding means of designing and building the test rigs. Theurer stated that it is concerned about the cost of modifying or acquiring new test rigs and stated that none of the manufacturers of its test rigs currently supply test rigs, nor are prepared to do modifications to existing equipment.

NHTSA estimates that a current 121 test rig can be reworked for approximately $200 (parts only) using a smaller volume tank and several additional valves, or a new one can be built for $400 to $500 (parts only). NHTSA's experience in building the modified test rig at VRTC indicates that it is a relatively simply task and does not require any components that are not readily available. Similarly, Freuhauf had no difficulty in building a modified test rig. If a manufacturer is unable or prefers not to build its own test rigs, it can have them built by companies which produce specialized equipment.

Timing Requirements

The second aspect of NHTSA's proposal concerned vehicle timing requirements. The agency proposed to establish gladhand timing requirements and to amend the maximum application and maximum release timing requirements for trailers and other vehicles.

A number of commenters questioned whether certain of the specific timing values of the NPRM are justified, particularly to the extent that other than minimal vehicle modifications may be required. For example, MVMA stated that it agrees that timing is a factor in brake balance, but questions its significance in relationship to brake torque and pneumatic balance. According to that commenter, industry experience shows that combination timing has a minimal effect on vehicle balance. MVMA also asserted that NHTSA's own test results do not support the significance of combination timing on trailer push, jackknifing, or accident avoidance. That organization recommended that the agency establish timing requirements which will require minimal changes to towing vehicles.

Bendix commented that the proposed changes would require air brake system design changes to most tractors, towing trucks, non-towing trailers, towing trailers and dollies. According to that commenter, the proposed changes would result in faster application and release times for combination vehicles and would also result in a reduction in the difference between the response times of individual brakes in a combination vehicle. Bendix stated that it believes that, for combination vehicles, faster application times coupled with improved timing balance will result in shorter stopping distances and better driving control. That commenter stated that it believes also the proposed changes are in the proper direction and are technically feasible, although it is unaware of data to substantiate performance improvements.

Several commenters argued that adoption of the proposed timing requirements would not ensure combination vehicle stability because the brakes of a tractor with very fast application time could still actuate well before the brakes of a trailer meeting the proposed requirements, with the result that the trailer would overrun the tractor. ATA commented that the actual maximum application times which are adopted are not as important as the necessity to adopt a minimum time for tractor brake application. That commenter stated that no matter what the maximum brake apply time for tractors becomes, a minimum time must also be established to ensure that tractor brakes not actuate too quickly, putting the combination out of balance and defeating the purpose of the proposed revisions. ATA stated that very fast tractors are being sold every day, with application times as fast as 0.13 second, with many at 0.14 second and 0.15 second. Other commenters supporting minimum application times for tractors included CHP, Echlin, Theurer, and Brake Technology Company.

International Harvester (IH) submitted test data which it asserted indicates that although a 0.60 second differential in tractor-to-trailer application timing results in an unacceptable pushing sensation, a 0.40 second differential is acceptable. That commenter stated that its test results, as well as other field experiences, convinces it that there is no compatibility benefit in requiring the timing differential between tractor and trailer chambers to be closer than 0.4 second. IH also commented that to truly control the timing differential between tractors and trailers, a relationship of gladhand to tractor and trailer chamber timing needs to be established.

A further discussion of comments concerning the proposed vehicle timing requirements, categorized by requirement and/or type of vehicle, is provided below.

Gladhand Timing Requirements

As discussed above, Standard No. 121 does not currently specify timing requirements at the air line coupler between a tractor and trailer (truck gladhand) or between successive trailers in multiple trailer combinations (trailer gladhand). While the standard's existing timing tests for vehicles designed to tow trailers are conducted with a 50-cubic-inch reservoir (representing a typical trailer's control line volume) connected to the control line coupling, no minimum times are specified for the rise or fall of air pressure in the test reservoir. The NPRM proposed to require that a power unit, e.g., a tractor, increase the pressure in the test reservoir to 60 p.s.i. in not more than 0.35 second, and release the pressure in not more than 0.70 second. The NPRM proposed to require that a trailer increase the pressure in the test reservoir in not more than 0.50 second, and release the pressure in not more than 1.00 second. The purpose of the proposed gladhand timing requirements was to ensure that the air delivery from towing vehicles to towed vehicles is fast enough to result in application of the brakes of all vehicles in the combination at approximately the same time, thereby avoiding reduction in combination stability (e.g., trailer bumping) caused by a slow gladhand.

Most commenters addressing the proposed gladhand timing requirements supported the establishment of such requirements but argued that the proposed requirements are too stringent. MVMA stated that it believes that gladhand timing requirements will improve tractor/trailer compatibility. It expressed concern, however, that the proposed requirements may require modification of most of the air braked vehicles produced by its member companies. That organization argued that available research does not justify requiring extensive product modifications and suggested that requirements be established that are achievable with minimal modifications.

GM stated that while it believes the addition of gladhand timing requirements may improve combination vehicle compatibility, it does not believe NHTSA has provided any data to substantiate a need for the proposed 0.35/0.70 second tractor control line application/release times. That company stated that the 0.35/0.70 second values appear to represent only an average of times of vehicles tested by the agency and that the vehicles tested are not totally representative of the current vehicle fleet. GM argued further that while NHTSA has implied that the kingpin forces measured are largely the result of the brake timing existent on the tested vehicle combinations, those forces are actually a function of brake system pneumatic balance, torque balance, brake application technique and timing. That commenter asserted that NHTSA has demonstrated neither that there is a need to lower such forces nor that the revisions proposed would serve to achieve that end. GM recommended as an initial step that the 0.50/1.00 second application and release times proposed for trailer gladhands also be adopted for tractors and trucks equipped to tow trailers. It stated that if the 0.50/1.00 second timing is appropriate for trailers utilized as towing vehicles, it questions why these values would not also be appropriate for all towing vehicles. GM argued that its recommendation would accomplish the objectives of the proposal without requiring as extensive a change in pneumatic systems.

Midland Brake commented that although the control line coupling timing of 0.35 second apply and 0.70 second release may be typical values for power units, there appears to be no firm evidence or rationale for mandating these values as the maximum allowable. That commenter added that vehicle manufacturers would have to design their brake systems for apply and release times even less than these values to be certain that all production vehicles with normal manufacturing tolerances will meet the requirements. Midland stated that it believes that the proposed requirements would cause significant changes by many vehicle manufacturers and, like GM, argued that 0.50/1.00 second requirements would be more practical.

IH stated that its test results indicate that application timing of 0.50 second, as opposed to the proposed value of 0.35 second, would provide a tractor/trailer timing differential that would not result in trailer pushing or any other combination compatibility problem. That commenter stated that it is difficult to determine the effect of trailer release timing and tractor/trailer release differentials on compatibility. According to IH, however, its test results indicate that a release timing at the tractor coupling of 0.90 second is sufficient. That company also argued that it disagrees that the costs of the proposed

gladhand timing requirements would be minimal. It stated that although NHTSA's test results indicated that the majority of tractors passed the proposed requirements, they were not worst case vehicles. IH stated that the designs of all wheelbases must be changed if the longest wheelbase does not meet the requirements, since it does not customize the piping of a tractor by wheelbase. According to that company, the proposed requirements would require an average customer cost increase of $25.00 per unit. IH stated that its customers would pay $725,000 per year for an imperceptible benefit of 10 milliseconds on application and 40 milliseconds on release.

Freightliner stated that its data show that significant modifications to the pneumatic system are required for the majority of its product line to approach the proposed 0.35 second application limit. It stated that it endorses the concept of setting standards at the gladhand but recommends a maximum application value of 0.40 second for vehicles under 200 inches in wheelbase and 0.45 second for vehicles with a wheelbase over 200 inches.

Ford recommended that the maximum application and release gladhand timing requirements for power units be set at 0.45/0.85 second. That commenter stated that any redesign of its tractors necessary to bring them into compliance with the proposed values would not have a substantial effect on tractor/trailer pneumatic timing capability.

Echlin stated that it questions mandating an upper limit to the application and release times at the tractor/towing truck gladhand at what has been indicated to be "within the range of times observed in the trucks tested at the VRTC." That commenter stated that since it has not been demonstrated that the response rate at the gladhand of trucks/tractors is too slow, there appears little substance to require vehicle manufacturers to incur the expense to modify these vehicles to change the nominal apply and release characteristics. Echlin suggested that a better approach might be to assume that the 0.35/0.70 second times are adequate and add an upper limit to this characteristic, such as 0.40/0.80 second.

One commenter, Volvo White, opposed the adoption of gladhand timing requirements. That company argued that manufacturer's compliance data would be invalidated, that many of the changes implemented over the last ten years to improve tractor trailer compatibility would no longer be available, and that NHTSA's research does not justify the need for the proposed requirements. According to Volvo White, its product lines would not conform without major analysis and redesign activities. It also stated that it believes, although it cannot confirm without extensive tests, that the design changes required to ensure conformance would adversely affect compatibility for some of its customers.

NHTSA believes that timing is an important factor for safe air brake system performance and notes that most commenters supported the establishment of gladhand timing requirements. The agency agrees with commenters that other factors, including brake torque and pneumatic balance, are also important factors in brake balance. However, the significance of these other factors does not obviate the safety need for appropriate brake timing requirements.

In establishing timing requirements for combination vehicles, an important goal is to avoid trailer brakes applying so slowly that excessive compressive, and potentially destabilizing, forces are produced at the kingpin. In more extreme cases, these compressive forces create a pushing sensation that is unnerving to drivers. However, the forces can decrease stability at levels that cannot be detected by drivers. Therefore, NHTSA does not agree with IH's argument that a 0.40 second differential is acceptable simply because drivers have difficulty detecting a pushing sensation at that level.

ATA argued that ideal or optimum combination vehicles would apply the rearmost brakes first and then sequentially move forward until the front axles are applied last. While this approach might be ideal for reducing combination instability, NHTSA believes that it could only be achieved by major changes in air brake design. Moreover, a standard requiring such performance could result in longer stopping distances, since it might be necessary for the brakes on leading axles of such combinations to actuate significantly later than on current designs. In establishing timing requirements, NHTSA must consider both combination balance and potential effects on stopping distance.

The 0.35 second/0.70 second maximum application and release gladhand timing requirements proposed by NHTSA for power units are typical of current production vehicles. For example, recent tests conducted for the Truck Trailer Brake Research Group (TTBRG) had gladhand application times of 0.15, 0.20, 0.24, 0.25, 0.25, 0.26, 0.26, 0.26, 0.27, 0.27, 0.31, 0.32, 0.33, 0.36 and 0.39 second. The gladhand release times for these vehicles were 0.43, 0.45, 0.48, 0.54, 0.55, 0.57, 0.61, 0.62, 0.63, 0.65, 0.67, 0.68, 0.69, 0.73 and 0.78 second.

In developing the NPRM, NHTSA did not intend to require major changes in air brake design. On the other hand, the goal of improving the balance of combination vehicles cannot be achieved by simply setting requirements at the level of the "least common denominator" vehicles being produced. The maximum application time at the gladhand is particularly important for safety since a slowing of this time slows the application time for trailer brakes, resulting in both increased stopping distances *and* the potential for increased instability caused by "trailer push."

After reviewing the comments, NHTSA continues to believe that the proposed 0.35 second maximum gladhand application time for power units is appropriate. Most vehicles easily meet this requirement, and most others can meet the requirement with minor plumbing changes. A few special design towing trucks may require the addition of a relay valve.

A short gladhand release time is not as important for safety and, in fact, it is not desirable to have the gladhand release before the tractor brakes. Given these factors, NHTSA believes that a maximum release time slightly slower than proposed in the NPRM is appropriate, 0.75 second, which should minimize the need for design changes.

NHTSA does not agree with GM's comment that because the agency proposed 0.50/1.00 second maximum gladhand timing for towing trailers, the same timing is appropriate for all towing vehicles. As a general matter, it is easier to achieve faster gladhand timing for power units than for trailers, since the distance between the gladhand and air supply is much less. Indeed, as discussed below, towing trailers need a relay valve in order to meet the proposed 0.50/1.00 second requirements, while most power units do not need a relay valve to meet the more stringent 0.35/0.75 second requirements. While the agency recognizes that it would be desirable for towing trailers to have even faster gladhand timing than proposed in the NPRM, it recognizes also that the design changes needed would be much more difficult for these vehicles.

In addressing the proposed gladhand timing requirements for towing trailers and dollies, some commenters raised the issue of whether relay valves should be required on dollies as well as towing trailers. Bendix commented that the proposed requirements would encourage the use of relay valves on both towing trailers and dollies. That company

supported the proposed requirements, arguing that they result in improved combination performance regardless of what type of vehicle is purchased in the future. Bendix stated that if a fleet is purchasing new dollies to be used with existing trailers, the dolly will be able to improve multiple trailer combination timing performance, while for new trailer purchases, the trailer will be able to improve the multiple trailer combination timing performance. Fruehauf, on the other hand, commented that it is redundant to install these types of valves on all three units of a combination.

NHTSA agrees that in order to meet the proposed 0.50/1.00 second gladhand timing requirements, dollies would generally need to be equipped with a booster relay valve. Given that the other towed vehicles in a doubles combination would generally have booster relay valves under the requirements established by this notice, NHTSA does not believe that it is necessary for dollies to also be equipped with such devices. The air flow restriction through a dolly should not be significant enough to warrant a booster on each dolly. Also, dollies have historically been designed to be uncomplicated. While Bendix is correct that there would be some benefit from relay-valve-equipped dollies being used with old trailers, NHTSA does not believe that this potential benefit justifies requiring design changes to dollies that would be of marginal benefit when the dollies are used with new trailers. TTBRG tests of three in-service dollies without boosters showed gladhand application/release times of 0.49/1.04, 0.51/1.32, and 0.49/1.28 seconds. NHTSA believes that gladhand timing requirements of 0.55/1.10 second can be met by dollies without boosters. Many dollies already meet these requirements, and only minor plumbing changes should be necessary for other dollies.

After reviewing the comments, NHTSA believes that the proposed 0.50/1.00 second maximum gladhand timing requirements are appropriate for towing trailers other than dollies. While these requirements will generally require the use of booster relay valves, the VRTC tests indicate that the use of these devices will result in a substantial improvement in timing. The cost of adding a booster relay valve is estimated to be about $45 (parts only) per vehicle. The agency notes that commenters did not object to requiring booster valves for these vehicles.

NHTSA shares the concern of several commenters that the overall timing requirements proposed in the NPRM might not ensure combination vehicle stability in some situations because the brakes of a tractor with a very fast application time could still actuate well before the brakes of a trailer meeting the proposed requirements. While the agency agrees with the commenters that a minimum application time for tractors would take care of this problem, it believes that there is a better approach. As a general matter, faster brake application is better than slower application, so long as incompatibility doesn't become a problem. The disadvantage of a minimum application time is that it would prohibit fast tractors in situations where timing compatibility is not a problem, e.g., captive combinations (where a tractor always tows the same trailer) where the trailer has very fast timing. NHTSA believes that it is sufficient to require the actuation time at the gladhand to be faster than the timing of the tractor brake chambers and that the release time be fast enough to assure good modulation of the tractor brakes.

NHTSA is publishing a supplementary NPRM (SNPRM) proposing to require that the actuation time at the gladhand be at least as fast as the timing at the brake chambers. As a practical matter, such a requirement would not need to include any maximum actuation time at the gladhand, since that time would be limited by the maximum time specified for the brake chambers.

Given the importance of timing, NHTSA does not believe that the establishment of the timing requirements proposed by the May 1985 NPRM should be delayed. In this notice, the agency is establishing 0.35/0.75 second maximum actuation and release gladhand timing requirements for power units, 0.50/1.00 second requirements for towing trailers other than dollies, and 0.55/1.10 second requirements for dollies. However, in light of the SNPRM, the agency is also establishing an alternative option for towing vehicles of actuation at the gladhand being at least as fast as the timing at the brake chambers. For manufacturers choosing this option, the maximum brake chamber requirements established by this notice (discussed below) would ensure essentially the same maximum gladhand actuation time.

Brake Chamber Timing—Power Units

Standard No. 121 currently specifies that the brake application time for trucks and buses not exceed 0.45 second and that the brake release time for those vehicles not exceed 0.55 second. The NPRM proposed to lengthen the maximum brake application time for trucks designed to tow other air-braked vehicles to 0.50 second, while retaining the current time of 0.45 second for other trucks and buses. The primary reason for proposing the change was to establish application times of 0.50 second across all units of a combination.

A number of commenters argued that there is no reason for towing trucks, non-towing trucks and buses to have different timing requirements. Echlin stated that the same manufacturers build these vehicles, often on the same production lines, and expressed concern that differing requirements could cause confusion, especially when a vehicle is converted from one kind to another. IH stated that it agrees with slowing down tractor application, but believes that it should be done for all vehicles. Bendix commented that the increase in actuation time is acceptable and would not increase stopping distances significantly. The Insurance Institute for Highway safety (IIHS) expressed concern that the proposal would increase braking times and further increase the already large disparity in braking performance between cars and trucks. Freightliner stated that the proposed change may be insufficient. That company noted that ATA's recommended practice of a 0.30 second minimum application time is increasingly specified by its customers. It stated that the window created by ATA's 0.30 second time and the proposed 0.50 second time is insufficient.

After analyzing the comments on this issue, NHTSA has decided not to change the current 0.45 second application time for trucks and buses. While the potential impact on stopping distance would be relatively small, the agency believes that it should not relax a requirement closely related to stopping distance unless it is clearly necessary. In this case, the potential improvement in compatibility that would be achieved by permitting 0.05 second longer application time does not clearly outweigh the impact on stopping distance. Moreover, manufacturers are currently meeting the 0.45 second requirement without difficulty. NHTSA notes that Standard No. 121 does not specify the 0.30 second minimum application time cited by Freightliner and that, in any event, manufacturers can design their vehicles to meet both Standard No. 121 and ATA's recommended minimum application time.

Brake Chamber Timing—Trailers

Standard No. 121 currently specifies, using the old test rig, that the brake

application time for trailers other than dollies not exceed 0.30 second and that the brake release time for those vehicles not exceed 0.65 second. Given the 0.29 second slower application time for the modified test rig, an equivalent requirement using the modified test rig would be approximately 0.60 second. The NPRM proposed a maximum time of 0.50 second, which appeared to be easily obtainable, for the purpose of requiring faster application time. Given the 0.48 second slower release time for the modified test rig, an equivalent requirement using the modified test rig would be approximately 1.20 seconds. The NPRM proposed a maximum time of 1.00 second, which also appeared to be easily obtainable, for the purpose of requiring faster release time.

For trailer converter dollies, Standard No. 121 currently specifies, using the old test rig, maximum application/release times of 0.35/0.65 second. The NPRM proposed the same maximum application/release times as for trailers, 0.50/1.00 second.

Bendix commented that the proposed actuation times for trailers, along with the slower test rig, is a big step in the right direction. That company argued that trailer brakes should come on as fast as possible to minimize time lag and trailer push. It stated that the use of ⅜-inch tubing to speed up the control signal time was verified by its testing, and that the times and combination time balance were improved even more dramatically with pilot relay valves on slide axle non-towing trailer systems. Bendix stated that while it does not suggest faster times, it believes the proposed 0.50/1.00 second times should not be increased. That company stated that it has been involved in specific field problems when trailer release time exceeds 1.00 second.

Freuhauf commented that it disagrees with the proposed 0.50/1.00 second maximum application/release times and recommended that the times be extended to 0.60/1.20 seconds. That company stated that the docket is clearly requesting a reduction in the application and release times of trailers. Freuhauf presented test data showing that a standard 48 foot trailer has application/release times of 0.216 second/0.573 second using the current mini-tractor and 0.579 second/1.194 seconds using the modified mini-tractor. That company argued that its experience with this trailer over the last ten years indicates that the trailer's timing is acceptable for safe highway operation. Freuhauf also presented test data showing that the trailer's timing, using the modified test rig, could be improved to 0.507 second/1.022 seconds by using smaller size tubing. That company asserted that the test results indicate that a simple change of total control line diameter will not allow a standard 48-foot tandem axle semi-trailer to meet the 0.50/1.00 second proposal. Freuhauf acknowledged that it is possible to achieve the proposed timing requirements by using a booster type valve or relay, but argued that the addition of boost valves further complicates and potentially reduces the reliability of the brake system on trailers for marginal improvements in application and release times. That company argued that this, coupled with the additional sizeable economic penalty caused by the addition of the boost valve and other necessary design changes, makes the addition of a boost valve unacceptable. Freuhauf also indicated that it tried to accomplish the proposed timing requirements by evaluating four delivery ported relay valves. Freuhauf stated, however, that while the use of such valves improved timing results, they did not result in sufficient margins to ensure that all of its production vehicles would comply with the proposed requirements.

TTMA commented that the proposed trailer timing requirements would require additional valves and complexity which is not justified. That organization stated that users complain that complexity in trailer air systems and differences in systems make it difficult to train maintenance personnel. TTMA stated that it supports the comment by Freuhauf to change the maximum timing requirements to 0.60 seconds apply and 1.20 seconds release.

Midland Brake commented that the maximum trailer timing requirements should be such that if a trailer with ½ inch tubing complies with the current requirements, it should comply with new requirements when the control line is changed from ½ inch to ⅜ inch. That commenter argued that this was the assumption in the NPRM. Midland stated that its testing shows that this would not be the case under the proposed 0.50/1.00 second requirements and argued that timing requirements at those levels would require additional system changes, at significant costs.

Theurer commented that it concurs that a ⅜ inch diameter control line can be substituted for the commonly used ½ inch line. That commenter stated, however, that there are many specialized trailers where the control line is ½ inch to meet the release timing requirements. Theurer stated that preliminary tests of the proposed test rig indicate that the problem is exacerbated. That company stated that if it turns out that some trailers require ½ inch diameter control lines to meet release timing requirements, it will probably build all units with the larger lines to minimize inventory, thereby negating whatever costs savings are attributable to the smaller line size. Theurer presented test data for a production 48 foot trailer, using a modified test rig, showing application/release times of 0.60 second/0.99 second using ½ inch line and 0.62 second/1.15 seconds using ⅜ inch line.

After evaluating the comments, NHTSA has decided to adopt maximum brake chamber application/release times of 0.60/1.20 second for non-towing trailers, 0.55/1.10 second for dollies, and 0.50/1.00 second for other towing trailers. At the time of the NPRM, the agency believed that the proposed 0.50/1.00 second requirements could be met by the last two categories of trailers without booster valves. However, based on its review of the comments and other available data, the agency now believes that adoption of the proposed requirements would necessitate the addition of a booster valve on many trailers in all three categories.

The brake chamber timing requirements for non-towing trailers and dollies are being set at a level that NHTSA believes can be met without the addition of a booster valve. The agency does not believe that the potential benefits associated with slightly faster timing requirements for these vehicles would justify the increased cost and complexity associated with designs incorporating a booster valve. As indicated above, the 0.60/1.20 second requirement for non-towing trailers is about equivalent to the existing requirement, taking into account the new test rig. The 0.55/1.10 second requirement for dollies is somewhat more stringent than the existing requirement, and may thus result in slightly faster timing.

NHTSA has concluded that the proposed 0.50/1.00 second maximum brake chamber timing requirements are appropriate for towing trailers other than dollies. As discussed above, the gladhand timing requirements established by this notice will generally necessitate the use of a booster valve for these vehicles. The same booster valve may be used to meet both the gladhand and brake chamber timing requirements. Thus, once the booster valve is included to improve gladhand timing, the vehicle can more easily meet faster brake chamber timing requirements. Moreover, there is a greater need for towing trailers to have

faster brake chamber timing. It is industry practice to use towing trailers as both the first and second trailers in doubles combinations. When the towing trailer is used as the second trailer, it is typically serviced by a slower gladhand (that of the first trailer) than the first trailer or a typical single trailer (which are serviced by the power unit gladhand). Faster brake chamber timing for the second trailer helps offset the slower timing at the gladhand.

Eaton commented that the time differential between tractors and trailers should be decreased by reducing the trailer release time and thereby promoting energy balance improvements between tractors and trailers. The difference between these values reflects the agency's view that trailer release times that are slightly slower than the release time for towing vehicles do not degrade the stability of combination vehicles.

Other Comments

Eaton commented that it supports NHTSA's objective in improving the stability of combination vehicles during braking, but argued that brake energy balance, which is influenced by air system timing, must be considered. That commenter stated that tractor-trailer combination vehicles with unbalanced brake energy characteristics will develop significant brake maintenance costs because of a disproportionate braking workload distribution between the vehicles. Eaton stated that any proposed air system timing changes to Standard No. 121 should be thoroughly evaluated relative to the optimization of brake energy balance, as well as timing balance. As indicated earlier in this notice, NHTSA agrees that factors other than timing, such as brake torque and pneumatic balance, are also important factors in brake balance. The agency has considered these factors in evaluating air brake timing and believes that the improved timing performance will help optimize brake energy balance as a whole.

The Insurance Institute for Highway Safety argued that rather than concentrating all of its truck brake rulemaking on revising the current standard, NHTSA should begin rulemaking to establish a new standard for vehicles with air brakes that reflects state-of-the-art technology. That commenter also argued that any changes to the current standard should decrease timing delay requirements to reflect modern air brake technology. According to that organization, SAAB-Scania has an electrically actuated air brake system by Bosch, which can reduce actuation time by 50 percent and incorporates a fail-safe system that utilizes pneumatic triggering if the electrical system malfunctions. As discussed above, NHTSA believes that the requirements adopted by this notice will result in improved on-road performance for combination vehicles. The agency notes that it is currently engaged in research that will help it decide in the future whether to consider upgrading Standard No. 121 to reflect various new technologies.

Effective Date

The amendments made by this rule to the Code of Federal Regulations are effective June 2, 1989. The amendments require mandatory compliance effective May 3, 1991. After reviewing the comments, NHTSA has concluded that two years leadtime is needed to enable manufacturers to make the design changes needed to meet the new requirements. Between those dates, manufacturers have three options for meeting maximum application and maximum release timing requirements for trailer brake chambers: (1) Meeting the existing requirements, using the existing test rig, (2) meeting the new requirements, using the modified test rig, or (3) meeting requirements approximately equivalent to the existing requirements but specifying use of the modified test rig. Permitting optional compliance with amendments that become effective at a later date promotes manufacturer flexibility without creating any adverse impacts. The purpose of the third option noted above is to facilitate early use by manufacturers of the modified test rig.

Economic and Other Impacts

NHTSA has evaluated the economic and other effects of this final rule and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. A final regulatory evaluation describing those effects has been placed in the docket.

The regulatory evaluation concludes that the final rule will result in a combination of cost increases and cost savings. While there will be net cost increases for some towing vehicles (tractors, towing trucks, towing trailers), on the order of $15.50 or less for most vehicles, there is a potential for net cost savings over the entire affected fleet (tractors, towing trucks, towing trailers, single trailers, dollies). A one-time cost for trailer manufacturers is the need to modify existing test rigs. Most trailer manufacturers have between one and three test rigs. The agency estimates that the necessary modifications can be made for about $300 per test rig. It is expected that specification of the new test rig will enable trailer manufacturers to change to smaller diameter control lines, at a cost saving of $35 per unit. About 85 percent of towing trailers will require the addition of a booster relay valve, at a cost of $45, in order to comply with the amended brake chamber and new gladhand timing requirements. The gladhand timing requirements will also result in increased testing costs for towing trailers, dollies, tractors, and towing trucks. In addition, about 30 percent of tractors/towing trucks will require control line tubing changes and relay valve modifications, at a net cost of $10 per unit, in order to comply with the gladhand timing requirements.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. Few of the truck tractor manufacturers affected by this final rule are small manufacturers. While many of the trailer manufacturers may qualify as small manufacturers, this final rule will not significantly increase the production or certification costs for those manufacturers. Other small businesses, small organizations, and small governmental units will be affected by the amendments only to the extent that they purchase motor vehicles. The amendments will not have any significant effect on the price of those vehicles. Accordingly, no regulatory flexibility analysis has been prepared.

The agency has also analyzed this rule for the purposes of the National Environmental Policy Act, and determined that the rule will not have any significant impact on the quality of the human environment.

Finally, this rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.121 [Amended]

2. S5.3.3 of § 571.121 is revised to read as follows:

S5.3.3 *Brake actuation time.* Each service brake system shall meet the requirements of S5.3.3.1, except that, at the option of the manufacturer, vehicles manufactured before May 3, 1991 may meet the requirements specified in either S5.3.3.2 or S5.3.3.3.

S5.3.3.1(a) With an initial service reservoir system air pressure of 100 p.s.i., the air pressure in each brake chamber shall, when measured from the first movement of the service brake control, reach 60 p.s.i. in not more than 0.45 second in the case of trucks and buses, 0.50 second in the case of trailers, other than trailer converter dollies, designed to tow another vehicle equipped with air brakes, 0.55 second in the case of trailer converter dollies, and 0.60 second in the case of trailers other than trailers designed to tow another vehicle equipped with air brakes. A vehicle designed to tow another vehicle equipped with air brakes shall meet the above actuation time requirement with a 50-cubic-inch test reservoir connected to the control line output coupling. a trailer, including a trailer converter dolly, shall meet the above actuation time requirement with its control line input coupling connected to the test rig shown in Figure 1.

(b) For a vehicle that is manufactured after May 3, 1991 and is designed to tow another vehicle equipped with air brakes, the pressure in the 50-cubic-inch test reservoir referred to in S5.3.3.1(a) shall, when measured from the first movement of the service brake control, reach 60 p.s.i. not later than the time the fastest brake chamber on the vehicle reaches 60 p.s.i. or, at the option of the manufacturer, in not more than 0.35 second in the case of trucks and buses, 0.55 second in the case of trailer converter dollies, and 0.50 second in the cae of trailers other than trailer converter dollies.

S5.3.3.2 *(Optional requirement for vehicles manufactured before May 3, 1991.)* With an initial service reservoir system air pressure of 100 p.s.i., the air pressure in each brake chamber shall, when measured from the first movement of the service brake control, reach 60 p.s.i. in not more than 0.45 second in the case of trucks and buses, and 0.60 second in the case of trailers. A vehicle designed to tow another vehicle equipped air brakes shall meet the above actuation time requirement with a 50-cubic-inch test reservoir connected to the control line output coupling. A trailer, including a trailer converter dolly, shall meet the above actuation time requirement with its control line input coupling connected to the test rig shown in Figure 1.

S5.3.3.3 *(Optional requirement for vehicles manufactured before May 3, 1991.)* With an initial service reservoir system air pressure of 100 p.s.i., the air pressure in each brake chamber shall, when measured from the first movement of the service brake control, reach 60 p.s.i. in not more than 0.45 second in the case of trucks and buses, 0.35 second in the case of trailer converter dollies, and 0.30 second in the case of trailers other than trailer converter dollies. A vehicle designed to tow another vehicle equipped with air brakes shall meet the above actuation time requirement with a 50-cubic-inch test reservoir connected to the control line output coupling. A trailer, including a trailer converter dolly, shall meet the above actuation time requirement with its control line input coupling connected to the test rig shown in Figure 1(a).

3. S5.3.4 of § 571.121 is revised to read as follows:

S5.3.4 *Brake release time.* Each service brake system shall meet the requirements of S5.3.4.1, except that, at the option of the manufacturer, vehicles manufactured before May 3, 1991 may meet the requirements specified in either S5.3.4.2 or S5.3.4.3.

S5.3.4.1(a) With an initial service brake chamber air pressure of 95 p.s.i., the air pressure in each brake chamber shall, when measured from the first movement of the service brake control, fall to 5 p.s.i. in not more than 0.55 second in the case of trucks and buses, 1.00 second in the case of trailers, other than trailer converter dollies, designed to tow another vehicle equipped with air brakes, 1.10 seconds in the case of trailer converter dollies, and 1.20 seconds in the case of trailers other than trailers designed to tow another vehicle equipped with air brakes. A vehicle designed to tow another vehicle equipped with air brakes shall meet the above release time requirement with a 50-cubic-inch test reservoir connected to the control line output coupling. A trailer, including a trailer converter dolly, shall meet the above release time requirement with its control line input coupling connected to the test rig shown in Figure 1.

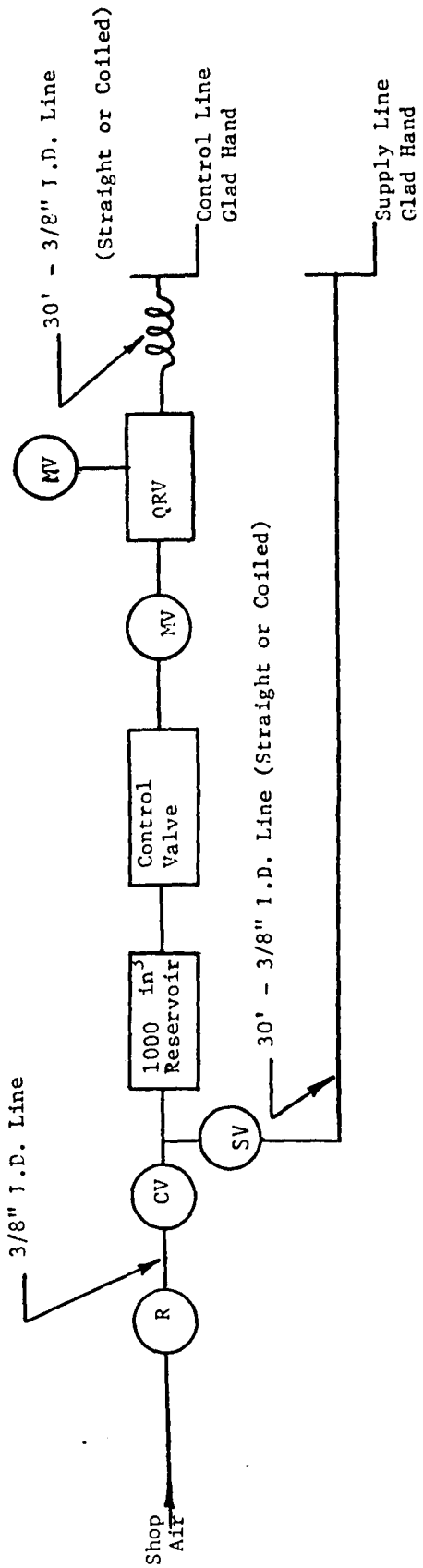
(b) For vehicles designed to tow another vehicle equipped with air brakes, effective May 3, 1991, the pressure in the 50-cubic-inch test reservior referred to in S5.3.4.1(a) shall, when measured from the first movement of the service brake control, fall to 5 p.s.i. in not more than 0.75 seconds in the case of trucks and buses, 1.10 seconds in the case of trailer converter dollies, and 1.00 seconds in the case of trailers other than trailer converter dollies.

S5.3.4.2 *(Optional requirement for vehicles manufactured before May 3, 1989.)* With an initial service brake chamber air pressure of 95 p.s.i., the air pressure in each brake chamber shall, when measured from the first movement of the service brake control, fall to 5 p.s.i. in not more than 0.55 seconds in the case of trucks and buses, and 1.20 seconds in the case of trailers. A vehicle designed to tow another vehicle equipped with air brakes shall meet the above release time requirement with a 50-cubic-inch test reservoir connected to the control line output coupling. A trailer, including a trailer converter dolly, shall meet the above release time requirement with its control line input coupling connected to the test rig shown in Figure 1.

S5.3.4.3 *(Optional requirement for vehicles manufactured before May 3, 1991.)* With an initial service brake chamber air pressure of 95 p.s.i., the air pressure in each brake chamber shall, when measured from the first movement of the service brake control, fall to 5 p.s.i. in not more than 0.55 seconds in the case of trucks and buses, and 0.65 seconds in the case of trailers. A vehicle designed to tow another vehicle equipped with air brakes shall meet the above release time requirement with a 50-cubic-inch test reservoir connected to the control line output coupling. A trailer, including a trailer converter dolly, shall meet the above release time requirement with its control line input coupling connected to the test rig shown in Figure 1(a).

4. A new Figure 1 is added following S5.3.4.3 to read as set forth below.

BILLING CODE 4910-59-M



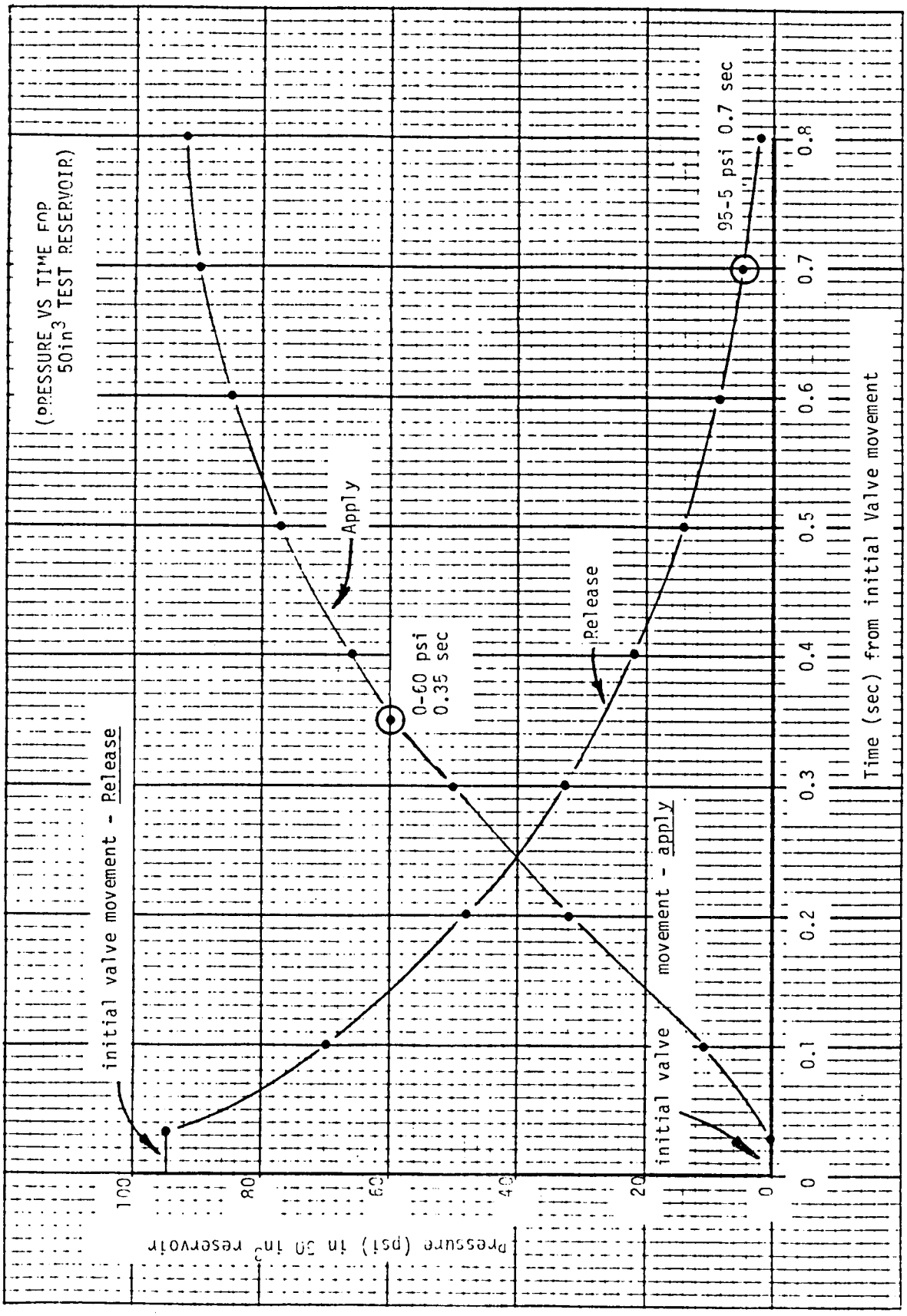
SV - Shut-off valve
R - Regulator (set at 100 psi for actuation tests and 95 psi for release test)
CV - Check Valve
MV - Metering Valve (Variable or Fixed)
QRV - Quick Release Valve

BILLING CODE 4910-59-C

5. The existing Figure 1 is redesignated Figure 1(a).

6. A new Figure 3 is added following S6.1.13 to read as set forth below.

BILLING CODE 4910-59-M



BILLING CODE 4910-59-C

7. S6.1.13 of § 571.121 is revised to read as follows:

S6.1.13 Trailer test rig.

(a) The trailer test rig shown in Figure 1 is calibrated in accordance with the calibration curves shown in Figure 3. For the requirements of S5.3.3.1 and S5.3.4.1, the pressure in the trailer test rig reservoir is initially set at 100 p.s.i. for actuation tests and 95 p.s.i. for release tests.

(b) The trailer test rig shown in Figure 1(a) is capable of increasing the pressure in a 50 cubic inch reservoir from atmospheric to 60 lb/in^2 in 0.06 second, measured from the first movement of the service brake control to apply service brake pressure and of releasing pressure in such a reservoir from 95 to 5 lb/in^2 in 0.22 second measured from the first movement of the service brake control to release service brake pressure.

Issued on May 1, 1989.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 89-10320 Filed 4-28-89; 2:23 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket Number 80597-8097]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NOAA issues this final rule to implement a technical amendment to the regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP). This is a housekeeping rule which: (1) corrects the foreign fishing regulations at 50 CFR 611.70 to restore their original meaning with respect to authority to establish seasons and areas south of 39°00′ N. latitude for joint venture fisheries for species other than Pacific whiting on a case-by-case basis; (2) reinstates a prohibition that was inadvertently deleted from 50 CFR 663.7 when the nationwide regulations at 50 CFR Part 620 were developed; and (3) redesignates the formats an existing prohibition that is inconsistent with the changes made by 50 CFR Part 620. The intent is to correct and clarify the regulations for the groundfish fisheries off Washington, Oregon, and California so that they are consistent with nationwide regulations and the FMP.

EFFECTIVE DATE: April 27, 1989.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-526-6140.

SUPPLEMENTARY INFORMATION: The groundfish fishery off Washington, Oregon, and California is managed according to the Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations at 50 CFR Parts 611, 620, and 663. This rule corrects the foreign fishing regulations at 50 CFR 611.70(d) and the prohibitions at 50 CFR 663.7.

50 CFR 611.70: 50 CFR 611.70(g)(2) provides that "Except as specified under § 663.24 or § 611.70(d), no U.S.-harvested fish may be received or processed south of 39°00′ N. latitude." The intent of this section is to allow, on a case-by-case basis, joint ventures for species other than Pacific whiting south of 39°00′ N. latitude under the procedures at 50 CFR 611.70(d). It is consistent with section 1.6 of the FMP, which provides that area closures for joint venture fisheries for species other than Pacific whiting will be determined on a case-by-case basis. The procedures specified at 50 CFR 611.70(d)(1) and 611.70(d)(3) originally (and currently) provided that "The Secretary may publish season and area restrictions for any directed fishery for species other than Pacific whiting under the procedures of this paragraph (d)" and "At any time the Secretary may propose to establish or modify seasons or areas for directed fisheries for species other than Pacific whiting." At the time these provisions were promulgated (50 CFR 611.70(b)(1) at 47 FR 43970, October 5, 1982), the terms "directed fishery" and "directed fisheries" were understood to include joint ventures. However, when the nationwide foreign fishing regulations at 50 CFR 611 Subpart A were revised in 1985, the definition of "directed fishing" at 50 CFR 611.2 was narrowed to exclude joint ventures; the narrower definition also replaced the original definition of "Directed or target fishing" at 611.70(b)(1). The references to "directed fishery" and "directed fisheries" in 50 CFR 611.70(d)(1) and 611.70(d)(3) wer overlooked, inadvertently narrowing the scope of those sections and removing joint ventures from their authority. The technical amendment restores the original meaning of the sections by including specific reference to joint ventures.

50 CFR Part 663: In the process of consolidating the nationwide regulations in a new regulatory section at 50 CFR Part 620 (53 FR 24644, June 29, 1988), some of the prohibitions at 50 CFR 663.7 were deleted and moved to 50 CFR Part 620. A prohibition that formerly appeared at 50 CFR 663.7(q) (53 FR 22001, June 13, 1988) was inadvertently deleted and is herein reinstated at 50 CFR 663.7(j) and edited to conform with the format changes made when 50 CFR Part 620 was implemented.

Also, a prohibition was published at 50 CFR 663.7(r) (53 FR 47956, November 29, 1988) that did not take into account the designation and format changes made by promulgation of 50 CFR Part 620. This prohibition is redesignated as 50 CFR 663.7(k) and edited to conform with the format changes made when 50 CFR Part 620 was implemented.

Classification

This final rule, technical amendment is issued under 50 CFR Parts 611 and 663 and complies with the Magnuson Act. Because this rule only makes minor, non-substantive corrections, the Assistant Administrator for Fisheries, NOAA, finds that it is unnecessary under 5 U.S.C. 553(b)(B) to provide for prior public comment and that there is good cause under 5 U.S.C. 553(d) not to delay for 30 days its effective date. For the same reason, this action is categorically excluded from the requirement to prepare an environmental assessment by NOAA.

Because this rule is being issued without prior comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act and none has been prepared. There is no change in the regulatory impacts previously reviewed and analyzed.

This rule is minor and technical in nature and therefore is not subject to Executive Order 12291. It does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Parts 611 and 663

Fisheries, Fishing, Foreign relations.

Dated: April 21, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Parts 611 and 663 are amended as follows:

PART 611—[AMENDED]

1. The authority citations for 50 CFR Parts 611 and 663 continue to read as follows:

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

2. The introductory text of paragraphs 50 CFR 611.70(d) (1) and (d) (3)(i) are revised as follows:

§ 611.70 Pacific Coast Groundfish Fishery.

* * * * *

(d) *Modifications to authorized foreign fishing.*

(1) Modifications. The Secretary may establish or modify amounts of TALFF, JVP, and corresponding incidental catch and retention allowances during the season by publishing a notice in the **Federal Register** in accordance with this paragraph (d). The Secretary may publish season and area restrictions for any directed fishery or joint venture for species other than Pacific whiting under the procedures of this paragraph (d).

* * * * *

(3) *Procedures for other modifications*—(i) *Proposed modifications.* At any time during the calendar year, the Secretary may propose to modify the incidental catch or retention allowance percentages for any groundfish species or species complex. At any time the Secretary may propose to establish or modify seasons or areas for directed fisheries or joint ventures for species other than Pacific whiting. The Secretary will consult with the Pacific Fishery Management Council and will consider the following factors:

* * * * *

PART 663—[AMENDED]

3. The introductory text of § 663.7 is revised, paragraph (r) is removed, and paragraphs (j) and (k) are added to read as follows:

§ 663.7 Prohibitions.

It is unlawful for any person to do any of the following:

* * * * *

(j) Refuse to submit fishing gear or fish subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection;

(k) Falsify or fail to make and/or file, any and all reports of groundfish landings, containing all data, and in the exact manner, required by the applicable State law, as specified in § 663.4, provided that person is required to do so by the applicable State law.

[FR Doc. 89-10147 Filed 4-27-89; 4:09 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 84
Wednesday May 3, 1989

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

Agricultural Marketing Service

7 CFR Part 29

[TB-89-004]

Tobacco Fees and Charges for Mandatory Inspection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Tobacco Inspection Act requires the Secretary to fix and collect fees and charges for inspection and certification, the establishment of standards, and other services, including administrative and supervisory costs, at designated tobacco auction markets in all tobacco producing areas. The fees collected must, as nearly as possible, cover the Department's costs of performing these services. This proposed rule would increase the fee currently in force to reflect the increased cost of operating the tobacco inspection program.

DATE: Comments are due on or before June 2, 1989.

ADDRESS: Send comments to the Director, Tobacco Division, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456. Comments will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ernest Price, Director, Tobacco Division, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456. Telephone (202) 447-2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department proposes to amend the regulations governing the mandatory inspection and certification of producer tobacco sold at designated auction markets throughout tobacco producing areas. The proposed amendment would increase the fees and charges assessed by the Department for providing inspection and certification of quota tobacco, the establishment of standards, and other services. The fee would cover the increased cost of operating the program, including administrative and supervisory costs. Authority for these regulations is contained in the Tobacco Inspection Act (7 U.S.C. 511-511q).

The current fee of $.0055 per pound has been in effect since July 1, 1982, as published in the **Federal Register** (47 FR 51722) on June 23, 1982.

The Department conducts a yearly review of the financial status of this program to determine whether the fee is sufficient. Receipts for the 1988-89 marketing season were approximately $7,875,000. Anticipated expenses for that period are approximately $9,252,000. For the past three seasons, the increased costs of the tobacco inspection program forced the department to draw upon funds in that program's reserve account. the major factors causing the need for additional funds are increases in Government salaries, including a special salary rate for tobacco graders which was effective October 30, 1988, and increases in travel allowances and overall administrative costs since 1982. An analysis of data available to the Department indicates that a fee of $.0067 per pound would cover expenses and maintain a reserve that would meet any reasonable contingency. Information on program income and expenses was presented to the National Advisory Committee for Tobacco Inspection Services at its meeting on March 7, 1989, in Washington, DC. The National Advisory Committee, made up of 14 representatives from tobacco producer interest groups, was established under the Tobacco Inspection Act to advise the Secretary of Agriculture on the fees to be assessed, level of inspection service, and other related matters. The Committee adopted a motion, by a vote of eleven in favor and two opposed, to recommend to the Secretary an increase in the fee to $.0070 per pound. However, based on a recalculation of pounds under quota for the coming marketing season, a fee of $.0067 per pound is being proposed.

The marketing season for tobacco does not coincide with the Federal fiscal year. It is contemplated that the increased rate would be made effective on July 1, 1989, so as to treat all types of tobacco on an equal basis.

This rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "nonmajor rule" because it does not meet any of the criteria established for major rules under the Executive order.

Additionally, in conformance with the provisions of Pub. L. 96-354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Most of the firms which would be affected by this rule are small businesses. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. This proposed rule would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this proposed rule would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and would not alter the market share or competitive positions of small entities relative to the large entities and would in no way affect normal competition in the marketplace. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobacco inspection program.

All persons who desire to submit written data, views, or arguments for consideration in connection with this proposal may file them with the Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, DC, 20090-6456, not later than June 2, 1989.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Tobacco.

Accordingly, the department proposes to amend the regulations under the Tobacco Inspection Act contained in 7 CFR part 29 as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. The authority statement for Subpart B continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

§ 29.123 [Amended]

2. In § 29.123 (a) *Mandatory inspection,* change $.0055 per pound to $.0067 per pound.

Dated: April 27, 1989.

J. Patrick Boyle,
Administrator.

[FR Doc. 89-10534 Filed 5-2-89; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL TRADE COMMISSION

16 CFR Part 401

Trade Regulation Rule; Misuse of "Automatic" or Terms of Similar Import as Descriptive of Household Electric Sewing Machines

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission announces its intention to begin a rulemaking proceeding for the trade regulation rule concerning misuse of "automatic" or terms of similar import as descriptive of household electric sewing machines ("Sewing Machine Rule" or "Rule"). The proceeding will address whether the Sewing Machine Rule should remain in effect without changes or should be repealed. The Commission invites public comment on how the Sewing Machine Rule has affected consumers, business and others.

Because the Rule contains no information collection requirements, the Commission is not seeking comments as to whether the Rule imposes unnecessary recordkeeping and disclosure requirements (Paperwork Reduction Act, 44 U.S.C. 3501-3518). The issue of whether or not the Rule has had significant economic impact on small entities is required to be addressed at that stage of the rulemaking proceeding at which a Notice of Proposed Rulemaking is issued (Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*). However, to expedite the inquiry, the Commission in this NAPR seeks comments on whether the Rule has had an impact on small entities.

DATE: Written comments will be accepted until June 2, 1989.

ADDRESS: Written comments should be addressed to the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580. All comments should be captioned: "ANPR Comment—Sewing Machine Rule."

FOR FURTHER INFORMATION CONTACT: Robert E. Easton, Sr., Esq., Special Assistant—Enforcement, (202) 326-3029, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Part A—Background Information

This notice is being published pursuant to section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a *et. seq.*, the provisions of Part 1, Subpart B of the Commission's Rules of Practice, 16 CFR 1.7, and 5 U.S.C. 551, *et. seq.* This authority permits the Commission to promulgate, modify and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting Commerce within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45.

In essence the Sewing Machine Rule declares it to be an unfair method of competition and an unfair or deceptive act or practice to use the word "automatic" or similar terms to describe a household sewing machine. The need for the Rule, stated at the time of promulgation, was that use of the word automatic as a description of a sewing machine led consumers "to believe that merely by the twist of a dial or the flick of a lever they will be able to perform complicated sewing operations." (16 CFR 401 1988)).

The Sewing Machine Rule was adopted on June 30, 1965 and became effective July 30, 1966.

Part B—Objectives

The objective of this rulemaking proceeding is to determine whether the Commission's Sewing Machine Rule should remain in effect without changes or be repealed. To assist the Commission in reaching its determination, the Commission will seek evidence on the following factual issues: (1) Whether there are any benefits from the Sewing Machine Rule and, if so, whether they are greater than its costs; and (2) whether sewing machine technology and marketing have changed so that the Rule is no longer needed.

The Commission is undertaking this rulemaking proceeding as part of the Commission's ongoing program of evaluating trade regulation rules to determine their current effectiveness and impact.

Part C—Alternative Actions

The Commission does not plan to consider alternatives to repealing the Sewing Machine Rule or leaving it in effect as it is.

Part D—Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's review of the Sewing Machine Rule. A comment that includes the reasoning or basis for a proposition will likely be more persuasive than a comment without supporting information. The Commission requests that factual data upon which the comments are based be submitted with the comments. In this section, the Commission identifies a number of issues on which it solicits public comment. The identification of issues is designed to assist the public to comment on relevant matters and should not be construed as a limitation on the issues or the public comment.

Questions

(1) Does the Rule currently benefit consumers?

(2) Are current purchasers of sewing machines likely to be deceived by the use of the word "automatic" or terms of similar import used to describe the product?

(3) Would consumers be harmed if the Rule were repealed?

(4) How have improvements in sewing machine technology, such as elimination of the need to change cams, affected the ease of use of sewing machines?

(5) Has industry incurred any direct costs, such as paying for tests, studies, etc., in association with compliance with the Rule?

(6) Has industry incurred any indirect costs, such as loss of sales resulting from foregoing the use of the term "automatic" in promotional literature, in association with compliance with the Rule?

(7) Does the Rule have any impact on small entities?

(8) Should the Rule be kept in effect or should it be repealed?

List of Subjects in 16 CFR Part 401

Sewing machines, Trade practices.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 89-10584 Filed 5-2-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 75

Child Protection and Obscenity Enforcement Act of 1988; Record-keeping Provisions: Correction

AGENCY: Department of Justice.

ACTION: Proposed rule: Correction.

SUMMARY: This document corrects a typographical error. The proposed rule as printed contained a reference to an incorrect month.

FOR FURTHER INFORMATION CONTACT: Carol A. Williams, Special Counsel, Office of Legal Counsel, telephone number: 202-633-3865. This is not a toll-free number.

PART 75—CHILD PROTECTION AND OBSCENITY ENFORCEMENT ACT OF 1988; RECORD-KEEPING PROVISIONS

§ 75.2 [Amended]

Section 75.2(a) introductory text in FR Doc. 89-4428, published in the **Federal Register** issue of Monday, February 27, 1989, on p. 8217 is corrected by removing "August 17" and inserting, in its place, "May 17."

Carol A. Williams,

Federal Register Liaison Officer.

[FR Doc. 89-10571 Filed 5-2-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 90363-9063]

RIN: 0651-AA40

Patent and Trademark Automated Search System Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office proposes to amend the rules of practice in patent and trademark cases, Parts 1 and 2 of Title 37, Code of Federal Regulations, to set forth changes that will be made to users of text data bases resident on the Automated Patent System (APS) and the automated trademark search system (T-Search). Pub. L. 100-703, enacted on November 19, 1988, allows the Commissioner to establish reasonable fees for on-line access to the automated search systems.

The Office plans to provide on-line access to its USPAT data base (full text of U.S. patents issued after 1974), the U.S. classification data from 1790 to the present, and to English abstracts of Japanese and Chinese patents (to the extent they are available) hereinafter referred to as APS-Text, and T-Search in its Patent Search Room and Trademark Search Library located in Crystal City, Virginia. The Office does not plan to provide on-line access to its patent and trademark data bases at any other facilities at the present time.

The Office will be making both search systems available to the public free of charge during this rulemaking process for the purposes of self-education and training (familiarization).

The paper or microfilm collections of U.S. patents, foreign patent documents and U.S. trademark registrations continue to be available to the public free of charge as provided by section 104(b) of Pub. L. 100-703.

The proposed rule changes are intended to establish a basis for the charges for use of the on-line automated search systems. In addition, procedures for public use of the automated search systems, including training and charging of fees, are presented.

DATES: Written comments must be submitted on or before June 30, 1989; a public hearing will be held on June 30, 1989 at 9:00 a.m. Requests to present oral testimony should be received on or before June 29, 1989.

ADDRESSES: Address written comments and requests to present oral testimony to the Commissioner of Patents and Trademarks, Washington, DC 20231, Attention: Frances Michalkewicz, Suite 904, Building 2, Crystal Park. The hearing will be held in Suite 912 on the 9th floor of Building 2, Crystal Park, located at 2121 Crystal Drive, Arlington, Virginia. Written comments and a transcript of the public hearing will be available for public inspection in Suite 904 of Building 2, Crystal Park, at 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Frances Michalkewicz by telephone at (703) 557-1610 or by mail marked to her attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The purpose of the proposed rule change is to establish new fees for the on-line use of APS-Text, and T-Search that are to be provided in the Office's facilities in Crystal City, Virginia. This is consistent with the Office's Electronic Data Dissemination Policies and Guidelines, which is being published separately in this issue of the **Federal Register** in final form. Establishment and adjustment of patent fees is provided for by section 6 and section 41 of Title 35, United States Code, and section 103(b) of Pub. L. 100-703. Establishment and adjustment of trademark fees is provided for by section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113) and section 103(a) of Pub. L. 100-703. Information on the procedures for public use of the automated systems, including training, waivers, and the charging of fees also are presented for information.

Background

In response to Pub. L. 96-517, the 1980 legislation which amended patent and trademark laws, the Office prepared and submitted a plan for the automation of its operations to Congress on December 13, 1982. The plan centered on two basic concepts: the creation of electronic data bases that: (1) Would eventually replace the Office's all-paper patent and trademark files, and thereby improve their integrity and quality; and (2) would support searches, examinations, Office actions and other Office functions through electronic workstations which would provide text and image retrieval capabilities and perform other automation functions.

Over 700,000 active Federal trademark registrations have been converted to an electronic data base of textual and digital image data. A computer system has been installed to enable examiners to search the data base for textual data and codes describing designs, and to retrieve and display all information as a substitute for paper file searches. Trademark examiners have been using T-Search exclusively since January 1988, and the capability is ready to be deployed for public use in the Trademark Search Library.

The T-Search "dead data base," trademarks cancelled, expired or abandoned since March 1984, also is available to the public, but approximately 17,000 images are missing and an additional 184,000 registrations and applications have not been quality checked. The trademark examining attorneys do not search this data base. The Office is soliciting the public's comments as to whether this data base should be compared to the paper copy and corrected for use by public searchers at a cost projected to be about $250,000.

An Automated Patent System (APS) was installed for test and evaluation purposes, using one patent examining group as an operational testbed. Major operational components of APS, that is, large scale computers with conventional magnetic storage devices, a high-speed local area data communications network, and electronic workstations equipped with two high resolution

graphic displays and laser printers were interconnected on July 1, 1986 to enable system test and evaluation to begin in the testbed group.

On-line access to the full-text of all U.S. patents granted after 1974 and then to English language abstracts of Japanese patents was deployed to the patent examining staff beginning in 1986. On-line access to APS-Text permits examiners to search the text of approximately one million U.S. patents containing more than five billion words. Today, all examiners have been trained in the use of the full-text searching tool, and it has become a routine part of the patent examination process for many examiners. Searches are conducted from single screen text terminals located throughout the Office. The APS-Text capability is ready for deployment to the public in the Patent Search Room.

The Office intends to enter the text of virtually all U.S. patents issued after 1970. In addition, selected tabular data and chemical and mathemical equations will have been added to the current full text file. Ultimately, approximately 1.2 million U.S. patents will be available to both patent examiners and the public for search in full text form.

Public evaluation of the APS full-text search capability was conducted between January 11 and April 15, 1988. Forty-two (42 public users were trained on APS-Text during January, 1988 and allowed first-come/first-serve access to several terminals. Reactions of public users to APS-Text were positive. Public users found APS-Text useful for pre-application and state-of-the-art searches.

A total of 38 public users were trained on T-Search during a public evaluation period conducted between June and December, 1988. Preliminary review indicates that public users considered. T-Search to be valuable both as a primary source for registrability searching and for verifying paper searches. In addition, T-Search was found to facilitate searches by class and ownership.

Public Law 100-703, enacted on November 19, 1988, allows the Commissioner to establish reasonable fees for public access to the automated search systems while it continues the requirements that no more than 30 percent of automation resources may be from user fees and that the Office may not enter into exchange agreements relating to automatic data processing resources.

Section 104(c) of Pub. L. 100-703 allows the Commissioner to waive the payment by an individual of fees for accessing the automated search systems upon a showing of need or hardship, and if such waiver is in the public interest. The proposed Office policy retains the flexibility authorized by the enabling legislation to waive fees in appropriate circumstances.

The information contained in the automated data bases, which will be available to the public at the location of the Patent and Trademark Office in Arlington, Virginia, is available free of charge at that location in paper form, and is substantially available through private vendors on-line for a fee. At the present time, it is considered to be in the public interest to waive the proposed fee in situations where access to the data base is needed for a personal, educational purpose by an individual or member of an educational or non-profit organization, or where payment of the fee would pose a genuine financial hardship to the user.

A personal, educational purpose is one in which the person using the data base is attempting to satisfy a personal need, and is not conducting a search or otherwise using the data base for compensation in any form. Examples of appropriate waiver situations would include students or teachers doing a term paper, or a university professor collecting background information for the preparation of an application for a research grant. An example of a situation where a waiver would not be appropriate would include an individual doing work for remuneration—e.g., a law student doing a pre-examination or infringement search for a law firm.

The Commissioner will further consider a fee waiver based on a genuine financial hardship. The person requesting a waiver will be required to provide information that would demonstrate a clear inability to pay the fee.

A waiver for the payment of fees is intended to be granted sparingly, and generally only where the terminals are available. It is not anticipated that fees will be waived for each individual except once or twice each year depending on the circumstances. The Commissioner reserves the right to control access to the data bases and deny a waiver to any individual.

In the course of developing criteria, consideration was given to charging reduced fees to an individual who could claim small entity status as defined in 35 U.S.C. 41(h). However, since it is anticipated that the majority of people that will be using the automated data bases would be members of law firms or commercial search services, this approach was obviously flawed.

As proposed, the waiver policy would apply only to use of the automated system, and not to any service that may also be available to conduct a search or to the printing or sale of copies. Any abuse of the waiver policy could lead to a ban on the use of any public search facility for that individual. The Office encourages both comments and suggestions on the waiver policy that realistically address the public interest and the need to meet existing fiscal responsibilities.

Cost Calculations

The Office calculated unit costs for all fees based on OMB Circular A-25, and OMB Circular A-130, "Management of Federal Information Resources." Costs were determined from the best available records (for example, financial statements for the Office) and included direct and indirect costs to the Office of carrying out the activity, as directed by OMB Circular A-25. Proposed user charges for both APS-Text and T-Search were based on the marginal costs of providing these services to the public.

In calculating the costs of providing access to T-Search and APS-Text to the public, the Office followed Congressional direction that fees be reasonable by reflecting the marginal cost for providing the new service and not including the costs of designing or installing the automated system for use by Office examiners, or the development of the new systems.

The marginal costs for one hour terminal session time on APS-Text include a portion of the lease cost of a new computer mainframe which originally was to be acquired in fiscal year 1990 for use by Office patent examiners. To meet public search requirements, the mainframe is being leased earlier than originally planned. That portion of lease costs for the eight (8) month period October 1989 through May 1990 over and above the lease costs for a mainframe sized to meet only examiner needs is being passed on to the user. After May 1990, the mainframe was intended to be procured and installed to support APS. Therefore, no costs are being passed on to the public user after that time. When public usage reaches the level where a mainframe dedicated for public use is required, fee adjustments will be proposed to pass all of the costs of that mainframe on to the the public.

The level of public use will affect the amount of main memory needed to support the additional search sessions. It is projected that an additional increment of main memory will be required in fiscal years 1991 and 1992. This increment would not be required to support the examiner workload alone.

The Office also is proposing to provide some free training and access time during training on the automated search systems in accordance with section 104(c) of Pub. L. 100-703 which reads, ". . . a limted amount of free access shall be made available to all users of the systems for purposes of education and training."

Cost of equipment included in the fee calculations for public access include network interface units, text terminals, printer noise dampeners and text terminal printers.

Other costs are included for a portion of license fees that must be paid to Chemical Abstracts Service for its proprietary text and structure search software; additional personnel for the Patent Search Room, and the Office of Information Systems; computer installation costs; supplies and equipment dedicated to public use; and general and administrative overhead.

The usage rate estimates are based on the three month public user study performed from January through March 1988. For this study, 42 frequent Patent Search Room users were selected to be trained in the use of APS-Text. Three text terminals were made available to the trained public users at no charge. During the three month study period, use of the three terminals averaged approximately 50 percent. While it is impossible to accurately predict future use by a more diverse group of public users, the cost calculations attempt to take into account such factors and assumptions as:

1. Future public users, on average, will use APS-Text less frequently than the 42 frequent users selected for the 1988 study, since the study group was weighted toward a small number of frequent public searchers, many of whom routinely used commercially available automated text search tools.

2. Collection of a fee for use (as opposed to the absence of any charge during the study) will reduce demand for text search services when compared with usage data obtained during the study period.

3. The potential universe of public users is expected to average no more than 300 per day.

4. The average length of a public user search session is projected to be approximately 22 minutes—the average length of a search session during the 1988 test of public use.

5. Based on the preceding assumptions, if all 300 potential public users conducted a single search session during a work day, a total of 110 hours of access would be required. Twenty-five text terminals available five days a week, twelve hours a day, will provide a maximum potential of 300 hours of available text search time. Under these assumptions, the number of text terminals appears to be adequate for the foreseeable future.

6. For purposes of actual use of available text terminals, the following estimates are used:

(a) In fiscal year 1990, up to ten terminals will be available during the first quarter. An estimate of 45 percent utilization of available text terminal time is projected. By increasing the number of text terminals to 15 in January 1990 and 20 in April 1990, an estimate of 40 percent utilization of available text terminal time is projected. By increasing the number of text terminals to 25 in July 1990, an estimate of 35 percent utilization of available text terminal time is projected.

(b) During fiscal year 1991 and beyond, stable levels of usage should be achieved, yielding an estimated 35 per cent average utilization of the 25 available terminals. This utilization rate equates to 105 session hours per day, or an average of 4.2 session hours per terminal per day. At an average of 22 minutes per session, this anticipates a total of 286 search sessions per day.

A summary of the fee calculations is as follows:

APS-TEXT—MARGINAL COST OF ONE-HOUR OF TERMINAL SESSION TIME

[October 1989-September 1992]

Cost Element	Public share (marginal cost)
Personnel: Compensation and Benefits	$918,197
Hardware & Maintenance	$1,036,587
Software (license fees)	$300,357
Site Preparation	$38,118
Non-capital Furniture	$8,750
Supplies & Forms	$3,500
Sub-Total	$2,305,509
General & Administrative Overhead	$361,504
Total Cost	$2,667,013
Estimated Use (hours)	73,755
Unit Cost (per hour)	$36.16

The marginal cost for one hour of Office staff search assistance on APS-Text includes the costs of personnel compensation and benefits.

A summary of the fee calculations is as follows:

APS-Text—Marginal Cost of One-Hour of Office Staff Search Assistance

[September 1989-October 1992]

Cost Element	Public share (marginal cost)
Personnel: Annual Compensation and Benefits (Total Cost)	$45,659
Work Hours (per annum)	1,776
Unit Cost (per hour)	$25.71

The marginal cost for a printed copy generated from APS-Text includes costs for compensation and benefits, printers, and supplies and forms. A summary is as follows:

APS-TEXT—MARGINAL COST OF EACH PRINTED PAGE

[October 1989-September 1992]

Cost Element	Public Share (marginal cost)
Personnel: Compensation and Benefits	$173,473
Hardware & Maintenance	$13,843
Non-captial Furniture	$5,000
Supplies & Forms	$41,273
Sub-Total	$233,589
General & Administrative Overhead	$36,627
Total Cost	$270,216
Estimated Use (pages)	5,028,750
Unit Cost (per page)	$0.054

The marginal cost for one hour terminal session time on T-Search includes the costs of personnel in the Trademark Search Library, general and administrative overhead, and maintenance on the T-Search terminals.

The usage rate for T-Search during fiscal years 1990-1992 is projected to be 28 percent. This rate is extrapolated from actual usage rates during the T-Search public user pilot program which was conducted from June through December 1988. A total of 38 members of the public were trained on T-Search, and about 24 to 28 public users were active on T-Search each month. Overall usage rate of these active users was 14 percent. It is anticipated that the overall number of users and the usage rate will double once T-Search is made available in the Trademark Search Library to all public users of that search facility and training is provided on a routine basis.

A summary of the fee calculations are as follows:

T-SEARCH—MARGINAL COST OF ONE-HOUR OF TERMINAL SESSION TIME

[October 1989–September 1992]

Cost Element	Public Share (marginal cost)
Personnel: Compensation and Benefits	$195,171
Hardware and Maintenance	$28,809
Site Preparation	$1,000
Supplies and Forms	$3,298
Subtotal	$228,278
General and Administrative Overhead	$30,932
Total cost	$259,210
Estimated Use (hours)	5,985
Unit Cost (per hour)	$43.31

The marginal cost for one hour of Office staff search assistance on T-Search includes the costs of personnel compensation and benefits.

A summary of the fee calculations is as follows:

T-SEARCH—MARGINAL COST OF ONE-HOUR OF OFFICE STAFF SEARCH ASSISTANCE

[October 1989–September 1992]

Cost Element	Public Share (marginal cost)
Personnel: Annual compensation and benefits (Total Cost)	$45,659
Work Hours (per annum)	1,776
Unit Cost (per hour)	$25,71

The marginal cost for a period copy generated from T-Search includes costs for compensation, and supplies and forms. A summary of the cost is as follows:

T-SEARCH MARGINAL COST OF EACH PRINTED PAGE

[October 1989–September 1992]

Cost Element	Public Share (marginal cost)
Personnel: Compensation and benefits	$27,862
Hardware and Maintenance	$5,274
Supplies and Forms	$3.579.
Subtotal	$36,715
General and Administrative Overhead	$4,975
Total Cost	$41,690
Estimated Use (pages)	448,875
Unit Cost (per page)	$0.093

Rounding Procedures: Fee amounts were rounded so that the amount rounded would be de minimis and convenient to the user. This procedure is consistent with section 103(b) of Pub. L. 100–703 which allows the Office to adjust patent fees in the aggregate, and with section 103(a) of Pub. L. 100–703 which allows the Office to adjust trademark fees in the aggregate.

The Office has detailed cost calculation worksheets for each fee item, which are available for public inspection in Suite 904 of Building 2, Crystal Park at 2121 Crystal Drive, Arlington, Virginia.

Procedures for Public Use of APS-Text and T-Search

Patent Search Room Configuration

Initially ten (10) text search terminals will be installed and available for public use in the Patent Search Room. A printer will be associated with each text search terminal. An additional terminal will be located in Patent Search Room employee office space for control and administration activities. Fifteen (15) more terminals and printers are planned to be added for public use during fiscal year 1990, if necessary.

Trademark Search Library Configuration

Initially three (3) T-Search terminals with associated printers will be installed and available for public use in the Trademark Search Library. The terminals will be clustered in one area of the Trademark Search Library. An additional terminal will be located in Trademark Search Library employee office space for control and administration activities. Additional terminals and printers will be added as demand warrants and space permits.

Procedures for public use of APS-Text and T-Search have been made as similar as possible in order to provide for consistency in application and ease of administration. Unless specifically stated to apply to only one system, procedures apply to both APS-Text and T-Search.

Training

To enable prospective public users to become effective on T-Search, four (4) hours of basic training is being offered. T-Search training is expected to be held in the Crystal City complex.

Enrollment in all training classes will be on a lottery basis. Public users wishing to be trained on APS-Text or T-Search, will be required to submit an application form by a specific deadline to allow the Office adequate time to select, schedule and notify attendees.

System Use and Fee Procedures

To ensure equity of public access to the automated systems, as well as efficient operations, rules for use will be posted at the terminals. Users of the systems will be expected to comply with the rules as with other regulations regarding the use of facilities.

Users are strongly encouraged to register in advance for system use. Each week, the next week's schedule will be available in the Patent Search Room and the Trademark Search Library. Should requests for blocks of terminal time exceed the availability of terminals, limits on the amount of reserved time may be instituted. Eight (8) of the initial ten (10) terminals in the Patent Search Room and two (2) of the initial three (3) terminals in the Trademark Search Library will be allocated to public users with advance reserved times. The remaining terminal in both the Patent Search Room and the Trademark Search Library will be available for walk-up users and for assisted searches for infrequent users. The terminal time reservation system and the number of terminals available for walk-up public use and for assisted searches is subject to change based upon operational experience.

All public use of APS-Text and T-Search with the exception of scheduled training classes is on a pre-payment basis. In pre-paying for use of the systems, the public may use a blank signed check, major credit card or charge to a deposit account. At the end of the search or the pre-paid amount of time, users will receive an accounting from Patent Search Room or Treademark Search Library staff for terminal time used and prints produced. The user must then finalize payment.

Discussion of Specific Rules

37 CFR 1.21 Miscellaneous fees and charges

Section 1.21, if amended as proposed, would add new paragraph (o) to set the fees for access to the Automated Patent System full-text search capability (APS-Text) and to provide for the waiver of fees under certain circumstances.

Section 1.21, if amended as proposed, would add new paragraph (p) to set the fees for APS-Text search assistance by Office staff.

Section 1.21, if amended as proposed, would add new paragraph (q) to set the fee for a printed copy from APS-Text.

37 CFR 2.6 Trademark fees

Section 2.6, if amended as proposed, would add new paragraph (u) to set the fees for access to the automated

trademark seach system (T-Search) and to provide for the waiver of fees under certain circumstances.

Section 2.6, if amended as proposed, would add new paragraph (v) to set the fees for T-Search search assistance by Office staff.

Section 2.6, if amended as proposed, would add new paragraph (w) to set the fee for a printed copy from T-Search.

Other Considerations

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.* There are no information collection requirements relating to patent and trademark fee rules.

The Office has determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Fexibility Act, Pub. L. 96-354). The proposed rules make the Office's on-line, automated patent full-text search and trademark search systems available to the public at rates significantly less than commercial systems.

The Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. There will be no 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 or export markets.

List of Subjects in

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Lawyers, Reporting and record keeping requirements, Small businesses.

37 CFR Part 2

Administrative practice and procedure, Courts, lawyers, Trademarks.

For the reasons set forth in the preamble, the Office is proposing to amend Title 37 of the Code of Federal Regulations, Chapter 1, as set forth below. All proposed additions are printed between arrows (> <) and all deletions are shown between brackets([]).

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as *follows:*

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.21 is proposed to be amended by adding new paragraphs (o)-(q).

§ 1.21 Miscellaneous fees and charges.

* * * * *

>(o) Marginal cost, paid in advance, for each hour of terminal session time, including print time, using Automated Patent System full-text search capabilities, prorated for the actual time used. The Commissioner may waive the payment by an individual for access to the Automated Patent System full-text search capability (APS-Text) upon a showing of need or hardship, and if such waiver is in the public interest.....$40.00

(p) Marginal cost, paid in advance, for each hour of Office staff search assistance to conduct a search using Automated Patent System full-text search capabilities (APS-Text), prorated for the actual time used.....$25.00

(q) Marginal cost, for each printed page generated from the Automated Patent System text terminal.....$0.10<

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

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

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.6 is proposed to be amended by adding new paragraphs (u)-(w).

§ 2.6 Trademark fees.

* * * * *

>(u) Marginal cost, paid in advance, for each hour of terminal session time, including print time, using T-Search capabilities, prorated for the actual time used. The Commissioner may waive the payment by an individual for access to T-Search upon a showing of need or hardship, and if such waiver is in the public interest.....$40.00

(v) Marginal cost, paid in advance, for each hour of Office staff search assistance to conduct a search using T-Search capabilities, prorated for the actual time used.....$25.00

(w) Marginal cost, for each printed page generated from the T-Search terminal.....$0.10<

Dated: March 7, 1989.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 89-10779 Filed 5-1-89; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3561-9]

Approval and Promulgation of Implementation Plans; Wisconsin State Implementation Plan: Extension of Comment Period

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for a notice of proposed rulemaking published February 22, 1989, (54 FR 7572) has been extended 60 days from the date of publication. This notice proposes to disapprove a revision to the Wisconsin State Implementation Plan for ozone. The requested revision from the Wisconsin Department of Natural Resources consists of portions of Wisconsin's 1987 Act 27, which created a program for allocating a growth allowance for sources of volatile organic compounds in Southeastern Wisconsin. USEPA is taking this action based on an extension request by a commentor.

DATE: Comments are now due on or before May 24, 1989.

ADDRESS: Send comments to Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6031.

FOR FURTHER INFORMATION PLEASE CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

Date: April 13, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89-9991 Filed 5-2-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 160

[OPP-250081; FRL-3565-1]

Notification to Secretary of Agriculture of the Final Revision to the Federal Insecticide, Fungicide, and Rodenticide Act; Good Laboratory Practice Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of Agriculture a final regulation that amends the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) Good Laboratory Practice Standards. This action is required by section 25(a)(2)(B) of FIFRA, as amended.

FOR FURTHER INFORMATION CONTACT: Richard Mahler, Office of Compliance Monitoring (EN-342), Environmental Protection Agency, Room E-707B, 401 M St., SW., Washington, DC 20460, (202) 382-7825.

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(B) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any final regulation at least 30 days prior to signing it for publication in the **Federal Register**. If the Secretary comments in writing regarding the final regulation within 15 days after receiving it, the Administrator shall issue for publication in the **Federal Register**, with the final regulation, the comments of the Secretary's comments. If the Secretary does not comment in writing within the 15 days after receiving the final regulation, the Administrator may sign the final regulation for publication in the **Federal Register** anytime after the 15-day period notwithstanding the foregoing 30-day time requirement.

As required by FIFRA section 25(a)(3), a copy of this final regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

As required by FIFRA 25(d), a copy of this final regulation has been forwarded to the Scientific Advisory Panel.

Authority: 7 U.S.C. 130 et seq.

Dated: April 20, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 10404 Filed 5-2-89; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 552

General Services Administration Acquisition Regulation; Construction Contract Modifications

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule; terminated.

SUMMARY: The General Services Administration, Office of Acquisition Policy, is terminating further action with respect to a proposed rule which was published in the **Federal Register** on March 24, 1989 (54 FR 12251) (GSAR Notice No. 5-255), that would revise the Equitable Adjustments clause in section 552.243-71. Comments and questions received to date have raised a number of policy and procedural issues. Until these issues are resolved, a final rule will not be promulgated. If, after the issues are resolved, a revision to the regulation is necessary, a new proposed rule will be published for public comment.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Office of GSA Acquisition Policy and Regulations, (202) 566-1224.

SUPPLEMENTARY INFORMATION: The proposed rule that is being terminated would revise the Equitable Adjustments clause in section 552.243-71 by (1) establishing timeframes for submission of proposals, (2) eliminating the $5,000 threshold for submitting detailed price breakdowns, (3) eliminating the term "commission" and the four-percentage limitation and substitute overhead and profit for "commission," (4) establishing an overhead rate by calculating the rate as a percentage of the company's total direct costs which percentage would be applied to the total direct cost amount, and (5) providing for bond premium adjustments resulting from changes to be made at final settlement.

Dated: April 27, 1989.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 89-10550 Filed 5-2-89; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-07; Notice 4]

RIN 2127-AB12

Federal Motor Vehicle Safety Standards Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: On May 14, 1985, NHTSA published a notice of proposed rulemaking (NPRM) to amend the pneumatic timing requirements of Standard No. 121, *Air Brake Systems*, for the purpose of improving the timing balance of combination vehicles. The agency is publishing a final rule based on that NPRM in today's issue of the **Federal Register**. This SNPRM proposes two further amendments concerning pneumatic timing. First, NHTSA is proposing to require for towing vehicles that actuation at the interface (gladhand) between towing vehicles and trailers must be at least as fast as actuation at the towing vehicle brake chambers. The purpose of this requirement would be to improve combination stability by ensuring that the brakes of a tractor, or other towing vehicle, do not actuate well before the brakes of a trailer being towed. Second, the agency is proposing requirements for towing trailers to ensure that the relay booster valves used on these trailers do not upset brake balance between vehicles in a combination.

DATES: Comments must be received on or before July 3, 1989. The amendments in this notice would become effective on the later of the following two dates: one year after the publication of a final rule adopting those amendments, or two years after the publication of today's final rule (i.e., the date on which the new gladhand timing requirements adopted by that rule become effective).

ADDRESSES: Comments should refer to the docket and notice numbers and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400

Seventh Street, SW., Washington, DC (202-366-5274).

SUPPLEMENTARY INFORMATION: NHTSA is publishing a final rule in today's issue of the **Federal Register**, which makes several amendments to Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*, for the purpose of improving the timing balance of combination vehicles. The final rule is based on a notice of proposed rulemaking (NPRM) published in the **Federal Register** (50 FR 20113) on May 14, 1985. This SNPRM proposes further amendments concerning pneumatic timing.

Pneumatic timing is an important factor in air brake system performance. The time required for a vehicle's service brake chambers to reach a relatively high pressure level after actuation of the brake control by the driver is referred to as "pneumatic application time." Since the generation of brake torque, and therefore braking force, is directly related to the air pressure available in the brake chambers, pneumatic application time affects vehicle stopping distance. As a general matter, the shorter the pneumatic application time, the shorter the vehicle's stopping distance.

For combination vehicles, pneumatic application timing can affect stability. If a trailer's brakes apply more slowly than the towing vehicle's brakes, the trailer can bump the towing vehicle, applying an excessive compressive force on the kingpin connecting the trailer to the towing vehicle. If the brakes are applied during a turn, this force may reduce the stability of the combination and contribute to a jackknife accident.

"Pneumatic release timing", the time required for the pressure in the brake chambers to fall from a relatively high pressure to a relatively low pressure after the driver releases the brake control, also affects braking performance. If a vehicle's wheels lock as the driver is attempting to stop, the vehicle will skid. If the driver is to regain control of the vehicle in this situation, immediate release of the brakes is necessary.

For combining vehicles, pneumatic release timing can affect stability. If a towing vehicle's brakes release more slowly than the trailer's, destabilizing forces may increase at the kingpin.

Standard No. 121, *Air Brake Systems*, specifies certain requirements for pneumatic timing. Section S5.3.3 provides that the brake actuation (application) time for trucks, buses, and trailers must not exceed specified periods of time. Section S5.3.4 provides that the brake release time for these vehicles must not exceed specified periods of time.

The timing tests for trailers, including trailer converter dollies, are not conducted with the trailer connected to an actual tractor. Instead, the trailer's brake system is connected to a test rig. The test rig delivers air to, and releases air from, the trailer during the timing test. The timing tests for vehicles designed to tow trailers are conducted with a 50-cubic-inch reservoir connected to the rear control line coupling. This reservoir represents the control line volume of the towed trailer.

The May 1985 NPRM proposed, among other things, to establish new requirements to address the timing of the interface (gladhand) between towing vehicles and trailers. The NPRM proposed to require that power units and towing trailers increase, and release, the pressure in the 50-cubic-inch test reservoir within specified maximum times. The purpose of the proposed gladhand timing requirements was to help ensure that the air delivery from towing vehicles to towed vehicles is fast enough to apply the brakes of all vehicles in the combination at approximately the same time, thereby avoiding combination instability (e.g., trailer overrun) that might be caused by a slow gladhand. The NPRM also proposed to amend the maximum application and maximum release timing requirements for trailers and other vehicles.

Several commenters expressed concern that the overall timing requirements proposed in the NPRM might not ensure combination vehicle stability in some situations because the brakes of a tractor with a very fast application time could still actuate well before the brakes of a trailer meeting the proposed requirements, with the result that the trailer would overrun the tractor. The American Trucking Association (ATA) commented that the actual maximum application times which are adopted are not as important as the necessity to adopt a minimum time for tractor brake application. That commenter stated that no matter what the maximum brake apply time for tractors becomes, a minimum time must also be established to ensure that tractor brakes do not actuate too quickly, putting the combination out of balance and defeating the purpose of the proposed revisions. ATA stated that very fast tractors are being sold every day, with application times as fast as 0.13 second, with many at 0.14 second and 0.15 second. Other commenters supporting minimum application times for tractors included the California Highway Patrol, Echlin, Theurer, and Brake Technology Company.

NHTSA shares the concern that the overall timing requirements proposed in the May 1985 NPRM might not ensure combination vehicle stability in some situations because the brakes of a tractor with a very fast application time could still actuate well before the brakes of a trailer meeting the proposed requirements.

While the agency agrees with the commenters that a minimum application time for tractors could take care of this problem, it believes that there is a better approach. As a general matter, faster brake application is better than slower application, so long as incompatibility doesn't become a problem. The disadvantage of a minimum application time is that it would prohibit fast tractors in situations where timing compatibility is not a problem, e.g., captive combinations (where a tractor always tows the same trailer), where the trailer has very fast timing. NHTSA believes that it is sufficient to require the actuation time at the gladhand to be at least as fast as the timing of the towing vehicle brake chambers.

NHTSA is therefore proposing in this SNPRM to require that the actuation time at the gladhand be at least as fast as the timing at the brake chambers. As a practical matter, such a requirement would not need to include any maximum actuation time at the gladhand, since that time would be limited by the maximum time specified for the brake chambers. The agency believes that this proposal would improve combination stability by helping to ensure that the brakes of a tractor, or other towing vehicle, do not actuate well before the brakes of a trailer it is towing.

The agency notes that, for purposes of the final rule being published today, it did not believe that the establishment of the timing requirements proposed by the May 1985 NPRM should be delayed. In that final rule, the agency established 0.35/0.75 second maximum actuation and release gladhand timing requirements for power units, 0.50/1.00 second requirements for towing trailers other than dollies, and 0.55/1.10 second requirements for dollies. However, the agency indicated that it was publishing this SNPRM, and established an alternative option for towing vehicles of actuation at the gladhand being at least as fast as the timing at the brake chambers.

In the preamble to today's final rule, the agency noted that for manufacturers choosing the "at least as fast as the brake chambers" option, the maximum brake chamber requirements established

by the final rule would ensure essentially the same maximum gladhand actuation time. The requirements proposed today would make that option mandatory. For vehicles designed to meet the requirements established by today's final rule, the agency believes that, at most, only minor plumbing changes would be needed to meet the additional requirements proposed by this notice.

NHTSA is also proposing requirements for towing trailers to ensure that the relay booster valves used on these trailers do not upset brake balance between vehicles in a combination. The agency notes that Bendix stated in its comment on the May 1985 NPRM that it has a concern that the control line pressure differential in a multiple trailer combination could be excessive if the characteristics of booster relay valves (or pilot relay valves) are not correctly specified. That commenter stated that a significant pressure imbalance could result, causing serious brake problems that could negate the benefits of the timing improvements.

NHTSA shares the concern of Bendix about excessive control line pressure differentials in multiple trailer combinations. Also, pressure differentials, which could be caused by relay booster valves with overly high crack pressures, could create situations where the brakes of only one of the trailers (the towing trailer) are actuated. (The pressure at which a booster relay valve opens is called the "crack pressure.") For example, if the crack pressure is too high, the relay booster valve will not open during mild braking, and the brakes of the towed trailer will not be actuated.

NHTSA is proposing to require that in all situations where the pressure at the input coupling is steady, or increasing or decreasing at a rate of 10 psi per minute or less, the pressure differential between the control line gladhand at the front of a towing trailer and the control line gladhand at the rear of the trailer be not more than 1.0 psi at input pressures between 5.0 and 20.0 psi, and not more than 2.0 psi at input pressures above 20.0 psi. The agency believes that this requirement would ensure that the brakes of both the towing trailer and the towed trailer receive the same signal.

The proposed requirements would specifiy that a 50-cubic-inch test reservoir (representing the control line volume of the towed trailer) be connected to the control line input coupling. The proposed requirements could easily be tested by using shop air, a metering valve and small orifice to control input air flow, and pressure gauges at the front and rear control line gladhands. The agency believes that manufacterers could meet the proposed requirements by using booster relay valves with a relatively low crack pressure.

The agency proposes that the amendments in this notice would become effective on the later of the following two dates: One year after the publication of a final rule adopting those amendments, or two years after the publication of today's final rule (i.e., the date the new gladhand timing requirements adopted by that rule become effective). As discussed in the preamble to that final rule, some vehicles will require the addition of booster relay valves to meet those new requirements. However, for vehicles designed to meet those new requirements, only minor plumbing changes, including, in some cases, use of a booster relay valve with a lower crack pressure, are expected to be needed to meet the additional requirements proposed by this notice. The cost of a booster relay valve with a lower crack pressure is estimated to be approximately $11 to $24 more than a booster relay valve with a higher crack pressure. Many vehicles would require no changes. The leadtime that would be provided under this proposal would enable manufacturers to conduct compliance testing, as well as make the minor additional changes to their vehicles that might be necessary to ensure compliance.

The agency has considered the costs and other impacts of this proposal and determined that the proposal is neither major within the meaning of Executive Order 12291 nor significant within the meaning of the Department of Transportation's regulatory policies and procedures. As discussed above, the proposed requirements would necessitate only minor additional changes to vehicles beyond those required by the final rule being published today, which itself is neither major nor significant. The final regulatory evaluation for that final rule includes a discussion of the effects of this proposal.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendments would not have a significant economic impact on a substantial number of small entities. The effect of this proposal, if adopted, on any small manufacturers of vehicles or brake systems would be minor. Only minor additional changes to vehicles beyond those necessitated by the final rule being published today would be needed. Other small businesses, small organizations, and small governmental units would be affected by the proposed amendments only to the extent that they purchase motor vehicles. The proposed amendments would not have any significant effect on the price of those vehicles. Accordingly, no regulatory flexibility analysis has been prepared.

The agency has also analyzed this proposed rule for the purposes of the National Environmental Policy Act, and determined that the proposed rule would not have any significant impact on the quality of the human environment.

Finally, this proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after

the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 would be amended as follows:

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.121 [Amended]

2. S5.3 of § 571.121 would be revised to read as follows:

S5.3 *Service brakes—road tests.* The service brake system on each truck and bus shall, under the conditions of S6.1, meet the requirements of S5.3.1, S5.3.3, and S5.3.4 when tested without adjustments other than those specified in this standard. The service brake system on each trailer shall, under the conditions of S6.1, meet the requirements of S5.3.2, S5.3.3, and S5.3.4 when tested without adjustments other than those specified in this standard. The service brake system on each trailer designed to tow another vehicle equipped with air brakes shall, in addition to the requirements specified above, under the conditions of S6.1, meet the requirements of S5.3.5 when tested without adjustments other than those specified in this standard. However, a heavy hauler trailer and the truck and trailer portions of an auto transporter need not meet the requirements of S5.3.

3. S5.3.3 of § 571.121 would be revised and S5.3.3.1 is added to read as follows:

S5.3.3 *Brake actuation time.* Effective (date to be inserted would be the later of the following two dates: One year after the publication of a final rule adopting those amendments, or two years after the publication of today's final rule (i.e., the date the new gladhand timing requirements adopted by that rule become effective)), each service brake system shall meet the requirements of S5.3.3.1.

S5.3.3.1(a) With an initial service reservoir system air pressure of 100 psi, the air pressure in each brake chamber shall, when measured from the first movement of the service brake control, reach 60 p.s.i. in not more than 0.45 seconds in the case of trucks and buses, 0.50 seconds in the case of trailers, other than trailer converter dollies, designed to tow another vehicle equipped with air brakes, 0.55 seconds in the case of trailer converter dollies, and 0.60 seconds in the case of trailers other than trailers designed to tow another vehicle equipped with air brakes. A vehicle designed to tow another vehicle equipped with air brakes shall meet the above actuation time requirement with a 50-cubic-inch test reservoir connected to the control line output coupling. A trailer, including a trailer converter dolly, shall meet the above actuation time requirement with its control line input coupling connected to the test rig shown in Figure 1.

(b) For a vehicle that is designed to tow another vehicle equipped with air brakes, the pressure in the 50-cubic-inch test reservoir referred to in S5.3.3.1(a) shall, when measured from the first movement of the service brake control, reach 60 p.s.i. not later than the time the fastest brake chamber on the vehicle reaches 60 p.s.i.

4. S5.3.5 would be added to § 571.121 to read as follows:

S5.3.5 *Control signal pressure differential—trailers designed to tow another vehicle equipped with air brakes.* Effective (date to be inserted would be the later of the following two dates: One year after the publication of a final rule adopting those amendments or two years after the publication of today's final rule (i.e., the date the new gladhand timing requirements adopted by that rule become effective)), for a trailer designed to tow another vehicle equipped with air brakes, when the pressure at the input coupling is steady, and when the pressure at the input coupling is increasing or decreasing at a rate of 10 psi per minute or less, the pressure differential between the control line input coupling and the control line output coupling shall not be more than 1 psi at all input pressures between 5 psi and 20 psi, and not more than 2 psi at all input pressures above 20 psi. The above requirements shall be met with a 50-cubic-inch test reservoir connected to the control line output coupling.

Issued on April 25, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-10321 Filed 4-28-89; 2:23 pm]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 54, No. 84
Wednesday, May 3, 1989

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

Commodity Credit Corporation

Targeted Export Assistant Program, Fiscal Year 1990

AGENCY: Commodity Credit Corporation. USDA.

ACTION: Notice.

SUMMARY: This notice announces the conduct of the Targeted Export Assistance Program for fiscal year 1990.

FOR FURTHER INFORMATION CONTACT: Richard E. Passig, Director, Marketing Programs Division, Commodity and Marketing Programs, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1000, Telephone: (202) 447–4327.

Section 1124 of the Food Security Act of 1985, as amended (7 U.S.C. 1736s) (the Act), provides that for fiscal years 1986 through 1990, the Secretary of Agriculture shall use a specified amount of funds of, or commodities owned by, the Commodity Credit Corporation (CCC) to counter or offset the adverse effect on the export of a U.S. agricultural commodity, or the product thereof, of a subsidy, import quota, or other unfair trade practice of a foreign country. Such funds or commodities must be used for export activities authorized to be carried out by the Secretary of Agriculture or CCC.

Section 1124 of the Act requires the Secretary to provide export assistance on a priority basis in the case of agricultural commodities and products thereof with respect to which there has been a favorable decision under section 301 of the Trade Act of 1974 or for which exports have been adversely affected, as defined by the Secretary, by retaliatory actions related to a favorable decision under section 301 of the Trade Act of 1974.

Section 1124 of the Act requires that during fiscal year 1990, the minimum amount of funds or value of commodities for targeted export assistance shall be not less than $325,000,000. However, the President's budget submission for fiscal year 1990 includes a budget assumption for the fiscal year 1990 TEA program of $200,000,000, the maximum level at which the program is to be conducted during fiscal year 1989 in accordance with section 635 of the Rural Development, Agriculture and Related Agencies Appropriations Act, 1989, (Pub. L. 100–460). It is expected that the final program level for TEA will be determined during the course of Congressional consideration of the President's fiscal year 1990 budget proposals.

It is currently intended that target export assistance will be provided in a Targeted Export Assistance Program conducted as follows: Project agreements will be entered into by CCC with nonprofit agricultural trade associations, regional state sponsored organizations or private U.S. firms. These project agreements will provide for the issuance by CCC of generic commodity certificates to partially reimburse participants for authorized promotional activities to increase the export of specific agricultural commodities. At the option of CCC, reimbursement may be made in CCC funds. Agreements are signed by the Vice President, CCC, who is the Administrator, Foreign Agricultural Service (FAS).

Promotional activities will be undertaken with respect to those countries that offer a reasonable possibility for increased exports to counter or offset unfair trade practices of foreign countries including countries that (1) maintain such practices, or (2) represent markets in which the export of U.S. agricultural commodities is adversely affected by such practices.

Persons desiring to participate in the program must be able to provide substantial cost sharing (contributions) for export promotional activities, adequate administrative support, and a commitment to promotional activities. Project agreements will also provide for control and review via activity plans, reporting requirements, program evaluation, and the conduct of compliance audits. Contributions to cost sharing for export promotional activities must be in addition to what would have been spent on such activities had there been no program.

The criteria upon which CCC will base its allocation of fiscal year 1990 resources will include: (1) The commodity or product to be promoted and the degree to which the organization represents U.S. producer interests on a commodity or nationwide basis; (2) the degree to which exports of the commodity or product may benefit from promotional activities; (3) the dollar amount of assistance requested; (4) the identification of an unfair foreign trade practice and the extent to which it has adversely affected exports of the commodity; (5) the extent to which the applicant organization is willing to contribute resources to the joint project, including the identification of the source of contributions projected that may be provided by the applicant, U.S. industry, and foreign third parties; (6) the organization's prior export development experience and the adequacy of its administrative and personnel resources for the purposes of planning and managing the requested program level; (7) the historical export levels of the commodity or product; (8) the anticipated likelihood of success of the proposed project in terms of increasing U.S. exports or mitigating the unfair trade practice or its effects; (9) whether or not the commodity or product is in adequate supply; and (10) the extent to which the composition of the commodity or product is U.S. origin. Products whose composition is less than 50 percent U.S. origin, computed on a volume or value basis, will not be considered.

The deadline for submitting applications for consideration for participation in the program for fiscal year 1990 is 45 days from the date of publication of this notice. Applications for participation in the allocation of fiscal year 1990 TEA resources should address the above criteria and any other factors the applicant deems appropriate. CCC may change the terms and conditions under which it will provide targeted export assistance or the structure of the TEA Program at any time.

For further information regarding application procedures and the TEA program, contact the Marketing Program Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC, 20250–1000, Telephone (202) 447–5521. Comments regarding the

conduct of the TEA program may be directed to the same address.

Signed at Washington, DC, on January 23, 1989.

Thomas O. Kay,

Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 89-10568 Filed 5-2-89; 8:45 am]

BILLING CODE 3410-10-M

Forest Service

Sugar Bowl Ski Resort Expansion Project, Tahoe National Forest, Placer and Nevada Counties, CA: Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, Tahoe National Forest will prepare an Environmental Impact Statement (EIS) for a proposal to expand the existing Sugar Bowl Ski Resort. The proposal would develop three new ski lifts, a day lodge, and about 100 acres of new skiable terrain on the western slope of Mount Judah, all on National Forest System (NFS) lands on the Truckee Ranger District, Tahoe National Forest, Placer and Nevada Counties, California. The proposed parking area and access road are on both NFS and private land.

The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected persons and organizations are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis should be received by June 15, 1989, to receive timely consideration in the development of the draft environmental impact statement.

ADDRESS: Send written comments and suggestions concerning the scope of the analysis to Joanne B. Roubique, District Ranger, Truckee Ranger District, P.O. Box 99, Truckee, CA 95734, Attn: Sugar Bowl EIS.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Rick Maddalena or Bob Moore, Truckee Ranger District, phone (916) 587-3558.

SUPPLEMENTARY INFORMATION: In preparing the EIS, the Forest Service will identify and consider a range of alternatives for this project. One alternative will consider no additional development (No Action). The range of alternatives to be developed and will respond to the significant issues identified during the scoping process and will consider a smaller scale of development, different access routes, and facility development in other locations.

Geri V. Bergen, Forest Supervisor, Tahoe National Forest, Nevada City, California, 95959 is the responsible federal official.

The analysis is expected to take about six months.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action. This information will be used in preparation of the draft environmental impact statement. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be anlayzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous enviromental process.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and assignment of responsibilities.

Preliminary scoping has indicated a need to evaluate the impacts upon traffic, the experience of biking along the Pacific Crest Trail, and disturbances to known historic features.

Public workshop(s) will be held in the Truckee, California area to explain and receive comment on the project proposal. Notice of meeting date(s) and location(s) will be published in local newspapers.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by November 1989. At that time, EPA will publish a notice of availability of the draft EIS in the **Federal Register.**

The comment period on the draft EIS will be 45 days from the date of the EPA's notice of availability in the **Federal Register.** It is important that those interested in the management of the Sugar Bowl Ski Resort area participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. "Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978)." Such decisions have also established that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. "Wisconsin Heritages, Inc. v. Harris, 490 F Sup. 1334, 1338 (E.D. Wis. 1980)." The reason for this requirement is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

After the end of the comment period on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is expected to be completed by February 1990. In the final EIS, the Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS and applicable laws, regulations and policies in making a decision regarding this proposal. The responsible official, who is the Tahoe National Forest Supervisor, will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under standard agency procedures (38 CFR Part 217).

Date: March 23, 1989.

Frank J. Waldo,

Deputy Forest Supervisor.

[FR Doc. 89-10545 Filed 5-2-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 431]

Temporary Extension of Authority for Subzone 41F, Milwaukee, Wisconsin; Ambrosia Chocolate Co.

Pursuant to its authority under the Foreign-Trade Zones (FTZ) 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, on March 23, 1987, the Board conditionally approved an application submitted by the Foreign-Trade Zone of Wisconsin, Ltd. (FTZW), grantee of FTZ 41, for foreign-trade subzone status (SZ 41F) at the chocolate products manufacturing plant of Ambrosia Chocolate Company in Milwaukee, Wisconsin (Board Order 346, 52 FR 10247);

Whereas, approval was subject to a 2-year time restriction (from action: 4/24/87), and a condition that limits the use of zone procedures to the manufacture of products that are subject to sugar-containing product quotas;

Whereas, the 2-year period expires on April 24, 1989;

Whereas, FTZW has made application to the Board (FTZ Docket 2-89, filed March 2, 1989, 54 FR 11257) for a 2-year extension of authority;

Whereas, The review being conducted by the Board will not be completed by April 24, 1989, because it will include an overall study of sugar operations in zones; and,

Whereas, the FTZ Staff has conducted a preliminary review and finds that a temporary extension of authority would be in the public interest pending completion of the overall study;

Now, Therefore, the Board hereby orders:

That the authority for Subzone 41F is extended to May 1, 1990, subject to all of the other conditions in Board Order 346.

April 24, 1989.

Michael J. Coursey,

Acting Assistant Secretary of, Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.

Executive Secretary.

[FR Doc. 89–10559 Filed 5–2–89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

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

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or § 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than May 31, 1989, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

Antidumping Duty Proceeding

	Period
Brazil: Certain Iron Construction Castings (A-351-503)	05/01/88–04/30/89
Brazil: Certain Tubeless Steel Disc Wheels (A-351-606)	05/01/88–04/30/89
Brazil: Frozen Concentrated Orange Juice (A-351-605)	05/01/88–04/30/89
Brazil: Malleable Cast Iron Pipe Fittings (A-351-505)	05/01/88–04/30/89
Dominican Republic: Portland Cement, Other Than White, Nonstaining Portland Cement (A-247-003)	05/01/88–04/30/89
India: Certain Iron Construction Castings (A-533-501)	05/01/88–04/30/89
India: Certain Welded Carbon Steel Standard Pipes and Tubes (A-533-502)	05/01/88–04/30/89
Japan: Impression Fabric (A-588-066)	05/01/88–04/30/89
Japan: Portable Electric Typewriters (A-588-087)	05/01/88–04/30/89
The People's Republic of China: Certain Iron Construction Castings (A-570-502)	05/01/88–04/30/89
The Republic of Korea: Malleable Cast Iron Pipe Fittings, Other than Grooved (A-580-507)	05/01/88–04/30/89
Taiwan: Certain Circular Welded Carbon Steel Pipes and Tubes (A-583-008)	05/01/88–04/30/89
Taiwan: Malleable Cast-Iron Pipe Fittings, Other than Grooved (A-583-507)	05/01/88–04/30/89
Turkey: Welded Carbon Steel Standard Pipe and Tube Products (A-489-501)	05/01/88–04/30/89
Brazil: Certain Heavy Iron Construction Castings (C-351-504)	01/01/88–12/31/88
Canada: Fresh Whole Atlantic Groundfish (C-122-507)	01/01/88–12/31/88
Mexico: Bricks (C-201-017)	01/01/88–12/31/88
Mexico: Ceramic Tile: (C-201-003)	01/01/88–12/31/88
Sweden: Viscose Rayon Staple Fiber (C-401-016)	05/01/88–12/31/88

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by May 31, 1989.

If the Department does not receive by May 31, 1989 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: April 26, 1989

Joseph A. Spetrini,

Deputy Assistant Secretary, for Compliance.

[FR Doc. 89-10563 Filed 5-2-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-081]

Polyvinyl Chloride Sheet and Film From Taiwan, Initiation of Changed Circumstances Review and Preliminary Results of Changed Circumstances Administrative Review; and Tentative Determination to Revoke Antidumping Finding

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

ACTION: Notice of initiation of changed circumstances review and preliminary results of changed circumstances administrative review; and tentative determination to revoke antidumping finding.

SUMMARY: In response to a request by a respondent, the Department of Commerce has conducted an administrative review of the antidumping finding on polyvinyl chloride sheet and film from Taiwan. The review covers one exporter of this merchandise to the United States and the period June 1, 1986 through May 31, 1987. The review indicates the existence of no dumping margin during the period.

As a result of the review, the Department has preliminarily determined to assess no dumping duties with respect to Orchard Corp. Due to lack of further interest in the case by the petitioner, the Department has also determined to terminate the present administrative review, initiate a "changed circumstances" review, and has tentatively determined to revoke the antidumping finding. In the context of the changed circumstances review the Department intends to complete its administrative review.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: May 3, 1989.

FOR FURTHER INFORMATION CONTACT: Linnea Bucher or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 22833) the final results of its last administrative review of the antidumping finding on polyvinyl chloride sheet and film from Taiwan (43 FR 28457).

A respondent, Orchard Corp., requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on July 17, 1987 (52 FR 27036). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act"). At the same time, on October 10, 1988, Occidental Chemical Corporation, the petitioner, informed the Department that it is no longer interested in the finding and stated its support of revocation of the finding. Under section 751(b) and (c) of the Tariff Act, the Department may revoke an antidumping finding that is no longer of interest to domestic interested parties.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of unsupported, flexible, calendered polyvinyl choloride ("PVC") sheet, film and strips, over 6 inches in width and over 18 inches in length and at least 0.0002 inch but not over 0.020 inch in thickness. During the review period, such merchandise was classifiable under item 771.4312 of the Tariff Schedules of the United Stated Annotated. This merchandise is currently classifiable under HTS item 3920.42.50. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive. The review covers one exporter of Taiwan PVC sheet and film to the United States and the period June 1, 1986 through May 31, 1987.

United States Price

In calculating the United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the f.o.b. packed price to an unrelated purchaser in the United States. We made adjustments, where applicable, for foreign inland freight and foreign import duty drawback. No other adjustments were claimed or allowed.

Foreign Market Value

Incalculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since there were sufficient home market sales of such or similar merchandise to provide a basis for comparison. Home market price was based on the packed price to unrelated purchaser with adjustments, where applicable, for inland freight and differences in credit and packing costs. No other adjustments were claimed or allowed.

Preliminary Results of the Review, Tentative Determination To Revoke and Termination of Section 751(a) Administrative Review

As a result of our review, we preliminarily determine that no dumping margins exist for Orchard Corp., Taiwan, for the period June 1, 1986 through May 31, 1987.

We also determine that the petitioner's affirmative statement of no interest in continuation of the antidumping finding on PVC sheet and film from Taiwan provides a reasonable basis for terminating the current section 751(a) administrative review and initiating a section 751(b) "changed circumstances" review to revoke the finding.

Therefore, we hereby terminate the current section 751(a) administrative review and tentatively determine to revoke the finding on PVC sheet and film from Taiwan effective June 1, 1987. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

If the Department issues a final determination of revocation, no future cash deposit shall be required. We then intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after June 1, 1987, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. In the context of the changed circumstances review the Department will complete its administrative review. We will issue appraisement instructions directly to the Customs Service for entries during the review period on the basis of our findings.

Interested parties may request disclosure and/or an administrative

protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This notice of termination of section 751(a) administrative review, initiation of changed circumstances review, preliminary results of changed circumstances administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (a)(1), (b), and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (b), (c)) and 19 CFR 353.53a and 353.54.

Date: April 26, 1989.

Michael J. Coursey,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-10561 Filed 5-2-89; 8:84 am]

BILLING CODE 3510-DS-M

[A-461-601]

Solid Urea From the Union of Soviet Socialist Republics; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from one manufacturer/exporter, the Department of Commerce has conducted an administrative review of the antidumping duty order on solid urea from the Union of Soviet Socialist Republics ("USSR"). The review covers one manufacturer/exporter of this merchandise to the United States, Soyuzpromexport, and the period January 2, 1987 through June 30, 1988. There were no known shipments of this merchadise to the United States by Soyuzpromexport during the period and there are no known unliquidated entries.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 3, 1989.

FOR FURTHER INFORMATION CONTACT: J.E. Downey or John R. Kugelan, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Room B-099, 14th Street & Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 26366) the antidumping duty order on solid urea from the USSR. A manufacturer/exporter, Soyuzpromexport, requested in accordance with 19 CFR 353.53a(a) that we conduct an administrative review. We published a notice of initiation on August 30, 1988 (53 FR 33163). The Department now has conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* ("HTS") as provided for in section 1201 et. seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered in this review are shipments of solid urea. During this review such merchandise was classifiable under item number 480.3000 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item 0511.99.40. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive as the the scope of the product coverage.

The review covers one manufacturer/exporter of this merchandise to the United States, Soyuzpromexport, and the period January 2, 1987 through June 30, 1988. There were no known shipments of this merchandise to the U.S. by Soyuzpromexport, a.k.a. Soyuzagrochimexport, during the period and there are no known unliquidated entries.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margin exists:

Manufacturer/ Exporter	Time period	Margin (percent)
Soyuzpromexport, a.k.a. Soyuzagrochimexport	1/2/87-6/30/88	[1] 68.26

[1] No shipments during the period; margin from the last period in which there were shipments.

Parties to the proceeding may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter.

Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any such comments or at a hearing.

Further, as provided for by 19 CFR 353.48(b), a cash deposit of estimated antidumping duties based on the above margin shall continue to be required for all manufacturers/exporters. This deposit requirement is effective for all shipments of solid urea from the USSR entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Date: April 25, 1989.

Michael J. Coursey,

Acting Assistant Secretary, for Import Administration.

[FR Doc. 89-10562 Filed 5-2-89; 8:45 am]

BILLING CODE 3510-DS-M

Patent and Trademark Office

[Docket No. 70470-9062]

Electronic Data Dissemination Policies and Guidelines

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Electronic Data Dissemination Policies and Guidelines—Final Notice.

SUMMARY: The U.S. Patent and Trademark Office (PTO) has undertaken a program to automate its operations. As a result, electronic patent and trademark data are being created and new techniques are being implemented to expand the use of the PTO's collection of electronic information, which will contain all U.S. patents and registered trademarks and selected foreign patents. These data bases comprise one of the largest information resources of the Nation.

DATE: May 3, 1989.

ADDRESS: Comments should be addressed to: Donald J. Quigg, Assistant Secretary and Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office, Washington, DC. 20231.

FOR FURTHER INFORMATION CONTACT: Bradford R. Huther at 703–557–1572.

SUPPLEMENTARY INFORMATION: In response to Pub. L. 96–517, the 1980 legislation which amended patent and trademark laws, the PTO prepared and submitted a plan for the automation of its operations to Congress on December 13, 1982. The plan centered on two basic concepts: the creation of electronic data bases that: (1) Would eventually replace the PTO's all-paper patent and trademark files, and thereby improve their integrity and quality; and (2) would support searches, examinations, Office actions and other Office functions through electronic workstations which would provide text and image retrieval capabilities and perform other automation functions.

Over 700,000 active Federal trademark registrations have been converted to an electronic data base of textual and digital image data. An IBM-based computer system has been installed to enable examiners to search the data base for textual data and codes describing designs, and to retrieve and display all information as a substitute for paper file searches. Trademark examiners have been using T-Search exclusively since January 1988, and the capability is ready to be deployed for public use in the Trademark Search Library.

An Automated Patent System (APS) was installed for test and evaluation purposes, using one patent examining group as an operational testbed. Major operational components of APS—large scale computers with conventional magnetic storage devices, a high-speed local area data communications network, and electronic workstations equipped with two high resolution graphic displays and laser printers—were interconnected on July 1, 1986 to enable system test and evaluation to begin in the testbed group. Optical disk storage units were subsequently installed to house the test data base of digital images of U.S. and foreign patents. In December 1987, the testbed patent examiners began using the APS image search and retrieval capability (APS-Image) in a live production environment. Based on recommendations of an Industry Review Panel appointed by the Deputy Secretary of Commerce to review the Office's patent automation program, changes were made and the testbed examiners are using a stable, reliable system suited to their need. The digital image retrieval capability of APS has been stabilized in the testbed, which now is being used as an operational testbed for deployment to other patent examining groups. A decision on the next incremental deployment of the digital image retrieval and other electronic searching capabilities is planned to be made in mid-1989. Additional system capabilities for office automation and other administrative support will be added to those already installed in the testbed over the next several months to supplement the search and retrieval capabilities. Examiners will be provided access to commercial data bases, such as industry-specific data bases, from the electronic workstations.

PTO continues to digitize the entire backfile of almost five million U.S. patents. The source for the digital image scanning operation is the archival set of patent documents which is believed to contain the best available copy of each patent. First, images of all U.S. patents in the testbed group's search files were converted to digital form and placed on optical disks for use in electronic classification and combined text classification searches. Subsequently, the remaining patents were captured. These patents will be written to optical disk and loaded on APS before APS-Image can be deployed to the remaining patent examining groups and the public. Through exchange agreements with the European and Japanese Patent Offices, European patents issued since 1920 and all Japanese patents have been or will be converted to a common facsimile standard and key patents will be entered for on-line retrieval.

On-line access to the full-text of all U.S. patents granted after 1974 and the English language abstracts of Japanese and Chinese patents—a data base of more than two million records representing about 52 gigabytes of data—was deployed to the patent examining staff beginning in June 1986. Access to this full-text data base (APS-Text) permits examiners to search the text of more than one million U.S. patents containing more than five billion words. Today, all examiners have been trained in the use of the full-text searching tool, and it has become a routine part of the patent examination process. Searches are conducted from single screen text terminals located throughout the Office, supported by a NAS-9080 dual processor. The APS-Text capability is ready for deployment to the public in the Patent Public Search Room.

The PTO intends to enter the text of U.S. patents issued after 1970.

To fulfill its mission to disseminate information and to guide the management of its electronic information resources, on June 8, 1984, the PTO issued guidelines and policies for dissemination and distribution of electronic patent data. These were published at 49 FR 2485 (June 14, 1984). Subsequently, the Office of Management and Budget issued revised policies and expanded guidelines for electronic data dissemination in OMB Circular A–130 dated December 1985 and entitled "Management of Federal Information Resources."

On August 20, 1987, PTO published at 52 FR 31442 a notice (1) To inform the public of the PTO's intention to amend its pricing policy for data base products, and to expand the scope of its dissemination policies and guidelines to encompass patent and trademark electronic data; (2) to explain the current situation with regard to public access to automated patent and trademark search rooms and libraries; and (3) to solicit public comments on the intended proposals.

On December 10, 1987, PTO published at 52 FR 46815 a notice amending the pricing policy for data base products and expanding the scope of the policies and guidelines to encompass patent and trademark data. That notice also extended the period to December 31, 1987, for receiving public comments on alternatives for funding public access to patent or trademark search rooms or libraries.

On June 23, 1988, PTO published at 53 FR 23677 a notice informing the public of its intention to publish a comprehensive edition of the policies and guidelines to replace the versions published in the June 14, 1984 and December 10, 1987 notices.

In that notice, the PTO also published a summary of the comments received on the three alternatives for financing public access to the automated search systems in PTO's public search rooms and libraries. Subsequently, Pub. L. 100–703 was enacted on November 19, 1988. That law allows the Commissioner of

Patents and Trademarks to establish reasonable fees for access by the public to the automated search systems.

Response to Comments

Comment: If user fees are established for public access to the automated patent and trademark systems, will those fees also be charged by the Patent Depository Libraries (PDLs)?

Response: Arrangements will be worked out between the PTO and individual libraries for providing access to the automated search system. Arrangements will depend on each library's authority to collect user fees for the service on their own or the PTO's behalf. Fees for access in PDLs would be adjusted to account for any different equipment costs, maintenance and added telecommunications costs.

Comment: How would PDLs administer the free access provision of Pub. L. 100-703?

Response: Based on PTO's policy for administering this provision, arrangements would be worked out with individual libraries.

Comment: One respondent asked if PTO conducted a study to determine the potential demand in PDLs for trademark information and patent information.

Response: Several surveys on the demand for patent and trademark information have been conducted which provide unofficial indications to the PTO for the need for patent and trademark information. Reports to the PTO indicate that the demand for trademark information is increasing.

Comment: One respondent wanted clarification of what will ultimately be available to the PDLs—paper, microfilm, electronic data.

Response: The form of the patent and trademark information in each PDL ultimately will depend on decisions made between the PTO and individual PDLs and the technology and economics of remote access for providing access to the automated search systems.

Comment: If PTO contracts for the provision of public access, who owns the PTO data base?

Response: The PTO will continue to own the PTO data base.

Comment: One respondent claimed that section B is inconsistent with OMB Circular A-130 and the order of sub-paragraphs B(1) and B(2) should be reversed.

Response: Section B relates only the PTO search facilities and PDLs. This policy is consistent with OMB Circular A-130 by providing an information "safety net" to the public through the dissemination of information in the search facilities and libraries. PTO states in paragraph F that, outside the search facilities and libraries, it will encourage the private sector to offer commercial patent and trademark search and retrieval services, and it will not compete with the private sector.

Sub-paragraphs B(1) and B(2) state that PTO will choose the most efficient means for providing search and retrieval services in its search facilities and PDLs, directly and/or through a contractor.

Comment: One respondent suggested that there might be misunderstanding between sections C and E.

Response: Section C specifically refers to commercial data bases whereas section E refers to PTO-owned data bases.

Comment: In section D, what does the term "existing collections in the PDLs" mean?

Response: In the June 23, 1988 edition of the **Federal Register**, the reference to "existing collections" meant the collections held by each individual library. Collections vary from library to library, and acquisition of collections is up to each individual PDL. Section D has been revised because section 104(c) of Pub. L. 100-703 allows the Commissioner to establish reasonable fees for on-line access to the automated search systems.

Comment: Section E provides for the possibility that a commercial search and retrieval service could be substituted for the PTO automated systems in the PDLs. Would the PDLs be required to absorb to cost?

Response: Arrangements would be worked out between the PTO and each individual library and would depend on the library's ability to provide commercial services on its premises.

Comment: One respondent asked for a brief explanation of OMB Circular A-76, entitled "Performance of Commercial Activities.

Response: The A-76 process enhances quality and efficiency by using competition to select the most cost-effective operation to perform a service. It requires that studies be conducted to see whether work should be performed by the Government or by industry. This program was formalized in 1955 and, in 1966, the Bureau of the Budget issued the policy as Circular No. A-76.

Comment: One respondent suggested that the word "indirectly" in section F should be removed since there already are many private trademark search enterprises. Another respondent suggested that the word "encouraged" in that same section should be changed to "allowed." A third respondent said that PTO should "directly encourage" the private sector by making its data available in electronic form.

Response: Section F as written expresses how the PTO will indirecly achieve its dissemination goals. No change has been made to the wording.

Comment: One respondent suggested that PTO should not even consider "exclusive" arrangements with regard to the sale of bulk data as suggested by section H.

Response: Paragraph H has been changed by deleting the word "normally."

Comment: One respondent suggested that marginal cost recovery described in section I should be limited to commercial entities seeking bulk data.

Response: All costs of goods and services are fully user-fee funded under the terms of OMB Circular A-25, "User Fees."

Comment: Several respondents asked for clarification of the statement that the trademark automated system could be ready for public deployment by September 30, 1988.

Response: Under a proposed rule package entitled Patent and Trademark Automated Search System Fees, the PTO is proposing to provide access to T-Search.

Comment: One respondent asked for clarification and more specificity to the response concerning the PTO's authority to automate PDLs.

Response: Section 13 of title 35, United States Code, authorizes the Commissioner to conduct a patent depository library program for disseminating patent information to the public. The Paperwork Reduction Act of 1980, as amended, 44 USC, chapter 35, requires each Federal agency to "implement applicable government-wide * * * information policies * * * with respect to * * * dissemination of information * * and other information resource management functions * * * ." OMB Circular A-130 establishes a Governemnt-wide policy of disseminating Government information products and services in the manner most cost effective for the Government. Accordingly, the Paperwork Reduction Act would authorize disseminating patent information to the PDLs in some electronic form, in lieu of paper or microform, if it is the most cost-effective mode. The authority for providing access to patent and trademark information in the PDLs like that for the Patent Search Room and Trademark Search Library is the authority inherent in various provisions of the patent law other than section 13 such as section 10 of title 35. The PDLs serve as extensions of the PTO for disseminating patent and trademark information in other geographic locations.

Comment: One respondent asked that PTO adhere to Rep. Kastenmeier's instructions reported in 134 Cong. Rec. H9676 (daily ed. Oct. 5, 1988) (statement of Rep. Kastenmeier), to follow the letter and spirit of the copyright law regarding nonpatent literature.

Response: The PTO will adhere to the letter and the spirit of the copyright law as it applies to the inclusion of nonpatent literature in the Automated Patent System.

Other Considerations

The PTO has determined that this notice is not a major rule within the meaning of section 1(b) of Executive Order 12291. Therefore, a Regulatory Analysis has not nor will be prepared. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this amended policy statement by the Administrative Procedure Act (5 U.S.C. 553(b) (A)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared. The PTO also has determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612. This notice does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

Electronic Data Dissemination Policies and Guidelines

Dissemination in Government Public Search Facilities and Depository Libraries

It is the goal of the PTO to achieve effective, widespread dissemination of information concerning patents and Federally registered trademarks to all segments of the U.S. public.

A. The dissemination goal will be accomplished directly by the PTO by providing electronic search and retrieval services to the public in search facilites located in the PTO, in other facilities which may be established by the Government and in Patent Depository Libraries (PDLs). PDLs are Federal, State and local government, university or non-profit organization libraries designated by the PTO to offer public access to patent collections.

B. To the extent funding is authorized and appropriated, search and retrieval services will be provided in the PTO's search facilities and PDLs either:

(1) by the PTO, using its own data bases, computers, communications equipment, and software, and/or

(2) by PTO contractors.

C. Access to commercial data bases that are available to the PTO's examiners, for example industry-specific data bases, will be furnished either through an APS workstation or a terminal furnished by data base vendors in the PTO public search facilities at commercial rates, provided the user has established a commercial account with the data base vendor.

The PTO will not act as an agent for any data base vendor in providing training for, assisting in, or collecting fees for the use of such commercial data bases.

D. Services furnished in the PTO public search facilities and in PDLs will be at no cost to the public for access to paper and microform records. The costs of accessing PTO owned electonic data bases and systems will be recouped from user fees set to recover the marginal costs of such services.

E. The type of service for public search and retrieval, either PTO or commercial services, will be chosen based on the method and criteria established by the 1983 revision to OMB Circular A-76, entitled "Performance of Commercial Actitivies."

Distribution of PTO Data for Commercial Dissemination

F. In addition to B. and C. above, the PTO will pursue its dissemination goal indirectly by encouraging the private sector to offer commercial patent and trademark search and retrieval services and will seek to avoid competition with private sector firms in providing such services to the public outside the PTO search facilities and PDLs.

G. Fees charged for bulk data developed by the PTO will be based on the marginal cost of providing such distribution services.

H. Arrangements will be non-exclusive. Bulk resale of PTO data will be permitted subject to the terms of each bulk data sales agreement.

I. Fees charged to the public for U.S. patent and trademark data products will be based on the marginal cost of providing such products.

J. The PTO will receive non-U.S. electronic patent data through exchange agreements with other patent offices and international intergovernmental organizations. In general, the PTO will not distribute such data, except in conjunction with services that may be provided by the PTO or its contractors in the PTO public search facilities and PDLs. Rather, it will seek to have contractual arrangements established direcly between the organization and the commercial data base vendor and will not act as a service agent or representative unless there is a special need that cannot be met otherwise.

Dated: March 7, 1989.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 89-10780 Filed 5-2-89;8:45am]

BILLING CODE 3510-16-M

COMMODITY FUTURES TRADING COMMISSION

Financial Products Advisory Committee; Second Renewal

The Commodity Futures Trading Commission has determined to renew again for a period of two years its advisory committee designated as the "Commodity Futures Trading Commission Financial Products Advisory Committee." As required by section 14(a)(2)(A) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, 14(a)(2)(A), and 41 CFR 101-6.1007 and 101-6.1029, the Commission has consulted with the Committee Management Secretariat of the General Services Administration, and the Commission certifies that the renewal of the advisory committee is in the public interest in connection with duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1, *et seq.*, as amended.

The objectives and scope of activities of the Financial Products Advisory Committee are to conduct public meetings and submit reports and recommendations on issues concerning individuals and industries interested in or affected by financial markets regulated by the Commission.

Commissioner Rober R. Davis serves as Chairman and Designated Federal Official of the Financial Products Advisory Committee. The Committee's membership represents a cross-section of interested and affected persons and groups including representatives of new institutional market participants, such as commercial banks, broker-dealers, insurance companies, trust companies, pension sponsors, and investment companies; traditional market participants, such as futures commission merchants, commodity pool operators and commodity trading advisors, and other appropriate public participants.

Interested persons may obtain information or make comments by writing to the Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

Issued in Washington, DC on April 28, 1989, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-10587 Filed 5-2-89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44. U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement, Part 229, Specifications, Standards and Other Purchase Descriptions; No Forms; and OMB Control Number 0704-0249.

Type of Request: Extention.

Average Burden Hours/Minutes Per Response: 1 Hour.

Frequency of Response: On occasion.

Number of Respondents: 31.

Annual Burden Hours: 372.

Annual Responses: 372.

Needs and Uses: This request concerns information collection requirements required to reimbursement for nonrefundable taxes.

Affected Public: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 28, 1989.

[FR Doc. 89-10580 Filed 5-2-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Changes to the CHAMPUS DRG-Based Payment System Rates and Weights; Correction

AGENCY: Office of the Secretary, DoD.

ACTION: Corrections to notice of revised rates.

SUMMARY: This document corrects technical errors that appeared in the notice of revised rates which was published on March 22, 1989, (54 FR 11781) and which revised the weights and rates to be used in the CHAMPUS DRG-based payment system effective for admissions occurring on or after April 1, 1989.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Office of Program Development, OCHAMPUS, Aurora, Colorado 80045, telephone (303) 361-4005.

SUPPLEMENTARY INFORMATION: In 54 FR 11781 which was published on March 22, 1989, make the following corrections:

1. On page 11781, in the third column, the fourth line of the second full paragraph, "<2499 grams" is corrected to read ">2499 grams".

2. On page 11781, in the third column, Table 1, the National Large Urban Adjusted Standardized Amount, Nonlabor portion, is corrected to read "$735.69".

3. On page 11782, Table 2, the second sentence at the beginning of the table is corrected to read "The following summary shows the final CHAMPUS DRG weights as well as the arithmetic and geometric average lengths of stay and outlier thresholds for all CHAMPUS DRGs including the PM-DRGs. Long stay threshold (A) is applicable to all hospitals except children's hospitals, and long stay threshold (B) is applicable to children's hospitals."

4. On page 11784, DRG 181, the arithmetic ALOS "32" is corrected to read "3.9".

5. On page 11784, DRG 199, the weight "3.03.0097" is corrected to read "3.0097".

6. On page 11786, DRG 282, the geometric ALOS "1" is corrected to read "1.5" and the short stay threshold "1.5" is corrected to read "1".

7. On page 11787, DRG 349, the geometric ALOS "2.51" is corrected to read "2.0".

8. On page 11789, DRG 615, the DRG description is corrected to read "Neonate, BWT 2,000-2,499 g, with signif OR proc, with mult major problems".

9. On page 11789, DRG 618, the DRG description is corrected to read "Neonate, BWT 2,000-2,499 g, w/o signif OR proc, with major problems".

10. On page 11789, DRG 619, the DRG description is corrected to read "Neonate, BWT 2,000-2,499 g, w/o signif OR proc, with minor problems".

11. On page 11789, DRG 621, the DRG description is corrected to read "Neonate, BWT 2,000-2,499 g, w/o signif OR proc, with other problems".

12. On page 11789, DRG 623, the DRG description is corrected to read "Neonate, BWT >2499 g, with signif OR proc, w/o mult major problems".

13. On page 11789, DRG 630, the DRG description is corrected to read "Neonate, BWT >2499 g, w/o signif OR proc, with other problems".

L.M. Bynum,

Alternate OSC Federal Register, Liaison Officer, Department of Defense. April 27, 1989.

[FR Doc. 89-10532 Filed 5-2-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Advisory Panel on Government-Industry Relations; Subpanel Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Defense Advisory Panel on Government-Industry Relations (DAPGIR), Subpanel on Alternative Dispute Resolution, is scheduled to be held from 1:00 p.m. to 5 p.m. on May 16, 1989. The meeting will be held at the US Chamber of Commerce, 1615 H Street NW., Washington, DC. The agenda will focus on a discussion of material recently provided the subpanel as well as report planning.

The DAPGIR was established pursuant to Section 808, Pub. L. 100-456 to study and make recommendations to the Secretary of Defense on ways to enhance cooperation between the Department of Defense and industry regarding matters of mutual interest, including (1) procedures governing the debarment and suspension of contractors from doing business with the Department of Defense; (2) the role of self-governing oversight programs established by defense contractors; and (3) expanded use of alternative disputes resolution procedures. The Panel will also study and make recommendations on the desirability of establishing a permanent panel.

Persons desiring to attend the Subpanel meeting should contact Ms. Regina Bacon, Defense Advisory Panel on Government-Industry Relations, ATTN: DLA-L, Cameron Station,

Alexandria, VA 22304, telephone (202) 274-7146, no later than May 12, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 28, 1989.

[FR Doc. 89-10581 Filed 5-2-89; 8:45 am]

BILLING CODE 3810-01-M

Special Operations Policy Advisory Group, Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on 10 May 1989 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations Forces.

In accordance with section 10(d) of Pub. L. 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1) of Title 5, United States Code, this meeting will be closed to the public.

Linda M. Bynum,

OSD Federal Register Liaison, Department of Defense.

April 28, 1989.

[FR Doc. 89-10582 Filed 5-2-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Intent to Prepare a Supplement to a Draft Environmental Impact Statement (DEIS); Biological Aerosol Test Facility

AGENCY: Department of the Army/Department of Defense.

ACTION: Notice of intent to prepare a Supplement to the DEIS for the *Proposed Construction and Operation of the Biological Aerosol Test Facility (BATF)*, February 12, 1988 addressing the alternative of consolidating the Life Sciences Laboratory (LSL) and BATF at Dugway Proving Ground, UT (DPG).

1. As part of the 1984 DPG modernization program, the Army proposed construction and operation of two biological testing facilities, the BATF and the LSL. Both facilities were to be constructed and operated in compliance with the National Institutes of Health/Centers for Disease Control (NIH/CDC) biosafety guidelines; the BATF was to be constructed to biosafety level four (BL-4) and operated at BL-3 standards while the LSL was to be constructed and operated at BL-3 and BL-2 standards.

2. In September 1988 the Army announced as its preferred alternative, BATF construction and operation at BL-3. Since the LSL was planned for BL-3, this allowed consolidation of the LSL and BATF to be considered. An economic analysis concluded it would be cost effective to construct a combined LSL and BATF in one building. Consolidation would contribute to savings by decreased maintenance, operational, and instrumentation costs.

3. The Army therefore, in accordance with The National Environmental Policy Act, proposes to consider construction and operation of this consolidated biological test facility, the Life Science Laboratory, as an additional alternative to those considered in the existing BATF DEIS. The LSL would include aerosol test capabilities proposed for the BATF. All operations would be at the BL-3 level. Combining LSL and BATF activities would not result in variation from BL-3 requirements or any different activities than would have been conducted in two separate facilities.

4. The Army gives notice that a Supplement to the BATF DEIS, a more comprehensive document than existing LSL environmental documentation, will be prepared and published. This Supplemental DEIS will address the alternative of consolidating proposed BATF operations, equipment and construction into the proposed LSL.

5. A public notice of the availability of the Supplement for review and comment will be announced with details of a planned public hearing. Questions and comments regarding this NOI should be addressed to Commander, U.S. Army Dugway Proving Ground, ATTN: STEDP-PA (Ms. Kathy Whitaker), Dugway, Utah, 84022-5000.

April 27, 1989.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA(I&L).

[FR Doc. 89-10531 Filed 5-2-89; 8:45 am]

BILLING CODE 3710-08-M

Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 22 and 23 May 1989.

Time: 0800-1700 hours each day.

Place: Fort Stewart, Georgia.

Agenda: The Army Science Board Ad Hoc Subgroup on Human Dimensions in Army Safety will conduct its next meeting at which time the panel will hold discussions and receive briefings from personnel in operational units including air and ground experience in combating human error accidents. The panel will hold discussions with commanders from corps to company level, then observe units in training and daily operations and take further opportunity to talk with junior leaders. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Richard E. Entlich,

Colonel, GS, Executive Secretary.

[FR Doc. 89-10564 Filed 5-2-89; 8:45 am]

BILLING CODE 3710-08-M

Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 22-23 May 1989.

Time: 0800-1700 hours each day.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense (Follow-On) will meet for classified briefings and discussions reviewing matters that are an integral part of or related to the issue of the study effort. The subgroup is tasked with a comprehensive review of BMD requirements, technology, and specific critical issues impacting on program development. These meetings will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Richard E. Entlich,

Colonel, GS, Executive Secretary.

[FR Doc. 89-10565 Filed 5-2-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by May 12, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal Agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden and (6) Abstract. Because an expedited review is requested, the information collection request is also included as an attachment to this notice.

Dated: April 27, 1989.

Carlos U. Rice,

Director for, Office of Information, Resources Management.

Office of Educational Research and Improvement

Type of Review: EXPEDITED.

Title: Application for Grants under the Secretary's Fund for Innovation in Education (FIE) (New and Continuation).

Abstract: This form will be used by eligible applicants to apply for grants under the Secretary's Fund for Innovation in Education (The FIE Program). The Department uses the information to make grant awards.

Additional Information: The Secretary's Fund for Innovation in Education is requesting expedited review for these applications in order to process FY 1989 grant awards. The application contains the following standard forms: Standard Form 424—Face Sheet, Budget Information, and Non-Construction Assurances.

Frequency: Annually.

Affected Public: State or local Governments; Non-profit institutions.

Reporting Burden:

Responses: 600

Burden Hours: 14,400

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

BILLING CODE 4000-01-M

PART III -- APPLICATION NARRATIVE

Before preparing the Application Narrative, an applicant should read carefully the Application Notice describing the priorities and selection criteria used to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should --

1. Begin with a one-page Abstract; include statements about: (i) the need for the project; (ii) the proposed plan of operation; and (iii) the project's significance/intended outcomes.

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might be useful in reviewing the application.

Please limit the application narrative to no more than 15 double-spaced, typed pages (on one side only). The total application should not exceed 25 pages, including appendices.

In addition, an applicant applying for a grant under the Computer-Based Instruction Program must show in the narrative evidence that they have carried out planning activities designed to facilitate the use of Federal financial assistance under this program for the expansion of computer resources in elementary or secondary schools. Planning activities must include the following:

1) The goals for computer-based instruction in the applicant's schools;
2) How computer-based instruction will be integrated with the curriculum;
3) Where appropriate, how provisions will be made for after school use of computers by students, parents, teachers, and adult learners; and
4) Standards for the evaluation of computer education programs the applicant plans to purchase, or develop.

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project 1850-New, Washington, D.C. 20503.

[FR Doc. 89-10544 Filed 5-2-89; 8:45 am]
BILLING CODE 4000-01-C

[CFDA 84.207]

Drug-Free Schools' Educational Personnel Training Program; Invitation of Application for New Awards for Fiscal Year (FY) 1989

AGENCY: Department of Education.

ACTION: Notice of extension of closing date for transmittal of applications for new awards for FY 1989 under the Drug-Free Schools' Educational Personnel Training Program as authorized under Part C of the Drug-Free Schools and Communities Act of 1986, as amended.

SUMMARY: This notice extends the closing date of May 22, 1989 to June 13, 1989, for transmittal of applications for new awards under the Drug-Free Schools' Educational Personnel Training Program. The application notice for this program, published in the Federal Register on April 14, 1989 (54 FR 15074), provides detailed information concerning this program. The extension of the closing date is needed to provide applicants with additional time to prepare applications.

FOR FURTHER INFORMATION CONTACT: Allen King, U.S. Department of Education, 400 Maryland Avenue SW., Room 2135, Washington, DC, 20202. Telephone (202) 732-3463.

Program Authority: Section 5128 of the Drug-Free Schools and Communities Act of 1986, as amended.

Dated: April 27, 1989.

Daniel F. Bonner,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 89-10598 Filed 5-2-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP89-1259-000, et al.]

Transwestern Pipeline Co. et al.; Natural Gas Certificate Filings;

April 26, 1989.

Take notice that the following filings have been made with the Commission:

1. Transwestern Pipeline Company

[Docket No. CP89-1259-000]

Take notice that on April 24, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1259-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP88-133-000 pursuant to Section 7 of the Natural Gas Act for PSI, Inc. (PSI), a marketer of natural gas, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transwestern proposes to transport natural gas for PSI, on an interruptible basis, pursuant to a transportation agreement dated January 10, 1989. Transwestern explains that service commenced February 15, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-2611-000. Transwestern further explains that the peak day quantity would be 120,000 MMBtu, the average daily quantity would be 90,000 MMBtu, and that the annual quantity would be 43,800,000 MMBtu. Transwestern explains that it would transport natural gas for PSI from various receipt points located in New Mexico, Oklahoma and Texas to various delivery points located in New Mexico, Oklahoma and Texas.

Comment date: June 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Trunkline Gas Company

[Docket No. CP89-1255-000]

Take notice that on April 20, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1255-000 a request pursuant to §§157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform a firm transportation service for Bethlehem Steel Corporation (Bethlehem), a shipper, under Trunkline's blanket certificate issued in Docket No. CP86-586-000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated March 1, 1989, it proposes to receive up to 5,000 dt equivalent of natural gas per day from Bethlehem at specified receipt points located in Illinois, Texas, and offshore and onshore Louisiana and redeliver the gas at specified points in the state of Indiana. Trunkline states that the peak day and average day volumes would be 5,000 dt equivalent of natural gas and that the annual volumes would be 1,825,000 dt equivalent of natural gas. It is stated that on March 1, 1989, Trunkline initiated a 120-day transportation service for Bethlehem under § 284.223(a) as reported in Docket No. ST89-2905-000.

Trunkline further states that no facilities need be constructed to implement the service. Trunkline states that the primary term of the transportation service would expire one year from the initial date of service and that the service would continue in effect until terminated by either party upon at least six months prior notice to the other. Trunkline proposes to charge rates and abide by the terms and conditions of its Rate Schedule PT.

Comment date: June 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP89-1252-000]

Take notice that on April 20, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1252-000 a request pursuant to Sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport gas for Health Petra Resources, Inc. (Heath Petra), a marketer of natural gas, under Tennessee's blanket certificate issued in Docket No. CP87-115-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to transport on an interruptible basis up to 25,000 dekatherm (dkt) of natural gas per day on behalf of Heath Petra pursuant to a transportation agreement dated February 3, 1989, as amended on March 23, 1989, between Tennessee and Heath Petra. Tennessee would receive gas at various existing points of receipt on its system in Louisiana, Texas and offshore Louisiana and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at various existing points of interconnection in Louisiana, Mississippi, Tennessee and Ohio.

Tennessee further states that the estmated average daily and annual quantities would be 25,000 dkt and 9,125,000 dkt, respectively. Service under Section 284.223(a) commenced on March 22, 1989, as reported in Docket No ST89-3026-000, it is stated.

Comment date: June 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP89-1253-000]

Take notice that on April 20, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston.

Texas 77252, filed in Docket No. CP89-1253-000 an application pursuant to Section 7(b) of the Natural Gas Act and § 157.7 of the Commission's Regulations for permission and approval to partially abandon its firm sales service to Columbia Gas Transmission Corporation (Columbia), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Tennessee requests authorization to reduce sales service to Columbia under Tennessee's Rate Schedule CD-3 by 155,080 dekatherms per day, effective February 1, 1989.

Comment date: May 17, 1989, in accordance with Standard Paragraph F at the end of this notice.

5. Transwestern Pipeline Company

[Docket No. CP89-1261-000]

Take notice that on April 24, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1261-000 a request pursuant to Sections 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport gas for Mobil Natural Gas, Inc. (Mobil), a marketer of natural gas, under Transwestern's blanket certificate issued in Docket No. CP88-133-000. pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transwestern proposes to transport, on an interruptible basis, for Mobil on a peak day 7,500 MMBtu, on an average day 10,000 MMBtu, and on an annual basis 365,000 MMBtu equivalent of natural gas.

Transwestern indicates that it would receive the gas at existing receipt points in Texas and Oklahoma and deliver the gas in Texas. The receipt and delivery points are listed in Exhibit A and B of the March 8, 1989 transportation agreement which provides for this service.

Comment date: June 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. CNG Transmission Corporation

[Docket No. CP89-1222-000]

Take notice that on April 17, 1989, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26302, filed in Docket No. CP89-1222-000 a prior notice request pursuant to Sections 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for various shippers under the certificate issued in Docket No. CP86-311-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CNG proposes to transport gas for various shippers on an interruptible basis from various receipt points on its system to various interconnections between CNG and interstate pipelines. CNG lists for each shipper the receipt and delivery points, the maximum daily, average daily, and annual volumes, as well as the docket number related to the 120-day transportation service initiated by CNG pursuant to Section 284.223(a)(1) of the Regulations (see attached appendix). CNG alleges that only existing facilities are necessary to perform the proposed transportation service.

Comment date: June 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX

Docket No.	Shipper or customer	Commence date	Max. daily, Avg. daily, Est. annual	Receipt point	Delivery point
ST89-2961	Catamount Natural Gas Co	Mar. 2, 1989	50,000 34,421 12,563,665	C	Tenn.
ST89-2962	Kogas, Inc	Mar. 1, 1989	30,000 964 351,860	A	RGE.
ST89-2963	Kogas, Inc	Mar. 4, 1989	15,000 964 351,860	A	Corning.
ST89-2964	Kogas, Inc	Mar. 7, 1989	30,000 964 351,860	A	HGI.
ST89-2959	Gulf Ohio Corp	Mar. 7, 1989	450 450 164,250	B	PNG.

Legend of Delivery Points:
Corning—Corning Natural Gas Corporation.
HGI—Hope Gas, Inc.
PNG—Peoples Natural Gas Company.
RGE—Rochester Gas & Electric Corporation.
Tenn.—Tennessee Gas Pipeline Company.

Legend of Receipt Points:
A—Various interconnects between Tennessee Gas Pipeline Company and CNG.
B—Various receipt points in West Virginia, Pennsylvania, and New York.
C—Various interconnects between Texas Eastern Transmission Corporation and CN.

7. Northern Natural Gas Company Division of Enron Corporation

[Docket No. CP89-1227-000]

Take notice that on April 17, 1989, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89-1227-000, an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity for authorization to implement new supply and throughput services on its system and for permission and approval to restructure its rates, make certain tariff changes, abandon certain of its existing sales and transportation rate schedules, and to modify certain rate schedules, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to establish new supply Rate Schedules SF for firm sales services available under a four-tier structure for a minimum term of three years, SFX for custom firm sales

services and SI for interruptible sales service. Also, Northern proposes restructured throughput Rate Schedules TF for firm throughput services available under a four-tier structure for deliveries in Northern's Market Zone for a minimum term of ten years, TFX for custom firm throughput services available for deliveries in both Northern's Market Zone and Field Zone, and TI for interruptible throughput services. Both overrun and peaking services would be available under these new supply and throughput rate schedules, with a daily balancing service also available under the throughput rate schedules, it is indicated.

Upon the effective date of the new rates and rate schedules, Northern proposes to abandon sales Rates Schedules CD-1, PL-1, CDD-1, GS-1, SS-1, WPS-1, PS-1, Argus, AOS-1, OS-1, ACDS-1, PO-1, ERS-1, and E-1; and transporation Rate Schedues FT-1 and IT-1. In addition, Northern proposes to modify other rate schedules to conform to the overall structure of the new services proposed as follows: Rate Schedules ISS-1 and ISS-2 would be modified and replaced by Rate Schedule SI and Rate Schedules FDD-1 and IDD-1 would be modified and replaced by Rate Schedules FDD and IDD.

Northern states that the tiers available under the new supply and throughput services are SF12 or TF12 for services on an annual basis for 12 months from September 1 through August 31, SF9 or TF9 for services on a nine month basis available during the months of September through May, SF5 or TF5 for services on a five month basis available during the months of November through March, and SF3 or TF3 for services on a three month basis available during the months of December through February.

For the new SF supply services, in addition to a demand rate and PGA surcharge, Northern proposes a three-part commodity charge composed of a reservation charge (R rate), a nomination charge (N rate) and a commodity charge (C rate). Northern also states that rates for SFX services include a 50% surcharge (50% of the SF R rate) and that additional charges would also be applicable to certain deliveries.

For the new TF throughput services, rates would include a reservation charge and a commodity charge, both of which would be differentiated by tier, with the rates for TF12 service having the lowest rates, it is indicated. Northern states that this rate structure is designed to encourage and expand off-peak utilization of the system and to ration peak usage. In addition, Northern proposes certain limitations on the amount of throughput service available under TF12, TF5 and TF3. Northern indicates that it would propose to realign, in Natural Gas Act Section 4 proceedings, the levels or tiers of service for each customer according to such limitations.

Northern states that for the new TFX throughput services, for deliveries in Northern's Market Zone, rates would be designed similar to the TF rates with a surcharge of 10% of the total TF rate added to the TFX customer's demand charge. Northern also states that for deliveries in the Field Zone, rates would be mileage-based similar to the existing rates for FT-1 service, except for delivery of system supply gas, for which a flat rate would apply.

Northern requests waiver of the Commission's PGA Regulations to the extent necessary to implement its proposal to post certain prices (declared prices) upon which its customers would nominate and Northern would bill, for the level of service they desire. Northern indicates that nominations for supply services would be made on the basis of such declared prices for prices set on annual, seasonal, winter and monthly periods.

In addition, Northern proposes to credit all sales revenues to Account 191 and to charge such account for take-or-pay, buyout, and buydown costs, contract reformation or renegotiation costs, gas inventory or reservation costs, and any other premium paid for seasonal service, for which a waiver of the PGA Regulations is also requested.

Additionally, Northern requests abandonment authorization to abandon sales service obligations to the extent customers elect to convert firm sales services to firm throughput services and to abandon throughput service obligations to the extent that customers so elect under the new fifteen-year term service agreement which provide for certain percentage reductions beginning in the sixth year of agreement. Further, Northern requests approval for an implementation period of six months for placing the restructured services into effect. Northern states that initial rates for all new services proposed herein would be determined pursuant to a rate proceeding as proposed in Docket No. RP88-259-000.

Comment date: May 17, 1989 in accordance with Standard Paragraph F at the end of the notice.

8. Tennessee Gas Pipeline Company

[Docket No. CP89-1239-000]

Take notice that on April 19, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an application pursuant to Section 7(b) of the Natural Gas Act and Section 157.7 of the Commission's Regulations for permission and approval to partially abandon its firms sales service to North Penn Gas Company (North Penn), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Tennessee requests authorization to reduce sales service to North Penn under Tennessee's Rate Schedule CD-4 by 5,571 dekatherms per day (dtd), resulting in a new sales entitlement of 31,568 dtd and 11,522,320 dt annually, effective February 1, 1989.

Comment date: May 17, 1989, in accordance with Standard Paragraph F at the end of this notice.

9. Delta Pipeline Company

[Docket No. CP89-1223-000]

Take notice that on April 17, 1989, Delta Pipeline Company, (Delta) 2411 E. Skelly Drive, Tulsa, Oklahoma, 74105, filed in Docket No. CP89-1223-000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act and Subparts E, F, and G of Part 157 of the Commission's Regulations for (1) an optional certificate of public convenience and necessity authorizing: (a) the construction and operation of facilities, (b) the transportation of natural gas in interstate commerce, and (c) conditional pregranted abandonment authority; (2) a blanket certificate authorizing the construction and operation of facilities; and (3) a blanket transportation certificate authorizing the transportation of natural gas on a self-implementing basis in accordance with Part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Delta proposes to construct and operate approximately 190 miles of 24-inch diameter pipeline extending in a general northeasterly direction from a point in the vicinity of Wilburton, Latimer County, Oklahoma to a point near Ft. Smith, Arkansas an then in a generally southeasterly direction to a point of interconnection with the existing pipeline system of Texas Eastern Transmission Corporation (Texas Eastern) in Hot Springs County, Arkansas. Delta also proposes an interconnection with the existing pipeline system of Natural Gas Pipe Line Company of America in the same general area as the proposed interconnection with the pipeline system of Texas Eastern. Delta estimates that

the proposed facilities would cost $82,112,500, which is expected to be financed through 25% equity and 75% debt security. It is indicated that the proposed pipeline would roughly parallel existing pipeline facilities of Arka Energy Resources, a division of Arkla, Inc.

Delta states that the initial design day capacity of the proposed facilities is 200,000 Mcf per day and that the initial design day capacity thereafter could be readily and economically increased as required. Delta explains that its proposed pipeline would link northeastern and midwest markets to gas supplies in eastern Oklahoma and western Arkansas, particularly reserves in the Arkoma Basin in eastern Oklahoma.

Delta further states that it would provide firm and interruptible transportation service on an open access, nondiscriminatory basis upon completion of the proposed facilities. Such service would be provided in accordance with the terms of Delta's FERC Gas Tariff and applicable firm or interruptible gas transportation contracts. Delta notes that *pro forma* copies of the tariff and contracts are contained in the application. Delta asserts that its proposed transportation rates are in conformance with the requirements of § 157.103(d) of the Commission's Regulations.

Delta states that the rate for firm service would consist of a reservation fee (maximum rate—$5.72292 per MMBtu) and a commodity charge (maximum rate—$0.07492 per MMBtu) and service would be provided under Rate Schedule FTS. Delta proposes to charge a maximum commodity charge of $0.26307 per MMBtu for interruptible service under Rate Schedule ITS.

Comment date: May 17, 1989, in accordance with Standard Paragraph F at the end of this notice.

10. Transwestern Pipeline Company

[Docket No. CP89-1262-000]

Take notice that on April 24, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1262-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Exxon Corporation (Exxon), a producer, under the blanket certificate issued to Docket No. CP88-133-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transwestern states that pursuant to a transportation agreement dated February 23, 1989, under its Rate Schedule ITS-1, it proposes to transport up to 30,000 MMBtu per day equivalent of natural gas for Exxon. Transwestern states that it would transport the gas from various receipt points in Texas as shown in Exhibit "A" of the transportation agreement and would deliver the gas to delivery points in Texas, New Mexico, Oklahoma, and Arizona, as shown in Exhibit "B" of the agreement.

Transwestern advises that service under Section 284.223(a) commenced February 23, 1989, as reported in Docket No. ST89-3034 (filed April 11, 1989). Transwestern further advises that it would transport 22,500 MMBtu on an average day and 10,950,000 MMBtu annually.

Comment date: June 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

11 Transwestern Pipeline Company

[Docket No CP89-1260-000]

Take notice that on April 24, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1260-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Enron Gas Marketing, Inc. (Enron), a marketer, under the blanket certificate issued in Docket No. CP88-133-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transwestern states that pursuant to a transportation agreement dated March 13, 1989, under its Rate Schedule ITS-1, it proposes to transport up to 20,000 MMBtu per day equivalent of natural gas for Enron. Transwestern states that it would transport the gas from receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas to a delivery point shown in Exhibit "B" of the agreement.

Transwestern advises that service under § 284.223(a) commenced March 13, 1989, as reported in Docket No ST89-2950-000 (filed April 5, 1989). Transwestern further advises that it would transport 15,000 MMBtu on an average day and 7,300,000 MMBtu annually.

Comment date: June 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedures (18 CFR 385-211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall

be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-10528-Filed 5-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-8-51-000]

Great Lakes Gas Transmission Co.; Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

April 26, 1989.

Take notice that Great Lakes Transmission Company ("Great Lakes") on April 21, 1989 tendered for filing First Revised Third Substitute Nineteenth Revised Sheet Nos. 57(i) and 57(ii), First Revised Second Substitute Seventh Revised Sheet No. 57(v) and Substitute Twentieth Revised Sheet Nos. 57(i) and 57(ii) to Great Lakes Gas Transmission Company's FERC Gas Tariff, First Revised Volume No. 1.

Great lakes states that its First Revised Third Substitute Nineteenth Revised Sheet Nos. 57(i) and 57(ii) and First revised Second Substitute Seventh Revised Sheet No. 57(v) reflect revised current PGA rates for the month of April, 1989. The tariff sheets were filed as an Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes states that Substitute Twentieth Revised Sheet Nos. 57(i) and 57(ii) were filed to reflect Rate Schedule T-24 for firm transportation service for Consumers Power Company and Poco Petroleums Ltd. Such service was authorized by Commission order issued March 22, 1989 in Docket No. CP88-539-000. Initial tariff sheets to implement the subject rate schedule were filed by Great Lakes on March 31, 1989 to be effective April 10, 1989.

Great Lakes requests waiver of the notice requirements of the provisions of Section 154.309 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective as requested in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 3, 1989. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-10516 Filed 5-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-81-001]

Tarpon Transmission Co.; Compliance Filing

April 26, 1989.

Take notice that on April 21, 1989, Tarpon Transmission Company ("Tarpon"), an interstate natural gas pipeline operating on the Outer Continental Shelf (OCS), tendered for filing with the Commission as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Substitute First Revised Sheet No. 45
Substitute First Revised Sheet No. 45A
Substitute First Revised Sheet No. 46
First Revised Sheet No. 57
First Revised Sheet No. 58

Tarpon states that these tariff sheets have been filed in compliance with the letter order issued by the Commission in the above-captioned docket on March 31, 1989, in response to Tarpon's Order No. 509 tariff filing. Tarpon has requested that the Commission waive all applicable regulations to permit these tariff sheets to become effective as of April 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol 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). Such motions or protests should be filed on or before May 3, 1989. Such motions or 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 desiring 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.

Lois D. Cashell,

Secretary.

[FR Doc. 89-10517 Filed 5-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-150-000]

Texas Eastern Transmission Corp.; Changes in FERC Gas Tariff

April 26, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on April 21, 1989, tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Sixth Revised Sheet No. 72
Sixth Revised Sheet No. 73
Sixth Revised Sheet No. 74
Sixth Revised Sheet No. 75
Sixth Revised Sheet No. 76-99
Original Sheet No. 483E
Original Sheet No. 483F

Texas Eastern states that the purpose of this filing is to establish the procedures pursuant to which Texas Eastern will recover the take-or-pay charges to be billed by Texas Gas Transmission Corporation (Texas Gas) and paid by Texas Eastern as proposed by Texas Gas in a filing made on March 31, 1989, in Docket No. RP89-119.

Texas Eastern states that it filed tariff sheets on March 31, 1989, in Docket No. RP89-119 to establish procedures to recover take-or-pay settlement payments. Texas Gas proposes to recover twenty-five percent (25%) through a direct billed fixed monthly charge to be billed to current firm sales customers, fifty percent (50%) through a commodity surcharge, and to absorb the remaining twenty-five percent. The related amounts are $36,098,019 to be recovered in fixed monthly charges, $72,196,037 to be recovered in a commodity surcharge, and $36,098,019 absorbed by Texas Gas. The amounts are to be amortized over 36 months with a proposed effective date by Texas Gas of May 1, 1989. The costs to be billed to Texas Eastern by Texas Gas, including a predetermined carrying charge, are a monthly fixed charge of $45,741 as well as the commodity surcharge adjustment of $0.0486/dth. Texas Eastern will likewise bill its customers equal monthly amounts totalling $45,741 over a 36 month period beginning May 1, 1989. Determination of the allocation factor and monthly amounts each customer will be required to pay are set forth under Attachment A of the filing.

Texas Eastern states that the tariff sheets Nos. 483E and 483F are filed to establish the procedures for recovering Texas Gas's take-or-pay charges to be billed by Texas Gas and paid by Texas Eastern. Sheet Nos. 72, 73, 74, and 75 set forth the monthly principal amount plus the allocation factor for carrying costs that each Texas Eastern customer will be required to pay in order to recover Texas Gas's fixed monthly charges pursuant to Texas Gas's March 31, 1989 filing.

Texas Eastern states that in tracking Texas Gas' methodology, it has given recognition to purchases by Texas Eastern's Rate Schedule SGS customers under Rate Schedule I in the determination of the base and deficiency periods, to the extent these customers did not request Rate Schedule I gas in lieu of Rate Schedule SGS gas, but were given the benefit of the lower I rate. This methodology is consistent with the methodology used and approved by the Commission in Texas Eastern's previous filings.

Texas Eastern states that if at any time Texas Gas is permitted by Commission order to change its take-or-pay procedures and/or the amounts to be recovered pursuant thereto, Texas Eastern will likewise change its take-or-pay procedure and/or the amounts to be recovered pursuant thereto. In addition, Texas Eastern expressly agrees to refund to its customers all refunds received from Texas Gas in Docket No. RP89-119 in the manner in which such refunds were collected.

Texas Eastern states the proposed effective date of the above tariff sheets is May 1, 1989, coinciding with the effective date proposed by Texas Gas in its March 31, 1989 filing.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-10518 Filed 5-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. T089-2-17-001]

Texas Eastern Transmission Corp.; Changes in FERC Gas Tariff

April 26, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on April 21, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Substitute Thirteenth Revised Sheet No. 50
Substitute Tenth Revised Sheet No. 50A
Substitute Tenth Revised Sheet No. 50B
Substitute Tenth Revised Sheet No. 50C
Substitute Tenth Revised Sheet No. 50D

Texas Eastern states that this filing is a revision of Texas Eastern's regular quarterly PGA filing of March 31, 1989, which March 31 Filing is proposed to be effective May 1, 1989 in Docket No. TQ89-2-17-000. Texas Eastern states that the purpose of this filing is to reflect revisions in the rates to be charged Texas Eastern by its pipeline supplier, Texas Gas Transmission Corporation (Texas Gas) as of May 1, 1989.

Texas Eastern states that the revisions to Texas Eastern's March 31 Filing are required as a result of two filings made by Texas Gas on March 31, 1989. In particular, Texas Gas filed its regular quarterly PGA filing on March 31, 1989 reflecting rates to be effective May 1, 1989 which are different from those used by Texas Eastern in its own quarterly PGA filing of March 31, 1989. Timing constraints required Texas Eastern to complete preparation of its PGA filing before the time that Texas Gas was able to complete the PGA filing by Texas Gas. As a result, Texas Eastern utilized an estimate provided by Texas Gas of the rates to be charged by Texas Gas effective as of May 1, 1989. Texas Eastern proposes by this filing to revise its quarterly PGA calculation to reflect the Texas Gas rates which have actually been filed by Texas Gas to be effectve on May 1, 1989 in Texas Gas's own quarterly PGA filing.

Texas Eastern states that Texas Gas also filed on March 31, 1989 a proposal providing for the recovery of certain take-or-pay costs under the Commission Order No. 500. Such costs are to be recovered by a combination of a fixed demand surcharge and a volumetric surcharge applied to Texas Gas sales and transportation volumes. Texas Eastern did not have knowledge of this Order No. 500 filing in time to include the impact of the volumetric surcharge in its quarterly PGA filing of March 31, 1989. Therefore, Texas Eastern proposes in this filing to revise its quarterly PGA calculation to include this additional increase in Texas Gas's commodity rates proposed to be effective on May 1, 1989.

Texas Eastern states that the changes proposed in this filing consist of current adjustments as follows for the components of Texas Eastern's sales rates:

Rate component	Current adjustment
Commodity	$(0.1602)/dth.
Demand—1	$.052/dth.
Demand—2	$(.0260)/dth.

Texas Eastern states that these current adjustments differ from those originally filed in Texas Eastern's quarterly PGA filing of March 31, 1989 by an increase of $.0117/dth in commodity, with no change in Demand—1 or Demand—2.

The proposed effective date of the above tariff sheets is May 1, 1989.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-10519 Filed 5-2-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3565-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), these notices announce that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and their expected costs and burdens; where appropriate, they include the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382-2740).

DATE: Public comments for these collections of information must be submitted on or before June 2, 1989.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NSPS for Graphic Arts Industry (Subpart QQ)—Information Requirements. (EPA ICR #0657.03; OMB #2060-0105). This is a reinstatement of a previously approved collection.

Abstract: Source must notify EPA of construction, modification, startup, shutdowns, malfunctions, date and results of performance tests. The initial performance averaging period will be 30 consecutive days, including startups and shutdowns. The amounts of solvent and water used, solvent recovered, and the estimated emission percentage must be recorded monthly. The Administrator may request additional performance tests. No excess emission reports are required. Information is used to implement and enforce the standard.

Burden Statement: The estimated public reporting burden for this collection of information is 81 hours per response.

Respondents: Graphic Arts Industry.

Estimated No. of Respondents: 120.

Estimated Total Annual Burden on Respondents: 8,715 hours.

Frequency of Collection: Initial notifications and performance test only.

Title: NSPS for Asphalt Processing and Asphalt Roofing Manufacturers (Subpart UU)—Information Requirements. (EPA ICR #0661.03; OMB #2060-0002). This is a reinstatement of a previously approved collection.

Abstract: Source must notify EPA of construction, modifications, startups, shutdowns, malfunctions, date and results of performance test. Source must continually monitor and record temperature in specified pollution control devices. EPA will determine parameters to be recorded in other control devices described by the source. No excess emission reports are required. Information is used to implement and enforce the standard.

Burden Statement: The estimated public burden for this collection of information is 102 hours per response.

Respondents: Asphalt Processing and Asphalt Roofing Manufacturers.

Estimated No. of Respondents: 34.

Estimated Total Burden on Respondents: 2,329 hours.

Frequency of Collection: Initial notification and performance test only.

Title: Sale and Use of Aftermarket Catalytic Converters. (EPA ICR #1292.02; OMB #2060-0315). This is a renewal of a previously approved collection.

Abstract: Catalyst testing and manufacturing information is submitted once for each model line, while sales or production figures are reported semi-annually. The information is used to monitor catalyst production, sale, and installations in inspection and non-inspection areas, and to evaluate the effectiveness of catalyst replacement programs.

Burden Statement: The estimated public burden for this collection of information is 152 hours per response.

Respondents: Aftermarket Catalyst Manufacturers and Reconditioners.

Estimated No. of Respondents: 16.

Estimated Total Burden on Respondents: 5,824.

Frequency of Collection: Semi-annually and on occasion.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460,

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20530.

Date: April 26, 1989.

David Schwarz,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 89-10577 Filed 5-2-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3566-7]

Environmental Effects, Transport and Fate Committee; Open Meeting

Under the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that a two-day meeting of the Environmental Effects, Transport and Fate Committee of the Science Advisory Board (SAB) will be held on May 15 and 16, 1989. The meeting will begin at 9:00 a.m. and will be held in the Stouffer Concourse Hotel, 9801 Natural Bridge Road, St. Louis, MO 63134. The meeting will adjourn no later than 12:00 p.m. on May 16.

Several objectives will be accomplished at this meeting. First, the Environmental Effects, Transport and Fate Committee (EET&FC) will be brought up to date on the activities of the various Subcommittees it oversees, including the Long-Range Ecological Research Needs Subcommittee, and the Sediment Critiera Subcommittee. The activities of other SAB committees with related missions, such as the Research Strategies Committee, and the Global Climate Change Subcommittees, will also be summarized.

The Committee will be informed of several Agency activities related to environmental and/or ecological risk assessment. Results of prior peer-review of selected risk assessment case studies prepared by the Agency will be provided by Dr. Allan Hirscah. Next, Dexter Hinckley of EPA's Office of Policy, Planning and Evaluation will provide a summary of current efforts to develop ecological risk assessment guidelines. Following these briefings, the Committee will discuss the strengths and shortcomings of current risk assessment efforts. They will also discuss and provide advice on ways to improve ecological risk assessment, specifically through the generation of guidelines.

In addition, the Committee will receive a briefing on the Ecoregion concept develped in collaboration with staff at the Agency's Environmental Research Laboratory in Corvallis, Oregon. This concept is being applied by the Office of Water, and by selected States for watershed management purposes. EPA staff are currently preparing a historical report on the development and application of the concept to water-related problems that the Agency faces.

The final objective for the meeting is future planning. Issues coming to the Board, or issues that should be brought

to the Board will be discussed and prioritized for the coming year. In addition, the activities of the Long-Range Ecological Research Needs Subcommittee will be discussed.

The meeting will be open to the public. Any member of the public who wishes to attend, present information, or receive further details should contact Ms. Janis C. Kurtz, Executive Secretary or Mrs. Dorothy Clark, Staff Secretary (A-101 F) Science Advisory Board, U.S. EPA, 401 M Street SW., Washington, DC. Telephone (202) 382-2552 or FTS-8-382-2552. Written comments will be accepted and can be sent to Ms. Kurtz at the address above. Persons interested in making statements before the Subcommittee must contact Ms. Kurtz no later than May 9, 1989, to be assued of space on the agenda.

Date: April 21, 1987.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89-10722 Filed 5-2-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3566-4]

Public Information Reference Unit (PIRU): Docket Temporarily Closed

AGENCY: Environmental Protection Agency.

ACTION: Notice of temporary shutdown of public information reference unit (PIRU) docket.

SUMMARY: The Public Information Reference Unit (PIRU) will be closed temporarily during the month of May. This action is taken because of reconstruction of the heating and air conditioning system in the entire library area. The dockets will not be accessible during this time. These are documents supporting the Agency's actions administered under the Clean Air Act (primarily, the State Implementation Plans), and the Clean Water Act (primarily, the Effluent Limitation Guidelines).

FOR FURTHER INFORMATION CONTACT: Gloris J. Butler, Manager, Public Information Reference Unit (PIRU) at (202) 382-5926.

Brigid Rapp,

Acting Chief, Information Services Branch.

[FR Doc. 89-10578 Filed 5-2-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100062; FRL-3562-5]

Syracuse Research Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Syracuse Research Corporation (SRC) has been awarded a contract to perform work for the EPA Office of Environmental Criteria and Assessment and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SRC consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), respectively. This action will enable SRC to fulfill the obligations of the contract and this notice serves to notify affected persons.

DATE: Syracuse Research Corporation will be given access to this information no sooner than May 8, 1989.

FOR FURTHER INFORMATION CONTACT: By mail:

Catherine S. Grimes, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Rm. 212, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-4460

SUPPLEMENTARY INFORMATION: This notice is to amend the list of chemicals in the **Federal Register** notice of August 17, 1988 (53 FR 31101). The pesticide chemicals listed below are in addition to those mentioned in the above **Federal Register**. Other chemicals may be included in SRC's work later in this contract. Readers may contact the person named above in approximately 1 year to learn if chemicals other than those on this list will be involved in this contract.

Chloramben
Fluometuron
Propoxur
Tetrachlorvinphos

The Office of Environmental Criteria and Assessment and the Office of Pesticide Programs have jointly determined that contract No. 68-C8-0004, involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2) the contract with SRC, prohibits use of the information for any purpose other than the purposes specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, SRC has previously submitted for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Environmental Criteria and Assessment. All information supplied to SRC by EPA for use in connection with this contract will be returned to EPA when SRC has completed its work.

Dated: April 19, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-10068 Filed 5-2-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

April 26, 1989.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501 *et seq.*).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on these

information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

OMB Number: 3060-0356
Title: Section 76.619, Grandfathered operation in the frequency bands 108-136 and 225-400 MHz
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: Recordkeeping requirement and on occasion reporting
Estimated Annual Burden: 100 responses; 6,000 recordkeepers; 12,770 hours; 2.1 hours average burden per response or recordkeeper
Needs and Uses: Information is used by cable television systems and the Commission to locate and eliminate harmful interference as it occurs, to ensure safe operation of aeronautical and marine radio services, and to minimize the possibility of interference to these safety-of-life services

OMB Number: 3060-0332
Title: Section 76.614, Cable television system regular monitoring
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 6,200 recordkeepers; 12,648 hours; 2.04 hours average burden per recordkeeper
Needs and Uses: Information is used by Commission personnel to prevent, locate, and eliminate harmful interference as it occurs, to ensure safe operation of aeronautical and marine radio stations and to minimize interference to these safety-of-life services

OMB Number: 3060-0331
Title: Section 76.615, Notification requirements
Action: Extension
Respondents: Businessses (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 2,900 responses; 1,450 hours; 0.5 hours average burden per response
Needs and Uses: This requirement affects certain cable television system operators transmitting in the aeronautical frequency band. Notification of such operation is required to enable the Commission to locate and eliminate harmful interference and to ensure safe operation of aeronautical and marine radio services

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 89-10525 Filed 5-2-89; 8:45 am]
BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0010
Title: Ownership Report
Form Number: FCC 323
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: On occasion and annually
Estimated Annual Burden: 9,702 Responses; 67,914 Hours
Needs and Uses: Licensees/permittees of commercial broadcast stations are required to file FCC 323, Ownership Report within 30 days of the date of grant by the FCC of an application for an original construction permit or the consummation, pursuant to Commission consent, of a transfer of control or an assignment. The data is used by FCC personnel to determine if licensees/permittees are abiding by FCC's multiple ownership rules, are in compliance with the transfer of control provisions, the alien ownership restrictions and the CATV-TV cross-ownership prohibitions set forth in the Communications Act

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 89-10526 Filed 5-2-89; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010726-002.
Title: Port of Oakland Marine Terminal Agreement.
Parties:
Port of Oakland,
Hapag Lloyd AG, operating as Euro-Pacific Service
Compagnie Generale Maritime Incotrans B.V.
Sea-Land Service, Inc.
P & O Containers (TFL) Ltd. d/b/a Trans Freight Lines

Synopsis: The Agreement (1) adds Sea-Land Service, Inc. and P & O Containers (TFL) Ltd. d/b/a Trans Freight Lines as parties to the Agreement and (2) deletes the joint service, Pacific Europe Express, operated by Compagnie Generale Maritime and Incotrans B.V. from the Agreement.

By Order of the Federal Maritime Commission.
Dated: April 27, 1989.
Joseph C. Polking,
Secretary.
[FR Doc. 89-10548 Filed 5-2-89; 8:45 am]
BILLING CODE 6730-01-M

Request for Additional Information

Agreement No.: 212-010286-018.
Title: South Europe/U.S.A. Pool Agreement.
Parties:
Compania Trasatlantica Espanola, S.A.
Costa Container Lines (Contship Container Lines Ltd.)
Evergreen Marine Corporation
Farrell Lines, Inc.
"Italia" di Navigazione, S.p.A.

Jugolinija
Lykes Lines (Lykes Bros. Steamship Co., Inc.)
A. P. Moller-Maersk Line
Nedlloyd Lines (Nedlloyd Lijnen B.V.)
Sea-Land Service, Inc.
P & O Containers (TFL) Ltd.
Zim Israel Navigation Company, Ltd.

Synopsis: Notice is hereby given that the Federal Maritime Commission, pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1705), has requested additional information from the parties to the Agreement in order to complete the statutory review of Agreement No. 212-010286-018 as required by the Act. This action extends the review period as provided in section 6(c) of the Act.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-10567 Filed 5-2-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232-011225-001.

Title: Benargus/Autoship Space Charter Agreement.

Parties:

K/S Benargus A/S & Co.
Autoship, Inc.

Synopsis: The proposed modification would substitute Norwegian Specialized Auto Carriers ("NOSAC") for K/S Benargus A/S & Co., as a party to the Agreement. It would also change the name of the Agreement from Benargus/Autoship Space Charter Agreement to NOSAC/Autoship Space Charter Agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: April 28, 1989.

[FR Doc. 89-10566 Filed 5-2-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 16, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Michael O. Lunsford*, Muncie, Indiana; to acquire 31.1 percent of the voting shares of Parker Bank Holding Company, Indianapolis, Indiana, and thereby indirectly acquire The Parker Banking Company, Parker City, Indiana.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Charles Boepple*, Goltry, Oklahoma; to acquire an additional 1.39 percent of the voting shares of Goltry Bancshares, Inc., Goltry, Oklahoma, for a total of 22.52 percent, and thereby indirectly acquire First State Bank of Goltry, Goltry, Oklahoma.

2. *Gary Proffitt*, J.E. Brock, Bill Ball, and Russell Wilkey, all of Sterling, Kansas; to each acquire an additional 3.0 percent of the voting shares of Quivira BancShares, Inc., Sterling, Kansas, and thereby indirectly acquire First National Bank, Sterling, Kansas. After the acquisition, each notificant will own 16.2 percent of the voting shares.

Board of Governors of the Federal Reserve System, April 28, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-10551 Filed 5-2-89; 8:45 am]

BILLING CODE 6210-01-M

Logansport Bancorp, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater conveience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specificaly any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than May 24, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Logansport Bancorp, Inc.*, Indianapolis, Indiana; to acquire Skyline

Village, an Indiana Limited Partnership, Corunna, Indiana, and thereby engage in promoting community welfare by the construction and operation of low income housing pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Markle, Indiana.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Hansen Freeborn, Inc.*, Freeborn, Minnesota; to acquire all insurance agency assets of Freeborn Agency, Inc., and thereby engage in general insurance agency activities in a place with a population of less than 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Freeborn, Minnesota.

Board of Governors of the Federal Reserve System, April 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-10552 Filed 5-2-89; 8:45 am]

BILLING CODE 6210-01-M

Penncore Financial Services, Inc., et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

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 May 24, 1989.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Pencore Financial Services Corp.*, Newtown, Pennsylvania; to engage *de novo* through its subsidiary, Commonwealth Courier Services, Inc., Newtown, Pennsylvania, in providing courier services for transportation of nonbearer instruments of Commonwealth State Bank customers pursuant to § 225.25(b)(10) of the Board's Regulation Y.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; Norwest Financial, Inc., Des Moines, Iowa; and Norwest Financial Services, Inc., Des Moines, Iowa; to engage through their subsidiary, Centurion Casualty Company, in underwriting, directly or through reinsurance arrangements, involuntary unemployment insurance related to extensions of credit made or acquired by Norwest Corporation or its direct or indirect subsidiaries pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Labette County Bankshares, Inc.*, Altamont, Kansas; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. *Neosho Bankshares, Inc.*, Neosho, Missouri; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-10553 Filed 5-2-89; 8:45 am]

BILLING CODE 6210-01-M

Peoples Bancorp of Winchester, Inc., et al; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 19, 1989.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Peoples Bancorp of Winchester, Inc.*, Winchester, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Commercial Bank, Winchester, Kentucky.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Bankers Capital Corporation*, Forest, Mississippi; to become a bank holding company by acquiring 50.01 percent of the voting shares of The Metropolitan Corporation, Biloxi, Mississippi, and thereby indirectly acquire Metropolitan National Bank, Biloxi, Mississippi.

2. *Forest Bancorp*, Forest, Mississippi; to acquire 67.26 percent of the voting shares of Bankers Capital Corporation, Forest, Mississippi, and thereby indirectly acquire 50.01 percent of the Metropolitan Corporation, Biloxi, Mississippi.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230

South LaSalle Street, Chicago, Illinois 60690:

1. *F & M Financial Services Corporation*, Menomonee Falls, Wisconsin; to acquire 100 percent of the voting shares of St. Francis State Bank, St. Francis, Wisconsin.

D. **Federal Reserve Bank of Minneapolis** (James W. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Hansen Freeborn, Inc.*, Freeborn, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Freeborn, Minnesota.

Board of Governors of the Federal Reserve System, April 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-10554 Filed 5-2-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Care Labeling Rule; Information Collection Requirement

AGENCY: Federal Trade Commission.

ACTION: Notice of application to OMB under the Paperwork Reduction Act (44 U.S.C. 3501-3518) for clearance of information collection requirements contained in the Care Labeling Rule.

SUMMARY: The FTC is seeking OMB clearance for information collection requirements contained in the Trade Regulation Rule Concerning Care Labeling of Textile Wearing Apparel and Certain Piece Goods, as amended, 16 CFR 423. A 3-year extension of the existing clearance, OMB Control No. 3084-0046, is being requested.

The Care Labeling Rule, effective since 1972, requires manufacturers and importers of textile wearing apparel to attach a permanent label bearing instructions on how to effect regular care and maintenance. Manufacturers and importers of piece goods that are used to make wearing apparel must also supply care instructions.

The Supporting Statement submitted with the Request for OMB Review includes an estimate that the total annual paperwork burden for the rule is 4,060,000 hours. The basis for this estimate is described in more detail in the Supporting Statement.

The Care Labeling Rule applies to approximately 26,600 manufacturers and importers of covered products. Each year's compliance with the rule by a covered manufacturer is deemed to be one response, amounting to 153 hours per year.

DATES: Comments on this application must be submitted on or before May 3, 1989.

ADDRESS: Send comments to Mr. Don Arbuckle, FTC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503. Copies of the application may be obtained from the Public Reference Section, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Christian S. White, Assistant General Counsel, Federal Trade Commission, Washington, DC 20580 (202) 326-2476.

Kevin J. Arquit,

General Counsel.

[FR Doc. 89-10585 Filed 5-2-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[4150-04]

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Service's claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the Federal Register.

The Secretary of the Treasury has certified a rate of 15.25% for the quarter ended March 31, 1989. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Date: April 27, 1989..

Dennis J. Fisher,

Deputy Assistant Secretary, Finance.

[FR Doc. 89-10592 Filed 5-2-89; 8:45 am]

BILLING CODE 4110-60-M

Alcohol, Drug Abuse, and Mental Health Administration

Board of Scientific Counselors; Meetings

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Board of Scientific Counselors, NIMA. The Board will review and evaluate intramural projects and individual staff scientists. Therefore, portions of the meeting will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b) (6) and 5 U.S.C. appl 2 10(d). Notice of this meeting is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Board of Scientific Counselors, NIMH.

Date and Time: May 18-20: 8:30 a.m.

Place: National Institutes of Health, Building #31, C Wing, Conference Room 9, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting: Open—May 18: 8:30-9:00 a.m.; Closed—Otherwise.

Contact: Dr. Steven M. Paul, National Institute of Mental Health, Building #10, Room 4N-224, 9000 Rockville Pike, Bethesda, MD 20892.

Purpose: The Board provides expert advice to the Director, NIMH, on the mental health intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Substantive information may be obtained from the contact person listed above. The NIMH Committee Management Officer will furnish summaries of the meeting and roster of committee members upon request. Contact Ms. Joanna Kieffer, Room 9-94, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone number: (301) 443-4333.

Date: April 27, 1989.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89-10557 Filed 5-2-89; 8:45 am]

BILLING CODE 4160-20-M

Health Care Financing Administration

Medicaid Program; Notice of Hearing: Reconsideration of Disapproval of New Mexico State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on June 22, 1989, in Dallas, Texas to reconsider our decision to disapprove New Mexico State Plan Amendment 88-7.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk (within 15 days after publication).

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966-4471.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove New Mexico State Plan Amendment 88-7

Section 1116 of the Social Security Act and 42 CFR Part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

New Mexico 88-7 revised the State's Medicaid eligibility and posteligibility policies to permit use of community property principles in calculating the income of an institutionalized person in determining the person's Medicaid eligibility under a special income limit and in the posteligibility application of the patient's income to the cost of institutional care.

The issues in the matter are: (1) Whether use of New Mexico's community property principles in calculating the income of an institutionalized person under a special income limit in the eligibility process is "no more restrictive" than the Supplemental Security Income (SSI) methodology are rquired by 1902(r)(2);

(2) Whether this use of community property principles in the eligibility process is protected under the moratorium provision of the Deficit Reduction Act of 1984, as amended;

(3) Whether use of New Mexico's community property principles in the posteligibility application of the patient's income to the cost of institutional care violates the meaning of income under HCFA policy and violates regulations at 42 CFR 435.725; and

(4) Whether New Mexico's community property laws fall within the scope of the Ninth Circuit Court of Appeals decision in *State of Washington v. Bowen.*

Section 1902(r)(2) of the Social Security Act permits States to use a methodology for the aged, blind, and disabled that is more liberal than that under SSI for all eligibility groups except those whose Medicaid eligibility is based upon the actual and deemed receipt of SSI benefits. This expanded application covers institutionalized persons who are eligible for Medicaid under a special income limit. However, section 1902(r)(2) specifies that any such more liberal methodology shall be no more restrictive than SSI methodology, specifying further that:

> methodology is considered to be 'no more restrictive' if, using the methodology, additional individuals may be eligible for medical assistance and no individuals who are otherwise eligible are made ineligible for such assistance.

Eligibility rules—Under SSI regulations at 20 CFR 416.1102, income is anything a person receives in cash or in kind that can be used to meet the person's needs for food, clothing, or shelter. Thus, an item has to be received by a person to be income for that person. When members of a couple in a 1634 State (i.e., a State following SSI rules) are living apart, only the income that a member receives is counted in determing that person's eligibility for Medicaid. Under New Mexico's community property rules, one-half of community income is attributed to each spouse in determining each person's Medicaid eligibility. The State regulations do not require that attributed income be distributed accordingly and, thus, attribution of income can result in ascribing income to a person that he or she does not receive. The attribution of one-half of community income to each spouse could make an otherwise eligible person ineligible. Because using the community property rules to determine Medicaid eligibility would make an otherwise eligible spouse ineligible, HCFA concluded that the enabling SPA violates section 1902(r)(2) of the Social Security Act and, thus, is not approvable.

We considered whether fiscal protection could be provided for the proposal under the moratorium provision of the Deficit Reduction Act of 1984, as amended. However, because moratorium protection, in this case, is limited to State methodology that is more liberal than SSI methodology and because the proposed policy would or could be more restrictive, moratorium protection is not available.

Posteligibility rules—The State is using community property rules to determine the State's payment for an institutionalized person's care in the posteligibility application of patient income to the cost of institutional care. The meaning of income in the posteligibility computation follows the meaning of income used in determining eligibility except for the inclusion in the posteligibility computation of certain payments received for medical or remedial care or social services. (This clarification, which is current HCFA policy, would be incorporated specifically into regulations under a proposed rule published in the **Federal Register** on August 24, 1988 (53 FR 32252).) As explained in the preceding section, only an item that is received and can be used to meet the person's needs for food, clothing, or shelter can be income for eligibility purposes in a 1634 State such as New Mexico and, thus, only an item that is received can be income in the posteligibility computation in New Mexico. To the extent that an item attributed to, but not received by, the institutionalized spouse is counted as income to that spouse under community property rules in New Mexico, HCFA determined that the rules violate HCFA policy.

Second, income received by the institutionalized spouse and allocated to the community spouse has the effect of deducting the allocated income from the institutionalized spouse's income that is otherwise applicable toward the cost of his or her care. Such a deduction violates HCFA regulations which require the patient to contribute his or her total income, less deductions specified at 42 CFR 435.725(c), toward the institutional costs before the State

incurs liability. Since income allocated to a community spouse under a State's community property rules is not included on the list of allowable deductions in the Medicaid regulations, it cannot be used to reduce the amount of the institutionalized person's income that is applicable toward the cost of care.

The State indicated that its posteligibility practice is based on a precedent set by HCFA In its approval of a Washington SPA which allowed the State to use community property principles in its institutional care program. The approval of the Washington SPA (84-20) that the State cited was ordered by the Ninth Circuit Court of Appeals (*State of Washington v. Bowen*, 815 F.2d 549 (9th Cir. 1987)). However, HCFA does not agree that the policy contained in the Washington SPA is consistent with the statute and regulations. Therefore, HCFA Is only applying the *State of Washington* ruling to States in the Ninth Circuit. Since New Mexico is in the Tenth Circuit, it is not covered by the Ninth Circuit's decision.

The notice to New Mexico announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follow:

Ms. Helen P. Nelson,
Assistant General Counsel, New Mexico Human Services Department, P.O. Box 2348, Sante Fe, New Mexico 87504-2348.

Dear Ms. Nelson: I am advising you that your request for reconsideration of the decision to disapprove New Mexico State plan amendment 88-7 was received on March 28, 1989. This amendment proposes to allow the use of community property principles in calculating the income of an institutionalized person in determining the person's Medicaid eligibility under a special income limit and in the posteligibility application of the patient's income to the cost of institutional care.

There are four issues in this matter. They are: (1) whether use of New Mexico's community property principles in calculating the income of an institutionalized person under a special income limit in the eligibility process is "no more restrictive" than the Supplemental Security Income (SSI) methodology as required by 1902(r)(2) of the Social Security Act; (2) whether this use of community property principles in the eligibility process is protected under the moratorium provision of the Deficit Reduction Act of 1984, as amended; (3) whether use of New Mexico's community property principles in the posteligibility application of the patient's income to the cost of institutional care violates the meaning of income under Health Care Financing Administration policy and violates regulations at 42 CFR 435.725; and (4) whether New Mexico's community property laws fall within the scope of the Ninth Circuit Court of Appeals decision in *State of Washington v. Bowen.*

I am scheduling a hearing on your request to be held on June 22, 1989, at 10 a.m. in Room 1950, 1200 Main Tower Building, Dallas, Texas. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed in 42 CFR Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966-4471.

Sincerely,

Louis B. Hays,
Acting Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: April 27, 1989.

Louis B. Hays,
Acting Administrator, Health Care Financing Administration

[FR Doc. 89-10527 Filed 5-2-89; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration Advisory Council; Establishment

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463 (5 U.S.C. Appendix II), the Health Resources and Service Administration (HRSA) announces the establishment of the following advisory committee.

Designation: Graduate Training in Family Medicine Review Committee.

Purpose: The Committee shall advise the Director of the Bureau of Health Professions, HRSA, on the technical merit of family medicine graduate training grant applications.

The Committee shall review applications from public or nonprofit private hospitals, and other public or nonprofit entities that plan, develop and operate or participate in approved graduate training programs in the field of family medicine; or supports trainees in such programs who plan to specialize or work in the practice of family medicine.

Authority for this Committee will terminate in two years unless the Administrator, HRSA formally determines that continuance is in the public interest.

Dated: April 27, 1989.

Jackie E. Baum,
Advisory Committee Management Officer, HRSA.

[FR Doc. 89-10558 Filed 5-2-89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contract Negotiations; Roosevelt Recreational Enterprises

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with Roosevelt Recreational Enterprises authorizing it to continue to provide boat moorage, houseboat and boat rental, grocery items, general merchandise, camper and fishing supplies, marine fuel and oil, etc., for the public at Coulee Dam National Recreation Area, in the state of Washington, for a period of twenty-five (25) years from January 1, 1990, through December 31, 2015.

EFFECTIVE DATE: July 3, 1989.

ADDRESS: Interested parties should contact the Regional Director, Pacific Northwest Region, 83 South King Street, Suite 212, Seattle, Washington 98104, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This proposed contract requires/authorizes a construction and improvement program. The construction and improvement program required/authorized was previously addressed in the Environmental Assessment approved August, 1979, and incorporated in the General Management Plan approved on July 10, 1980, for the Keller Ferry site, Coulee Dam National Recreation Area. No additional construction beyond that addressed in the Environmental Assessment will be authorized by the renewal of this contract. Therefore it has been determined that the proposed action will have no impact on the quality of the human environment and comes within those actions which have been determined to be categorically excluded from the requirements of section 102(2) of National Environmental Policy Act of 1969 (NEPA) (83 Stat. 852), 42 U.S.C. 4331 (1982 ed.), as set forth in the Departmental Manual (Appendix 7.4A(6) of 516 DM 6).

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an

existing permit which expires by limitation of time on December 31, 1990, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new contract as defined in 36 CFR, § 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Date: February 23, 1989.

William J. Briggle,

Acting Regional Director, Pacific Northwest Region.

[FR Doc. 89-10556 Filed 5-2-89; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to CERCLA, NL Industries, Inc.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on April 14, 1989, a proposed Partial Consent Decree in *United States v. NL Industries, Inc.*, Civil No CV89-408, was lodged with the United States District Court for the District of Oregon.

The Partial Consent Decree was made and entered into by and between the United States and NL Industries, Inc. The complaint was brought pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to compel NL Industries, Inc., the past owner, operator and generator at the Gould Site (Site) in Portland, Oregon to carry out the remedial action contemplated by the Record of Decision (ROD) and to reimburse the United States for response costs associated with the Site. The Partial Consent Decree provides that NL Industries, Inc. will perform a predesign study and, if technologically feasible, remedial actions up to $2.25 million minus the cost of the pre-design study.

The proposed Partial Consent Decree may be be examined at the office of the United States Attorney for the District of Oregon, 312 U.S. Courthouse, 620 SW Main Street, Portland, Oregon 97205; at the Region IX Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 10th and Pennsylvania Avenue Washington, DC. 20530.

The Department of Justice will receive written comments relating to the proposed partial consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. NL Industries, Inc.*, Department of Justice Reference No. 90-11-3-397.

In requesting a copy of the Partial Consent Decree, please enclose a check in the amount of $4.30 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-10572 Filed 5-2-89; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Arts in Schools Basic Education Grants Section) to the National Council on the Arts will be held on May 18, 1989, from 9:00 a.m.-6:00 p.m. and May 19, 1989, from 9:00 a.m.-3:00 p.m. in Room M-09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 19, 1989 from 11:00 a.m.-3:00 p.m. The topics for discussion will be policy issues.

The remaining portion of this meeting on May 18, 1989 from 9:00 a.m.-6:00 p.m. and May 19, 1989, from 9:00 a.m.-11:00 a.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-10536 Filed 5-2-89; 8:45 am]

BILLING CODE 7537-01-M

Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Special Projects Section) to the National Council on the Arts will be held on June 5, 1989, from 8:30 a.m.-8:00 p.m., June 6-7, 1989, from 8:30 a.m.-7:00 p.m., and June 8, 1989, from 8:30 a.m.-2:00 p.m. in Room M-09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 8, 1989 from 11:15 a.m.-2:00 p.m. The topics for discussion will be policy issues and guidelines.

The remaining portion of this meeting on June 5, 1989 from 8:30 a.m.-8:00 p.m., June 6-7, 1989, from 8:30 a.m.-7:00 p.m., and June 8, 1989, from 8:30 a.m.-11:15 a.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100

Pennsylvania Avenue, NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

April 26, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-10537 Filed 5-2-89; 8:45 am]

BILLING CODE 7537-01-M

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Challenge III section) to the National Council on the Arts will be held on May 19, 1989, from 9:00 a.m.-5:30 p.m. in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

The meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

April 26, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-10538 Filed 5-2-89; 8:45 am]

BILLING CODE 7537-01-M

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Overview Section) to the National Council on the Arts will be held on May 23, 1989, from 9:15 a.m.-5:30 p.m. in Room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be policy issues, budget, and guidelines.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

April 26, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-10539 Filed 5-2-89; 8:45 am]

BILLING CODE 7537-01-M

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Special Artistic Initiative Section) to the National Council on the Arts will be held on May 24, 1989, from 9:00 a.m.-5:30 p.m. in Room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 24, 1989 from 9:00 a.m.-9:15 a.m. and from 5:00 p.m.-5:30 p.m. The topics for discussion will be on policy issues.

The remaining portion of this meeting on May 24, 1989 from 9:15 a.m.-5:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

April 26, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-10540 Filed 5-2-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 8, 1989 through April 21, 1989. The last biweekly notice was published on April 19, 1989 (54 FR 15820).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed

amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 2, 1989 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC,

and at the local public document room for the particular facility involved.

Arkansas Power & Light Company, Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of amendment request: December 12, 1986 and April 14, 1988 as amended.

Description of amendment request: The licensee requested several administrative changes to the Technical Specifications (TS) for each unit. One change was to establish a range of membership of the Safety Review Committee (SRC) from eight to twelve members, instead of strictly eight as currently specified in the TS for each unit. Also, this change would provide an equivalent SRC meeting quorum requirement. Other TS changes requested in the licensee's submittal have been noticed separately.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7744). One of the examples (i) of these actions involving no significant hazards consideration relates to a purely administrative change to Technical Specifications. The proposed changes to the Technical Specifications for Arkansas Nuclear One, Units 1 and 2, would allow the voting members on the safety review committee (SRC) to vary from a minimum of eight to a maximum of 12 persons plus the SRC chairman. This change would provide some flexibility that would enhance the functioning of the SRC and does not reduce the existing requirements regarding member qualifications and SRC duties and responsibilities, and provides an equivalent definition of what constitutes a quorum. These proposed changes are administrative in nature and do not change the functional requirements of the SRC presently in the Technical Specifications and, therefore, involve no significant hazards. These requests do not involve a significant increase in the probability or consequence of an accident or other adverse condition over previous evaluations; or create the possibility of a new or different kind of accident or condition over previous evaluations; or involve a significant reduction in a margin of safety. Based on this information, the staff proposes to determine that the proposed change does not present a significant hazard.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell, & Reynolds, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Jose A. Calvo

Commonwealth Edison Company, Docket Nos. 50-454 and 50-455, Byron Nuclear Power Station, Unit Nos. 1 and 2, Ogle County, Illinois; and Docket Nos. 50-456 and 50-457 Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: January 25, 1989, supplemented February 3, 1989.

Description of amendments request: The proposed amendment would revise Techncial Specification 5.3.1 of Appendix A of those licenses to replace the values of the maximum enrichment of reload fuel with a reference to a report entitled "Criticality Analysis of Byron and Braidwood Station Fuel Storage Racks," which contains the values of those limits. In addition, reference to this report has been included in the Definitions Section of the Technical Specifications (TS) to note that it is the unit-specific document that provides these limits for the current operating reload cycle. Furthermore, the definition notes that the values of these cycle-specific parameter limits are to be determined in accordance with the Specification 6.9.1.10. This specification requires that these limits be determined for each reload cycle in accordance with the referenced NRC-approved methodology for these limits, and be consistent with the applicable limits of the safety analysis.

Finally, this report and any mid-cycle revisions shall be provided to the NRC upon issuance. Generic Letter 88-16, dated October 4, 1988, from the NRC provided guidance to the licensees on requests for removal of the values of cycle-specific parameters from TS. The licensee's proposed amendment is in response to this Generic Letter.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Involve a significant reduction in a margin of safety.

The proposed revision to the License Condition is in accordance with the guidance provided in Generic Letter 88-16 for licensees requesting removal of the values of cycle-specific parameters from TS. The establishment of these limits in accordance to an NRC-approved methodology and the incorporation of these limits into "Criticality Analysis of Byron and Braidwood Station Fuel Storage Racks" will ensure that proper steps have been taken to establish the values of these limits. Furthermore, the submittal of this report will allow the staff to continue to trend the values of these limits without the need for prior staff approval of these limits and without introduction on an unreviewed safety question. The revised specifications with the removal of the values of cycle-specific parameter limits and with addition of the referenced report for these limits does not create the possibility of a new or different kind of accident from those previously evaluated. They also don't involve a significant reduction in the margin of safety since the change does not alter the methods used to establish these limits.

Consequently, the proposed change on the removal of the values of cycle-specific limits does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Because the values of cycle-specific parameters will continue to be determined in accordance with an NRC-approved methodology and be consistent with the applicable limits of the safety analysis, these changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards considerations.

The proposed amendment does not alter either the requirement that the plant be operated within the limits for cycle-specific parameters or the required remedial actions that must be taken when these limits are not met. While it is recognized that such requirements are essential to plant safety, the values of limits can be determined in accordance with NRC-approved methods without affecting nuclear safety. With the removal of the values of these limits from the technical specifications, they have been incorporated into a report that is submitted to the Commission. Hence, appropriate measures exist to control the values of these limits. These changes are administrative in nature and do not impact the operation of the facility in a

manner that involves significant hazards considerations.

Based on the preceding assessment, the staff believes this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: For Byron Station, the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: April 11, 1989

Description of amendments request: Pursuant to 10 CFR 50.90, Commonwealth Edison Company (CECo, the licensee) proposed to amend Appendix A, Technical Specifications (TS), of Facility Operating Licenses DPR-29 and DPR-30 for the Quad Cities Nuclear Power Station (QCNPS). The proposed amendment will change the current language of TS surveillance requirement 4.7.A.2.b to be consistent with the test frequency delineated in 10 CFR Part 50, Appendix J ("Primary Reactor Containment Leakage Testing for Water Cooled Power Reactors"). The existing TS requirement is more restrictive than 10 CFR Part 50, Appendix J and could require a plant shutdown prior to a scheduled refueling outage, especially in light of 18-month fuel cycles. The provisions of 10 CFR Part 50, Appendix J are structured such that this situation would be prevented. TS 4.7.A.2.b requires a Type A test be performed at least every 18 months in the event that two consecutive Type A tests fail to meet applicable acceptance criteria. The proposed change would require a Type A test be performed at each shutdown for refueling or approximately every 18 months, whichever occurs first, in the event that two consecutive tests failed.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety. In accordance with 10 CFR 50.92, CECo conducted an analysis of their proposed amendment and concluded that it does not involve a significant hazards consideration.

In a Federal Register notice publication dated March 6, 1986 (51 FR 7751) the Commission provided guidance on "Examples of Amendments That Are Considered Not Likely To Involve Significant Hazards Consideration." Example (vii) is defined as "A change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." Appendix J of 10 CFR Part 50 was made a regulatory rule after Quad Cities Station was licensed. CECo previously submitted a TS amendment request, dated April 13, 1981, to incorporate the provisions of Appendix J. The NRC approved this request as license amendments (No. 82 and 76 for Units 1 and 2, respectively) on November 2, 1982. Unfortunately this original TS amendment language for conducting Type A tests, following consecutive failures, was not an accurate reflection of the actual regulatory requirements. Consequently, CECo's subsequent request, dated April 11, 1989 to amend their facility license, is attempting to correct this discrepancy and make TS 4.7.A.2.b conform exactly with Appendix J as it should have been originally. The current difference between TS 4.7.A.2.b and Appendix J does not result from any technical design or licensing basis. The TS wording proposed for QCNPS is also consistent with current Dresden TS, a similar nuclear power station in vintage and design.

NRC staff reviewed the licensee's application and analysis of no significant hazards consideration. Based upon this review and the above discussion, and Commission guidance the NRC staff proposes to determine that this amendment request does not involve significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: January 10, 1989

Description of amendment request: By an application dated January 10, 1989, Connecticut Yankee Atomic Power Company (CYAPCO) proposed to amend the existing Technical Specification sections that refer to the boron concentrations in the idled/isolated loops. The proposed amendment will: (a) split and revise existing Technical Specification (TS) section 3.3.1.5 "Isolated Loop," into sections 3.3.1.5 "Isolated Loop" (Modes 1 and 2) and 3.3.1.6 "Isolated Loop" (Modes 3, 4, 5 and 6), (b) renumber and revise existing TS section 3.3.1.6 "Isolated Loop Startup," to TS section 3.3.1.7 "Idled Loop," (Modes 3, 4, 5 and 6), and (c) split and revise existing TS section 3.3.1.8 "Idled Loop Startup," into sections 3.3.1.10 "Idled Loop Startup" (Modes 1 and 2) and 3.3.1.11 "Idled Loop Startup" (Modes 3, 4, 5 and 6). Currently, the TS requires that the boron concentration in the idled/isolated loops be maintained greater than or equal to the boron concentration in the operating loops. In Modes 1 and 2, the proposed amendment will not alter the current TS. In Modes 3, 4, 5 and 6, the TS will be revised to require a boron concentration in the idled/isolated loops that is greater than or equal to the shutdown margin requirements as specified in the current TS Sections 3.1.10.2, 3.10.1.3 and 3.13.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazard exists as stated in 10 CFR 50.92. CYAPCO has reviewed the proposed changes and concluded that the proposed amendment satisfies the three criteria in 10 CFR 50.92 and therefore involves no significant hazards consideration.

CYAPCO has provided the following discussion regarding these three criteria. The proposed changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

Boron Concentration Change in Proposed Technical Specification Sections 3.3.1.6 through 3.3.1.11

The safety analysis assumes that the inactive loop is at the boron concentration which corresponds to the shutdown margin requirement. Inaccuracies in determining the concentration are accounted for in the analysis. The proposed change requires that

an idled or isolated loop be at a boron concentration greater than or equal to that required to meet the shutdown margin. Thus, the change does not impact the consequences of the idled or isolated analysis.

Other Changes in Proposed Technical Specification Sections 3.3.1.6 and 3.3.1.9

In addition to the boron concentration change addressed in the above discussion, the applicability requirements have been increased to include MODE 6.

The increased requirements will reduce the potential for reactivity transients during operation in MODE 6. The safety analysis assumes that the boron concentration and temperature surveillances are performed when a loop is isolated or idled during operation in MODE 6. Thus, the change is consistent with the safety analysis and does not impact the consequences of any event.

Other Changes in Proposed Technical Specification Section 3.3.1.7

In addition to the boron concentration change addressed in the above discussion, the applicability requirements have been increased to include MODE 6, the LCO requirement to keep the reactor subcritical by 1000 pcm has been deleted, and a footnote has been added which removes from the applicability section the instances when a hot leg loop isolation valve is opened to create an idled loop configuration.

The inclusion of MODE 6 is acceptable as discussed above for Technical Specification Section 3.3.1.6.

The definition of MODES 3, 4, and 5 require that the reactor be subcritical with K_{eff} less than .99 and MODE 6 requires K_{eff} less than .94. Thus the requirement on subcriticality in this section is redundant and can be deleted.

The note which removes from the applicability section the instances when a hot leg loop isolation valve is opened to create an idled loop, does not impact the design basis events. With the cold leg loop isolation valve closed there will be no flow through the loop. Thus there will be no flow induced reactivity insertion to the RCS due to temperature or boron concentration differences. If the RCS were depressurized after opening the loop isolation valve, less than 10 $ft.^3$ of fluid would be displaced into the remainder of the RCS. This volume of fluid is insignificant when compared to the volume of fluid in the remainder of the RCS. In addition, any cooldown of the RCS that would most probably occur as the plant is depressurized would negate this effect of the depressurization. For these reasons the proposed change has an insignificant impact on the design basis events.

Other Changes in Proposed Specification Section 3.3.1.11

In addition to the boron concentration change addressed in the above discussion, the discussion of Specification 3.3.1.7 regarding removal of the requirement to remain 1000 pcm subcritical applies here. For these reasons the change does not impact the consequences of the design basis events.

2. Create the possibility of a new or different kind of accident. The proposed change only modifies the required boron concentration for idled and isolated loops during operation in MODES 3 through 6. The proposed changes are consistent with the safety analysis for idled loop startup and do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in margin of safety. The current Technical Specification bases provide margin against a dilution event in MODES 3, 4, and 6 by requiring an idled or isolated loop to be at the same concentration as the remainder of the RCS. The safety analysis assumes that the idled or isolated loop(s) is at a boron concentration greater than or equal to that required to meet shutdown or refueling requirements, whichever is appropriate. The proposed changes are consistent with the safety analysis and, therefore, do not reduce the margin of safety.

The staff has reviewed the analysis provided by the licensee in support of a no significant hazards consideration determination. The staff agrees with the licensee's analysis and believes that the licensee has met the criteria for such a determination. Therefore, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: April 5, 1989

Description of amendment request: The proposed amendment deletes the following sentence from Technical Specification 6.4.2.2; "The SRB shall be organized as one board for all GPC Nuclear power plants." This change will allow a separate Safety Review Board (SRB) for each Georgia Power Company (GPC) nuclear plant.

Basis for proposed no significant hazards consideration determination: GPC operates two nuclear power plants. One is the Hatch Nuclear Plant, a boiling water reactor of General Electric design, and the other is the Vogtle Electric Generating Plant (VEGP) which is a pressurized water reactor of Westinghouse design. Currently the VEGP Technical Specifications (TS) require that the same (SRB) be used for both of these plants. The proposed change to the TS will delete that requirement. The removal of that restriction will allow the formulation of a specific SRB for each plant. The qualifications for membership on the SRB and the responsibilities of the SRB will not change.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and has determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change does not affect any plant operating parameter.

Also, the licensee's proposed changes would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the physical plant design is not being changed. Finally, the licensee's proposed changes would not (3) involve a significant reduction in a margin of safety because the qualification requirements and responsibilities of the SRB are not changed.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street, N.E., Altanta, Georgia 30043.

NRC Project Director: David B. Matthews

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: March 21, 1989

Description of amendment request: The proposed amendment would revise the Technical Specifications on Control Room Air Conditioning System by separating the current composite requirements into four specifications covering control room emergency air filtration system (two mode sets), control room air temperature, and

control room isolation and pressurization. This amendment is related to a revision to the Technical Specification Bases approved by the NRC in a letter dated August 9, 1988.

Basis for proposed no significant hazards consideration determination: The proposed change clarifies the operability criteria for the various heating, ventilating, air condition (HVAC) components servicing the control room. The composite requirements in the current Technical Specification are not altered except that they will be contained in four separate specifications to address specific requirements.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability of consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed change represents a specialization of system and its operability criteria each into a specification. The sum of the new specifications is consistent with the current overall specifications but less confusing and easier understood. There is no change to the systems operation or design and no change to the responses to postulated accidents. Therefore, the proposed change does not involve a significant increase in probabilities or consequences of any accident previously evaluated. In addition, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated. The systems will continue to be operated as before and will be available for service as required by the current Technical Specifications. Therefore, the proposed amendment will not involve a significant reduction in a margin of safety.

Based on the above considerations, the staff proposes to determine that the change does not involve a significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of amendment request: November 10, 1988

Description of amendment request: The proposed amendment would revise Technical Specification Section 4.0.5, Surveillance Requirements for Inservice Inspection and Testing, to incorporate the requirements of Generic Letter 88-01, "NRC Position on IGSCC In BWR Austenitic Stainless Steel Piping" dated January 25, 1988.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of the examples of actions involving no significant hazards considerations is example (ii) "a change that constitutes an additional restriction, . . . , e.g., a more stringent surveillance requirement."

Because the application for amendment involves a change encompassed by an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark Wetterhahn, Esq., Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Robert A. Capra

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Dates of amendment request: April 18, 1988 (Reference LAR 88-05)

Description of amendment request: The proposed amendment would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to revise TS Sections 3.0 and 4.0 and associated Bases on the applicability of limiting conditions for operation and surveillance requirements. This amendment request also proposes to delete the exception to TS 3.0.4 in the applicable Technical Specifications. The proposed changes are in accordance with the recommendations of Generic Letter 87-09 to clarify the TS to provide greater operational flexibility and preclude unnecessary plant shutdowns and to clarify the TS to allow passage through or to operational modes as required to comply with Action Requirements.

Specific TS changes would include the following: TS 3/4 0, Table 3.3-1, Table 3.3-3, 3/4 3.3, Table 3.3-6, 3/4 3.3, 3/4 4.9, 3/4 4.10, 3/4 7.8, 3/4 7.9, 3/4 7.10, 3/4 7.13, 3/4 8.4, 3/4 9.7, 3/4 9.9, 3/4 9.11, 3/4 9.12, 3/4 11.1, 3/4 11.2, 3/4 11.3, 3/4 11.4, 3/4 12.1, 3/4 12.2, 3/4 12.3, and B3/4 0.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its submittal of April 18, 1988, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed revision to Specification 3.0.4 does not involve a significant increase in the probability or consequences of an accident previously evaluated. The revision allows entry into an Operational Condition in accordance with Action requirements when conformance to the Action requirements permits continued operation of the facility for an unlimited period of time. This operational flexibility is consistent with that allowed by the existing individual LCOs and their associated Action requirements which provide an acceptable level of safety for continued operation.

The proposed revision to Specification 4.0.3 does not involve a significant increase in the probability or consequences of an accident previously evaluated. Providing a delay of up to 24 hours to permit the completion of a missed surveillance when the allowable outage time limit of the Action requirements is less than 24 hours reduces the probability of a transient occurring when the affected system or component is either out of service to allow performance of the surveillance test or there is a lower level of confidence in its operability because the normal surveillance interval was exceeded. As such, the probability and consequences of an accident previously evaluated are actually reduced as a result of the proposed revision.

The proposed revision to Specification 4.0.4 does not involve a significant increase in the probability or consequences of an accident previously evaluated because it is a clarification to the specification and as such it is administrative in nature. The revision makes it clear that Specification 4.0.4 does not prevent passage through or to Operational Conditions as required to comply with Action requirements. This is consistent with the existing Specification 3.0.4.

The revisions to the Bases Section 3.0 and 4.0 and the elimination of specific exemptions to Specification 3.0.4 are administrative in nature and, therefore, do not involve a significant increase in the probability or consequences of any accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed amendment does not [require]... physical alteration to any plant system, nor is there a change in the method in which any safety related system performs its function. The proposed revisions result in improved Technical Specifications by (1) removing unnecessary restrictions on mode changes and facility operation, (2) preventing unnecessary shutdowns caused by inadvertent exceedance of surveillance intervals, and (3) avoiding conflicts within the Technical Specifications.

The revisions to the Bases Sections 3.0 and 4.0 and the elimination of specific exemptions to TS 3.0.4 are administrative in nature and, therefore, do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in the margin of safety?

The proposed amendment does not involve a significant reduction in a margin of safety. The revision to Specification 3.0.4 allows operations flexibility consistent with that allowed by the existing individual LCOs and their associated Action requirements. An acceptable level of safety for continued operation is provided.

The proposed revision to Specification 4.0.3 reduces risk by providing a delay of up to 24 hours to permit the completion of a missed surveillance when the allowable outage time limit of the Action requirements is less than 24 hours. This reduces the probability of a transient occurring when the affected system or component is either out of service to allow performance of the surveillance test or when there is a lower level of confidence in its operability because the normal surveillance interval was exceeded. The revision to Specification 4.0.4 is a clarification to the specification and as such is administrative in nature. The revision makes it clear that Specification 4.0.4 does not prevent passage through or to Operational Conditions as required to comply with Action requirements. This is consistent with the existing Specification 3.0.4.

The revisions to the Bases Sections 3.0 and 4.0 and the elimination of specific exemptions to Specification 3.0.4 are administrative in nature and, therefore, do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the proposed changes and the licensee's no significant hazards consideration determination and finds them acceptable. Therefore, the staff proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Dates of amendment request: December 19, 1988 (Reference LAR 88-09)

Description of amendment request: The proposed amendment would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to allow the fully withdrawn position for the shutdown and control rod banks to be redefined as 225 steps or greater, rather than 228 steps, with insertion limits remaining the same. This revision would provide the flexibility to reposition the rod banks as part of a control rodlet wear management program and involves changes to TS 3.1.3.5 and 4.1.3.5 and Figures 3.1-1a and 3.1-1b.

Also, this amendment request adds x and y axis intercepts to Figure 3.1-1a. This would provide clarity to operations personnel as to the value of rod bank positions for these power conditions. Values for the x and y intercepts were provided from the Diablo Canyon "Precautions, Limitations and Setpoints Document."

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its submittal of December 19, 1988, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Repositioning rod banks will reduce the possibility of wear-through of the rodlet cladding. Thus, the consequences and probability of a malfunction of the rods will be decreased while maintaining compliance with functional requirements. ...[S]ufficient margin exists between calculated safety parameters and safety limits, such that redefining the fully withdrawn position for the rod banks to 225 steps or greater, will not significantly increase the probability or the consequences of any previously analyzed accident.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Repositioning the rods does not involve the addition of a new plant system or significantly alter operation of the current system. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in the margin of safety?

A Westinghouse evaluation has determined that the impact of redefining the fully withdrawn position for the rod banks to 225 steps or greater has a negligible effect on peaking factors and rod worths under accident conditions. The slight change in these parameters does not result in a significant reduction in a margin of safety.

The NRC Staff has reviewed the proposed changes and the licensee's no significant hazards consideration determination and find them acceptable. Therefore, the Staff proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room Location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorney for Licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P. O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P. O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Dates of amendment request: February 28, 1989 (Reference LAR 89-01)

Description of amendment request: The proposed amendment would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to:

(1) Change the description of Plant Staff Review Committee (PSRC) membership by using functional and organizational description of the PSRC responsibilities rather than by formal job title,

(2) Specify that the qualifications of each PSRC member shall meet or exceed the requirements and recommendations of ANSI/ANS 3.1-1978,

(3) Increase the PSRC quorum requirements to a majority (more than one-half) of the members of the PSRC, and

(4) Revise the review and approval methodology for procedures to allow independent technically qualified individuals to conduct procedure reviews instead of the PSRC.

Specific TS changes include the following: TS Section 6.5.1 would be revised regarding description of PSRC membership, quorum requirements, qualifications and review responsibilities and would be renumbered to TS Section 6.5.2.; TS Section 6.5.1 would be added regarding the review methodology for procedures; TS Section 6.8 would be revised regarding methodology for procedures.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its submittal of February 28, 1989, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The change regarding the procedures review methodology will not result in a decrease in the effectiveness of the review methodology and will result in an equivalent or more effective level of review.

The other proposed changes are administrative in nature, do not affect plant operations, constitute more restrictive requirements, and provide greater assurance of effective performance. These changes are expected to result in improved administrative practices. Therefore, these proposed changes will not increase the probability or consequences of any accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

...[T]here is no physical alteration to any plant system, nor is there a change in the method by which any safety related system performs its function. The proposed changes are administrative in nature, are more restrictive and, therefore, do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in the margin of safety?

The proposed changes are administrative in nature or are more restrictive and, therefore, do not reduce any margin of safety.

The NRC staff has reviewed the proposed changes and the licensee's no significant hazards consideration determination and finds them acceptable. Therefore, the staff proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Dates of amendment request: March 20, 1989 (Reference LAR 89-02)

Description of amendment request: The proposed amendment would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to:

(1) Implement a nominal 40-hour work week for operating personnel and limit an individual to work no more than 28 hours in any 48-hour period;

(2) Change the requirement for plant staff qualification to reference ANSI/ANS 3.1-1978 and 10 CFR Part 55;

(3) Change the requirement for the plant staff retraining and replacement training program to reference 10 CFR Part 55;

(4) Add the Plant Manager, Diablo Canyon Power Plant, to the General Office Nuclear Plant Review and Audit Committee (GONPRAC) membership and to reflect the current title of the Manager, Station and Hydro Construction; and

(5) Require the submission of reports in accordance with 10 CFR 50.4.

Specific TS changes would include revisions to TS Sections 6.2.2, 6.3, 6.4, 6.5.2, 6.9.1, and 6.9.2.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3)

involve a significant reduction in a margin of safety.

The licensee, in its submittal of March 20, 1989, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Use of a 12-hour shift for plant staff personnel will not result in an increase in the probability or consequences of an accident because: studies of 12-hour shift operations have not indicated any deleterious effects; PG&E's 12-hour shift scheduling is similar to shift rotations now being used successfully at several other nuclear power plants; and PG&E's 12-hour shift scheduling is consistent with the draft revised NRC Policy Statement on control of working hours, indicating the NRC intent to move away from prescriptive requirements in the Technical Specifications governing work hours.

The other proposed changes will result in improved administrative practices, constitute more restrictive requirements, are consistent with NRC regulations, and do not affect plant operations.

Based on these considerations, these changes will not increase the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

...[T]here is no physical alteration to any plant system, nor is there a change in the method in which any safety related system performs its function. The proposed changes are administrative in nature and, therefore, do not create the possibility of a new or different kind of accident from any previously evaluated.

c. Does the change involve a significant reduction in the margin of safety?

The proposed changes are administrative in nature and, therefore, will not reduce any margin of safety.

The NRC staff has reviewed the proposed changes and the licensee's no significant hazards consideration determination and finds them acceptable. Therefore, the staff proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Dates of amendment request: March 22, 1989 (Reference LAR 89-03)

Description of amendment request: The proposed amendment would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to

(1) Change TS 4.3.1.1, Table 4.3-1, Item 23, Seismic Trip, to increase the surveillance test interval (STI) for the seismic trip system actuating device operational test from 6 to 18 months to eliminate the need to perform seismic trip system surveillance testing at power, and

(2) Change TS 3.3.1, Table 3.3-1, Item 23, Seismic Trip, to add a Table Notation allowing the seismic trip system to be removed from service for up to 72 hours for maintenance or component replacement should failures be detected while operating at power.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its submittal of March 29, 1989, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Operation of the seismic trip system is not required or assumed to mitigate the consequences of any accident in the FSAR Update safety analyses. The seismic trip system component history demonstrates that component failures would not have prevented a reactor trip had a seismic event of the prescribed magnitude occurred. Because the system design does not permit reliable testing at power, two challenges to the reactor protection system have occurred during testing. Such challenges cause an increase in core damage frequency. Increasing the STI to allow testing to be performed during shutdown periods will eliminate the risk of inadvertent reactor trips and establishing an out of service time will allow for maintenance or component replacement at power.

Therefore, the proposed changes to increase the STI of the trip actuating device operational test to 18 months and establishing an out of service time at 72 hours do not increase the probability or consequences of any accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

There is no physical alteration to any plant system, nor is there a change in the method by which any safety related system performs its function. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in the margin of safety?

The proposed changes would potentially reduce the number of inadvertent reactor trips due to on-line surveillance testing and, therefore, would result in an increase in plant safety. Since the seismic reactor trip is not assumed to function for any of the Chapter 15 FSAR Update accident analyses, there is no affect on the margin of safety as defined in those analyses. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the proposed changes and the licensee's no significant hazards consideration determination and finds them acceptable. Therefore, the staff proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Dates of amendment request: March 29, 1989 (Reference LAR 89-04)

Description of amendment request: The proposed amendment would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to require the licensee to maintain at least 23 feet of water above the top of irradiated fuel assemblies within the vessel during movement of rod cluster control assemblies. The present TS requires that at least 23 feet of water must be maintained above the top of the reactor vessel flange. The proposed amendment would revise TS 3/4.9.10, "Water Level-Reactor Vessel," and the associated Bases.

Specifically, TS 3.9.10 would be subdivided into TS 3.9.10.1 and TS 3.9.10.2 to address different operational situations. TS 3.9.10.1 would require at least 23 feet of water above the reactor pressure vessel flange for movement of fuel assemblies within containment. TS 3.9.10.2 would allow rod cluster control assembly (RCCA) movement within the reactor pressure vessel with at least 23 feet of water over the top of the irradiated fuel assemblies. Also, a statement would be added to the TS 3.9.10.1 action statement to specify that the provisions of TS 3.0.3 are not applicable. TS 3.9.10.2 would allow RCCA movement with 23 feet of water over the top of irradiated fuel assemblies. TS 4.9.10 would be subdivided into TS 4.9.10.1 and TS 4.9.10.2 to require surveillance of the refueling water level for movement of fuel assemblies and for movement of control rods, respectively.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its submittal of March 29, 1989, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The basis for requiring 23 feet of water above the reactor vessel flange is to ensure that sufficient water depth is available to remove 99 percent of the assumed 10 percent iodine gap activity if released by an irradiated fuel assembly. During uncoupling of the control rod drive shafts, the upper internals are still in place and the fuel assemblies will remain seated in the reactor pressure vessel. With the fuel assemblies seated in the pressure vessel, 23 feet of water above the top of the fuel will ensure sufficient water depth is available to remove 99 percent of the assumed 10 percent iodine gap activity released from any conceivable accident in accordance with NRC Safety Guide 25.

This change, which involves uncoupling the control rod drive shafts sooner in the refueling evolution and at a lower reactor vessel water level, does not alter the conditions or assumptions of the accident analysis, increase the probability or consequences of the accidents analyzed, or the bases of the current Technical Specification. Fuel handling operations during refueling are unchanged and the refueling water level requirement remains consistent with the accident analysis assumptions in the DCPP FSAR Update concerning the minimum required water level.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Requiring 23 feet of water above the irradiated fuel assemblies during movement of RCCAs is in accordance with the assumptions made in the DCPP FSAR Update and the Bases of the Technical Specifications (B 3/4.9.10 and B 3/4.9.11) that require 23 feet of water be available over any fuel damaged in a fuel handling accident. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in the margin of safety?

Requiring 23 feet of water above the irradiated fuel assemblies during movement is in accordance with the Bases of the Technical Specifications (B 3/4.9.10 and 3/4.9.11) that require 23 feet of water be available over any fuel damaged in a fuel handling accident. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the proposed changes and the licensee's no significant hazards consideration determination and finds them acceptable. Therefore, the staff proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: February 22, 1989

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) related to the Standby Liquid Control System (SLCS) to ensure compliance with paragraph (c)(4) of the Anticipated Transient Without Scram (ATWS) Rule, 10 CFR 50.62, and to simplify and improve the TS requirements for the backup shutdown system. The ATWS Rule requires that the SLCS for BWRs have an equivalent control capacity of 86 gpm of 13 weight percent sodium pentaborate solution. One of the proposed changes to the surveillance requirements (SR) on the SLCS would be inclusion of a formula that includes the concentration of sodium pentaborate and the two pump flowrate to comply with the ATWS Rule. The SRs would also be revised to specify that the available volume of sodium pentaborate solution must be at least 4537 gallons, instead of having the operators determine the minimum required volume from a figure, and to require that the available weight of sodium pentaborate must be at least 5389 pounds. The Limiting Condition for Operation (LCO) definition for operability would require that all three injection loops shall be tested in three operating cycles.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from

any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards considerations with the request for the license amendment. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is reproduced below:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The requested changes do not involve any physical changes to the SLCS or its operation. The proposed changes reflect SRs necessary to ensure compliance with ATWS Rule, relocation of certain SRs in order to simplify the Technical Specifications (TS), and a SR change to reflect actual system design. This latter change extends the SLCS loop testing requirement to three cycles to reflect the LGS three pump design. All testing criteria will continue to be met to ensure the same high degree of reliability for the SLCS. Therefore, the same or better reliability of the SLCS system will result.

The latest General Electric design data is incorporated into the proposed specifications to reflect more refined instrument accuracies. Design margins and requirements continue to be satisfied.

The proposed change to add minimum operability requirements in the LCO, provides specifics on what these requirements are since none are currently stated. This change is administrative, since the minimum operability requirements are the same as those in the TS bases and the design bases.

The proposed changes described above maintain system design criteria and surveillance requirements. In addition, no changes to the system or its operation result and therefore, these changes do not modify or add any initiating parameters that would significantly increase the probability or consequences of any accident previously evaluated.

FSAR Sections 9.3.5 and 15.8 were reviewed in making this determination.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve any design or physical changes to the SLCS and do not change system operation. The design bases of LGS will remain the same. Therefore, the current FSAR will remain complete and accurate in its discussion of the licensing basis events and in analyzing plant response and consequences. Further, as discussed above, the proposed changes maintain the design basis and testing criteria so that the same level of reliability and performance are maintained. Therefore, no equipment is adversely affected, nor could the proposed changes involve any potential initiating events which would create any new or different kind of accident. As such, the plant initial conditions utilized for the design basis accident analyses are still valid.

C. The proposed changes do not involve a significant reduction in a margin of safety.

As discussed above, the proposed changes do not change the design bases and continue to ensure a high degree of system reliability. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the proposed amendment involves a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: April 10, 1989

Description of amendment request: The proposed amendment would amend the Technical Specifications (TSs) on the Residual Heat Removal Service Water (RHRSW) and the Emergency Service Water (ESW) systems to reflect operation of Limerick, Unit 2. The RHRSW and ESW systems are common to both Limerick, Units 1 and 2. These systems were previously evaluated and approved for two unit operation in the NRC's Safety Evaluation Report (SER) NUREG-0991. The current TSs contain special provisions for one unit operation while the second unit is under construction. The purpose of amending the TSs is to reflect the original design for two unit operation of the Limerick Generating Station.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards considerations with the request for the license amendment, addressing the proposed revisions to the TSs for the RHRSW and ESW systems separately. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is reproduced below:

The proposed TS changes [for the RHRSW] system do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated

Since the proposed Technical Specification[s] changes reflect no functional change to the Unit 1 and Common RHRSW system, the system will operate exactly as before. The system's capability to perform its safety-related functions will be improved due to the additional reliability present from the Unit 2 operable diesel generators. These Technical Specification[s] changes are necessary to be consistent with the final two-unit design configuration of the RHRSW system. All accidents previously analyzed that require operation of this system were evaluated in the [Final Safety Analysis Report] FSAR Chapter 15 with the system in its two-unit configuration.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated

These proposed Technical Specification[s] changes reflect the final two-unit configuration of the RHRSW system upon which the FSAR Chapter 15 analyses are based.

The proposed changes to the Limiting Condition for Operation Action statements will result in operational parameters for the RHRSW system which have been previously evaluated in the original NRC SER for the two-unit operation of Limerick Generating Station. Therefore, these changes do not create a new or different kind of accident that has not been considered in the previously approved two-unit operating system configuration as described in the FSAR.

3. Involve a significant reduction in a margin of safety

The proposed Technical Specification[s] changes provide for two-unit operation and eliminate unique requirements which were in place due to single-unit operation. These changes will result in this Technical Specification[s] allowable out-of-service times being consistent with NUREG-0123 "Standard Technical Specification". The capacity of the RHRSW system and its ability to perform its safety-related function will remain unchanged. Therefore, the applicable margin of safety will not be changed. The RHRSW system operation during two-unit operation was previously evaluated and found acceptable by the NRC in SER Section 9.2.2. Therefore, the proposed changes do not reduce this approved margin of safety.

The proposed changes to the Technical Specifications [to permit tie-in of the ESW system to Unit 2] do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated

The proposed changes to the Technical Specifications do not reflect a functional change to the Unit 1 and Common ESW System operation. The Unit 2 portions of the ESW system were designed, installed, and will be tested to the same requirements as the Unit 1 and Common portions of the system. The proposed changes to the Technical Specifications are required to reflect the final two-unit configuration of the ESW System as originally designed and described in FSAR Section 9.2.2. The revised Action statements will make no change in the system's capability to operate as designed.

The present Technical Specification restriction exists to provide adequate separation from Unit 2 equipment outside the [Protected Area Boundary] PAB. Since Unit 2 equipment will be placed within the PAB, the restriction is no longer needed. Therefore, the changes do not increase the probability or consequences of an accident previously evaluated. The proposed changes to the Technical Specifications also assure the availability of emergency power to the remaining ESW pumps by reminding operators of the plant interdependency on emergency diesel generators.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated

The proposed changes to the Technical Specifications provide for two-unit operation as described and evaluated in the SER and the FSAR. The changes provide relief from the restriction on inter-connection with Unit 2 following its inclusion within the PAB. In the final two-unit system configuration, there will be no functional change in the system operation and its ability to perform its intended safety function as described in the FSAR. Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety

The proposed changes to the Technical Specifications are consistent with two-unit operation of Limerick Generating Station. The two-unit operation of Limerick Generating Station has been previously evaluated in the FSAR Section 9.2.2 and previously evaluated and approved in SER Section 9.2.1. There is no change in the system's capability and its ability to perform its safety-related function, and consequently in the applicable margin of safety, as a result of these proposed changes to the Technical Specifications. Therefore, the proposed changes will not reduce the margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the proposed amendment involves a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: April 10, 1989

Description of amendment request: The proposed amendment would make six changes to the Technical Specifications (TSs) as follows:

1. To delete the requirement that the Average Power Range Monitors (APRM) be operable when the plant is in the cold shutdown condition.

2. Revise the reactor coolant leakage requirements to be similar to the leakage rates in generic letter 88-01.

3. Modify the table on minimum shift crew composition to permit the SRO for Unit 1 to serve the same position for Unit 2 when Unit 2 is in cold shutdown, being refueled or is defueled. This corrects an error in the TSs since the table now permits the Unit 1 SRO to fill the same position in the common control room for Units 1 and 2 when both units are in startup, hot shutdown or power operation.

4. Clarify the location of the temperature sensors used to delete leakage from the main steam lines.

5. Permit snubber surveillance to be performed when a unit is operating.

6. Correct an error in the test value listed for the hydrogen recombiner phase resistance to ground for the heater elements.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of the no significant hazards consideration in its request for a license amendment for each of the proposed changes discussed previously. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is reproduced below.

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes which correct technical inconsistencies will correct errors currently existing in the TS or achieve consistency throughout the TS. The proposed change to allow the surveillance testing of snubbers during operation would eliminate the restriction that the 18 month inspections be performed while the unit is shutdown.

None of these changes will affect any plant hardware, plant design, safety limit settings, or plant system operation, and therefore do not modify or add any initiating parameters that would significantly increase the probability or consequences of any previously analyzed accident. Therefore, the proposed changes will not result in a significant increase in the probability or consequences of any accident previously evaluated.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed in Item (1) above, the proposed TS changes correct errors, provide consistency throughout the TS, or are the result of the tie-in and operation of Unit 2. The proposed changes do not affect any equipment nor do they involve any potential initiating events that would create any new or different kind of accident. As such, the plant initial conditions utilized for the design basis accident analyses remain valid. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed changes do not involve a significant reduction in a margin of safety.

As discussed in (1) above, the proposed changes which correct technical inconsistencies, do not affect any equipment involved in potential initiating events or safety limit settings and therefore, do not involve a significant reduction in a margin of safety.

The change to remove the requirement to perform snubber surveillances during shutdown does not involve a significant reduction in a margin of safety, since snubber operability will continue to be demonstrated in accordance with the existing surveillance test intervals which have not been changed. The bases establish snubber-functional reliability by specifying testing methods which prescribe sample size and sample acceptance but not the operation status of the associated reactor. All snubbers are demonstrated to be operable under existing criteria and the guidelines of the current Technical Specifications. Removing the requirement to perform snubber testing during shutdown does not change the operability or testing requirements for snubbers. Therefore, the proposed change to remove the requirement to perform snubber surveillances during shutdown does not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the proposed amendment involves no significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: April 10, 1989

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) to reflect the modifications necessary to change from the current single-unit power supply configuration to a two-unit power supply configuration when Limerick, Unit 2 is issued an operating license. These modifications merely implement the final configuration of the original two-unit design that was reviewed and approved by the NRC in the Safety Evaluation Report (SER), NUREG-0991, dated August, 1983. The final design configuration for Unit 2 power supplies feeding common system components is reflected in the proposed TS to ensure the interdependence between Unit 1 and Unit 2 is properly considered by Unit 1 plant operators. When Unit 2 is issued an operating license, some of the Unit 2 power distribution systems are needed to support common equipment for the operation of Unit 1. This philosophy is currently reflected in the Unit 2 TS which are in the final stages of development. The proposed changes, therefore, would provide a consistent application of this philosophy to both Unit 1 and Unit 2 TS.

The proposed TS changes reflect transfers of several Class 1E 480 volt AC power supplies and several 125 volt DC power supplies for the motor operated valves associated with Unit 2 for the common Residual Heat Removal Service Water (RHRSW) system, the Emergency Service Water (ESW) system and the Spray Pond system. The proposed TS changes reflect segregating (approximately in half) the redundant loads for the ESW and RHRSW systems between the Unit 1 and Unit 2 power supplies.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of the no significant hazards consideration with the request for a license amendment. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is reproduced below.

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes reflect transfers of several Class 1E 480V AC power supplies and several 125V DC power supplies for the motor operated valves associated with Unit 2 for the common RHRSW, ESW, and Spray Pond systems. The proposed TS changes reflect segregating (approximately in half) the redundant loads for the ESW and RHRSW systems between the Unit 1 and Unit 2 power supplies and has no adverse effect on the ability of Unit 1 to achieve safe shutdown. Once licensed, the Unit 2 power sources will operate with the same high degree of dependability as the Unit 1 power sources. Hence, supplying common equipment from Unit 2 sources has no effect on the operability of this equipment or on Unit 1 safety. The Final Safety Analysis Report (FSAR) Sections 8.3.1.1.2, 8.3.2, 9.2.2, 9.2.3, and Figures 8.3-2 and 8.3-3 were reviewed in making this determination. The proposed TS changes are consistent with all the design requirements applicable to the original design. These requirements include, but are not limited to, seismic and environmental qualifications, quality assurance, separation, and testability.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The transfer of power supplies is in accordance with the original design intent of segregating (approximately in half) the redundant loads for the ESW and RHRSW systems between the Unit 1 and Unit 2 power supplies, and does not reduce the equipment protection provided by the existing design.

The ability of the RHRSW and ESW systems to support safe shutdown of Unit 1 is not adversely affected.

The function or performance of any safety-related or nonsafety-related equipment or system is not affected. The Unit 2 power supply system was designed to carry the additional loading being transferred to it. Hence, there is no degradation in the dependability or operability of the power sources supplying these common loads. FSAR Sections 8.3 and 9.3 were reviewed in making this determination.

The proposed TS changes are consistent with all the design requirements applicable to the original design.

These requirements include, but are not limited to, seismic and environmental qualifications, quality assurance, separation, and testability. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed TS changes are necessary to reflect the original two-unit power supply configurations which are being implemented due to the completion and licensing of Unit 2. The power supplies will meet all their original design requirements, and the capacity for performing their safety-related functions will not be reduced. Since the Unit 2 power sources will operate with the same high degree of reliability as Unit 1 power sources, supplying the identified common loads from Unit 2 power sources has no effect on their ability to perform their safety related function for Unit 1. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the proposed amendment involves no significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: March 22, 1989

Description of amendment request: The proposed amendment would clarify the surveillance requirements for maintaining the discharge piping of the Emergency Core Cooling Systems (ECCS) and of the Reactor Core Isolation Cooling (RCIC) System filled

with water. Minor editorial changes would also be incorporated.

Specifically, the proposed changes affect page 123 as follows: (1) Specification 3.5.G.a would be changed by adding "of" between "purposes" and "satisfying" for clarity; (2) Specification 4.5.G.2 would be changed to read, "Following any period when the LPCI subsystems or core spray subsystems have not been maintained in a filled condition, the discharge piping of the affected subsystem shall be vented from the high point of the system and water flow observed," to more closely control the filled status; and (3) Specification 4.5.G.3 would be changed by deleting "Core Spray" since lineup of a Core Spray System to the condensate storage tank is not considered to be an operable condition for the system.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

The basis for concluding that a significant hazards consideration does not exist for each of the proposed changes to the Technical Specifications is as follows:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change to Specification 3.5.G.a is purely administrative. The clarification of Specification 4.5.G.2 retains the existing functional requirements to maintain the discharge piping of the ECCS and RCIC Systems filled with water. The revision to Specification 4.5.G.3 eliminates a reference to an alignment of the Core Spray System which would render it inoperable. The proposed changes do not involve modification of any existing equipment, systems, or components; nor do they change any administrative controls or limitations imposed on existing plant equipment. The changes do not alter the conclusions of the plant's accident analyses or radiological release analyses as documented in the FSAR or the NRC staff's SER.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. They merely correct editorial and grammatical errors, clarify the intent of the surveillance requirements, and improve the consistency of Technical Specifications. They do not involve modification to any of the plant's systems, equipment, or components; nor do they place the plant in an unanalyzed configuration. These changes are of an administrative nature.

3. The change to Specification 3.5.G.a is purely administrative, and as such, does not involve a significant reduction in the margin of safety. The other proposed changes affect the Core Spray and LPCI Systems. These systems are the primary source of emergency core cooling after the reactor is depressurized and for flooding of the core after a postulated accident. Revised Specification 4.5.G.2 still requires that the discharge piping of the ECCS and RCIC Systems be maintained water solid; thus, the system response times for providing emergency cooling water are not impacted and the potential for a water hammer transient is still precluded. Revised Specification 4.5.G.3 eliminates a reference to an inoperable alignment of the Core Spray System; thus, providing additional assurance that the Core Spray System's suction supply is from the torus as assumed in the plant's accident analyses. The proposed changes do not involve modification to any of the plant's systems, equipment, or components.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: February 6, 1989

Description of amendment request: Increase the Surveillance Test Intervals (STIs) and allowable out-of-service times (AOTs) for the Reactor Protection System.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. In accordance with 10 CFR 50.92 the licensee has reviewed the proposed changes and has concluded as follows that they do not involve a significant hazards consideration:

Significant Hazards Consideration Evaluation

The proposed changes to the HCGS Technical Specifications:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The generic analysis contained in Licensing Topical Report NEDC-30851P assessed the impact of changing RPS STIs and AOTs on the RPS failure frequency, the scram frequency and equipment cycling. Specifically, Section 5.7.4 of NEDC-30851P states that:

Fewer challenges to the safeguards system, due to less frequent testing of the RPS, conservatively results in a decrease of approximately one percent in core damage frequency. This decrease is based upon the following:

- Based on the plant specific experience presented in Appendix J, the estimated reduction in scram frequency (0.3 scrams/yr) represents a 1 to 2 percent decrease in core damage frequency based on the BWR plant specific Probabilistic Risk Assessments (PRAs) listed in Table 5-8.
- The increase in core damage frequency due to less frequent testing is less than one percent. This increase is even lower (less than 0.01 percent) when the changes resulting from the implementation of the Anticipated Transients Without Scram (ATWS) rule are considered.
- The effect of reducing unnecessary cycles on RPS equipment, although not easily quantifiable also results in a decrease in core damage frequency.
- The overall impact on core damage frequency of the changes in allowable out-of-service time is negligible.

From this generic analysis, the BWR owners Group concluded that the proposed changes do not significantly increase the probability of an accident previously evaluated, namely the probability of a scram due to RPS unavailability, and the consequences of an accident are actually decreased in that the core damage frequency is decreased by about one percent.

Furthermore, the proprietary plant-specific analysis [contained in Attachment 3] demonstrates that although HCGS differs from the generic model analyzed in Licensing Topical Report NEDC-30851P, the net affect of the plant specific differences do not alter the generic conclusions.

2. Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The increase in the RPS AOTs and STIs does not alter the function of the Reactor

Protection System nor involve any type of plant modification. Additionally, no new modes of plant operation are involved with these changes.

3. Do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed and approved the generic study contained in Licensing Topical Report NEDC-30851P and has concurred with the BWR Owners Group that the proposed changes do not significantly affect the reliability of the RPS. The overall availability of the RPS is increased due to reduced component wearout and actuation. Hence it can be concluded that the proposed changes do not adversely affect plant safety margins. In fact, not all proposed changes involve an increase in the AOT or STI, for example, the Manual Scram functional test of the RPS is being decreased from monthly to weekly. Therefore, it can be concluded that the proposed changes do not significantly reduce a margin of safety.

The staff reviewed the licensee's determination that the proposed license amendment involves no significant hazards consideration and agrees with the licensee's analysis. Accordingly, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: December 27, 1988

Description of amendment request: The proposed amendments would delete the existing Non-radiological Environmental Technical Specifications from Appendix B for both Salem Units 1 and 2 and replace them with an Environmental Protection Plan. Adoption of the Environmental Protection Plan will provide an up-to-date definition of PSE&G's environmental review and protection responsibilities and standardize environmental requirements for the two Salem units.

Basis for proposed no significant hazards consideration determination: The majority of the sections of the radiological portion of the Environmental Technical Specifications (ETS) have, by previous amendments, either been deleted or moved into Appendix A. The only remaining Radiological ETS in Appendix B is Section 3.1.1.6, Meteorological Monitoring. Section 3.3.3.4 of Appendix A to the Unit 1 license is a duplicate of Section 3.1.1.6 of Appendix B. The fact that only Unit 1 Technical Specifications has the Meteorological Monitoring requirements is not of any safety significance. There is only one meteorological monitoring tower for both the Salem Units. The Limiting Condition for Operation (LCO) requires the instruments to be operable at all times. However, if the LCO is not met, the Action Statements do not prohibit mode changes nor require a plant shutdown.

Implementation of the EPP will terminate the terrestrial monitoring requirements. A summary assessment report titled, "An Environmental Monitoring Program 1974-1984 on Diamondback Terrapin Nesting and Osprey Nesting/Bald Eagle Occurrence in the Vicinity of Artificial Island," concluded that Salem has had no adverse environmental impact on either the diamondback terrapin or the osprey/bald eagle. The monitoring program has continued to be conducted and the data collected in subsequent years support the conclusion. This program was required to be continued for five years after Unit 2 became operational. Unit 2 became operational in 1981.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has analyzed the proposed amendment to determine if a significant hazards consideration exists:

The following evaluation is provided for the significant hazards consideration standards.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. This change merely replaces the present Environmental Technical Specifications with the Environmental Protection Plan and is administrative in nature.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not make any physical changes to the plant or changes in parameters governing normal plant operation. Therefore, the changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

As discussed above, the proposed changes are administrative and do not degrade the existing margin of safety. Therefore, changes do not involve a significant reduction in a margin of safety.

The staff has reviewed the licensees submittal and significant hazards analysis and concurs with the licensee's determination that the proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: November 24, 1986, September 21, 1987, and December 14, 1987

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Rancho Seco Nuclear Generating Station to reflect changes to that regulation. The proposed amendment would modify paragraph 2.C.(3) of Facility Operating License No. DPR-54 to require compliance with the revised plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on November 24, 1986, September 21, 1987, and December 14,

1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P. O. Box 15830, Sacramento, California 95813

NRC Project Director: George W. Knighton

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: June 21, 1988, as revised February 28, 1989

Description of amendment request: The proposed amendment would change the Technical Specifications to address operation of the 12-inch reactor building pressure equalization valves when the plant is in the "Power Operation" mode (greater than 2% of rated power as defined by Technical Specification 1.2.5). Also, the Technical Specifications would be changed to appropriately define the purge system operation requirements and add reference to reactor building equalization isolation in Technical Specification Table 3.5.1-1, "Process Instrumentation," Item 9.

The proposed amendment would remove the "at cold shutdown or refueling" operator action statement in Table 3.5.1-1, "Process Instrumentation," Item 9, column (c); modify the action statement to ensure the equalization valves and the purge valves are properly addressed in relation to high-range reactor building area radiation monitor operability and provide consistency and proper cross-referencing within the Technical Specifications; and change the Minimum Channels Operable requirement in column (B) of Table 3.5.1-1 for the high-range reactor building area radiation monitors from 1 to 2.

The proposed amendment would also add reference to reactor building pressure equalization valves to Technical Specification 3.6.8, modify Technical Specification Section 3.8, "Fuel Loading and Refueling," to provide appropriate refueling restriction on the operability of the reactor building purge system and the reactor building stack radiation monitor, and add a new refueling Technical Specification.

Additionally, the proposed amendment would shorten the Technical Specification required surveillance interval for the reactor building equalization valves from 6 months to 3 months.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated: (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The NRC staff finds that the proposed amendment does not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the licensee states that containment integrity would be maintained at all times when it is required by the Technical Specifications. Moreover, the proposed changes are within the bounds of the accident analysis of reactor building pressure equalization during power operation contained in the Safety Analysis Report; (2) The proposed amendment does not create the possibility of a new or different kind of accident previously evaluated because, currently, the purge valves are required to be closed during cold shutdown when the high-range reactor building area radiation monitors are inoperable and containment integrity is not required, thus allowing for the possibility of an unmonitored, unfiltered release through the equipment or personnel hatches. The licensee stated that deleting this requirement will remove the possibility of an unmonitored, unfiltered release of radiation under the above described conditions. Additionally, the licensee stated that there are no hardware modifications and providing limitations on the reactor building pressure equalization operations will assure that the Safety Analysis Report accident analysis that considers equalization during power operation will remain bounding for pressure equalization operations; (3) The proposed amendment does not involve a significant reduction in a margin of safety because the licensee plans to maintain containment integrity at all appropriate times, such as during power operation, when the reactor is above cold shutdown, and during refueling. The licensee states that the changes proposed would not compromise any of the bases for the affected Technical Specifications.

Therefore, based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Project Director: George W. Knighton

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: October 25, 1988

Description of amendment request: The proposed amendment modifies Technical Specification 3.14 to remove technical specification requirements for fire suppression systems in fire zones 75 through 80 located in the Nuclear Service Electrical Building (NSEB). Fire zones 75 through 80 do not require automatic suppression systems. This proposed change provides an operational enhancement by removing the CO_2 fire suppression systems that are currently required to be operable by

Technical Specification 3.14.4 in zones 75 through 80.

Basis for proposed no significant hazards consideration determination: The Commission has provide standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed change will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the fire hazards analysis demonstrates that the construction features, low combustible loadings and equipment layout within the NSEB serve to contain the postulated fire within the given fire area and limit potential fire damage to one train of systems important to safety without reliance on automatic fire suppression; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the NSEB Train A and Train B equipment credited for post-fire safe shutdown is protected in accordance with the requirements of 10 CFR Part 50, Appendix R; (3) Involve a significant reduction in the margin of safety because the existing fire detection system will remain operational. Adequate fire suppression capability is available to confine and extinguish fires occurring where safety-related equipment or redundant systems required for safe shutdown are located.

Accordingly, the licensee has determined that the proposed changes to the Technical Specifications involve no significant hazards consideration.

The NRC staff has reviewed the proposed amendment and the licensee's determination and find them acceptable. Therefore, the staff proposes to determine that the amendment request does not involve a significant hazards consideration.

Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P. O. Box 15830, Sacramento, California 95813

NRC Project Director: George W. Knighton

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: August 24, 1988

Description of amendment request: The August 24, 1988 submittal proposes to revise Technical Specifications (TS) Sections 3/4.8.2, "D. C. Sources." This revision proposed to modify the value for the average electrolyte temperature referenced in TS 4.8.2.1.b.3 and the value for the battery capacity as referenced in TS 4.8.2.1.e. The submittal proposed modifying the average electrolyte temperature in TS 4.8.2.1.b.3 from 60° F to 65° F and battery capacity in TS 4.8.2.1.e from 80% to 90%.

The licensee identified during an emergency power review, that the calculation for sizing ESF Batteries 1A & 1B used derating factors for aging and temperature more conservative than those identified in the TS. The calculations used an aging derating factor of 90% and a temperature derating factor of 94% (65° F) as opposed to 80% aging derating factor and 90% (60° F) temperature derating factor, as presently stated in the TS. In respect to the "Aging Factor," it has been identified that 90% for the capacity of the battery at the end of its useful life was used in the original calculation, dated December 26, 1980, based on a letter from the manufacturer. In respect to the "Temperature Derating Factor," a factor of 94% for battery capacity has been used to account for the effect of minimum temperature. As identified in the Final Safety Analysis Report (FSAR) Table 3.11-3, the minimum design temperature for the battery room is 65° F. During normal plant operation, the battery room temperature is controlled by a thermostat, which is set to maintain the room temperature at 75° F. If the control system malfunctions, a bistable controller connected to a temperature element in the room will close the supply damper if the temperature falls below 70° F (the dampers will reopen if the temperature increases).

The standard temperature for stating cell capacity is 77° F. Temperature correction factors are used to determine the additional battery capacity required at lower temperatures to achieve the same battery performance, as if it were 77° F. Electrolyte temperature is assured to be at a temperature equal to or greater than ambient because of the heating effects of the float charge. Thus, the minimum room design temperature of 65° F has been used in conjunction with vendor supplied curves, for the specific battery in use, to establish the derating factor of 94%.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined with respect to the August 24, 1988 submittal that:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the revised derating factors will provide added assurance that the batteries will maintain capacity to perform their design function.

2. The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed changes do not change any hardware. They provide more conservative derating factors to use in establishing the condition of the batteries. As such, the revision does not create a new or different kind of accident.

3. The proposed amendment does not involve a significant reduction in a margin of safety. Since the revised derating factors are more conservative, the margin in capacity of the batteries is increased, not decreased.

The staff has reviewed these determinations and is in agreement with them.

Accordingly, the Commission proposed to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: January 20, 1989, as supplemented March 20, 1989

Description of amendment request: The proposed amendment would implement the recommendations of Generic Letter 85-09, "Technical Specifications for Generic Letter 83-28, Item 4.3," regarding reactor trip breaker testing. Specifically, the licensee proposed to modify Technical Specifications (TS) Table 3.3-1, "Reactor Trip System Instrumentation," to add Action 11 to the reactor trip breakers for the case when one of the diverse trip features is inoperable. Table 4.3-1, "Reactor Trip System Instrumentation Surveillance Requirements," of the TS was proposed to be revised to modify Table Notation 11 and to add Table Notations 12-14. This Table was also proposed to be modified to have Table Notations 11 and 12 apply to the Trip Actuating Device Operational Test for the Manual Reactor Trip functional unit and the Reactor Trip Breaker functional unit, respectively. In addition, the Reactor Trip Bypass Breaker was added as a functional unit to Table 4.3-1 with Table Notations 13 and 14 applying to this unit.

On May 25, 1985, the Commission issued Generic Letter 85-09, "Technical Specifications for Generic Letter 83-28, Item 4.3." Generic Letter 83-28, Item 4.3 established the requirement for automatic actuation of the shunt trip attachment for Westinghouse plants. Later the staff concluded that Technical Specification changes should be proposed to explicitly require independent testing of the undervoltage and shunt trip attachments during power operation and independent testing of the control room manual switch contacts during each refueling outage. The proposed changes to Tables 3.3-1 and 4.3-1 add additional limitations and restrictions required to implement the staff's objectives in Generic Letter 85-09.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that a no significant hazards evaluation is justified and that should this request be implemented it will not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated because no plant equipment has been changed. This proposed change adds additional testing requirements to the reactor trip breakers.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the additional testing is necessary to ensure the continued reliable reactor trip breaker operation.

3. Involve a significant reduction in a margin of safety because only additional testing of the reactor trip is proposed.

The NRC staff has reviewed the licensee's no significant hazards considerations determination and finds it acceptable. Accordingly, the Commission proposes to determine that the change does not involve any significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: April 5, 1989

Description of amendment request: The proposed amendment revises the action statement of Technical Specification 3.7.1.6, "Feedwater Isolation Valves," to allow one or more feedwater isolation valves to be inoperable in Modes 2 and 3 provided that the affected isolation valves are maintained closed. Currently, the licensee can have only one isolation valve inoperable in Modes 2 and 3.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The operability of open feedwater isolation valves in Modes 2 or 3 is necessary to ensure the feedwater isolation function in the event of a secondary side high-energy line break. However, a closed feedwater isolation valve in Modes 2 or 3 is in its required position for plant safety. An inoperable status for a feedwater isolation valve is only a concern if the affected valve is open and cannot be closed. For this case, a planned shutdown must be executed. This requirement is reflected in the current Technical Specification and remains valid.

The number of closed but inoperable feedwater isolation valves would not have an impact on plant safety. Thus, the Technical Specification requirement regarding an inoperable feedwater isolation valve in Mode 2 or 3 being maintained in the closed position supports the licensing-basis safety analysis assumptions of closed feedwater isolation valves upon receipt of a signal to do so.

The licensee has determined that a no significant hazards consideration determination is justified and that should this request be implemented it will not:

(1) Involve a significant increase in the probability or consequences of any accident previously evaluated because the feedwater isolation valves will be maintained in a safe although inoperable status. The feedwater isolation valves are required to close to mitigate the consequences of a postulated main steam line break, feedwater line break, or steam generator blowdown line break. This modified Technical Specification requires that any feedwater isolation valves [sic] must be maintained closed if inoperable.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because this proposed revised Technical Specification continues to maintain the feedwater isolation valves in a safe position.

(3) Involve a significant reduction in a margin of safety because the feedwater isolation valves will be maintained in their safe position. The margin of safety is not reduced as long as the inoperable feedwater isolation valves remain closed.

The NRC staff has reviewed the licensee's no significant hazards considerations determination and finds it acceptable. Accordingly, the Commission proposes to determine that the change does not involve any significant hazards considerations.

Local Public Document Room location: Fairfield County Library,

Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: April 11, 1989

Description of amendment request: The proposed amendment would re-issue the Technical Specifications in their entirety to eliminate all differences between the NRC and licensee's copy of this document which have evolved over the years. The amendment is editorial and administrative in content and does not involve substantive changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis about the issue of no significant hazards consideration which is quoted below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

As stated above, the proposed revisions are administrative in nature and do not affect accident probabilities or consequences. Therefore, it is concluded that operation of the facility in accordance with this proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

As stated above, the proposed revisions are administrative in nature and do not affect previously analyzed or create any new accidents. Therefore, it is concluded that operation of the facility in accordance with this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety

Response: No

As stated above, the proposed revisions are administrative in nature and do not impact any margin of safety. Therefore, it is concluded that operation of the facility in accordance with this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station Units 2 and 3, San Diego County, California

Date of amendment request: March 28, 1989 (Reference PCN-283)

Description of amendment request: Technical specification 3/4.7.8.1 requires operability of the fire suppression water system at all times. This ensures that adequate fire suppression capability is available to confine and extinguish fires occurring in any plant area where safety related equipment is located. The fire suppression system consists of the water system, spray and/or sprinklers, and fire hose stations. The collective capability of the fire suppression system is adequate to minimize potential damage to safety related equipment and is a major element in the site fire protection program.

Surveillance Requirement 4.7.8.1.1.e.2 specifies an 18 month surveillance frequency to demonstrate operability of the fire suppression water system by performing a system functional test. This includes cycling each valve in the flow path that is not testable during plant operation through at least one complete cycle of full travel. The proposed change would revise the frequency of this surveillance to a refueling interval for those plant areas that are inaccessible during non-refueling plant operations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed change from "18 months" to "refueling interval" is required to prevent plant shutdowns that would otherwise be required to provide for Technical Specification surveillances in areas which are normally inaccessible during power operation (i.e., inside containment and other high radiation areas). Results of the surveillances previously performed to meet this Technical Specification have indicated that no unsatisfactory conditions were identified. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No

The proposed change only affects the frequency of performing the 18 month system functional test of the fire suppression water system. The proposed change does not modify operation of the facility. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No

The proposed change only revises the frequency of the 18 month system functional test of the fire suppression water system. Facility operation will be unchanged by this change to this surveillance. Results from the surveillance to date have demonstrated that no unsatisfactory conditions have been discovered. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Virginia Electric and Power Company, Docket No. 50-339, North Anna Power Station, Unit No. 2, Louisa County, Virginia

Date of amendment request: February 23, 1989

Description of amendment request: The proposed amendment would modify the North Anna Unit 2 (NA-2) Technical Specifications (TS) by deleting components from Table 3.8-1 which had previously been removed, and by correcting a typographical error. TS Section 3.8.25, Table 3.8-1, specifies the trip point for the containment penetration conductor overcurrent

protective devices. Included in this list are the steam generator support heaters, which were removed from the NA-2 TS by Amendment No. 40, dated July 7, 1984. The proposed change will remove the support heaters from the list.

In addition, the "System Powered (Mark No.)" for "Device Number and Location (Breaker No.)," 2C1-1A2L, currently shown in Table 3.8-1 as "2-DA-P-01B," should be "2-DG-P-01B." This typographical error would also be corrected.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of criteria for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7750). One of the examples of actions involving no significant hazards considerations is example (i), "a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The first change to Table 3.8-1 is administrative in nature as it involves deleting the steam generator support heaters which were previously removed by Amendment No. 40. The second change is also administrative as it involves the correction of a typographical error. Therefore, the proposed changes are in accordance with the above example.

Based on the above discussion, the staff proposes to determine that the proposed changes involve no significant hazards considerations.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: March 28, 1989

Description of amendment request: The proposed amendments would change Table 3.3-6 of the North Anna Units 1 and 2 (NA-1&2) Technical Specifications (TS) which provides the operability requirements for radiation monitoring instrumentation. Associated with each radiation monitor is an action statement should the radiation monitor be determined inoperable. Currently, Action Statement 35 for the containment high range area radiation monitors and the noble gas high range effluent monitors requires that when the number of channels operable is less than the minimum channels operable requirement, either restore the inoperable channel(s) to operable status within 72 hours or initiate the preplanned alternative method for monitoring the appropriate paramenter(s). The preplanned alternate monitoring method for containment high range area radiation is to utilize one of the two backup monitors located inside each containment. The TS require two radiation monitoring instruments to remain operable during Modes 1, 2, 3 and 4. The preplanned alternate monitoring method for noble gas high range effluents is to utilize a specified alternate noble gas high range effluent monitoring instrument or to sample the effluents every 12 hours for noble gas. Action Statement 35 also requires the submittal of a Special Report be made within the next 14 days outlining the action taken, the cause of inoperability, and the plans and schedule for restoring the monitor to operable status.

In an effort to enhance operating flexibility and allow the proper calibration and troubleshooting on an inoperable radiation monitor, the licensee proposed a change to Action Statement 35. The proposed change would initiate the preplanned alternate method for monitoring the appropriate parameter(s) of the radiation monitor within 72 hours and either restore the inoperable radiation monitor to operable status within 7 days or submit a Special Report within 14 days.

The proposed change is in conformance with the NRC guidance provided in Generic Letter No. 83-37, dated November 1, 1983.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change in accordance with the criteria above and has made the following determination:

The proposed change does not involve a significant hazards consideration as defined in 10 CFR 50.92 because the change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The preplanned alternate method of radiation monitoring will continue to be implemented when a radiation monitor is declared inoperable. This will ensure that abnormal radiation levels can be detected.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The preplanned alternated method of radiation monitoring will continue to be implemented when a radiation monitor is declared inoperable. This will ensure that abnormal radiation levels can be detected.

(3) Involve a significant reduction in the margin of safety. The preplanned alternate method of radiation monitoring will continue to be implemented when a radiation monitor is declared inoperable. This will ensure that abnormal radiation levels can be detected. In addition, the proposed change is consistent with the guidance provided in NRC Generic Letter No. 83-37, dated November 1, 1983.

Therefore, it has been concluded that the proposed change does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination analysis and agrees with the above conclusion. Therefore, the staff proposes to determine that the proposed change does not involve significant hazards considerations.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: March 8, 1989.

Description of amendment request: Technical Specification Table 4.3.2.1-1, Isolation Actuation Instrumentation Surveillance Requirements, would be modified to reduce requirements for testing temperature switches in the leak detection system. Presently the technical specification requires channel checks and channel functional tests on a 12-hour and monthly frequency respectively. The licensee proposes to amend the Technical Specifications to (1) eliminate the 12-hour channel check requirement and (2) change the channel functional test frequency from monthly to semi-annually.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The reduction in surveillance is based on enhanced operating capabilities of the leak detection system due to replacement of the present equipment (based on Riley Model 86 temperature switches) with General Electric Nuclear Measurement Analysis and Control (NUMAC) micro-computer based instrumentation. During the upcoming spring refueling outage the licensee intends to replace the Riley temperature switches in the leak detection system with General Electric Nuclear Measurement and Control instrumentation. The NUMAC equipment will receive signals from the presently installed thermocouples and provide alarm and trip signals to existing circuitry. All functions of the leak detection system will remain, the replacement is being done to enhance overall system reliability.

The licensee contends that the enhanced capabilities of the NUMAC instrumentation justify the reduction in surveillance and thus the proposed amendment to the Technical Specifications. The NUMAC equipment has significantly better total channel drift characteristics and the design incorporates diagnostic and self-test features. These design features provide a more comprehensive assessment of system operability every 30 minutes than that presently provided by the Riley instrument channel check on a 12-hour basis.

The Supply System has evaluated this amendment request per 10 CFR 50.59 and 50.92 and determined that it does not represent an unreviewed safety question or a significant hazard because it does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the NUMAC design providing better channel drift characteristics and incorporating diagnostic and self-test features should ensure a level of operability and functionality of the leak detection system comparable to that achieved with the present equipment and testing schedule. Hence, the probability or consequences of previously evaluated accidents are not increased by this change.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the function of the leak detection system would not change. The licensee believes that a new or different kind of accident due to functional testing on a semi-annual versus monthly frequency or due to substitution of the self-test for the manual check is not credible.

(3) Involve a significant reduction in a margin of safety because the diagnostic and self-test functions in lieu of a manual channel check, and semi-annual functional testing would ensure the NUMAC equipment functions as intended. Due to the diagnostic, self-test, and channel drift features, system operability would be assessed more frequently and accurately, failure would be identified more readily, operator efficiency would be increased and presently recognized margins would be conservatively preserved. Hence, the licensee believes the margin of safety would be increased through the use of the NUMAC equipment.

Based on the above considerations the Commission proposes to determine that the requested changes to the WNP-2 Technical Specifications involve no significant hazards consideration.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorneys for licensees: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005-3502 and G.E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352.

NRC Project Director: George W. Knighton

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: March 31, 1989

Description of amendment request: Technical Specification 3/4.2.6 Power/Flow Instability, and the associated Figure 3.2.6-1, Operating Region Limits of Specification 3.2.6, would be revised to change the limits defining the prohibited region of operation and to modify the action statement to require a manual scram when the required surveillance shows operation to be within the prohibited region.

Technical Specification 3/4.2.7, Neutron Flux Noise Monitoring, would be eliminated. This specification places limits on APRM and LPRM neutron flux noise levels.

Two new specifications would be added to require stability monitoring for two loop and single loop operation. The new specifications would add limiting conditions of operation for the decay ratio of the neutron signals. The stability monitoring is based on the LPRMs and the APRMs and thus effectively addresses the objective of the neutron flux noise monitoring specification (3/4.2.7) proposed for deletion.

Technical Specification 3/4.4.1, Recirculation System would be revised to specify actions to be taken to ensure stability with less than two recirculation pumps operating.

Corresponding sections of the Bases of the Technical Specifications would be revised to reflect the new bases for the revised specifications.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

On December 30, 1988 NRC issued IE Bulletin 88-07, Supplement 1, "Power Oscillations in Boiling Water Reactors." This supplement required licensees to take certain actions to protect against power instabilities in the reactor core. In response to Supplement 1 the Washington Public Power Supply System proposed replacing the existing detect-and-suppress technical specifications with specifications based on the Advanced Nuclear Fuels (ANF) ANNA Stability Monitoring System. The current specifications require evaluation of neutron signal noise against a baseline noise level. The licensee contends that the ANNA system provides a much stronger, faster means of monitoring the stability of the reactor core.

The ANNA system performs a sophisticated noise analysis technique to calculate the decay ratio of neutron

signals (LPRM and APRM). These calculations are performed automatically, such that peak-to-peak and decay ratio data is presented in near real-time. As a result, the ANNA system provides information more rapidly than existing methods, and without the distractions to control room staff imposed by current methods. In addition, the decay ratio information available through the ANNA system is a primary indicator of the state of the core stability, whereas the current indicator, neutron signal noise level, is an indirect, less reliable means. The licensee believes that through use of the ANNA system, a much more quantitative measure of the margin of instability exists. This significant improvement in detecting the approach to a region of instability is the licensee's justification for the proposed enlargement of the allowable region of operation.

The Supply System has reviewed this amendment request per 10 CFR 50.92 and has determined that it does not represent an unreviewed safety question or a significant hazard because it does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because, as discussed above, the ANNA system represents a substantial improvement in the capability to detect-and-suppress, such that the present safety margin is preserved for operation in an expanded region. The use of the ANNA system provides greatly improved ability to detect the approach to a region of instability. It is the Supply System's judgement that this improved detection capability more than compensates for the enlargement of the power/flow operating region such that the present safety margin is preserved and in fact increased. Hence, the probability or consequences of previously evaluated accidents are not increased by this change.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the design basis function, to detect-and-suppress core instability events, remains the same and is enhanced by the ANNA system.

(3) Involve a significant reduction in a margin of safety because as discussed above, the implementation of ANNA would provide improved detection capability which would more than compensate for the enlargement of the allowable range of operation. Hence, there is no reduction in the margin of safety due to this proposal.

Based on the above considerations the Commission proposes to determine that the requested changes to the WNP-2 Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorneys for licensees: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005-3502 and G.E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352.

NRC Project Director: George W. Knighton

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: September 9, 1988.

Description of amendments request: The proposed amendment would revise portions of Technical Specification Section 15.3.8, "Refueling," in order to provide more specific and precise requirements regarding the Containment Purge and Vent System. Additionally, minor editorial changes to Technical Specification Table 15.7.3-2, 15.7.4-2, and 15.7.6-2 are requested.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92. A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards consideration in its request for a license amendment. The licensee proposes to:

(A) Revise Technical Specification item 15.3.8.7 to reflect more specific requirements regarding the Containment Purge and Vent System as found in the Standard Technical Specifications for the Westinghouse Pressurized Water Reactors, NUREG-0452, revision 4. The modified specification will require demonstration of the operability of the Containment Purge and Vent System "within four days prior to the start of and at least once per seven days during refueling operations."

(B) Add a new Technical Specification item 15.3.8.8 which will introduce an exception to the operability requirement of Technical Specification item 15.3.8.7. It allows refueling operations to continue with the Containment Purge and Vent System inoperable, provided the purge and vent containment penetrations are closed.

(C) Modify the wording of the existing Technical Specification item 15.3.8.8, which becomes a new Technical Specification item 15.3.8.9. This item will identify more concisely the conditions under which refueling operations will cease. This is necessary due to the revision of Technical Specification items 15.3.8.7 and 15.3.8.8.

(D) Make minor editorial changes to Technical Specification Tables 15.7.3-2, 15.7.4-2, and 15.7.6-2. The changes to these tables are identical in nature, establishing a system name which is consistent throughout the Technical Specification, i.e. "Containment Purge and Vent System."

The Commission has provided guidance concerning the application of the criteria by providing examples (51 FR 7751) of actions that are considered not likely to involve a significant hazards consideration. This guidance has been applied to the aforementioned items and is outlined below.

In regards to items (A), (B), and (C) above, these items are indicative of example (ii) "A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specification..." The proposed change constitutes a more restrictive operability requirement for an isolation system during refueling operations. Additionally, the proposed amendment cannot affect the probability or consequences of a refueling accident nor create the possibility of a new or different kind of accident. Moreover, this proposal increases, rather than decreases, the margin of safety.

In regards to item (D) above, this item is indicative of example (i) "A purely administrative change to Technical Specifications..." These editorial changes are administrative in nature which would bring nomenclature consistency to the Technical Specification.

Based on the above information, the staff proposes to determine that the proposed change to the Technical Specification does not involve a significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Yankee Atomic Electric Company Docket No. 50-029 Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: March 21 and April 14, 1989.

Description of amendment request: The proposed amendment provides for the addition of a snubber to the pressurizer drain piping.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequence of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analyses contained in the March 21 and April 14, 1989 letters states the following:

The change is requested in order to add Snubber DRH-SNB-1 to Table 3.7-4 of the Yankee Nuclear Power Station Technical Specifications.

As such, this proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The addition of the snubber will enhance the seismic capability of the Pressurizer Drain piping. The snubber will not reduce the capability of the Pressurizer Drain piping to perform its operating or emergency functions. The design criteria provides assurance that the piping and snubber will perform their intended normal and emergency functions. No accident analysis assumptions are affected by the addition of the snubber.

2. Create the possibility of a new or different kind of accident from any previously evaluated. The design criteria and installation requirements used are at least equal to the original plant design basis. The Pressurizer Drain piping with snubber installed is in a stress analyzed condition meeting the requirements of the design criteria.

3. Involve a significant reduction in a margin of safety. The addition of the snubber does not affect the basis of any Technical Specification. Also, there are no accident analysis assumptions affected. The analysis of the Pressurizer Drain piping together with the in-service inspection requirements for snubbers in the Technical Specification ensures that this change does not involve a significant reduction in a margin of safety.

Based on the discussion above, it is concluded that there is reasonable assurance that operation of the Yankee plant, consistent with the proposed Technical Specifications, will not endanger the health and safety of the public. The proposed change has been reviewed by the Nuclear Safety Audit and Review Committee.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based on that conclusion the staff proposes to make a no significant hazards consideration determination.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: October 13, 1986

Brief description of amendment request: The amendment would revise the Duane Arnold Energy Center Technical Specifications to conform to the Inservice Testing (IST) Program for Pumps and Valves and to correct typographical errors.

Date of individual notice in **Federal Register:** April 6, 1989 (54 FR 13967)

Expiration date of individual notice: May 8, 1989

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: April 24, 1987

Brief description of amendment request: The amendment would modify the Specifications issued as part of the Radiological Effluent Technical Specifications (RETS). The proposed modifications are administrative in nature and incorporate clarifications as well as typographical corrections to improve format consistency with the rest of the DAEC TS.

Date of individual notice in **Federal Register:** March 23, 1989 (54 FR 12034)

Expiration date of individual notice: April 24, 1989

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has

prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of applications for amendment: January 28, 1985 as revised August 30, 1985

Brief description of amendment: The amendment modified Technical Specification (TS) 4.6.2.2.e, which requires periodic surveillance testing of the sodium hydroxide addition system. The change clarified the intent of the flow testing of the system and reduces the flow rate of the test in accordance with the design specifications of the sodium hydroxide system pumps.

Date of issuance: April 11, 1989

Effective date: April 11, 1989

Amendment No.: 90

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 20, 1985 (50 FR 47857). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of applications for amendment: November 17, 1986, January 13 and April 5, 1989.

Brief description of amendment: This amendment revised the ANO-2 Technical Specifications to reflect changes in reporting requirements of 10 CFR 50.72 and 50.73 in accordance with NRC Generic Letter 83-43.

Date of issuance: April 18, 1989

Effective date: April 18, 1989

Amendment No.: 91

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 20, 1987 (52 FR 18972). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 18, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location; Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: January 12, 1987, as supplemented October 3, 1988 and April 4, 1989.

Brief description of amendment: The amendment revises the TS by adding operability and surveillance testing requirements for the reactor trip and bypass breakers, diverse trip features and trip logic. The amendment complies with the guidance provided in the NRC Generic Letters 85-09 and 83-28, Item 4.3.

Date of issuance: April 20, 1989

Effective date: April 20, 1989

Amendment No. 122

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** January 12, 1987 (52 FR 5851). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 20, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Unit Nos. 1 and 2, LaSalle County, Illinois

Date of application for amendments: November 26, 1986, January 14, 1988 and June 1, 1988.

Brief description of amendments: These amendments modified paragraph 2.C.(27) of License No. NPF-11 and paragraph 2.C.(16) of License No. NPF-18 to require compliance with the revised Physical Security Plan. This plan was updated to conform to the latest requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: April 10, 1989

Effective date: April 10, 1989

Amendment Nos.: 65, 46

Facility Operating License Nos. NPF-11 and NPF-18. These amendments revised the license.

Date of initial notice in **Federal Register:** December 30, 1988 (53 FR 53089). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 10, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: January 19, 1989

Brief description of amendments: These amendments relieve the licensee from the requirement that CO_2 fire hose stations be subject to the same surveillance testing used for water hose stations.

Date of issuance: April 13, 1989

Effective date: April 13, 1989

Amendment Nos.: 116, 112

Facility Operating License Nos. DPR-29 and DPR-30. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 22, 1989 (54 FR 7629). The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated April 13, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: August 18, 1986, as modified January 25, 1989

Brief description of amendment: This amendment revises and adds new requirements to Technical Specification Tables 3.5-2 and 4.1-1 requiring the operability and surveillance testing of the reactor trip breakers shunt trip attachment.

Date of issuance: April 10, 1989

Effective date: April 10, 1989
Amendment No.: 137
Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 8, 1986 (51 FR 36087) and renoticed March 8, 1989 (54 FR 9915). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 10, 1989.
No significant hazards consideration comments received: No
Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.
NRC Project Director: Robert A. Capra

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: September 23, 1988
Brief description of amendment: The amendment revises the operability requirements for the radioactivity monitors used for reactor coolant system leakage detection. The amendment also corrects several minor editorial errors.
Date of issuance: April 14, 1989
Effective date: April 14, 1989
Amendment No.: 138
Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 1, 1989 (54 FR 5162). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 14, 1989.
No significant hazards consideration comments received: No
Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.
NRC Project Director: Robert A. Capra

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: December 30, 1986
Brief description of amendment: This amendment revises section 5.2.2(h) of the Technical Specifications to reflect the inclusion of a second vent and a second drain valve to the scram dump tank.
Date of issuance: April 14, 1989
Effective date: April 14, 1989
Amendment No.: 95
Facility Operating License No. DPR-6. The amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** January 28, 1987 (52 FR 2879). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 14, 1989.
No significant hazards consideration comments received: No.
Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: January 17, 1989
Brief description of amendments: The amendments revised Technical Specification Table 3.3-5, item 15, and surveillance requirement (4.7.1.2 1b.4) to increase the auxiliary feedwater system suction swapover time from less than or equal to 15 seconds to less than or equal to 16 seconds.
Date of issuance: April 11, 1989
Effective date: April 11, 1989
Amendment Nos.: 60 and 54
Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 8, 1989 (54 FR 6193). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 11, 1989
No significant hazards consideration comments received: No.
Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: September 19, 1988, as supplemented December 28, 1988, and March 6, 1989.
Brief description of amendments: The amendments modify the Technical Specifications to revise the setpoints for Unit 2 steam generator level trips due to the planned relocation of level taps.
Date of issuance: April 14, 1989
Effective date: April 14, 1989
Amendment Nos.: 61 and 55
Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 8, 1989 (54 FR 6191). Because the March 6, 1989, submittal clarified certain aspects of the original request, the substance of the changes noticed in the **Federal Register** and the proposed no significant hazards consideration determination were not affected. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 14, 1989.
No significant hazards consideration comments received: No.
Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: October 5, 1988, as supplemented December 30, 1988, and January 27, 1989.
Brief description of amendments: The amendments modified the Technical Specifications to: (1) allow a one-time waiver to the requirements for a complete diesel generator (DG) overhaul and for the testing as stated in the first footnote to Table 4.8-1, (2) change the counting of failures on DGs from a "per nuclear unit basis" to a "per diesel generator basis," and (3) correct the numbers of surveillances referenced in the first footnote to Table 4.8-1.
Date of issuance: April 21, 1989
Effective date: April 21, 1989
Amendment Nos.: 62 and 56
Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 22, 1989 (54 FR 7630). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 21, 1989.
No significant hazards consideration comments received: No.
Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of application for amendments: October 13, 1986, as supplemented December 22, 1988
Brief description of amendments: The amendments revised the Technical Specifications to require Type C local leak test for penetration no. 22, low pressure service water from the reactor coolant pump motors and lube oil coolers outlet.
Date of issuance: April 21, 1989
Effective date: April 21, 1989

Amendment Nos.: 173, 173, and 170

Facility Operating License Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 6, 1987 (52 FR 16943). Because the December 22, 1988, submittal clarified certain aspects of the original request, the substance of the changes noticed in the **Federal Register** and the proposed no significant hazards determination were not affected. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 21, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: January 5, 1989

Brief description of amendments: The amendment revises the Technical Specifications in the following way: (1) updates the index, (2) corrects Section 4.4.5.2, steam generator inspection requirements to be consistent with Section 4.0.5, (3) corrects reporting requirement of Section 6.9.1 to be consistent with 10 CFR 50.4(b)(1), and (4) modifies Basis Section 3/4.2.2 and 3/4.2.3 to reflect updated approved requirements.

Date of issuance: April 11, 1989

Effective date: April 11, 1989

Amendment Nos.: 139 for Unit 1; 14 for Unit 2

Facility Operating License Nos. DPR-66 and NPF-73. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 22, 1989 (54 FR 7633). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 7, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of application for amendment: June 30, 1988

Brief description of amendment: The amendment revises Section 4.8.1.1.2.b.4, "Emergency Diesel Generator Surveillance Requirement," to include backup phase fault protection as one of the diesel generator trips not bypassed on a loss-of-power event to the emergency bus. This hardware change that resulted in this amendment was originally approved in our Safety Evaluation Report Supplement 1 (NUREG-1057, Supp. 1).

Date of issuance: April 19, 1989

Effective date: April 19, 1989

Amendment No.: 15

Facility Operating License No. NPF-73. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 7, 1988 (53 FR 34603). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

GPU Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2, (TMI-2), Dauphin County, Pennsylvania

Date of application for amendment: April 4, 1988

Brief description of amendment: The amendment modifies Appendix B Technical Specification by revising certain surveillance terms and definitions consistent with the meaning and usage in the Appendix A Technical Specifications.

Date of Issuance: April 12, 1989

Effective date: April 12, 1989

Amendment No.: 33

Facility Operating License No. DPR-73. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1988 (53 FR 53093). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 12, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County Illinois

Date of application for amendment: December 21, 1988

Description of amendment request: The proposed change will revise the acceptance criteria for the secondary containment drawdown test.

Date of issuance: April 10, 1989

Effective date: April 10, 1989

Amendment No.: 21

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 8, 1989 (54 FR 9918). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 10, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: January 16, 1987 and April 29, 1988

Brief description of amendments: These amendments change the Technical Specifications to allow the use of either actual or simulated loads for all of the station batteries and associated inverters. The Technical Specification (TS) changes reflect more closely the Standard Westinghouse TS's (STS) (NUREG-0452, Rev. 4), which allow the use of simulated loads.

Date of issuance: April 11, 1989

Effective date: April 11, 1989

Amendments Nos.: 123 and 110

Facility Operating Licenses Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Dates of initial notice in **Federal Register:** February 26, 1987 (52 FR 5857), July 29, 1987 (52 FR 28380), and December 30, 1987 (52 FR 49227). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 11, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: October 14, 1986, as revised March 25, 1987.

Brief description of amendment: The amendment consisted of changes to Section 6.0, "Administrative Controls," of the Duane Arnold Energy Center Technical Specifications. The amendment clarified the responsibilities of the plant Safety Committee and made other minor editorial changes.

Date of issuance: April 18, 1989

Effective date: April 18, 1989

Amendment No.: 157

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 26, 1987 (52 FR 5857). The licensee's March 25, 1987 submittal reduced the scope of the original requested changes. Therefore, the staff's no significant hazards consideration analysis contained in the initial notice remains valid. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 18, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: August 21, 1986

Brief description of amendment: This amendment adds Technical Specification 3.1.7.h to permit end-of-cycle coastdown operation to as low as 40 percent of rated power and to prohibit increasing core power level, once operation in the coastdown mode has begun, by reduced feedwater heating. The inclusion of Technical Specification 3.1.7.h transfers to the Technical Specifications the limiting conditions of license condition 2.C.(3), thereby permitting deletion of that license condition.

Date of issuance: April 10, 1989

Effective date: April 10, 1989

Amendment No.: 104

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 9, 1987 (52 FR 34016). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 10, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

NRC Project Director: Robert A. Capra

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: January 20, 1989

Brief description of amendment: This amendment to the Technical Specifications removes cycle-specific parameter limits, decreases the Minimum Critical Power Ratio from 1.07 to 1.04 and removes previous approval to initiate reactor startup with flow indication from 1 of the 20 jet pumps unavailable.

Date of issuance: April 14, 1989

Effective date: April 14, 1989

Amendment No.: 29

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 22, 1989 (54 FR 7636). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 29, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: December 5, 1986.

Brief description of amendment: This amendment revises the plant Technical Specification to: (1) reflect logic changes to made implement the requirements of NUREG-0737, Item II.K.3.18, which added a bypass timer to the reactor low pressure permissive start switch contracts for each Core Spray and Lower Pressure Coolant Injection System electrical division, and removed the high drywell initiation signal from the Auto Pressure Relief System; and (2) lower the Safety/Relief Valve Discharge Pipe Pressure Switch setpoint for Technical Specification consistency.

Date of issuance: March 31, 1989

Effective date: March 31, 1989

Amendment No.: 62

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 9, 1987 (52 FR 34016). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: May 5, 1986

Brief description of amendment: The amendment revises the Technical Specifications (TSs) to include changes resulting from a detailed review of the TSs that occurred following the 1985 plant refueling and recirculation piping replacement outage.

Date of issuance: April 18, 1989

Effective date: April 18, 1989

Amendment No.: 63

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 9, 1986 (51 FR 36100). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 18, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 31, 1988 as supplemented March 15, 1989.

Brief description of amendment: This amendment modifies the Technical Specifications to change the minimum operating requirements for the Raw Water Pumps to allow operation with one inoperable raw water pump when river water temperature is below 60° F.

Date of issuance: April 14, 1989

Effective date: Full implementation within 30 days from the date of issuance.

Amendment No.: 120

Facility Operating License No. DPR-40. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1989 (54 FR 5171). The March 15, 1989 submittal provided additional clarifying information and did not change the finding of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 14, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: March 13, 1987 (Reference LAR 87-03)

Brief description of amendments: The amendments revised Technical Specification (TS) 4.7.5.1, "Control Room Ventilation System," Table 3.3-1, "Reactor Trip System," of TS 3.3.1, and Table 4.3-1, "Reactor Trip System Instrumentation Surveillance Requirements," of TS 4.3.1 to clarify surveillance test requirements for the control room ventilation system and the reactor trip system instrumentation.

Date of issuance: April 7, 1989

Effective date: April 7, 1989

Amendment Nos.: 35 and 34

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** August 12, 1987 (52 FR 29926). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 7, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

NRC Project Director: George W. Knighton

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: March 23, 1989

Brief description of amendment: The amendment changed the Technical Specifications Table 3.3.3-2 to reflect compliance with the Final Safety Analysis Report design bases of the degraded grid undervoltage relay setpoints which provide a second level of undervoltage protection to the Class 1E equipment.

Date of issuance: April 14, 1989

Effective date: April 14, 1989

Amendment No. 18

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (54 FR 12978, dated March 29, 1989). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by April 28, 1989, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendments. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 14, 1989.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: January 26, 1989 as supplemented with confirmation information on March 6, 1989. The supplementary information did not alter or modify the application. The application of January 26, 1989 supersedes and replaces in its entirety an earlier application dated September 7, 1988.

Brief description of amendments: These amendments modified the Technical Specifications to correct deficiencies in the degraded voltage protection features.

Date of issuance: April 13, 1989

Effective date: April 13, 1989

Amendments Nos.: 143 and 145

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 19, 1988 (53 FR 40996). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 13, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Walnut Street and Commonwealth Ave., Harrisburg, Pennsylvania 17105.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: February 5, 1988

Brief description of amendment: The amendment revises the Technical Specifications to reflect the management reorganization of the Power Authority of the State of New York. The changes affect Figures 6.2-1 and 6.2-2 and Section 6.5.2.2.

Date of issuance: April 11, 1989

Effective date: April 11, 1989

Amendment No.: 85

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7599). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

NRC Project Director: Robert A. Capra

Public Service Company of Colorado, Docket no. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: January 13, 1989

Brief description of amendment: The amendment changed the amount of radioactive materials the licensee may possess and updates the format of the license.

Date of issuance: April 18, 1989

Effective date: April 18, 1989

Amendment No.: 70

Facility Operating License No. DPR-34. Amendment revised the license.

Date of initial notice in **Federal Register:** February 22, 1989 (54 FR 7644). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 18, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: September 29, 1988 (TS 257)

Brief description of amendments: The amendments modify Tables 3.2.J and

4.2.J to reflect new testing frequencies for seismic monitoring equipment.

Date of issuance: April 13, 1989

Effective date: April 13, 1989, and shall be implemented within 60 days

Amendments Nos.: 165, 163, 136

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 8, 1989 (54 FR 6211). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 13, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: October 25, 1988

Brief description of amendment: The amendment revised the Technical Specifications (TS) to support a core reload for Cycle 4. The revised TS include increased peaking factors, a positive moderator temperature coefficient, increased refueling water storage tank and accumulator boron concentrations, and increased spray additive tank sodium hydroxide concentration.

Date of issuance: April 19, 1989

Effective date: April 19, 1989

Amendment No.: 44

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1988 (53 FR 53103). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: March 23, 1989

Brief description of amendments: The amendment revised the permissible enrichments for storage of fuel assemblies in the new fuel storage vault and spent fuel pool by increasing the permitted U-235 content for OFA fuel assemblies to 40.0 g/cm (axial). In addition, the word "assemblies" is changed to "assembly" in two places to clarify the intent of the Technical Specification 15.5.4.2.

Date of issuance: April 14, 1989

Effective date: April 14, 1989

Amendment Nos.: 117 and 120

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (54 FR 13261 dated March 31, 1989). This notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided an opportunity to request a hearing by May 1, 1989, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 14, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: April 19, 1983 and modified April 13, 1984, September 7, 1984, July 14, 1988, and March 22, 1989.

Brief description of amendments: These amendments changed the technical specifications by modifying certain fire protection sections to include recently-installed systems or to be consistent with Standard Technical Specification, NUREG-0452.

Date of issuance: April 17, 1989

Effective date: April 17, 1989

Amendment Nos.: 118 and 121

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 1983 (43 FR 38382), July 24, 1984 (49 FR 29902), November 21, 1984 (49 FR 45941). The July 14, 1988 submittal is an administrative change to return to the original technical specifications and/or a previous submittal. This does not change the staff's proposed no significant hazards consideration determination as previously noticed. The March 22, 1989 submittal is an administrative change to correct typographical errors. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 17, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Rockville, Maryland, this 25th day of April, 1989.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation

[Doc. 89-10479 Filed 5-2-89; 8:45 am]

BILLING CODE 7590-01-D

[Docket Nos. 50-325 and 50-324]

Carolina Power & Light Co.; Withdrawal of Application for Amendments to Facility Operating Licenses; Brunswick Steam Electric Plant, Units 1 and 2

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Carolina Power & Light Company (the licensee) to withdraw their application dated April 29, 1985, for the Brunswick Steam Electric Plant, Units 1 and 2, (Brunswick) located in Brunswick County, North Carolina.

The proposed amendments were to provide for license changes to require an Integrated Plant Modification Plan. The proposed amendment did not involve changes to plant systems, components, or Technical Specifications. The Commission issued a Notice of Consideration of Issuance of Amendments in the **Federal Register** on June 19, 1985 (50 FR 25484). By letter dated April 3, 1987, the licensee withdrew their application for the proposed amendment. The basis for withdrawal of the application was the licensee's determination that a license change is not necessary to achieve the benefits of integrated scheduling. The licensee advises that such an integrated scheduling concept has been adopted at the Brunswick site. Their plan has been found to be a useful means of enhancing safe, reliable and economic operation. The Commission has considered the licensee's April 3, 1987 request and has determined that permission to withdraw the April 29, 1985 application should be granted.

For further details with respect to this action, see the application for amendment dated April 29, 1985, and the licensee's letter dated April 3, 1987, withdrawing the application for amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina.

Dated at Rockville, Maryland this 17th day of March 1989.

For the Nuclear Regulatory Commission.

Edward A. Reeves,

Acting Director, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-10573 Filed 5-2-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Advisory Committee on Semiconductors (NACS); Meeting

The purpose of the National Advisory Committee on Semiconductors is to devise and promulgate a national semiconductor strategy, including research and development. The implementation of this strategy will assure the continued leadership of the United States in semiconductor technology. The Committee will meet on May 16, 1989 at Science Applications International Corporation, 1555 Wilson Blvd., 7th Floor, Rosslyn, Virginia, 9:00 a.m. The proposed agenda is:

(1) Briefing of the Committee on its organization and administration.

(2) Briefing of the Committee by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed studies regarding semiconductors.

(3) Discussion of composition of panels to conduct studies.

A portion of the May 16 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b. (c) (1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b. (c)(6).

Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Hazel Houston, at (703) 556-7130, prior to 3:00 p.m. on May 15, 1989. Mrs. Houston is also available to provide specific information regarding time, place and agenda for the open session.

Barbara J. Diering,

Special Assistant, Office of Science and Technology Policy.

May 1, 1989.

[FR Doc. 89-10750 Filed 5-1-89; 4:08 pm]

BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-16939; File No. 811-5154]

Variable Life Investment Fund; Notice of Application.

April 25, 1989

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Variable Life Investment Fund ("Applicant").

Relevant 1940 Act Sections: Order requested under Section 8(f).

Summary of Application: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on January 23, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on May 19, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington DC 20549. Variable Life Investment Fund, 245 Park Avanue, New York, New York 10167.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney, (202) 272-3027 or Clifford E. Kirsch, Special Counsel (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. On May 11, 1987, Applicant, an open-end, diversified, management company, filed a Notification of Registration on Form N-8A and a registration statement on Form N-1A. The registration statement never became effective and no public offering of the securities of the Applicant was ever made.

2. Applicant represents that it has never had any assets, has no debts or other liabilities outstanding, is not a party to any litigation or administrative proceeding, has no security holders and is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-10530 Filed 5-2-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region III—Advisory Council Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Richmond, Virginia, will hold a public meeting from 1:00 p.m. to 5:00 p.m. on Thursday, June 8, 1989, and from 8:30 a.m. on June 9 until 12:00 Noon, at the Holiday Inn Conference Center, 1021 Koger Center Blvd., Richmond, Virginia 23235, to discuss such business as may be presented by members, and staff of the U.S. Small Business Administration, or others present.

For further information, write or call Catherine S. Marschall, District Director, U.S. Small Business Administration, P.O.

Box 10126, Federal Building, Richmond, Virginia 23240 (804) 771-1741.

April 17, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-10522 Filed 5-2-89; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 02/02-0529]

Crossland Small Business Investment Corp.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under provisions of section 301(c) of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661. *et seq.*) has been filed by Crossland Small Business Investment Corporation, 211 Montague Street, Brooklyn, New York 11201 (Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1988).

The officers, directors, and sole shareholder of the Applicant are as follows:

Name	Title or Relationship	Percent of Ownership
Barry M. Donohue, 133 Emory Road, Mineola, New York 11501.	President	
Joseph V. Sabella, 41 Wichard Boulevard, Commack, New York 11725.	Vice President	
John P. Sullivan, 101 Dover Parkway, Stewart Manor, New York 11530.	Secretary, Director	
Donald E. White, Jr., 12 Avon Court, Hillsdale, New Jersey 07642.	Treasurer, Director	
Bruce J. Franzese, 547 Foxhurst Road, Baldwin, New York 11510.	Assistant Secretary, Director.	
Crossland Savings, FSB, 211 Montague Street, Brooklyn, New York 11201.	Sole Shareholder	100

Crossland Savings, FSB is a full service retail Federal stock savings bank providing retail banking services in New York, Florida and Virginia.

The Applicant, a Delaware Corporation, will begin operations with $3,750,000 paid-in capital and paid-in surplus. The Applicant will conduct its activities primarily in the metropolitan area of New York City, but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St., NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Brooklyn, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 25, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-10521 Filed 5-2-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Vehicle Theft Prevention Standard and Target Area Designation Requirements; Denial of Petition for Exemption

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for exemption.

SUMMARY: NHTSA denies a petition from the Automobile Importers Compliance Association "for waiver of the target zone designation provision of the regulations under the Motor Vehicle Theft Prevention Act of 1984." The petition asked NHTSA to permit target area designation by importers until mandatory designations by manufacturers are provided to NHTSA, or that NHTSA establish a policy providing that, in instances in which the manufacturer has failed to supply target zone designations in a timely fashion, any vehicle with parts marked in importer designated target zones be determined to be in "substantial compliance" with the parts marking standard. The agency denies the petition, because allowing importers to designate target areas could cause confusion, lessening the effectiveness of the parts marking program. Furthermore, the AICA petition sought to correct a problem that occurred in 1987, the start-up year of target area designations, but has not since recurred.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Ms. Kurtz's telephone number is (202) 366-4808.

SUPPLEMENTARY INFORMATION: "Federal Motor Vehicle Theft Prevention Standard," 49 CFR Part 541, was issued pursuant to Title VI of the Motor Vehicle Information and Cost Savings Act. This standard contains performance requirements for identification to be inscribed on or affixed to original equipment major parts and replacement parts for those passenger vehicles selected as high theft car lines. The rule also lists those parts which are classified as major component parts, and requires the original vehicle manufacturers to designate target areas for marking the identification on both the original equipment and replacement major parts.

Each manufacturer (the original producer who installs or assembles the covered major parts of a designated high theft car line) is required to submit to NHTSA, in writing, not later than 30 days before the line is introduced into U.S. commerce, the designated target areas for each line subject to the parts-marking requirements of the theft prevention standard, and designated target areas for replacement parts.

Part 541 provides that the target area for marking the identification number on original equipment parts shall not exceed 50 percent of the surface area of the part. The target area for replacement parts is limited to not more than 25 percent of the surface area of the parts. Additionally, the target area for replacement parts is required to be at least 10 centimeters at all points from the nearest boundaries of the target area for the original part it replaces.

On February 18, 1987, the Automobile Importers Compliance Association (AICA) petitioned NHTSA on behalf of its members for a "waiver of the target zone designtion provision of the regulations under the Motor Vehicle Theft Prevention Act of 1984". AICA further requested that the agency:

Suspend the target zone designation requirement in the regulations and permit

designation by importers until the original manufacturer designations are provided to NHTSA, or

Establish the policy that any vehicle with parts marked in importer designated target zones, in instances in which the original manufacturer has failed to supply target zone designations, be determined to be in "substantial compliance" with the parts marking standard.

The members of the AICA are direct importers, individuals and businesses that obtain foreign motor vehicles which were not manufactured for sale in the U.S., import them into this country, and modify them so that they can be certified as being in compliance with U.S. vehicle safety, emissions, and bumper standards.

Although the parts of Title 49 CFR from which the AICA petitions for waiver were never specifically cited, AICA apparently seeks waiver of the target area requirements in §§ 541.5(e) and 541.6(e). In its petition, AICA alleges difficulties it has had in locating manufacturer designated target area submissions in NHTSA's docket for the Model Year (MY) 1987 Jaguar, Maserati, and Mercedes-Benz car lines. AICA said that the absence of these submissions violated the requirements of § 541.5(e)(2) which state that original manufacturers shall notify NHTSA in writing no later than 30 days before introduction of the vehicle into U.S. commerce, of the designated target areas for original equipment parts and replacement parts. The petitioner claims to have tried to obtain the information from NHTSA and was informed that "in certain instances manufacturers have not submitted their designations." The petitioner states that importers cannot comply with the standard unless they can obtain the manufacturer's target area designations.

Under the regulations, target areas may not be designated by parties other than the "manufacturer that is the original producer who installs or assembles the covered major parts on a line" for passenger cars (49 CFR 541.5(e)(1)), or the "manufacturer that is the original producer or assembler of the vehicle for which the replacement part is designed" for replacement parts (49 CFR 541.6(e)(1)).

The petition is denied because allowing target area designation by other than original producer or replacement part manufacturers would cause confusion, especially for law enforcement officials. This would contravene the purpose behind the theft marking requirements. Furthermore, the AICA petition sought to correct a problem that occurred in 1987, the start-up year of target area designations, but has not since recurred.

Target areas are designated by original equipment manufacturers in such a way as to ensure that identification markings and signs of tampering can be readily located by investigators. First, standardizing the location of target areas facilitates identification checks by law enforcement officers or investigators. Law enforcement officers would know exactly where to look for the markings on a particular part on each line, regardless whether the part was imported. Second, the target areas for original equipment parts and replacement parts are required to be designated so that there would be a separation between the areas where the identification would be marked on such parts. If there were no such requirement, a tamperer could obliterate the identifying numbers on original equipment parts and affix counterfeit replacement part identifications directly over the obliterated marking, making it more difficult for the investigator to see evidence of tampering. With the minimum separation requirement, a tamperer could apply the replacement part identification so as to cover the traces of the removed original equipment identification only by placing the replacement part identification outside the area designated for such identification. The investigator would thus be alerted that the replacement part identification should be carefully examined for authenticity.

From a practical standpoint, NHTSA believes that allowing importers to designate the target areas of affected car lines could cause confusion for law enforcement and customs personnel attempting to verify the authenticity of a vehicle, since an importer could mark vehicle parts in different areas from other direct importers of the same vehicle. If each importer designated its own target areas and inscribed identification markings on the vehicles at will, potential thieves could take advantage of the multiplicity of target area designations or fabricate their own identification markings. Since numerous differing areas could be designated for the same part on the same vehicle, it might be difficult to track the markings to the appropriate importer for verification.

An additional concern is that if each importer had separate target locations, there would be no means by which the agency could ensure that the parts marking remined consistent over the entire production of an affected vehicle. The regulations require that the target area for parts marking remain constant over the entire production run of the major parts, unless the part is restyled in such a way that it becomes impracticable to continue marking the part in the original area (See 49 CFR 541.5(e)(3) and 541.6(e)(4)). In such cases, the manufacturer would have to inform the agency of the redesign and provide the new target area.

In response to AICA's complaint about the timing of the submission of target area information by certain vehicle manufacturers to the agency for MY 1987, NHTSA reviewed the submission dates of the target areas for all manufacturers in general and for Jaguar, Maserati, and Mercedes-Benz in particular detail. Model Year (MY) 1987 was the first affected year for the parts-marking requirements of the theft prevention standard and the first year for manufacturers' submission of target area designations. As of the date of the AICA petition (February 18, 1987), Mercedes-Benz had provided its MY 1987 target areas, Jaguar was late, and Maserati had not yet introduced its MY 1987 car line.

In General, a majority of the manufacturers submitted their target area designations to the agency on time for both MY 1987 and MY 1988. An average of 79 percent of the manufacturers submitted target areas on time for all of their high theft car lines during those first two years that the requirements were in place.

Nevertheless, it is apparent that there were a few start-up problems in entering target areas into the public docket. When Jaguar submitted engineering drawings for its target area designations to the public docket, the drawings were too large for filing and were misfiled. After receipt of AICA's petition, the NHTSA docket section was searched and the drawings were located. Additionally, reduced reproductions of the drawings were provided for the public docket file.

Mercedes-Benz had experienced some difficulties in submitting its target area designations. Following receipt of the AICA petition, NHTSA contacted Mercedes-Benz and secured the submission of the information. Target areas for the last of the several Mercedes-Benz car lines were officially logged into the docket section on September 30, 1986. As an added measure, Mercedes-Benz resubmitted the target areas for all its car lines by letter dated February 5, 1987. That submission was logged into the docket section on February 26, 1987.

For MYs 1988 and 1989, all three manufacturers complied in a timely fashion with the requirements for target area submissions.

Accordingly, NHTSA denies the Automobile Importers Compliance Association's petition "for waiver of the target zone designation provision of the regulations under the Motor Vehicle Theft Prevention Act of 1984."

(15 U.S.C. 1410a; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on April 28, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-10579 Filed 5-2-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Privacy Act of 1974; Amendment to Existing Systems of Records Notices

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Amendment to Four Privacy Act Systems of Records Notices, Treasury/DO .111, .114, .118, .149.

SUMMARY: The Office of Foreign Assets Control is making a number of amendments to the description of existing systems of records to more accurately describe the categories of individuals covered by the systems, the categories of records within the systems, and the method of storage.

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on June 2, 1989, unless modified by a subsequent notice to incorporate comments received from the public.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, Tel.: (202) 376-0408.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, the Department of the Treasury reviewed all Privacy Act Systems of Records and published all Systems Notices on March 1, 1988. This publication affects only the notices for the four systems maintained by the Office of Foreign Assets Control, Treasury/DO .111, Treasury/DO .114, Treasury/Do. 118, and Treasury/DO .149. A recent review of these systems revealed minor inaccuracies in the description of categories of individuals covered by the system and categories of records in the system, as well as storage systems.

The principal change in all systems is the deletion of the list of Treasury regulations by specific name. This practice resulted in inadvertent inaccuracy any time a new regulation administered by the Office of Foreign Assets Control was promulgated. By referencing the general body of Treasury regulations administered by the Office, the need for repeated technical amendments is avoided.

Three of the systems are being modified to reflect changed storage methods. As new information is generated, it is being retained in forms accessible by computer as well as in paper files. This change is reflected in amendments to the storage description of the notices for affected systems.

Finally, descriptions of the categories of covered individuals and records in the Foreign Assets Control Enforcement Records System Notice, Treasury/DO .114, are being modified to more accurately reflect the use of the system. Referrals to the Enforcement Section may concern individuals suspected of engaging in prohibited activities. This information is maintained in the system, as well as the fully investigated matters described in the notice. Therefore, the descriptions of both the categories of individuals covered by the system and the categories of records are being modified to reflect the inclusion of this information.

The amendments described above are as follows:

TREASURY/DO .111

SYSTEM NAME:

Office of Foreign Assets Control Census Records—Treasury/DO.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of several censuses of U.S.-based, foreign-owned assets which have been blocked at any time since 1940 under Treasury Department regulations found at 31 CFR Subpart B, Chapter V.

TREASURY/DO .114

SYSTEM NAME:

Foreign Assets Control Enforcement Records—Treasury/DO.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have engaged in or who are suspected of having engaged in transactions and activities prohibited by Treasury Department regulations found at 31 CFR Subpart B, Chapter V.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents related to suspected or actual violations of relevant statutes and regulations administered by the Office of Foreign Assets Control.

* * * * *

STORAGE:

File folders and magnetic media.

* * * * *

SAFEGUARDS:

Folders in locked file cabinets are located in areas of limited accessibility Computerized records are password-protected.

TREASURY/DO .118

SYSTEM NAME:

Foreign Assets Control Licensing Records—Treasury/DO.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for permissive and authorizing licenses issued under Treasury Department regulations found at 31 CFR Subpart B, Chapter V.

* * * * *

STORAGE:

File folders and magnetic media.

SAFEGUARDS:

Folders in locked file cabinets are located in areas of limited accessibility Computerized records are password-protected.

TREASURY/DO .149

SYSTEM NAME:

Foreign Assets Control Legal Files—Treasury/DO.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are or who have been parties in litigation involving the Office of Foreign Assets Control or statutes and regulations administered by the agency found at 31 CFR Subpart B, Chapter V.

* * * * *

STORAGE:

Folders in file cabinets and magnetic media.

SAFEGUARDS:

Folders in locked file cabinets are located in areas of limited accessibility. Computerized records are password-protected.

Dated: April 25, 1989

David M. Nummy,

Acting Assistant Secretary (Management).

[FR Doc. 89-10529 Filed 5-1-89; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

Index of Opinions Issued by the Office of General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability to the public in the Department of Veterans Affairs (VA) Law Library of an index for certain opinions issued by the Office of General Counsel.

ADDRESSES: The index will be maintained and available for consultation and copying in the Law Library, Office of General Counsel, Room 1039, Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Jay Farris, Law Librarian, (026H), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: The index is to contain written opinions issued by the General Counsel, or by the Deputy General Counsel acting as or for the General Counsel, in which the law as it affects veterans benefits is interpreted. Indexed opinions will include those designated as either "conclusive" or "precedent." Conclusive opinions are those which are binding on VA officials with respect to the specific matter in which the question arose. Precedent opinions are conclusive opinions designated as precedential to signify that, until withdraw or overuled, they are controlling as well in all future cases in which the same legal questions arise. The index will not include opinions which are advisory only, except that it will include the published opinions issued by the Office of General Counsel between 1960 and March 8, 1989, all of which shall be considered advisory only unless reissued after March 8, 1989, as conclusive or precedent opinions.

Dated: April 24, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 89-10546 Filed 5-2-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol 54, No. 84
Wednesday, May 3, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:12 p.m. on Thursday, April 27, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider certain personnel matters.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsection (c)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: April 28, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-10643 Filed 5-1-89; 8:51 am]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUCEMENT: April 20, 1989, 54 FR 16438-Q.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: April 26, 1989, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to Items CAG-1, CAG-23 and CAG -33 for the agenda of April 26, 1989:

Item No., Docket No., and Company

CAG-1—RP88-228-006, Tennessee Gas Pipeline Company
CAG-23—RP88-27-000 and RP88-264-000, United Gas Pipe Line Company
CAG-33—RP88-207-000, Columbia Gas Transmission Corporation

Lois D. Cashell,

Secretary.

[FR Doc. 89-10619 Filed 4-28-89; 4:45 pm]

BILLING CODE 6717-02-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-89-16]

TIME AND DATE: Tuesday, May 9, 1989 at 10:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTER TO BE CONSIDERED:

1. Agenda.
2. Minutes
3. Ratifications
4. Petitions and Complaints: Certain Recombinant Erythropoietin (D/N 1489)
5. Inv. No. 731-TA-409 (F) (Certain Light-Walled Rectangular Pipes and Tubes from Argentina)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

April 27, 1989.

[FR Doc. 89-10635 Filed 4-28-89; 8:45 am]

BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-89-17]

TIME AND DATE: Thursday, May 11, 1989 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Inv. No. 701-TA-299 (P) and 731-TA-431 (P) (Aluminum Sulfate from Venezuela)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

April 27, 1989.

[FR Doc. 89-10636 Filed 4-28-89; 4:45 pm]

BILLING CODE 7020-02-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m Tuesday, May 9, 1989.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue SW., Washington, DC 20594.

STATUS: The first two items are open to the public. The last two items are closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Railroad Accident Report: Head-On Collision Between Iowa Interstate Railroad Train Extra 470 West and Extra 406 East with Release of Hazardous Materials, Altoona, Iowa, July 30, 1988.
2. Aircraft Accident Summary Report: McDonnell Douglas DC-9-31, N8948E, operated by Eastern Air Lines, Inc., Pensacola, Florida, December 27, 1987.
3. Opinion and Order: Administrator v. Kirkendall, Docket SE-9365; disposition of respondent's appeal.
4. Opinion and Order: Administrator v. Howerton, Docket SE-8074; disposition of respondent's appeal.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

April 28, 1989.

[FR Doc. 89-10644 Filed 5-1-89; 8:52 am]

BILLING CODE 7533-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 1:30 p.m. (closed portion), 3:15 p.m. (open portion), Tuesday, May 16, 1989.

PLACE: Offices of the Corporation, fourth floor Board Room, 1615 M Street NW., Washington, D.C.

STATUS: The first part of the meeting from 1:30 p.m. to 3:15 p.m. will be closed to the public. The open portion of the meeting will commence at 3:15 p.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 1:30 p.m. to 3:15 p.m.):

1. Finance Project in Caribbean Country
2. Finance Project in West Asian Country
3. Finance Project in Middle Eastern Country
4. Finance Project in Caribbean Country
5. Private Political Risk Insurance Advisory Group
6. Claims Report
7. African Growth Fund Report
8. Pilot Equity Program Report
9. Worker Rights Determinations
10. Finance and Insurance Reports
11. President's Report

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 3:15 p.m.)

1. Approval of the Minutes of the Previous Board Meeting
2. Scheduling of Future Meetings of the Board
3. Increase of Direct Investment Fund for Fiscal Year 1989
4. Treasurer's Report
5. Information Reports

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Secretary of the Corporation, on (202) 457-7079.

Peggy A. Kole,

OPIC Corporate Secretary.

May 1, 1989.

[FR Doc. 89-10770 Filed 5-1-89; 3:54 pm]

BILLING CODE 3210-01-M

POSTAL RATE COMMISSION

TIME AND DATE: 9:30 a.m., Thursday, May 4, 1989.

PLACE: Conference Room, 1333 H Street NW., Suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: To discuss the Postal Service Motion to Dismiss the Complaint in Docket No. C89-1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street NW., Washington, DC 20268-0001, Telephone (202) 789-6840.

Charles L. Clap,

Secretary.

[FR Doc. 89-10648 Filed 5-1-89; 9:14 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

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 meetings during the week of May 8, 1989.

A closed meeting will be held on Thursday, May 9, 1989, at 2:30 p.m. An open meeting will be held on Wednesday, May 10, 1989, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared 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)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 9, 1989, at 2:30 p.m., will be:

Institution of injunctive actions.

Settlement of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Wednesday, May 10, 1989, at 10:00 a.m., will be:

Consideration of whether to approve proposed rule changes submitted by the New York Stock Exchange, Inc., the National Association of Securities Dealers, Inc. and the American Stock Exchange, Inc. relating to the arbitration process and to the use of predispute arbitration clauses. For further information, please contract Robert A. Love at (202) 272-3064.

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: Max Berueffy at (202) 272-2400.

Jonathan G. Katz,

Secretary.

May 1, 1989.

[FR Doc. 89-10769 Filed 5-1-89; 3:54 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 84
Wednesday, May 3, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

[Docket No. AO-295-A38; DA-88-111]

Milk in the Iowa Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

Correction

In proposed rule document 89-9155 beginning on page 15417 in the issue of Tuesday, April 18, 1989, make the following correction:

§ 1079.7 [Corrected]

On page 15426, in the 2nd column, in § 1079.7(d)(3), in the 17th through 22nd lines remove "Iowa marketing area as route disposition, or to pool plants qualified on the basis of route disposition except that if such plant was subject to all the provisions of this part in the".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC89-10-000 et al.]

Consumers Power Co., et al; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 89-9922 beginning on page 18008 in the issue of Wednesday, April 26, 1989, make the following correction:

On page 18009, in the third column, under "**10. Florida Power & Light Company**" in the first line, "ER89-348-000" should read "ER89-328-000".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM89-4-28-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

Correction

In notice document 89-9928 beginning on page 18018 in the issue of Wednesday, April 26, 1989, in the heading, the docket number was incorrect and should appear as set forth above.

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-341]

Detroit Edison Co.; Wolverine Power Supply Cooperative, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

Correction

In notice document 89-9094 beginning on page 15278 in the issue of Monday April 17, 1989, make the following correction:

On page 15279, in the second column, between "For the Nuclear Regulatory Commission." and "*Acting Director, Project Directorate III-1,*" insert the name of the signer, **John Stang**.

BILLING CODE 1505-01-D

federal register

Wednesday
May 3, 1989

Part II

Department of Commerce

International Trade Administration

Antidumping; Antifriction Bearings From Various Countries; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

[A-428-801]

Final Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany

AGENCY: Import Administration, International Trade Administration, Commerce

ACTION: Notice.

SUMMARY: We determine that antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as AFBs or the subject merchandise) from the Federal Republic of Germany (FRG) are being, or are likely to be, sold in the United States at less than fair value. We also determine that critical circumstances exist with respect to imports of certain classes or kinds of AFBs from the FRG.

We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from the FRG as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports materially injure, or threaten material injury to, U.S. industries.

EFFECTIVE DATE: May 3, 1989.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Carole Showers, or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377-3965, 377-3217 or 377-2239, respectively.

SUPPLEMENTARY INFORMATION:

Final Determinations

We determine that AFBs from the FRG are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average dumping margins are shown in the "Suspension of Liquidation" section of this notice. We also determine that critical circumstances exist with respect to imports of certain classes or kinds of AFBs from the FRG, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since our notice of preliminary determinations (53 FR 45353, November 9, 1988), the following events have occurred. All respondents and petitioner requested that the final determinations in all of the antidumping duty investigations be postponed until not later than 135 days after the date of publication of the preliminary determinations, pursuant to section 735(a)(2) of the Act. On December 2, 1988, we issued a notice postponing our final determinations until not later than March 24, 1989 (53 FR 49581, December 8, 1988). That notice also announced the scheduling of the public hearing in these investigations.

Verification of the questionnaire responses was conducted in the FRG and the United States during November and December 1988 and January 1989.

A public hearing was held on February 22, 1989. Petitioner, respondents, and other interested parties have filed pre- and post-hearing briefs.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), and all merchandise entered or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The Department is providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the products covered by these investigations.

These determinations cover ball bearings, mounted or unmounted, and parts thereof (ball bearings); spherical roller bearings, mounted or unmounted, and parts thereof (spherical roller bearings); cylindrical roller bearings, mounted or unmounted, and parts thereof (cylindrical roller bearings); needle roller bearings, mounted or unmounted, and parts thereof (needle roller bearings); and spherical plain bearings, mounted or unmounted, and parts thereof (including rod end bearings) (spherical plain bearings). For a complete description of these products, see Appendix A to this notice (hereinafter referred to as Appendix A).

Class or Kind of Merchandise

Subsequent to the initiation of these investigations, the Department determined that the products under investigation constituted five separate classes or kinds of merchandise. After consideration of all comments, arguments, and information submitted by the parties, we find no reason to alter that decision. For a full discussion of our position on class or kind of merchandise, see Appendix B which is referred to below.

Standing

We determine that petitioner has standing with respect to each of the five classes or kinds of merchandise described in Appendix A to this notice. For a full discussion of standing, see Appendix B which is referred to below.

General Issues

Appendix B to this notice (hereinafter referred to as Appendix B) contains detailed discussions of all issues timely raised by parties to the proceeding in each of the concurrent antidumping duty investigations involving AFBs from nine countries. The first part of that Appendix addresses all general issues raised during these investigations and our treatment of these topics.

The general issues discussed therein are listed below.

1. Class or Kind of Merchandise
2. Standing
3. Products Covered
4. Basis for Cost of Production Investigations
5. Market Viability
6. Alternative Reporting Requirements
7. Critical Circumstances
8. Administrative Protective Order Issues

Following the discussion of general issues, all remaining comments are addressed, in alphabetical order by subject and company.

Period of Investigation

The period of investigation (POI) is October 1, 1987 through March 31, 1988.

Fair Value Comparisons

To determine whether sales of certain AFBs from the FRG to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

For reasons discussed in the best information available section of Appendix B, we have determined, in

accordance with Section 776(c) of the Act, that the use of best information available is appropriate for SKF and INA for certain classes or kinds of merchandise.

United States Price

For each of the respondents in these investigations, all sales to the first unrelated purchaser used in our analysis took place after importation into the United States. Therefore, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

The calculation of United States price for each class or kind of merchandise for each respondent is detailed below.

I. Ball Bearings

A. *FAG Kugelfischer George Schafer KGgA (FAG):* FAG reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. Certain of those sales included products which were further manufactured in the United States. We have determined that it is appropriate to exclude all such sales from our analysis. (*See,* Alternative Reporting Requirements section of Appendix B.) We have used all remaining U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP based on packed, c.i.f., and delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for containerization, foreign inland and ocean freight, import brokerage, import duties, marine and foreign inland insurance, U.S. inland freight, and U.S. inland insurance, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions from ESP, where appropriate, for commissions, credit, repacking in the United States, third party payments, warranty expenses, and indirect selling expenses (including advertising, indirect selling expenses incurred in the FRG and the United States, inventory carrying costs, product liability premiums, and technical service expenses), pursuant to section 772(e)(1) and (2) of the Act. We added the amount of value added taxes which would have been collected if the merchandise had not been exported.

FAG reported purchase price sales of ball bearings in its original response. However, we verified that these constitute a minimal percentage of FAG's sales to the United States. Therefore, we did not include these sales in our calculation of U.S. price.

We have excluded from our calculation of United States price sales of AFBs by FAG to the U.S. government for military and defense procurement. (*See,* Military Procurement section of Appendix B.)

We also excluded from our calculation of United States price, replacement AFBs for defective products, and AFBs used as promotional samples (both provided free-of-charge to FAG's customers) because these transactions involved an insignificant number of units. However, we have included sales of allegedly obsolete or discontinued AFBs in our calculations. (*See,* Miscellaneous section of Appendix B.)

B. *Georg Muller Nurnberg (GMN):* GMN reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* Alternative Reporting Requirements section of Appendix B.) In our preliminary determination, we limited our fair value analysis to those products with matching control numbers since we were not satisfied that matched products with different control numbers were in fact identical. At verification, we confirmed that these products were not identical. Therefore, for the purposes of our final determination, we have excluded matched products with different control numbers and only included U.S. sales with identical home market control numbers in our price-to-price comparisons.

We calculated ESP based on packed, f.o.b., and delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, foreign inland freight, marine insurance, ocean freight, U.S. duty, and U.S. inland freight, in accordance with section 772(d)(2) of the Act. We made further deductions from ESP, where appropriate, for commissions, credit, and indirect selling expenses (including indirect selling expenses incurred in the home market, inventory carrying costs, product liability premiums) pursuant to sections 772(e) (1) and (2) of the Act. We added the amount of the value added taxes which would have been collected if the merchandise had not been exported.

C. *INA Walzlager Schaeffler (INA):* INA reported that more than 33 percent by volume of its U.S. sales were identical to products in the home market. (*See,* Alternative Reporting Requirements section of Appendix B.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP based on packed, f.o.b. U.S. warehouse prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling (which included containerization, marine insurance, ocean freight, U.S. inland freight and insurance), foreign inland freight, foreign inland insurance, and U.S. duty, in accordance with section 772(d)(2) of the Act. We also made deductions from ESP, where appropriate, for credit expenses, repacking, and indirect selling expenses (including non-U.S. indirect selling expenses and U.S. indirect selling expenses, inventory carrying costs, product liability premiums, and warranty expenses), pursuant to sections 772(e) (1) and (2) of the Act. We added the amount of value added taxes which would have been collected if the merchandise had not been exported.

We modified the following claims based on verified information: warranty expenses, credit expenses, inventory carrying costs, product liability expenses, U.S. indirect selling expenses and non-U.S. indirect selling expenses. (*See,* Selling Expenses section of Appendix B.)

D. *SKF Kugellagerfabriken GmbH (SKF): See,* Best Information Available section of Appendix B.

II. Spherical Roller Bearings

FAG: FAG reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. Certain of those sales included products which were further manufactured in the United States. We determined that it is appropriate to exclude all such sales from our analysis. (*See,* Alternative Reporting Requirements section of Appendix B.) We have used all remaining U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP for spherical roller bearings based on packed, c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

FAG reported purchase price sales of spherical roller bearings in its original response. However, we verified that these constitute a minimal percentage of FAG's sales to the United States. Therefore, we did not include these sales in our calculation of U.S. price.

III. Cylindrical Roller Bearings

A. *FAG:* FAG reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. Certain of those sales included products which were further manufactured in the United States. We determined that it is appropriate to

exclude all such sales from our analysis. (*See*, Alternative Reporting Requirements section of Appendix B.) We have used all remaining U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP for cylindrical roller bearings based on packed, c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

FAG reported purchase price sales of cylindrical roller bearings in its original response. However, we verified that these constitute a minimal percentage of FAG's sales to the United States. Therefore, we did not include these sales in our calculation of United States price.

B. *INA: See*, Best Information Available section of Appendix B.

C. *SKF: See*, Best Information Available section of Appendix B.

IV. Needle Roller Bearings

A. *FAG:* FAG reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, Alternative Reporting Requirements section of Appendix B.) We have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP for needle roller bearings based on packed, c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

B. *INA:* INA reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, Alternative Reporting Requirements section of Appendix B.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP for needle roller bearings based on packed, f.o.b. U.S. warehouse prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

C. *SKF: See*, Best Information Available section to Appendix B.

V. Spherical Plain Bearings

A. *FAG:* FAG reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, Alternative Reporting Requirements section of Appendix B.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP for spherical plain bearings based on packed, c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

B. *SKF: See*, Best Information Available section to Appendix B.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales and constructed value (CV). The calculation of foreign market value for each class or kind of merchandise for each respondent is detailed below.

I. Ball Bearings

A. *FAG:* Petitioner alleged that FAG's home market sales of ball bearings were made at prices below the cost of production (COP). Based on petitioner's allegation, we gathered and verified data on FAG's production costs. We calculated the COP on the basis of FAG's cost of materials, labor, other fabrication costs, and general and administrative expenses. The COP data submitted by FAG was relied upon, except in the following instances where the costs were not appropriately quantified or valued. These were:

(1) Cost of manufacturing was corrected for a clerical error;

(2) A consulting fee which had been amortized over a fifteen-year period was included in 1987 G&A costs, as this is the year it was incurred;

(3) A clerical error in general expenses was corrected; and

(4) Interest expense was adjusted to reflect the net financial expense related to operations of the consolidated FAG Group.

We calculated the foreign market value based on CV, where appropriate, in accordance with section 773(e) of the Act. CV was calculated on the basis of FAG's fabrication costs plus general expenses and profit. Actual general expenses were used since these exceeded the statutory minimum requirement of ten percent of materials and fabrication. The statutory eight percent minimum profit was applied. Imputed credit and inventory carrying costs were included in selling expenses; therefore, interest expense reflected on the company books was reduced for a portion of the expense related to these activities in order to avoid double counting. All the changes made to the COP were also made to those cost elements in CV. We added U.S. packing. We deducted all direct selling expenses, and indirect selling expenses, up to the ESP cap.

Where we found that sufficient sales were above cost to permit the use of these sales as the basis for determining foreign market value, we calculated foreign market value based on packed, c.i.f. prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight, inland insurance, home market packing, corrections for pricing and invoice errors, and discounts and rebates. We made an addition for freight revenue. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions included in our analysis involved ESP, we made further deductions from home market price, where appropriate, for commissions, credit, and warranty expenses. We also deducted certain indirect selling expenses which include: product liability premiums, inventory carrying costs, advertising, and technical service expenses, in accordance with 19 CFR 353.15(c).

We also made an adjustment to foreign market value for revenue earned on hedging operations to account for differences between FAG's actual exchange rate return and the Federal Reserve rate employed by the Department. (*See*, Miscellaneous section of Appendix B.)

We made an upward adjustment to the tax-exclusive home market prices for the value-added tax we computed for the United States price.

B. *GMN:* Petitioner alleged that GMN's home market sales of ball bearings were made at prices below the COP. Based on petitioner's allegation, we gathered and verified data on GMN's production costs. We calculated the COP on the basis of GMN's cost of materials, labor, other fabrication costs and general and administrative expenses. The COP data submitted by GMN was relied upon, except in the following instances where the costs were not appropriately quantified or valued. These were:

(1) Indirect selling expenses were deducted from G&A expenses to eliminate double counting since they were also included as part of the selling expenses,

(2) Interest expense net of interest income related to operations was included in the COP, and

(3) Packing expense was removed from the G&A calculation and reported separately.

We calculated the foreign market value based on CV, where appropriate, in accordance with section 773(e) of the Act. CV was calculated on the basis of

GMN's fabrication costs plus general expenses and profit. Actual general expenses were used since these exceeded the statutory minimum requirement of ten percent of materials and fabrication. The statutory eight percent minimum profit was applied. Imputed credit and inventory carrying costs were included in selling expenses; therefore, interest expense reflected on the company books was reduced for a portion of the expense related to these activities in order to avoid double counting. All the changes made to the COP were also made to those cost elements in CV. We added U.S. packing. We deducted all direct selling expenses, and indirect selling expenses, up to the ESP cap.

Where we found that sufficient sales were above cost to permit the use of these sales as the basis for determining foreign market value, we calculated foreign market value based on delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight, inland insurance, home market packing, and cash discounts. We modified cash discounts based on verified information. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, where appropriate, for credit. We modified GMN's credit expenses based on verified information. (*See,* Credit Expense section of Appendix B.) We also made deductions from the home market price for commissions paid by GMN to unrelated parties. We also deducted certain indirect selling expenses which include: advertising, inventory carrying expenses and technical services, in accordance with 19 CFR 353.15(c).

We modified inland freight expense based on verified information. (*See,* Inland Freight section of Appendix B.)

We made an upward adjustment to the tax-exclusive home market prices for the value-added tax we computed for United States price.

C. *INA:* We calculated foreign market value based on delivered prices to unrelated customers in the home market. We added interest revenue earned on each transaction, where appropriate. We made deductions from the home market price, where appropriate, for inland freight, inland insurance, home market packing and discounts and rebates.

For U.S. packing expenses, INA reported only repacking which occurred at the U.S. warehouse; it did not include the packing costs incurred in the home market for shipment to the United States. Therefore, as the best information available for U.S. packing, we calculated an average U.S. packing expense for each product. We then subtracted the reported home market packing and added the average U.S. packing expense to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we deducted credit expenses from home market price. We also deducted indirect selling expenses which include: advertising, technical services, warranty expenses, quality control expenses, inventory carrying costs, product liability and other miscellaneous indirect selling expenses, in accordance with 19 CFR 353.15(c).

We modified the following claims based on verified information: Credit expenses, inland insurance, technical services, advertising, inventory carrying costs, warranty expenses, and indirect selling expenses. (*See,* Selling Expenses section of Appendix B.)

We made an upward adjustment to the tax-exclusive home market prices for the value-added tax we computed for United States price.

D. *SKF: See,* Best Information Available section of Appendix B.

II. Spherical Roller Bearings

FAG: Petitioner alleged that FAG's home market sales of spherical roller bearings were made at prices below the COP. Based on petitioner's allegation, we gathered and verified data on FAG's production costs. We calculated the COP as described above for ball bearings. The COP data submitted by FAG was relied upon, except in those instances listed above for ball bearings.

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market prices since there were sufficient home market sales at or above the COP.

We calculated foreign market value based on packed, c.i.f. prices to unrelated customers in the home market. (*See,* Market Viability section of Appendix B.) The adjustments were identical to those described above for ball bearings.

III. Cylindrical Roller Bearings

A. *FAG:* Petitioner alleged that FAG's home market sales of cylindrical roller bearings were made at prices below the COP. Based on petitioner's allegation, we gathered and verified data on FAG's production costs. We calculated the COP as described above for ball bearings. We calculated foreign market value based on CV where appropriate as described above for ball bearings. Where we found that sufficient sales were above cost to permit the use of these sales as the basis for determining foreign market value, we calculated foreign market value based on packed, c.i.f. prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

B. *INA: See,* Best Information Available and Cost of Production sections of Appendix B.

C. *SKF: See,* Best Information Available section of Appendix B.

IV. Needle Roller Bearings

A. *FAG:* Petitioner alleged that FAG's home market sales of needle roller bearings were made at prices below the COP. Based on petitioner's allegation, we gathered and verified data on FAG's production costs. We calculated the COP as described above for ball bearings. We calculated foreign market value based on CV where appropriate as described above for ball bearings. Where we found that sufficient sales were above cost to permit the use of these sales as the basis for determining foreign market value, we calculated foreign market value based on packed, c.i.f. prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

B. *INA:* We calculated foreign market value for needle roller bearings based on packed, c.i.f. prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

C. *SKF: See,* Best Information Available section of Appendix B.

V. Spherical Plain Bearings

A. *FAG:* We calculated foreign market value for spherical plain bearings based on packed, c.i.f. prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

B. *SKF: See,* Best Information Available section of Appendix B.

Currency Conversion

We used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

On August 1, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject

merchandise from the FRG. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

We generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we requested specific data on shipments of the subject merchandise as the most appropriate basis for our determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation.

We have asked all respondents in each of the AFB investigations to supply monthly volume shipment data from January 1986 through the present in order for the Department to base the critical circumstances determinations on company-specific data. We were unable to verify the shipment data provided by SKF and INA. (*See*, Critical Circumstances section of Appendix B.) Therefore, as best information available, we are assuming that imports from INA and SKF have been massive over a relatively short period of time. Based on our analysis of the monthly shipment data submitted by FAG and GMN, and the best information available for INA and SKF, we have found that imports of the following classes or kinds of merchandise from the companies listed below have been massive over a relatively short period of time.

1. Ball Bearings—INA, SKF
2. Spherical Roller Bearings—FAG
3. Cylindrical Roller Bearings—FAG, INA, SKF
4. Needle Roller Bearings—FAG, INA, SKF
5. Spherical Plain Bearings—SKF

Therefore, we find that the requirements of section 735(a)(3)(B) are met for the above companies and classes or kinds of merchandise.

We examined recent antidumping duty cases and found that there are currently no findings of dumping in the United States or elsewhere of the subject merchandise by FRG manufacturers, producers, and exporters of the subject merchandise. However, it is our standard practice to impute knowledge of dumping under section 735(a)(3)(A) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient. [*See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987).] However, in cases where the foreign manufacturer sells in the United States through a related company, we consider that lower margins may be sufficient. [*See, e.g., Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan* (53 FR 12552, April 15, 1988)).] Since [FAG, INA, and SKF] sell in the United States through related companies, and their margins are sufficiently high, we find that the requirements of section 735(a)(3)(A) are met for these companies with respect to the classes or kinds listed below. Therefore, the following chart sets forth our company-specific determinations with respect to the existence of critical circumstances for each company and each class or kind of merchandise from the FRG.

	Critical circumstances
Ball bearings:	
GMN	no.
FAG	no.
INA	yes.
SKF	yes.
All others	no.
Spherical Roller Bearings:	
FAG	yes.
All others	yes.
Cylindrical roller bearings:	
FAG	yes.
INA	yes.
SKF	yes.
All others	yes.
Needle roller bearings:	
FAG	yes.
INA	yes.
SKF	yes.
All Others	yes.
Spherical plain bearings:	
FAG	no.
SKF	yes.
All others	no.

Verification

Except where noted, we verified the information used in making our final determinations in accordance with section 776(b) of the Act. We used standard verification procedures including examination of relevant accounting records and original source documents of the respondents. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Interested Party Comments

As noted above, all comments raised by parties to the proceedings in the antidumping duty investigations on AFBs from nine countries are discussed in Appendix B.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from the FRG, as defined in the "Scope of Investigations" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. In those situations where we have found affirmative critical circumstances in both our preliminary determinations and our final determinations, the retroactive suspension of liquidation ordered in our preliminary determinations will remain in effect. In those situations where we have found affirmative critical circumstances only in these final determinations, we are instructing the U.S. Customs Service to suspend liquidation of such entries that are entered or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of the notice of the preliminary determinations in these investigations in the **Federal Register**. Finally, in those situations where our final critical circumstances determinations are negative, the retroactive suspension of liquidation ordered at the time of the preliminary determinations is terminated. All cash discounts or bonds placed on entries made by these companies of such merchandise prior to November 9, 1988 shall be refunded. (*See*, Critical Circumstances section of this notice.) The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from the FRG exceeds the

United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Weighted-average margin percentage
Ball bearings:	
FAG	70.41%
GMN	35.43%
INA	31.29%
SKF	132.25%
All Others	68.89%
Spherical roller bearings:	
FAG	36.61%
All Others	36.61%
Cylindrical roller bearings:	
FAG	52.43%
INA	52.43%
SKF	76.27%
All Others	55.65%
Needle roller bearings:	
FAG	107.05%
INA	41.82%
SKF	107.05%
All Others	47.83%
Spherical Plain bearings:	
FAG	74.88%
SKF	118.98%
All others	114.52%

For merchandise entering under Schedule 8 under military procurement provisions, the bonding rate is zero.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. 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 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 with respect to any of the products under investigations, the applicable proceeding[s] will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, the Department will issue antidumping duty orders directing Customs officials to assess antidumping duty on AFBs from the FRG entered or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

These determinations are published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

March 24, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

Appendix A

Scope of These Investigations

The products covered by these investigations, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) *Ball Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls (*Tariff Schedules of the United States Annotated* [TSUSA] items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation. Finished but unground or semiground balls are not included in the scope of this investigation.

Imports of these products are also classified under the following Harmonized System (HS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(2) *Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ spherical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ spherical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HS subheadings: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(3) *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ cylindrical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(4) *Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ needle rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960).

Wheel hub units which employ needle rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HS subheadings: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(5) *Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all spherical plain bearings which do not employ rolling elements and include spherical plain rod ends. Spherical plain bearings entering under TSUSA items 681.3900 and 692.3295 are subject to investigation; other products entering under these TSUSA items are not subject to investigation.

Imports of these products are also classified under the following HS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, 8708.99.50.

These investigations cover all of the subject bearings and parts thereof outlined above with certain limitations. With regard to *finished* parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts *are included* in the scope of these investigations. For *unfinished* parts (inner race, outer race, rollers, balls, etc.), such parts are included *if* (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are *not* covered by these investigations are those where the part will be subject to heat treatment after importation.

Appendix B

Contents

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Company Abbreviations

Cooper—Cooper Bearings Co., Ltd. and Cooper Bearing Company
FAG–FRG—FAG Kugelfischer Georg Schaefer KGaA; Elges
FAG-Italy—FAG Cuscinetti SpA
GMN—GMN Georg Mueller Nurnberg; GMN Georg Mueller of America
ICSA—ICSA Industria Cuscinetti, S.p.A.
INA–FRG—INA Walzlager Schaeffler KG; INA Bearing Company, Inc.
INA-France—INA Roulements; SM Noral
INA–UK—INA Bearing Co., Ltd.
Koyo—Koyo Seiko Co., Ltd.
Minebea—Minebea Co., Ltd.
Nachi—Nachi-Fujikoshi Corp.; Nachi America Inc.
NMB/Pelmec Singapore—NMB Singapore Ltd.; Pelmec Industries (Pte.) Ltd.
NMB/Pelmec Thai—NMB Thai, Ltd.; Pelmec Thai, Ltd.
NSK—Nippon Seiko K.K.; NSK Corporation
NTN—NTN Toyo Bearing Co., Ltd.; NTN Bearing Corporation of America; American NTN Bearing Manufacturing Corp.
RHP—RHP Bearings; RHP Bearings Inc.
Rose—Rose Bearings, Ltd.
SKF–FRG—SKF GmbH; SKF Gleitlager GmbH; SKF Linearsysteme GmbH; SKF Bewegungstechnik GmbH
SKF-France—SKF Compagnie d'Applications Mecaniques, S.A. (Clamart); ADR; SARMA
SKF-Italy—SKF Industrie; RIV–SKF Officine de Villar Perosa; SKF Cuscinetti Speciali; SKF Cuscinetti; RFT
SKF-Sweden—AB SKF; SKF Mekanprodukter AB; SKF Sverige (Goteborg and Nordisk Forsaljning)
SKF–UK—SKF (U.K.) Limited; SKF Industries; AMPEP Inc.
SKF–USA—SKF Industries, Inc.
SNR—SNR Roulements; SNR Bearings USA, Inc.
TIE—Tehnoimportexport
Torrington—The Torrington Company

General Issues

Section 1: Class or Kind of Merchandise

Comment 1. Petitioner contends that information submitted on the record demonstrates that the products subject to investigation constitute a single class or kind of merchandise based on the criteria used by the Department.

FAG–FRG contends that the Department has before it an enormous body of evidence from numerous sources which contradicts petitioner's allegation that the subject merchandise constitutes a single class or kind.

SKF and NTN contend that the Department properly determined that there are at least five classes or kinds of merchandise covered by these investigations and that there is ample evidence of record to support this determination.

INA–FRG supports the Department's conclusion that the circumstances in the instant case are appropriate for finding five distinct classes or kinds of merchandise.

DOC Position. We determine that the products under investigation constitute five separate classes or kinds of merchandise. Having carefully considered all the information and arguments presented, we find no reason to alter the conclusion reached in our July 13, 1988 memorandum that the scope of these investigations include five classes or kinds of merchandise.

The petition in these investigations characterized the products under investigation as a single class or kind of merchandise, as did the Department's notices of initiation. Subsequent to our initiations, several respondents and interested parties expressed strong disagreement with the presumption that the subject merchandise constituted a single class or kind. Given the information gathered subsequent to the initiations, the enormous diversity and multiplicity of individual products encompassed by the proposed single class or kind of "antifriction bearings," and the ITC determination of several like products and industries, the Department decided to reexamine the class or kind of merchandise, as described in the petition. (See also discussion below regarding the Department's authority to define the class or kind of merchandise.)

On July 13, 1988, after a thorough examination of this issue, the Department determined that the evidence of record warranted a subdivision of the merchandise under investigation into five classes or kinds. *See* Memorandum from Michael J. Coursey, Director, Office of Investigations, to Jan Mares, Assistant Secretary for Import Administration, dated July 13, 1988. In that memorandum, the Department used the *Diversified Products Corp.* v. *United States,* 572 F. Supp. 883 (CIT 1983) criteria as the basis for its finding that the merchandise subject to these investigations actually comprised five classes or kinds of merchandise. These criteria are: (1) The general physical characteristics; (2) the ultimate use; (3) the expectations of the ultimate

purchaser; (4) the channels of trade; and (5) the manner of advertising and display.

Since then, the parties have briefed the class or kind issue extensively. After considering all the arguments presented, the Department has no reason to alter the July 13, 1988 decision.

In order to appreciate the dilemma facing the Department in assessing whether there were single or multiple classes or kinds, we note that more than 80,000 bearing part numbers are used in the United States today. The subject merchandise is manufactured over a wide range of sizes, from only a fraction of an inch in diameter to over 40 feet. Some AFBs employ balls as rolling elements; others employ needle, spherical, or cylindrical rollers as rolling elements; still others employ sliding contact surfaces in lieu of rolling elements to address friction. AFBs are finished to a wide range of tolerances and can be assembled with tight or loose fits. Customers may purchase commodity bearings "off the shelf," or specialty bearings made to order. Further, the subject merchandise is produced in a variety of designs, and often with special features, such as enhanced flanges, for ease of mounting or to improve performance.

The application environment is extremely diverse. AFBs are used under water, underground, in space, in very hot or cold places, and in corrosive environments. The loads on an AFB can be radial, axial, or a measure of both, and often vary in intensity as the bearing rotates. The shaft on which the AFB is mounted can be high speed, low speed, or oscillatory. The application may involve axial displacement, or be subject to misalignment. As friction is the major constraint to machine performance, the subject merchandise can literally be found in almost any machinery or equipment that has moving parts. Almost all modern industries, from transportation, aviation, communications, and computers to logging, mining, and steel production utilize equipment which employ AFBs of some type.

Despite the enormous breadth of the merchandise covered by the petition, petitioner has argued throughout these proceedings that a single class or kind of merchandise exists on the basis that all AFBs have the same general physical characteristics [outer race, inner race, balls or roller elements and cage] and serve the same general function [to reduce friction and wear between moving and fixed parts, and thereby, permit easier and faster motion]. Respondents, on the other hand, collectively have contended that numerous classes or kinds exist on the basis of differences in size, type, precision, and application.

Faced with these two extreme analyses, the Department applied the *Diversified Products* criteria (noted above) to the facts in these investigations. Our analysis showed that the shape of the rolling element (in ball, cylindrical, needle, and spherical roller bearings) or the sliding contact surfaces (in spherical plain bearings) determined or limited the AFB's key functional capabilities (*e.g.*, load and speed). In turn, these capabilities established the boundaries of the AFB's ultimate use and customer expectations. We believe that these factors are the critical ones in determining that five classes or kinds of merchandise exist in these investigations. We, therefore, have distinguished the subject merchandise on the basis of the shape of the rolling element (in the case of ball and roller bearings) and sliding contact surfaces (in the case of spherical plain bearings).

The rolling element and sliding contact surfaces are the essential components of the subject merchandise. These components bear the load and permit rotation. A change in the geometry of these components changes the load/speed capability of the AFB and, thus, the applications for which the AFB is suited. See Department Memorandum, dated July 13, 1988. There are, of course, overlaps between AFBs in terms of load/speed capabilities, but there is enough separation that the market continues to demand a range of AFBs with different rolling element and sliding contact surface geometries.

The demand for a range of AFBs with different rolling element and sliding contact surface geometries arises from applications in which load/speed requirements can vary greatly. There are, of course, other functional and performance requirements that vary across applications (*e.g.*, available space, noise levels, stiffness, precision, misalignment capability, axial displacement, and frequency of mounting and dismounting). However, the load/speed requirement is reflective of the primary AFB function (to reduce friction and wear between moving and fixed parts), and is therefore, common to all applications. For instance, in ball bearing applications, the ball bearing must be able to withstand high revolutions per minute (rpms) under low load conditions. As a result, a ball bearing purchaser does not expect the ball bearing to perform under heavy load conditions. Similarly, spherical roller bearing applications require that the spherical roller bearing be able to withstand heavy loads at moderate rpms. As a result, the spherical roller bearing purchaser does not expect this AFB to perform under very high rpm conditions.

Since applications and expectations depend on functional capabilities (*e.g.*, load/speed), and these, in turn, are dependent upon rolling element and sliding contact surface geometries, a division of ultimate use and expectations of the ultimate purchaser results which parallels a division of AFBs on the basis of the rolling element or sliding contact surface geometry. Moreover, the focus on load/speed capability in the analysis of expectations and applications is consistent with the fact that for bearings, like for other producer-goods, functional capability is the basis for selection by the customer.

Petitioner's analysis fails to account for the fact that different rolling element and sliding surface geometries result in different functional capabilities of the AFBs and, thus, in different AFBs altogether. Furthermore, petitioner's definition of common function (to reduce friction and wear between moving and fixed parts, and thereby, permit easier and faster motion) applies to oil and other lubricants, non-stick surfaces such as teflon, and many other products as well as to the subject merchandise. In contrast, respondents' collective analysis does account for physical and application-specific differences of the subject merchandise, but to a degree that would lead to absurd results in determining the number of classes or kinds. In addition, we have viewed engineering design variations (such as dimensions or precision levels) as qualitative variations which are not so fundamental as to provide a basis for distinguishing classes or kinds.

As for channels of distribution and advertising, we acknowledge that these may be generally the same for many of the AFBs under investigation. We do not believe, however, that similarity in channels of distribution and advertising, alone, is sufficient reason to treat the subject merchandise as a single class or kind of merchandise when significantly more important dissimilarities exist with respect to physical characteristics, ultimate uses, and expectations of the ultimate user. For further analysis of the *Diversified Products* criteria, as applied to these investigations, see the discussion below.

For all of the above reasons, we determine that the products under investigation constitute five separate classes or kinds of merchandise.

Comment 2. Petitioner argues that the Department lacks the authority to alter

the class or kind of merchandise to be investigated, as defined in the petition, unless the petition contains inadequate allegations or is unsupported by evidence reasonably available to the petitioner (citing *Mitsubishi Electric Corp.* v. *United States*, 12 CIT_____, Slip Op. 88–152 at 43 n.3 (October 31, 1988) and *Royal Business Machines* v. *United States*, 1 CIT 80, 87, 507 F. Supp. 1007, 1014 (1980), *aff'd*, 69 C.C.P.A. 61, 660 F. 2d 692 (1982)). Petitioner also argues that respondents and interested parties have failed to establish that antifriction bearings should be subdivided into more than one class or kind of merchandise.

INA and NSK contend that the Department has the inherent power to establish the parameters of the investigation in order to carry out its intent (citing *Final Determination of Sales at Less than Fair Value: Cellular Mobile Telephones and Subassemblies from Japan*, (50 FR 45447, 45449, October 31, 1985). SKF argues that this authority is analogous to the Department's authority to reconsider decisions to initiate an antidumping investigation (citing *Kokusai Electric Co.* v. *United States*, 632 F. Supp. 23, 28 (CIT 1986) (citing *Gilmore Steel Corp.* v. *United States*, 585 F. Supp. 670 (CIT 1984)). Without this inherent authority, NSK argues that the Department would be tied to an initial scope definition that was based on whatever information the petitioner may have had available to it at the time of filing the petition, and which may not make sense in light of the information available to the Department or subsequently obtained in the investigation (citing *Final Determination of Sales at Less Than Fair Value: 3.5"* Microdisks and Coated Media Thereof from Japan ("Microdisks"), (54 FR 6433, 6434, February 10, 1989). INA further notes that the Department has used its discretion to define the classes or kinds of merchandise under investigation and, if necessary, has modified the scope of a petition in conducting its investigations (citing *Certain Iron Construction Castings from Canada; Final Determination of Sales at Less Than Fair Value* ("Castings"), (51 FR 2412, 2415, January 16, 1986); *Final Determination of Sales at Less Than Fair Value; Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Canada*, (53 FR 3227, 3230, February 4, 1988). SKF notes that the Court of International Trade recently upheld the Department's authority to define and clarify the scope of an investigation (citing *Mitsubishi Electric Corp.* v. *United States*, 12 CIT_____, Slip Op. 88–152 (Oct. 31, 1988)).

The Bearings Importers Group ("BIG") of the Aerospace Industries Association of America ("AIA") argues that 19 U.S.C. 1673a(c) directs the Department to investigate "the" class or kind described in the petition, which presupposes that the petition will only describe one class or kind of merchandise.

DOC Position. We disagree with petitioner. The Department has the authority to define and clarify the scope of merchandise to be investigated, as described in the petition, if the circumstances require such action. The Court of International Trade has recognized such authority in *Royal Business Machines*, 507 F. Supp. at 1014; *Diversified Products* v. *United States*, 572 F. Supp. 883 (CIT 1983); and *Mitsubishi Electric*, Slip Op. 88–152 at 43 (holding that the Department has the authority to define and/or clarify what constitutes the subject merchandise to be investigated as set forth in the petition). Respondents correctly point out that the Department has the inherent power to establish the parameters of an investigation so as to carry out its mandate to administer the law effectively and in accordance with congressional intent. Petitioner itself conceded at the public hearing on Antifriction Bearings from Sweden that it "would not rule out some situation that would be serious enough to suggest that there is an inherent authority [for the Department to alter the scope of the merchandise to be investigated, as defined in the petition]". *See* Transcript of Proceedings, Hearing on the Antidumping Investigation of Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from Sweden, February 9, 1989 at 20–21. For these reasons, the Department disagrees with petitioner's contention that respondents and interested parties have the burden to establish the existence of multiple classes or kinds of merchandise.

For the purpose of these investigations, however, the Department has not altered or narrowed the overall scope of the merchandise under investigation, as described in the petition. Rather, after a thorough briefing by the parties and extensive consultation with the Department of Commerce's Office of Industrial Resource Administration (OIRA), the U.S. Customs Service, and the ITC, the Department determined that petitioner's description of the subject merchandise in the petition was so broad that it encompassed five classes or kinds of merchandise. See discussion above regarding the Department's class or kind decision.

The Department disagrees with "BIG" that 19 U.S.C. 1673a(c) presupposes that only one class or kind of merchandise will be named in a petition. Merely because a domestic party combines cases together in one document does not mean that they constitute one petition. For example, petitioners frequently combine cases on various countries together in one document. Nevertheless, where petitioners do include more than one class or kind within one petition, the Department treats the investigation of each class or kind of merchandise as a separate investigation, just as we did during the present investigations.

Comment 3. Petitioner argues that the Department should not have applied the *Diversified Products* criteria during this investigation in making its determination that five classes or kinds of merchandise exist. Petitioner claims that these criteria should only be applied to the issue of whether a particular product is within the scope of an already existing antidumping duty order. Petitioner notes that the Department, itself, has taken this position in litigation before the Court of International Trade (citing Defendant's Memorandum in Opposition to Plaintiff's Motion for Judgment on the Agency Record as to Counts II through VI of Their Complaint as Supplemented, dated November 10, 1988 in *NTN Bearing Corporation* v. *United States*, Court No. 87–11–01066).

DOC Position. We disagree with petitioner. Although the Department traditionally applied the *Diversified Products* criteria to determine whether a product was covered by an outstanding antidumping or countervailing duty order, in recent years, the Department has relied on such criteria in defining and clarifying the scope of several of its investigations. See *Cellular Mobile Telephones*, (50 FR at 45449); *Castings*, (51 FR at 2415); *Erasable Programmable Read Only Memories from Japan, Final Determination of Sales at Less Than Fair Value* ("EPROMS"), (51 FR 39680, 39685, October 30, 1986); *Final Determination of Sales at Less Than Fair Value, Certain Forged Steel Crankshafts from the Federal Republic of Germany*, (52 FR 28170, 28174, July 28, 1987); *Final Determination of Sales at Less Than Fair Value: Granular Polytetrafluoroethylene Resin from Italy* ("PTFE"), (53 FR 26096, 26097, July 11, 1988); and *Microdisks*, (54 FR at 6434).

In fact, the Court of International Trade recently endorsed the Department's use of such criteria in defining and clarifying the class or kind

of merchandise during the investigation on cellular mobile telephones and subassemblies, cited above. *Mitsubishi Electric Corp.* v. *United States,* Slip Op. 88-152 at 46 (October 31, 1988). In the present investigations, the Department relied on these criteria in determining that the single class or kind of merchandise, as defined by petitioner, should be subdivided into five classes or kinds of merchandise. *See* discussion above regarding the Department's class or kind decision. Petitioner correctly notes that, in litigation currently pending before the Court of International Trade, the Department inadvertently overlooked the fact that the Office of Investigations has applied the *Diversified Products* criteria to define and clarify the scope of the various investigations cited above.

Comment 4. Petitioner argues that a review of several of the Department's past administrative determinations reveals that a single class or kind of merchandise often consisted of a variety of products, different in physical characteristics and end use (citing *Final Determination of Sales at Less Than Fair Value; Certain Valves, Couplings, Nozzles, and Connections of Brass, Suitable for Use in Fire Protection Systems from Italy* ("Fire Protection Products"), (49 FR 47066, 47067, November 30, 1984); *Portable Electric Typewriters from Japan; Final Results of Administrative Review of Antidumping Duty Order* ("PETS"), (48 FR 7768, 7769, February 24, 1983); *Castings,* (51 FR at 2415; *Final Determination of Sales at Less Than Fair Value; Certain Fresh Cut Flowers from Mexico* ("Flowers"), (52 FR 6361, 6362, March 3, 1987); *Television Receivers, Monochrome and Color from Japan; Final Results of Antidumping Duty Administrative Review,* (52 FR 8940, 8946, March 20, 1987); and *Certain Steel Wire Nails from the Republic of Korea; Antidumping: Final Determination of Sales at Less Than Fair Value and Exclusions from Final Determination* ("Nails"), (47 FR 27392, 27393, June 24, 1982).

Petitioner argues that, since the Department apparently used (1) similarity of production facilities and processes; (2) common marketing and distribution; and (3) general use of the merchandise as the relevant criteria in determining the presence of one class or kind in an earlier investigation (citing *Castings*), it should do so here. If the above three criteria are used, petitioner argues that, since all types of antifriction bearings are produced in common facilities, are marketed and distributed through common channels, and are generally used for the same purposes, the Department should find that there is only one single class or kind of merchandise under investigation for purposes of these final determinations. Finally, petitioner argues that the Department should follow *Citrosuco* at 26-27 and H.R. Rep. No. 40, 100th Cong., 1st Sess. 143 (1987) in making its final determination by either conforming to or explaining the reasons for its departure from its prior determinations.

SKF contends that it is clear from the responses to the cost of production questionnaire [*See* Section D Questionnaire Responses] that all antifriction bearings are *not* manufactured on the same equipment, by the same workers, and in the same facility and according to the same manufacturing process. While SKF concedes that early in the bearing manufacturing process, some common machinery may be used, SKF argues that this is not true with regard to the later processes, where most of the value is added, as demonstrated during verification. SKF notes that petitioner, itself, rationalizes its production based on size, type of rolling element, and level of precision, *citing* USITC Preliminary Conference Transcript, April 21, 1988 at 88.

DOC Position. A review of the cited Department determinations shows that it is extremely difficult to use the class or kind analysis from one investigation as precedent for another investigation, unless the products are quite similar and, therefore, closely analogous.

Also, the kind of analysis proposed by petitioner would require the review of all of the technical data and industry analyses that the Department had on record at the time of each of its class or kind decisions; the narrowness of the scope and class or kind, as proposed by petitioner during each of the investigations; the arguments and submissions filed by any opposition to the breadth of the scope or class or kind; as well as any internal research and memoranda with respect to these issues.

We disagree with petitioner that the Department must accept a broadly-defined class or kind of merchandise simply because orders we have issued in the past allegedly include a wide range of products within a single class or kind of merchandise. Normally, the Department will accept the class or kind of merchandise as defined by the petitioner. However, where respondents argue that the class or kind is overly broad, or where the Department develops information in the course of its investigation to this effect, it is appropriate for the Department to apply the *Diversified Products* analysis, as we have done in these investigations.

It also should be noted that the criteria petitioner claims the Department should use and has used (citing *Castings*) are really the *Diversified Products* criteria, discussed in the above comments. In analyzing physical characteristics, the Department has sometimes looked at the similarity of production facilities and processing of the products in question to see whether two products were significantly similar to warrant finding a single class or kind of merchandise. *See PTFE from Italy,* (53 FR at 26097). The evidence presented during these investigations, however, was inconclusive with respect to the common manufacturing facilities, workers, and machinery allegedly used in the production of all antifriction bearings. While a number of companies have rationalized various segments of their bearing production, some of this rationalization is based on rolling element shape, while some is based on dimensional ranges of the bearings with little regard to type. There may also be certain flexibility in the types of AFBs which can be produced on a particular machine. Since this evidence is inconclusive, we did not focus on the similarity between production facilities and processing in our analysis of general physical characteristics. Instead, as discussed below, we focused on the type of rolling element and sliding surfaces (for spherical plain bearings) characteristic to the subject merchandise.

Comment 5. Petitioner argues that the Department erred in determining that the general physical characteristics among AFBs warranted a finding of five classes or kinds of merchandise under investigation. First, petitioner contends that the relevant physical characteristics are not the specific, internal components of a given article, so much as the general attributes that define its essential character. Petitioner argues that it is the inner and outer races, rolling elements, and cage that define an AFB. Second, there is no evidence in the record to support the Department's determination that the physical differences *between* each of the proposed categories are substantially more significant than any differences among products *within* the proposed categories. Petitioner argues that, on the contrary, there is ample support on the record establishing that the general physical characteristics of all AFB's are the same. Third, the Department's focus on the internal rolling element as a physical characteristic worthy of note cannot be reconciled with previous administrative

determinations, given the virtually identical function shared by the AFBs under investigation (citing *EPROMS from Japan; Castings from Canada; Bicycle Speedometers from Japan,* (47 FR 28978, July 2, 1982); *PETS from Japan; Television Receivers from Japan; Final Determination of Sales at Less Than Fair Value; High Capacity Pagers from Japan,* (48 FR 28682, June 23, 1983); and *Certain Electric Motors from Japan; Antidumping: Final Determination of Sales of Large Motors at Less Than Fair Value and Suspension of Investigation for Small Motors,* (45 FR 73723, November 6, 1980)). Finally, the Department's subdivision of the subject merchandise into five classes or kinds produces absurd results when confronted with multiple-row bearings incorporating different roller types.

SKF argues that petitioner's request for one class or kind is illogical because the sole class or kind would include products which do not share the essential characteristics, as outlined by petitioner (*e.g.,* spherical plain bearings do not contain a rolling element), and use (reduction of friction), while products which clearly share these overly broad elements are excluded (*e.g.,* tapered roller bearings).

SKF also contends that the internal geometry of the five classes or kinds of bearings varies to such a degree that it results in widely divergent general physical characteristics, different uses and different performance expectations by customers. For example, since contact is concentrated at a single point in ball bearings (in contrast with the *line* contact of a cylindrical or needle roller bearing), ball bearings have a lower load-carrying capacity than cylindrical and needle roller bearings. Given the geometry of cylindrical and needle roller bearings, these bearings can accommodate heavy loads but only in a single direction and at varying speeds (cylindrical-high speed and needle-moderate speed).

DOC Position. We disagree with petitioner. There can be no doubt that the subject merchandise differs with respect to the shape of the rolling element (or the lack of rolling elements in the case of spherical plain bearings). Simple visual inspection reveals noticeable and significant physical differences. However, the question to be addressed is not whether there are physical differences between the various bearings, since the answer is obviously yes. The real question is whether the physical differences are so material as to alter the essential nature of the product and, therefore, rise to the level of class or kind distinctions. We believe that the physical differences between the five classes or kinds of the subject merchandise are fundamental and are more than simply minor variations on a theme.

As discussed in our July 13, 1988 memorandum on class or kind, the shape of the rolling element establishes the functional limitations of ball and roller bearings as to load and speed, and, by extension, ultimate use and expectations. Therefore, there is no other physical characteristic among these bearings more fundamental than the shape of the most essential component, the rolling element.

Spherical plain bearings, on the other hand, do not contain rolling elements. Instead, they are composed of inner and outer rings which form a spherically shaped bearing surface and which slide in relation to one another. This configuration establishes different functional limitations, ultimate uses and expectations than those that are characteristic to the ball and roller bearings discussed above. This configuration is fundamental to the nature of the spherical plain bearing and, therefore, is a basis for our distinction of this class or kind of merchandise.

For the purposes of clarifying scope and making its class or kind determination, the Department found that the difference in roller elements and in the case of spherical plain bearings, the sliding surface configuration, was much more significant than numerous differences in size, precision level, and applications within each respective category of AFB. As discussed in the above comments, the Department's decision to define class or kind according to these essential elements is well supported by the record due to the fact that the rolling element and sliding surface geometry, in turn, determines the functional capability, ultimate use, and customer expectations of the subject merchandise. Conversely, given the tremendous variations among sizes, precision levels and applications applicable to AFBs, the Department's subdivision of scope based on these characteristics would have led to numerous classes or kinds and absurd results.

Petitioner's reliance on the administrative cases cited in this comment is misplaced as well, for the same reasons discussed in the above comment. Further, the Department is focusing on the rolling elements and sliding surfaces (spherical plain) and their corresponding functional capabilities in determining class or kind for the purposes of *these* investigations because the technical data and industry analysis on record, the breadth of the scope, as described in the petition, as well as the arguments raised by respondents in opposition to a single class or kind indicate that such a focus is warranted.

Finally, the fact that there are certain AFBs which incorporate multiple rows of different types of rolling elements [combination bearings] for use in limited, unusual applications does not alter the Department's finding that the subject merchandise comprised five classes or kinds of merchandise. For instance, in the case of a combination needle roller/angular contact ball bearing, the relative position of the balls in an angular contact arrangement allows the bearing unit to withstand thrust loads which a radial needle roller bearing alone could not accept. However, the needle and ball bearings contained in the combination unit still retain their functional capabilities and separate identities. Therefore, in combination units, a different "bearing" is not created as much as an enhanced one. The combination unit is still designed for use where high radial loads are encountered but now accepts some thrust (or axial) forces as well.

Comment 6. Petitioner contends that, contrary to the Department's findings in the July 13, 1988 Memorandum on Class or Kind, the record evidence establishes that the various bearing types distinguished by the Department are, in fact, suitable for many of the same uses and that there is a great degree of interchangeability between different bearing types, and thus, should constitute one class or kind of merchandise under investigation. Further, the Department has concluded in other investigations that the lack of perfect substitutability does not splinter the class or kind (citing *Tapered Roller Bearings from Japan, EPROMS from Japan, Castings from Canada, Certain Forged Steel Crankshafts from the United Kingdom and Color Television Receivers from Korea*). Petitioner has argued throughout these proceedings that the general function of all of the AFB's under investigation is to reduce friction and wear between moving and fixed parts, and thereby, permit easier and faster motion.

SKF argues that petitioner's definition of ultimate use as the reduction of friction was so patently broad that a single class or kind would include automobile tires, lubricants, and non-stick surfaces, as well as all of the AFBs under investigation.

DOC Position. We disagree with petitioner. One of the most persuasive

pieces of evidence that all of the AFBs under investigation are not equally similar in their ultimate use is the obvious fact that there are numerous types of AFBs currently in production [ball bearings (including deep groove ball, self-aligning ball, angular contact ball, thrust ball bearings); cylindrical roller bearings (including cylindrical roller thrust bearings); spherical roller bearings (including spherical roller thrust); needle roller bearings; spherical plain bearings; tapered roller bearings as well as many others]. The apparent reason is that different types of AFBs are suited to different applications and uses. If, as petitioner contends, all AFBs were equally suitable in all applications, bearing manufacturers would not manufacture the diverse types of AFBs that they in fact produce.

As discussed above in the general discussion regarding the Department's class or kind decision, the rolling elements and sliding surfaces establish the limitations of the AFB's load and speed capabilities, the critical functional capabilities in the achievement of friction reduction. For example, the point contact between the ball and the races in a ball bearing enables the bearing to operate at relatively high speed applications but reduces its load carrying capability. By contrast, the line contact between the cylindrical roller and the races in a cylindrical roller bearing increases its load capabilities but with some sacrifice in speed. Such load/speed capabilities directly determine the uses and applications in which the bearing may be employed.

Petitioner argues that there is a great degree of interchangeability between the bearings under investigation, especially at the design stage of manufactured products which incorporate these bearings. While this may have limited validity in a theoretical sense, it has little practical application because AFBs are almost always "design followers." In almost any AFB application, a "best engineering" solution is normally indicated by weighing various operating factors in the application environment as to which type bearing, or combination of types to use. These factors include, but are not limited to, available space, load, speed, noise, axial displacement, mounting technique, misalignment, precision and stiffness. Again, load and speed are the critical criteria with respect to friction reduction. Only within certain narrow limits may other AFB types be fashioned to satisfy the application without significantly compromising the machine's performance. However, once the engineering criteria for bearing type selection has been established, switching to another type is restricted technically and/or economically, and will frequently result in a significant reduction in performance. Accordingly, while examples of interchangeability at the design stage may be found, they are comparatively rare. Interchangeability at the replacement stage is almost nil.

For the above reasons, the Department does not find that its determination with respect to ultimate use in these investigations conflicts with the earlier cases cited by petitioner since the lack of a substantial degree of substitutability and interchangeability was not our sole basis for finding that the AFBs under investigation involved distinctly different functional capabilities and ultimate uses. Rather, the Department has found that the lack of a substantial degree of substitutability and interchangeability between the bearings under investigation supports the Department's finding that five classes or kinds of merchandise exist.

Comment 7. Petitioner argues that, contrary to the Department's preliminary determinations, customer expectations do not vary among bearing types. In general, customers have a need for an antifriction device and an engineering design that must accommodate a bearing for that application. Thus, customers expect to be sold an AFB to meet specific requirements, rather than a particular type of AFB. Given the use of a single sales force, the actual purchasing patterns of customers, and the fact that AFBs are sold according to specification, the Department should find that there is only one class or kind of merchandise under investigation.

DOC Position. We believe that the five classes or kinds of merchandise have distinct customer expectations, given their distinctly different general physical characteristics and ultimate uses. The five classes or kinds of merchandise that we have established reflect the different functional capabilities and limitations (load/speed in particular) of each class or kind of merchandise. Customer expectations will differ accordingly, as discussed in the above general discussion regarding the Department's class or kind decision. For these reasons, the Department disagrees with petitioner that customers have the same expectations for ball bearings, spherical roller bearings, needle roller bearings, cylindrical roller bearings, and spherical plain bearings. See our July 13, 1988 memorandum for further discussion.

Comment 8. Petitioner contends that the channels of trade and advertising utilized by AFB manufacturers do not vary among bearing types. In fact, AFB manufacturers generally promote the full range of AFBs, not individual AFB types. Further, given AFB interchangeability, the marketing of a single product category, the use of one catalog for all AFB types, and advertisements promoting the substitutability of bearing types, the Department should find that there is only one class or kind of merchandise under investigation. Finally, petitioner argues that the Department's determination is inconsistent with its class or kind determinations in *Fire Protection Products, Nails from the Republic of Korea, and Certain Carbon Steel Products from Belgium* (finding one class or kind of merchandise under investigation while disregarding the fact that the catalogs on record demonstrated separate categories of merchandise, physical differences, and differences in application).

SKF argues that the channels of trade and means of promotion further support the existence of multiple classes or kinds of bearings. SKF notes that spherical plain bearings and needle roller bearings are excluded from the SKF General Catalogue. In addition, spherical plain bearings are sold through the SKF Specialty Bearings Division, as opposed to the Industries or Services Division which markets the remaining classes or kinds of bearings. Finally, SKF has a separate product manager assigned to each class or kind category of AFBs under investigation.

DOC Position. The evidence with respect to these criteria is inconclusive.

With respect to advertising and display, many types of AFBs are included in a single catalog, although this may differ with the particular manufacturer. Spherical plain bearings are often not included in the same catalog as ball and roller bearings. Many other catalogs group products by specific applications (*e.g.*, automotive bearings), by size (*e.g.*, miniature), by precision, by rolling element type, or by special application or design (*e.g.*, housed bearing units, angular contact bearings, or thrust bearings).

With respect to channels of trade, most manufacturers sell all or most of their AFBs through distributors, while selling only certain AFBs to OEMs. The sales divisions within the AFB manufacturing organizations often distinguish their sales and marketing according to the type of customer (*e.g.*, distributor versus OEM), industry segment (*e.g.*, automotive or aerospace),

or specialty products (*e.g.*, high precision or thin race ball bearings), rather than by the type of rolling element.

As noted in the general discussion above with respect to the Department's class or kind decision, we acknowledge that these criteria may be generally the same for many of the AFBs under investigation. Nevertheless, we do not believe that similarity in these two criteria alone is sufficient reason to treat the subject merchandise as a single class or kind of merchandise when extremely significant differences exist with respect to general physical characteristics, ultimate uses and customer expectations.

Comment 9. Petitioner contends that the Department's narrowing of class or kind in this investigation will foster circumvention by creating a tremendous incentive for multinational companies to shift their production to those products and plants where the duties are lowest. Petitioner notes that Congress' efforts to amend the antidumping law over the past several years with respect to multinational organizations, persistent dumping and circumvention due to the assembly of parts offshore and in the United States have been directed, in part, at eliminating such incentive. Moreover, since the Department has the authority to self-initiate investigations and to expand the acope of the merchandise under investigation (citing *Citrosuco Paulista S.A.* v. *United States*, Slip Op. 88-176 at 14-15 (December 30, 1988)) and has in the past expanded the class or kind of merchandise under investigation to include parts or subassemblies (citing *Gold Star Co.* v. *United States* 12 CIT _____, 692 F. Supp. 1382 (1988)), petitioner argues that the Department should maintain petitioner's definition of scope as one class or kind in order to prevent circumvention.

SKF argues that petitioner's contention with respect to circumvention defies credibility since SKF produces the various classes or kinds of merchandise using different machinery and equipment, in different facilities, in different cities, and in different countries; and circumvention would require the wholesale reorganization of its international operations, with a transfer of major production lines between countries.

FAG FRG contends that petitioner's assertion that the purpose of a broad definition of class or kind is to prevent circumvention is novel and not supported by the anti-circumvention provisions of Section 1321 of the Omnibus Trade and Competitiveness Act of 1988. FAG FRG also argues that petitioner's contention that multiple classes or kinds would encourage circumvention is without foundation.

DOC Position. As discussed above, we have determined that the subject merchandise properly constitutes five classes or kinds of merchandise. Given this determination, the Department finds it inappropriate to adopt petitioner's overly-broad definition of class or kind in order to address petitioner's speculation that the multinational companies under investigation may shift their production to those products and plants where the duties are lowest. If respondents do shift their production to a different class or kind of bearing or to a plant in a country where there is a particularly low cash deposit rate, any dumping of the covered products from countries covered under the orders would result in the Department's assessment of the appropriate duties during any administrative review of those particular orders, since antidumping duties are assessed on a sale-by-sale basis. If respondents do shift their production to facilities in countries not covered under the orders, then petitioner could seek monitoring relief under 19 U.S.C. 1673a(a)(2), the provision which addresses persistent dumping of covered merchandise from non-covered countries. Therefore, it appears that petitioner has other administrative remedies at its disposal should its fears materialize.

Petitioner cites the recent legislation concerning circumvention, Sec. 1321 of the Omnibus Trade and Competitiveness Act of 1988, as evidence of the legislative intent to eliminate the incentive for multinational companies to shift production to avoid paying duties. Through the 1988 Act, however, Congress sought to prevent circumvention where merchandise is completed or assembled either in the United States or in a country not covered by an existing antidumping duty order. *See* 19 U.S.C. 1677j(a), (b) (1988); *see also Mitsubishi Electric Corp.* v. *United States*, Slip Op, 88-152 at 34-56 (October 31, 1988). In addition, Congress sought to reach any merchandise altered in minor respects from the same class(es) or kinds of merchandise already subject to an investigation or order (19 U.S.C. 1677j(c)(1988), and later-developed merchandise which would fall within the same class(es) or kind(s) of merchandise already covered under an existing order. *See* 19 U.S.C. 1677j(d) (1988). None of these provisions, however, are applicable to this situation. For the reasons listed above, the Department finds no reason to alter its class or kind decision based on petitioner's circumvention concerns.

Section 2: Standing

During the period April 27 through September 29, 1988, we received numerous submissions from parties challenging The Torrington Company's, ("Torrington"), standing to file the petition and requesting dismissal of the petition on the grounds that it was not filed (1) by "an interested party," or (2) "on behalf of" the United States industry as required by section 732(b)(1) of the Act. Conversely, between May 9, 1988 and February 27, 1989, we received numerous letters from parties in support of the petition brought by Torrington.

In order to be considered an "interested party," Torrington must meet the standards of section 771(9) of the Act. Section 771(9)(C) of the Act provides, in relevant part, that an "interested party" is "a manufacturer, producer, or wholesaler in the United States of a like product." With the exception of an additional category for "other antifriction devices," the ITC's categorization of the subject merchandise into six like products is identical to the five classes or kinds of merchandise subject to these investigations. Torrington has demonstrated that it produces all five classes or kinds of the subject merchandise. Therefore, Torrington is a manufacturer, producer or wholesaler in the United States of the like products under investigation, and is an "interested party" with standing to file this petition.

The statutory provision that governs the standing of parties to bring petitions requires the commencement of an investigation "whenever an interested party * * * files a petition *** on behalf of an industry." Section 732(b)(1) of the Act. As we have stated in prior cases [*see, e.g., Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 26, 1987) and *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852, March 12, 1985)], the Department relies upon the petitioner's representations that it has filed "on behalf of" the domestic industry until it is shown that a majority of the domestic industry affirmatively opposes the petition. As the Court of International Trade recognized in *Citrosuco Paulista* v. *United States*, 12 CIT——Slip. Op. at 19, "[n]either the statute nor Commerce's regulations require a petitioner to establish affirmatively that it has the support of a majority of a particular industry."

As we have noted in other cases, to require a petitioner to establish affirmatively that it has the support of a majority of the industry on whose behalf it has filed the petition would, in many cases, "be so onerous as to preclude access to import relief under the antidumping and countervailing duty law." *Final Affirmative Antidumping Duty Determination; Frozen Concentrated Orange Juice from Brazil; Final Determination of Sales at Less than Fair Value,* ("Orange Juice"), (52 FR 8324, 8325, March 17, 1987), *aff'd in Citrosuco Paulista* v. *United States,* supra at 18.

When a member of the domestic industry challenges the assertion of the petitioner that it has filed "on behalf of" the domestic industry, the burden is on the opponent to establish that the petitioner does not have the support of a majority of the domestic industry. To meet this requirement, the opponent must provide evidence that at least a majority of the domestic industry affirmatively opposes the petition. Where domestic industry members opposing a petition provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing parties do, in fact, represent a major proportion of the domestic industry.

In order to determine whether a major proportion of the domestic industries oppose the petition, on October 14, 1988, we issued a questionnaire to those parties challenging the standing of Torrington. In this questionnaire, we requested the opponents to supply information on the nature and extent of their involvement in the domestic industries. We received responses to the standing questionnaire from October 21, 1988 through November 7, 1988. After a careful review of the responses submitted to our standing questionnaire, we have determined that the opposing parties do not, in fact, represent a major proportion of the domestic industries.

Neither the antidumping statute nor its legislative history provides the Department with clear guidance as to how to apply the "on behalf of an industry" standing requirement. The legislative history of the Trade Agreements Act of 1979 simply explains that Commerce is to initiate an antidumping duty investigation *unless* it believes strongly that the petition fails to state a claim upon which relief can be granted or fails to provide information in support of the allegations. S. Rep. No. 96–249, 96th Cong. 1st Sess. 47 (1979). By adopting the standing requirement contained in 19 U.S.C. 1675(a)(b)(1), Congress intended to "provide the opportunity for relief for an adversely affected industry." *Id.* Congress's lack of specificity in establishing the manner in which the Department was to determine whether a petition was filed "on behalf of an industry" evidences a bestowal upon the Department of the requisite discretion to develop criteria for making the determination. The determination of whether opponents of a petition represent a major proportion of the domestic industries necessarily requires Commerce to exercise its discretion and judgment based upon an assessment of all the factors and circumstances peculiar to each case presented to the Department.

The responses to our standing questionnaire show that six bearings producers oppose the standing of Torrington with respect to each class or kind of merchandise under investigation. The parties in opposition have provided their total volume and value of production during the period of investigation for each of the five classes or kinds of merchandise subject to these investigations. In order to determine whether the opponents represent a majority of the domestic industries, we cumulated the opponents' U.S. production for each class or kind by both quantity and value, and divided these figures by the respective quantity and value of total U.S. production. We calculated total U.S. production of ball, spherical, and cylindrical bearings using the Antifriction Bearing Manufactures Association's (AFBMA) quarterly information concerning total U.S. shipments during the period of investigation. Because the AFBMA was unable to provide the Department with statistical data on U.S. production of needle and plain bearings, we calculated total U.S. production of needle and plain bearings using the 1987 Census Current Industrial Report.

The Department concludes that the data collected in response to its questionnaire failed to yield information sufficiently convincing to conclude that the petition was not supported by the domestic industries. Our analysis demonstrates that the parties in opposition do not represent a majority of the domestic industries in terms of both quantity and value of production. In response to our standing questionnaire, some of the opponents based their percentage of market share on the value of their U.S. production, while other opponents based percentage of market share upon the volume of their U.S. production. In the absence of any demonstrable evidence establishing either volume or value of U.S. production as the most representative and appropriate measure of market share, Commerce believes that it is consistent with Congressional intent to require a showing of majority industry opposition based on both value and volume of U.S. production before rescinding an investigation.

Having found that the firms which oppose the petition do not represent a majority of the domestic industries, we need not address whether the domestic industries should be defined to exclude related parties or importers for standing purposes. See section 771(4)(B) of the Act, 19 U.S.C. 1677(4)(B). *Orange Juice,* 52 FR 8324, 8325 (March 17, 1987), *aff'd in Citrosuco Paulista* v. *United States,* supra at 19–22. Nevertheless, Commerce finds it necessary to point out that the firms in opposition are wholly-owned U.S. subsidiaries of the foreign respondent firms. These domestic companies in opposition may be so wed to the foreign respondents and the allegedly dumped imports that their interests would run counter to the imposition of antidumping duties.

Therefore, the Department reaffirms its preliminary determination in this case that the petition was filed on behalf of the domestic industries, and that the petitioner has standing to bring this petition.

Comment 1. Numerous respondents and interested parties have raised arguments pertaining to the issue of whether the petition in these investigations has been brought on behalf of the domestic industries producing the five classes or kinds of merchandise. For example, NTN argues that Torrington is only one of 90 firms identified in the petition as members of the U.S. bearing industry. Moreover, Torrington accounts for less than 25 percent of domestic production by value, and for less than 15 percent of ball bearing production.

These parties also claim that opponents of the petition account for more that 50 percent of the U.S. industries, production of this merchandise. For example, Koyo and Minebea point to the ITC's finding that 61 percent of total shipments of ball bearings in 1987 were accounted for by foreign-affiliated domestic producers. They also contend that foreign-affiliated producers represent over 50 percent of U.S. ball bearing production capacity.

Finally, SKF, FAG, KGS, and Caterpillar argue that the investigations should be terminated for those classes or kinds of merchandise where the Department determines that the opponents account for more than 50 percent of U.S. production.

Torrington argues it is the Department's practice to accept petitioners' allegations that they have filed on behalf of the U.S. industry until lack of support is demonstrated and that the opponents of the petition have not demonstrated this. Torrington also points to the ITC report to argue that producers in opposition to the petition account for only 26.6 percent of U.S. production.

DOC Position. As discussed in the standing section above, it is the Department's practice to accept a petitioner's claim that the petition has been filed on behalf of the U.S. industry until it is demonstrated that this is not the case. Because of expressions of opposition to the petition in these cases, we sent questionnaires to the opponents in order to determine whether they accounted for a majority of the U.S. industries. Based on our analysis of those responses, we have determined that the petition was brought on behalf of the U.S. industries and, consequently, have not rescinded these investigations.

Although Minebea and Koyo argue that the Department's position would run counter to the ITC's finding that the companies represented the domestic industries, considerations which underlie the decisions of the Department and the ITC on whether to include these firms as part of the domestic industry, although related, are not the same. *Orange Juice,* supra at 8326). While the ITC considers the opportunity of importers or related parties to conceal the extent of injury to the domestic industry, the Department must determine the extent to which the related parties' or importers, interest would run counter to the imposition of antidumping duties. *Id.*

Comment 2. NTN argues that because opponents of the petition account for more of the U.S. production than does Torrington, it is clear that more of the domestic industry opposes the petition than supports it. Minebea contends that the Department should draw an adverse inference from the failure of any significant domestic producer to step forward in support of the petition. Finally, NSK argues that the Department cannot determine whether the petitions have been brought on behalf of the U.S. industries unless it sends questionnaires to and analyzes the responses of U.S.-owned domestic producers. Without such responses, the Department lacks a reliable "denominator" for measuring opposition.

DOC Position. In these cases, we have followed our standard practice of issuing questionnaires to those parties which express opposition to the petition. *Orange Juice,* (52 FR 8324, March 17, 1987). As discussed in the standing section above, we cumulated the production of those companies and divided it by independently developed denominators. Therefore, we did not require information from other parties on the extent of their production or their estimates of their shares of U.S. production.

We do not agree with NTN or Minebea that the proper comparison is between the share of U.S. production accounted for by the petitioner and the share accounted for by opponents of the petition. We did receive a number of expressions of support for the petition from other members of the domestic industry, such as Pacamor Kubar, Lipe-Rollway Corporation, Federal-Mogul Corporation, MPB Corporation, and The Barden Corporation. We think it is reasonable to assume until proven otherwise that those parties which do not express opposition to the petition either support it or have no position. (see, *e.g., Certain Electrical Conductor Aluminum Redraw Rod from Venezuela* (53 FR 24755, June 30, 1988)).

Comment 3. Numerous respondents and interested parties have submitted comments on the issue of whether opponents to the petitions should be excluded from the domestic industry because they are related to the foreign producers subject to the investigations or because they import the products under investigation. Many claim that they should not be excluded because imports do not account for a majority of their sales, the "rule" the Department adopted in *Orange Juice,* (52 FR 8324, March 17, 1987), and that U.S.-owned domestic producers also import the products subject to investigation.

They further claim that they should not be excluded from the U.S. industries by reason of their relationship to foreign producers. Despite this relationship, they are not shielded from unfairly-traded imports and, in many cases, they operate independently from their foreign owners. Moreover, U.S.-owned domestic producers are also related to foreign producers subject to these investigations.

Finally, many parties claim that the Department should adopt the ITC's treatment of these foreign-owned producers as members of the U.S. industry or at least apply the same factors the ITC applies. The foreign-owned producers are not "screwdriver operations." They have undertaken significant investment in the United States and their employees and management are predominantly American. Also, in its section 232 investigation, the Department recognized that U.S. affiliates of foreign producers are part of the U.S. antifriction bearing industry.

Torrington claims that the 50 percent import standard employed by the Department in *Orange Juice,* supra at 8324, is not applicable in this case because the rule reflected the Department's consideration of "whether the domestic companies (were) so wed to allegedly dumped imports that their interests would run counter to the imposition of antidumping duties." The opponents' active participation in this case clearly indicates that their interests are counter to the imposition of duties. Moreover, in *Orange Juice,* supra at 8324, substantial importation was common among the U.S. industry and such is not the case in this investigation. With respect to relationship, Torrington claims that the statute permits Commerce to exclude foreign-owned producers from the industry merely by virtue of their relationship to producers covered by the investigation.

Torrington further claims that the ITC's inclusion of foreign-owned producers in the U.S. industry arose from the fact that their financial performance was worse than that of U.S.-owned producers, and that their support for or opposition to the petition is not relevant to the ITC's determination on whether the industry as a whole is suffering material injury.

DOC Position. Although the Department does have the discretion to exclude companies which import or which are related to foreign producers subject to the investigation from the domestic industry *Citrosuco Paulista* v. *United States,* 12 CIT _____, Slip Op. 88–176, December 30, 1988, we did not need to do so in these investigations because without excluding these companies we have still found that opponents of the petition do not account for a majority of the U.S. industries.

Section 3: Products Covered

Throughout these proceedings, the Department received numerous submissions requesting clarification of the products included in the scope of investigation. These submissions ranged from importers requesting that a specific product not be included in the scope of these investigations to other parties requesting that a particular product category be treated as a separate class or kind of merchandise subject to investigation.

With respect to requests that a certain product not be included in the scope of these investigations, we have looked primarily at the petition and accompanying exhibits, in order to determine whether petitioner intended

such merchandise to be included within the scope of these investigations. Where the petition and accompanying submissions were ambiguous, we had to determine whether the merchandise in question would properly fall within the classes or kinds of merchandise under investigation. In doing so, we relied on comments from the petitioner and interested parties, our research memoranda and analyses undertaken in connection with these investigations, as well as on the ITC preliminary determination, questionnaire, and staff report. Since we were able to make our determinations based upon the documentation noted above we did not have to rely on the *Diversified Products* criteria in making our scope exclusion determinations. However, for reference these criteria are: (1) The general physical characteristics of the merchandise; (2) the ultimate use of the merchandise; (3) the expectations of the ultimate purchaser; (4) the channels of trade; and (5) the manner in which the merchandise is advertised and displayed. Where we determined that a product was excluded from the scope of investigations, we determined that it was unnecessary to address any of the parties, concerns that such merchandise constituted a separate class or kind of merchandise.

Comment 1. Petitioner contends, contrary to the assertions of several interested parties, that the petition covers, at a minimum, all plain bearings of a type similar to those produced by the petitioner. These products include those specifically identified in the petition, such as spherical plain bearings and rod ends, as well as lined bearings/bushings ("metal on metal"), because such products are antifriction bearings. Petitioner disputes the assertions of several interested parties that the Department should exclude certain plain bearings other than spherical plain bearings from the scope of the investigations on the basis of the material used to produce the bearing in question.

Petitioner disputes INA's contention that plain bearings in general fall outside the class or kind of merchandise subject to the investigations because such bearings are not "antifriction bearings." Petitioner also disputes INA's contention that its Permaglide bearings (*e.g.*, bushings, flanged bushings, and thrust washers, and strips) should be excluded from these investigations because the petitioner produces bearings "virtually identical" to Permaglide bearings.

Nine interested parties contend that plain bearings other than spherical plain bearings are neither ground antifriction bearings in general, nor spherical plain bearings in particular and, therefore, should be excluded from the scope of the investigations. Two interested parties contend, in the alternative, that the Department should find that certain plain bearings constitute a separate class or kind of merchandise that is not covered by either the petition or the investigations.

Interested parties contend that plain bearings other than spherical plain bearings include oil-film plain bearings (*e.g.*, crankshaft bearings, crankshaft thrust bearings, and piston pin bushings), so-called "Permaglide" bearings (*e.g.*, bushings, flanged bushings, and thrust washers and strips), and other plain bearings (*e.g.*, fluid film or lubricated, dry rubbing, bi- and tri-metallic, plain journal, journal, and thrust bearings), as well as automobile crankshaft main bearings, engine connecting rod bearings, and a variety of bushings used in automotive engines (*e.g.*, distributor upper/lower bushings, connecting rods, small-end bushings, clutch pileup bushings, and generator bushings). These products are used in, among other applications, motor vehicle and aircraft engines, aircraft control devices, transmissions, tractors, and gearboxes.

These interested parties base their contentions on the following general points: (1) The petition's detailed description of plain bearings is limited to spherical plain bearings; thus, the question of whether the petitioner makes other kinds of plain bearings is irrelevant, because the petition does not include any such bearings; (2) the petitioner did not amend the petition to cover plain bearings other than spherical plain bearings; (3) the notices of initiation of investigations by both the Department and the ITC do not list plain bearings as products subject to these investigations; (4) the ITC's preliminary injury determination did not cover plain bearings other than spherical plain bearings; (5) the Department's antidumping questionnaire (Appendix V), dated May 31, 1988, did not request sales data for such bearings; as a result, the Department has not included such bearings in its fair value analysis; (6) these products are not produced by the petitioner and are not similar to or competitive with any product produced by the petitioner; and (7) such bearings are not part of the class or kind of merchandise which includes spherical plain bearings subject to these investigations.

With regard to this last point, these interested parties generally contend that other plain bearings differ from both ground antifriction bearings, in general, and spherical plain bearings, in particular, in terms of general physical characteristics, uses, customer expectations, channels of distribution, and methods of advertising and display. The materials, components, and manufacturing processes used to produce other plain bearings, as well as the producers and workers who produce the same, are different from those used to produce spherical plain bearings or any other kind of antifriction bearing. Other differences include those related to dimensions, lubrication, and capacity.

Specifically, Caterpillar contends that, in contrast to spherical plain bearings or any other kind of antifriction bearing, oil-film bearings have a single component with no rolling elements or other moving parts, such as balls, cages, or races. Some of these products have a coefficient of friction which is five to ten times greater than that of antifriction bearings. All oil-film bearings cost significantly less than antifriction bearings. Cummins Engine Company, Inc. ("Cummins") also contends that, in contrast to the surfaces of antifriction bearings, those of oil-film bearings are not ground.

Caterpillar further contends that the ultimate use of oil-film bearings involves applications where radial loads with high variability and speed are encountered, and where self-alignment capability is not required; in contrast, the ultimate use of the spherical plain bearings involves applications where both radial and thrust loads are encountered (*e.g.*, aircraft control elements). Oil-film bearings used in connection with engines and other high speed applications (*e.g.*, transmissions, track rollers, tractors, internal power train uses, as well as pivots on booms, lift arms, and rippers) carry the load of the rotating shaft on a film of pressurized lubricant. Antifriction bearings, by contrast, carry the load of the rotating shaft on the bearing surface.

The ultimate purchaser of oil-film bearings, the OEM, purchases a custom-made product tailored to individual applications which are radically different from the expectations of a purchaser of spherical plain bearings; that is, antifriction bearings and spherical plain bearings are sold in accordance with industry standard sizes and types. Oil-film bearings, therefore, move in different channels of distribution from antifriction bearings; oil-film bearings are not sold by antifriction bearing distributors but rather by authorized OEM dealers who make aftermarket, replacement sales of

such products. Finally, in contrast to custom-made oil-film bearings, standardized antifriction bearings lend themselves to a type of advertising involving catalogues that use industry standard designations.

Additionally, Caterpillar contends that Federal-Mogul Corporation, the only U.S. domestic producer of both oil-film bearings and antifriction bearings, does not support the inclusion of oil-film bearings within the scope of these investigations. Cummins notes that the petitioner does not manufacture oil-film bearings. Kolbenschmidt AD contends that the petitioner has stated at pages 3 and 4 of its February 24, 1989, letter to the Department that it does not object to the exclusion of "oil-film plain bearings" or other plain bearings that are not within the "class or kind" of spherical plain bearings.

Glacier Metal Co. Ltd. ("Glacier") and Vandervell Ltd. ("Vandervell") contend that spherical plain bearings have a spherically-shaped bearing surface, are self-aligning, and are manufactured from bearing grade steel; in contrast, plain bearings other than spherical plain bearings—plain journal and thrust bearings, in particular—have a cylindrical bearing surface, are not self-aligning, and are manufactured from a specialized bearing grade metal alloy. SKF further contends that other plain bearings are not antifriction bearings, because such plain bearings operate on a sliding, rather than rolling, motion.

Glacier and Vandervell also contend that, in contrast to other plain bearings (*e.g.*, film lubricated, plain journal, journal, and thrust bearings), spherical plain bearings are used in applications where a combination of radial and thrust loads are encountered. In contrast to other plain bearings, spherical plain bearings are never considered by a potential customer where high sliding speeds and significant loads are encountered. Spherical plain bearings typically are made by ball and roller bearing manufacturers, are standarized and interchangeable, and are advertised in catalogues through the use of price lists and discount schedules; in contrast, plain bearings other than spherical plain bearings are manufactured by specialist producers, are custom-made and not interchangeable, and are advertised separately from spherical plain bearings.

NDC Co., Ltd. ("NDC") contends that, in contrast to the primary function of antifriction bearings, the function of connecting rod and crankshaft main bearings—consisting of tin, lead, and copper—is not to reduce friction. Bushings used in automotive engine applications serve primarily as a positioning device for a rotating shaft. Additionally, the petitioner does not manufacture any product line either identical or similar to, or interchangeable and competitive with, the above noted products.

DOC Position. We determine that spherical plain bearings, whether mounted or housed, including those spherical plain bearings known as rod ends and parts thereof, are subject to these investigations. We also determine that plain bearings and parts thereof, other than spherical plain bearings, are not subject to these investigations. Accordingly, any sales of plain bearings other than spherical plain bearings were not used in our final calculations.

Spherical plain bearings were the only plain bearings which the petition and exhibits thereto specifically identified as subject to investigation. (*See* Petition at Executive Summary pages 1 and 3, and pages 13, 15, 16, and 19 of the narrative.) Although the petitioner stated in its letter, dated May 26, 1988, that "the petition specifically identified *plain bearings* as being covered [by these investigations]", this statement is incorrect. Neither the petition nor the exhibits thereto contain a reference, whether express or implied, to plain bearings other than spherical plain bearings. In addition, petitioner's LTFV allegations with respect to plain bearings were limited to spherical plain bearings. Therefore, there is no indication that the petition was intended to cover plain bearings other than spherical plain bearings.

Additionally, petitioner's most recent submissions regarding the scope of the investigations also indicate that the types of plain bearings of primary concern are spherical plain bearings and rod ends. Petitioner's letter to the Department of February 24, 1989, reiterates that the products "specifically intended to be covered by the investigation include: (1) All spherical plain bearings and parts thereof (regardless of whether housings or mountings are involved); (2) all rod ends (or rod end bearings)(whether plain or other); and (3) lined bearings/bushings ('metal on metal')" (With respect to lined bearings/bushings, it is not clear from information currently available to us the kind of bearings to which petitioner is referring.)

Petitioner's Posthearing Brief on Issues of General Application explicitly states that "[a]t the threshold, bearings names [sic] in the petition must be included in the investigations (*e.g.*, aerospace bearings, rod ends, *spherical plain bearings*, etc.)." (emphasis added). Furthermore, petitioner has stated that certain other types of plain bearings are not of concern and that it "does not object to the exclusion" of "oil film plain bearings (whether bi- or tri-metallic)" from the scope of the investigations. (Petitioner's Written Submission at 3, February 24, 1989.)

We have carefully examined the petition, the accompanying exhibits, clarifications by the petitioner, all of the arguments and submissions filed by petitioner and interested parties, Department research and memoranda, and the ITC staff report. Based on this examination, we have found that the other plain bearings cited by petitioner and other interested parties are substantially different from spherical plain bearings. Because of these differences, it is reasonable to conclude that had the petitioner intended to cover plain bearings other than spherical plain bearings, it would have specifically listed such bearings in the petition. Accordingly, such plain bearings could not reasonably be found to be within the scope of these investigations.

Spherical plain bearings have matched, spherically-shaped inner and outer rings which slide in relation to each other. By contrast, other plain bearings, such as sleeve bearings, journals, and plain bushings, are cylindrically-shaped (or semi-circular) and are composed of a single surface on which a shaft rests. Spherical plain bearings are self-aligning and are generally manufactured from bearing-grade steel (*i.e.* SAE 52100). By contrast, other plain bearings are not self-aligning and are not manufactured from SAE 52100 steel. Spherical plain bearings permit movement under moderate to high loads and allow for shaft misalignment. They generally function like an elbow joint in translating *oscillatory or realignment motion, as opposed to rotating motion.* By contrast, other types of plain bearings generally function on shafts, *rotating* at moderate to high speeds with little, if any, allowance for misalignment.

Finally, based on a careful examination of the products themselves, as well as on the documents noted above (*e.g.*, comments, Department research), we have found that plain bearings, other than spherical plain bearings and rod ends, are much more similar to oil-film plain bearings, products expressly excluded by the petitioner, than to spherical plain bearings, products expressly covered by the petition. This finding further confirms our conclusion that the petition did not intend to cover plain bearings other than spherical plain bearings.

We disagree with petitioner's contention that the petition covers all plain bearings of a type similar to those

it produces. The Department cannot accept such a broad interpretation of the scope of a petition. Our regulations require that a CVD or AD petition contain a "detailed description of the imported merchandise in question, including its technical characteristics and uses, and, where appropriate, its tariff classification * * *." (19 CFR 355.26(4) and 353.36(4).) We have determined that the petition expressly included spherical plain bearings and did not include other types of plain bearings, a conclusion supported by the substantial differences between the products. Whether petitioner manufactures any plain bearings other than spherical plain bearings is not determinative. Petitioner's argument, if allowed to stand, would permit other petitioners to define the scope of our investigations based on the products they produce, whether or not such products are generally or specifically identified in the petition.

It should be noted that the Department's July 13, 1988, decision memorandum inadvertently refers to "plain bearings," although the discussion therein describes the physical attributes and characteristics of spherical plain bearings, as opposed to other types of plain bearings. The inadvertent use of the term "plain bearings," rather than "spherical plain bearings," continued in the Department's questionnaires and in our preliminary CVD and AD determinations.

Similarly, the ITC preliminary determinations listed "plain bearings," rather than spherical plain bearings, as one of its six like products. However, the staff report accompanying those determinations specifically referred to and described spherical plain bearings only. In addition, the ITC, believing that only spherical plain bearings were covered by the investigations, limited its preliminary questionnaires, data collection, and injury analysis to the U.S. spherical plain bearing industry, as it did not solicit, receive, or examine data on plain bearings other than spherical plain bearings.

Comment 2: Petitioner contends that, despite arguments of some interested parties to the contrary, the petition covers all rod ends (rod-end bearings, whether plain or other) and all spherical plain bearings and parts thereof (regardless of whether housings or mountings are involved). Petitioner included in the petition plain bearings of the type described by Minebea, and petitioner produces each of these types of bearings. Petitioner further contends, contrary to Minebea's assertion, that plain bearings minimize friction between moving parts. Although plain bearings and rod ends have higher coefficients of friction than bearings with separate rolling elements, plain bearings and rod ends are designed and manufactured in accordance with industry and government standards which specify material hardness and break-away torque. The purpose of these requirements is to ensure surface finish and to reduce wear in order to minimize friction. Any sacrifice in the friction-reducing properties of plain bearings is offset by the high load-carrying capability as compared to other types of antifriction bearings of a similar dimension.

Minebea contends that rod ends without a rolling element, spherical plain bearings, and bushings (otherwise referred to as journals or sleeves) fall outside the scope of these investigations since these bearings are not antifriction bearings, but rather high friction bearings. Minebea contends that ball and roller bearings are antifriction bearings, because the rolling element significantly reduces friction between two moving parts. The principal function of ball and roller bearings is to reduce friction to the lowest practical level. Ball and roller antifriction bearings have very low coefficients of friction, ranging from .0008 to .0012 and .002 to .004, respectively. In contrast, high friction bearings have very high coefficents of friction, ranging from .03 to .5, respectively. Plain bearings lacking a rolling element generate substantially higher friction levels than antifriction bearings. For this reason, such plain bearings are referred to as high friction bearings and their interchangeability with antifriction bearings is limited.

Similarily, Nippon Thompson Co., Ltd. ("Nippon Thompson"), and IKO International, Inc. ("IKO") contend that rod-end bearings and spherical plain bearings are not antifriction bearings and, therefore, should be excluded from the scope of the investigations. Nippon Thompson and IKO base their contentions on the following points: (1) The petition does not specifically list rod ends; (2) both rod ends and spherical plain bearings differ from antifriction bearings in terms of general physical characteristics, ultimate uses, expectations of the ultimate purchaser, channels of trade, advertising and display, and the production processes utilized.

Specifically, Nippon Thompson and IKO argue that rod-end bearings and spherical plain bearings, unlike antifriction bearings, do not contain rolling elements; rather, they contain sliding elements that permit oscillating movement. Since the function of these bearings is not to reduce friction, and since such bearings contain no rolling elements, they have much higher friction levels than those of antifriction bearings. Spherical plain bearings are typically employed in applications requiring a heavy duty controlling and linking mechanism, such as construction equipment. Such bearings are designed to withstand particularly heavy radial and axial loads. Rod ends are similarly used as a linking or controlling mechanism in applications where space and weight pose significant problems. Examples of such applications include the controlling mechanisms in textile machinery, aircrafts and spacecrafts, farm equipment, packaging machinery, industrial robots, and other like mechanisms. No antifriction bearing can perform such functions; therefore, spherical plain bearings and rod end bearings are not interchangeable with antifriction bearings.

The ultimate users choose spherical plain bearings and rod end bearings where a particularly heavy duty linking or controlling mechanism, requiring almost no rotation, is involved. Such users would not look to antifriction bearings for such a use. Spherical plain bearings are sold directly to OEM customers and to distributors who are different from those distributors which sell antifriction bearings. The majority of rod end sales are made to distributors that handle power transmission products rather than antifrictions bearings. Moreover, advertising catalogues are prepared for antifriction bearings and spherical plain bearings/rod ends.

The manufacture of spherical plain bearings involves a separate production line at a separate facility from those used for the production of antifriction bearings. The shifting of production from spherical plain bearings to antifriction bearings, or *vice versa* is not feasible and therefore is not done. In contrast to the production process used to manufacture antifriction bearings, that used to manufacture spherical plain bearings involves a press machine, a hydraulic press, and swaging dies. Similarly, the manufacture of rod ends involves a separate production line at a separate facility from those used for the production of either antifriction bearings or spherical plain bearings. The production of rod ends, therefore, cannot be shifted to the production lines for either antifriction bearings or spherical plain bearings.

DOC Position. As discussed in the previous position, the Department has

determined that spherical plain bearings and rod-end bearings are within the scope of these investigations. (To the extent that any of the "journals" or "bushings" referred to by Minebea constitute a type of plain bearing other than a spherical plain bearing, we have excluded such products from the scope of these investigations. *See also* our discussion of spherical plain bearings and plain bearings other than spherical plain, above.)

Rod-end bearings, whether of the spherical plain or rolling element type, are also included in these investigations as they were specifically named in the petition. See Petition at Exhibit 4. These bearings are classified according to their rolling element geometry, (or the sliding contact geometry in the case of spherical plain rod ends). The Department's June 13, 1988 product coverage memorandum explicitly states that rod end bearings, without qualification, are subject to these investigations. Therefore, rod end bearings with or without a rolling element are within the scope of these investigations.

We disagree with the contention advanced by several interested parties that the products listed above should be excluded from the scope of these investigations, because the coefficients of friction of such products are higher than those of rolling element bearings. We find no evidence that the petition or any exhibit thereto expressly or implicitly limits the scope of the investigations on the basis of coefficients of friction.

While it might be argued that some of the products under investigation may not normally be referred to as an "antifriction bearing," such considerations are not determinative for purposes of establishing the scope of these investigations. Spherical plain bearings, including rod ends, were expressly identified in the petition and we have determined that they constitute a separate class or kind of merchandise.

Rod ends are simply bearings which are enclosed in a threaded housing of a specific, generally recognized shape.

Comment 3. Petitioner contends that there is no basis for SKF-France's attempt to differentiate an entire class of bearings on the basis of product application because the petition at page 14 specifically identifies "aviation and aerospace" applications as an illustration of the many applications of antifriction bearings covered by the investigations.

Petitioner also contends that the arguments advanced by SKF and Minebea that rod end bearings are airframe or fuselage components unrelated to the reduction of friction are without merit. Petitioner argues that the Department's June 13, 1988, product coverage decision memorandum explicitly states that rod ends are included within the scope of the investigations. Rod end bearings are "true bearings" and, accordingly, are not airframe components unrelated to the reduction of friction (*e.g.*, avionics equipment or fuselage components), which have been excluded from these investigations.

SKF-France contends that airframe components and parts thereof are a separate class or kind of merchandise and, therefore, should not be included within the scope of the investigations. SKF further contends, in the alternative, that the Department should determine that aircraft components—other than the airframe components already specifically excluded by the Department—are a distinct class or kind of merchandise for which separate antidumping duty margins should be calculated.

SKF-France argues that airframe components include rod ends, links, and special parts, such as struts, cable tension regulators, and fly-by-wire controls, which provide stability to the aircraft or act as a control device over certain parts of an airplane. SKF-France contends that aircraft components have physical characteristics that are different from those of the bearings subject to these investigations, are produced and sold through separate channels of trade, satisfy unique customer expectations and needs, and are advertised and displayed in a manner different from that for antifriction bearings. Specifically, aircraft components are specialized products manufactured in accordance with specialized and detailed aerospace standards, as well as strict qualification procedures. In contrast to the five classes or kinds of merchandise subject to these investigations, airframe components are subject to a hydrogen embrittlement process, vigorous quality control procedures, and specialized heat testing procedures. Even the grease used for aircraft components differs from that used in a standard commercial bearing. Thus, aircraft components are not interchangeable or competitive with the antifriction bearings subject to the investigations.

SKF-France also contends that the Department should define the classes or kinds of bearings subject to these investigations according to their end use, because both the industry and the workplace recognize different end uses for such products. Aircraft components are specially designed and are used to serve as parts in the aircraft. Fly-by-wire controls are used to convert mechanical movement into electrical impulses in electronic flight control systems; struts support the floors of the aircraft and cable tension regulators are used for aircraft control cables.

Minebea and Rose contend that even assuming the term "antifriction bearing" is a misnomer for bearings, there is ample evidence on the record indicating that the majority of Minebea's and Rose's U.S. exports of rod ends without rolling elements, spherical plain bearings, and bushings (otherwise known as journal bearings or sleeves) are airframe and fuselage components unrelated to the reduction of friction. Because the Department's July 13, 1988, class or kind decision memorandum already excluded such products from the scope of these investigations, the Department should not include such products within the scope of the final determinations.

These products are control linkages or flexible joints which are used to accept misalignment or minimize stress on the airframe or fuselage structure and prevent structure failures. Airframe components used in the primary flight control surfaces (wing flaps, leading edge slats, elevator controls) are used to absorb the deflections and loads associated with takeoff, landing, and flight. These airframe components do not function in a continuous rotational mode like a rolling element antifriction bearing. These products enter under TSUSA numbers other than the TSUSA number 681.3400 listed in Appendix V of the Department's questionnaire.

DOC Position. We determine that all AFBs (including rod ends and other spherical plain bearings) used in aviation applications are covered by the scope of these investigations. However, we have excluded from the scope of investigation airframe components that are unrelated to the reduction of friction. As discussed above in the general class or kind section, the Department has not distinguished between size, precision and application for the purposes of its class or kind determination.

The petition at page 14 specifically mentions "aviation" applications as being among the uses and applications of the antifriction bearings covered by these investigations. Exhibit 4 to the petition specifically lists "Aircraft Control" bearings. Furthermore, the express language of the petition and exhibits thereto covers spherical plain bearings and rod ends. (*See also* comments and responses above.) The Department's June 13, 1988, product coverage decision memorandum

similarly states that "[r]od ends and rod end bearings, which some parties have referred to as aircraft components, *are* subject to these investigations." (emphasis supplied in original). This same memorandum also states that only "[a]irframe components which are obviously unrelated to the reduction of friction (*e.g.*, avionics equipment or fuselage components) are *not* subject to these investigations." (emphasis supplied in original).

We have insufficient information to determine whether specific items vaguely referred to as "aircraft components" or "airframe components" are outside the scope of these investigations or constitute one or more separate classes or kinds of merchandise. An important factor in our determination is the vagueness of the terminology used by some of the parties. The phrases "aircraft components" and "airframe components" are subject to extremely varied interpretations. Accordingly, the Department is unable to be more specific in its response. However, it should be clear that any of the subject bearings, regardless of whether they may ultimately be utilized on aircraft, automobiles, or other equipment, are in fact within the scope of these investigations. It should also be clear that tariff classification numbers are *not* determinative of the products under investigation. *Diversified Products Corp.* v. *United States*, 572 F. Supp. 883, 887–88 (CIT 1983). The written description of the scope of investigation defines the products under investigation.

Comment 4. Petitioner contends that, contrary to the assertions of several interested parties, high-precision, aerospace bearings are exactly like "commodity" bearings in terms of function and manufacture and, therefore, should not be excluded from the scope of the investigations. To divide antifriction bearings into various classes or kinds based upon end uses, rather than on inherent characteristics of such bearings, would open a Pandora's box.

Petitioner further contends that there is no basis for the exclusion of aerospace engine bearings for the following reasons: (1) Petitioner manufactures the aerospace engine bearings illustrated in BIG–AIA's pre-hearing brief; (2) these bearings are antifriction bearings; hence, they are not unique and distinct from the other bearings included in the investigations; (3) the materials used to manufacture aerospace engine bearings (*e.g.*, M50 steel and silver lined cages) are not unique to those bearings; (4) the production facilities used to manufacture aerospace bearings are not unique to those bearings; that is, petitioner and other U.S. domestic producers of antifriction bearings can and have produced aerospace bearings in the same plants that manufacture bearings for less "exotic" applications; (5) warranties and guarantees, as well as special certification and testing requirements, for aerospace bearings are likewise not different from the guarantees assumed by the petitioner on various other bearings; (6) high temperature and heavy load requirements are not unique to aerospace bearings. For example, the temperature in an automobile engine may equal or exceed that at the front end of an aircraft engine; and (7) it is not unique that aerospace bearings are specially ordered; petitioner, as well as other U.S. domestic manufacturers of antifriction bearings, produces by special order many products that are not advertised or included in its catalogues.

Petitioner also contends that the Department should deny the requests of SKF and FAG–FRG to establish a new class or kind of merchandise for aerospace bearings and, accordingly, to calculate a separate antidumping duty margin for such bearings. Petitioner argues that SKF has not explained whether all high precision bearings would constitute a single class or kind of merchandise, or whether such bearings should be broken down into the five classes or kinds of merchandise already identified by the Department. The verification reports reveal that FAG–FRG was unable to supply conclusive evidence that such bearings represent a separate and distinct class or kind of merchandise. Nowhere in any of the verification reports is there a specific discussion concerning the length of the qualification process, the use of more advanced technologies, use of stricter quality control procedures, use of different channels of trade, and the different ultimate expectations of the end users.

BIG–AIA and FAG–FRG contend that the Department should exclude aerospace engine, ball, cylindrical, and spherical roller bearings from the scope of investigation. BIG–AIA and FAG–FRG also contend, as an alternative to the exclusion of aerospace bearings from the scope of investigations, that the Department should find that these products constitute a separate class or kind of merchandise. Accordingly, the Department should calculate a separate antidumping duty margin for such products.

BIG–AIA advances two arguments to support the exclusion of aerospace engine bearings from the scope of the investigations. First, the petition makes no specific reference to custom-made aerospace engine bearings; instead, the petition covers only commodity bearings. Second, aerospace engine bearings differ from antifriction bearings in terms of physical characteristics, ultimate uses, expectations of the ultimate purchaser, channels of trade and distribution, and the manner in which the product is displayed and advertised.

BIG–AIA argues that aerospace engine bearings are custom-made rather than standardized as commodity bearings are, are produced from M50 and M50 NIL steel, and have cadmium-plated surfaces. Almost all other bearings are manufactured from standard SAE 52100 steel, a less expensive and lower grade alloy. The design of an aerospace bearing contains much greater detail than that of a commodity bearing; aerospace engine bearings are manufactured at production facilities and by workers separate from those utilized to manufacture standardized commodity bearings; the technologies used to manufacture aerospace engine and commodity bearings differ. Aerospace bearings command a higher selling price than commodity bearings, because aerospace bearings are one hundred times more expensive to produce than commodity bearings.

SKF contends that aerospace engine bearings are subject to extremely strict quality control and qualification procedures. SKF further contends that none of the TSUS numbers under which aircraft ball bearings enter the United States is listed as being subject to the investigations.

BIG–AIA, FAG–FRG, and SKF contend that such bearings have unique applications. These bearings are used exclusively in missiles, spacecraft, and aircraft (fixed wing and rotary wing), as well as in main propulsion engines (*e.g.*, aerospace engines), auxiliary aircraft power units, gear boxes, and instruments. As such, these bearings are not interchangeable and competitive with standardized antifriction bearings. BIG–AIA further contends that such bearings must be able to withstand operating temperatures uncommon to those at which commodity bearings must operate, are subject to aerodynamic loads different from those of commodity bearings, must be able to perform at all altitudes, and must comply with the safety standards promulgated by the Federal Aviation Administration.

Customer expectations are, therefore, unique; that is, aerospace engine manufacturers, rather than the bearings manufacturers, design the bearings to be utilized in their engines. These bearings also carry special warranty and guarantee programs. Aerospace engine bearings are sold and distributed only to the specific engine manufacturer that designed and ordered such bearings; as a result, such bearings cannot be purchased "off the shelf." Because aerospace engine bearings are custom designed, advertising for such products consists of name recognition and product capability information, rather than catalogue information.

Finally, FAG–FRG contends that according to the analysis developed by the Department's Office of Industrial Resource Administration ("OIRA"), super-precision ball bearings and cylindrical roller bearings, the two types of bearings primarily used in aerospace engine applications, constitute separate and discrete product categories.

DOC Position. We determine that aerospace engine bearings are within the scope of these investigations and have not treated them as a separate class or kind of merchandise. As discussed above in the general class or kind section, the Department did not distinguish between size, precision and application in making its class or kind determination.

Contrary to the arguments of BIG–AIA, the petition specifically lists "aviation and aerospace" and "aircraft engines" as illustrations of the uses of antifriction bearings covered by these investigations. (See Petition at 14, 17).

The essence of the argument advanced by BIG–AIA and FAG–FRG is that the Department should exclude aerospace engine bearings from the scope of these investigations based on the end use of such bearings—that is, their final application in aircraft engines. As noted above, the petition and exhibits thereto already cover such applications.

Additionally, to accept the argument that aircraft engine bearings are a separate class or kind would require the Department to reach an unreasonable conclusion—*i.e.*, that for each specific application in which a particular bearing may be used, a separate class or kind of merchandise would be determined to exist.

That material content, quality, design, precision, or degree of engineering control may differ is typical of the subject merchandise since bearings are used in an enormous variety of specialized final applications. However, these products all provide and have in common the functional capabilities of the bearings under investigation.

BIG–AIA and FAG–FRG would have the Department determine that two ball bearings with similar dimensions and design constitute two separate classes or kinds of merchandise when one of those bearings is designated as an "aerospace bearing," and the other is designated as a "standard bearing" and used in an automobile. Conversely, these interested parties would have the Department determine that a cylindrical roller bearing and a ball bearing are similar and, thus, fall within the same class or kind of merchandise when both bearings are designated as "aerospace bearings." While there may be discernible differences between aerospace engine bearings and other bearings, the analysis proposed by the interested parties would elevate the final end use of a bearing as the sole distinguishing factor among all bearings, thereby ignoring important differences between the types of bearings in its proposed class or kind of merchandise. As discussed above in the comments on class or kind, the functional capabilities of a bearing are determined by the shape of the rolling element (and the shape of the contact surfaces in the case of spherical plain bearings).

We also disagree with the contention advanced by FAG–FRG that, because OIR found that super-precision ball bearings and cylindrical roller bearings, the two types of bearings primarily used in aerospace engine applications, constitute separate product categories, the Department is somehow bound by that finding. OIRA made its finding in the context of an investigation undertaken pursuant to section 232 of the Trade Expansion Act of 1962. (19 U.S.C. section 1862(h)). Although OIRA's finding may be instructive in the context of the Department's antidumping investigation, it is important to note that the objectives of the two investigations are significantly different. Investigations undertaken pursuant to section 232 seek to ascertain the production levels of an industry important to the national security of the United States to determine whether import relief is warranted; by contrast, those investigations undertaken pursuant to sections 701 and 731 of the Act seek to identify and offset injurious subdization and dumping practices, respectively. Because the objectives of the two investigations are different, the Department is not bound by a finding made by a different departmental organization that administers a different statute.

Comment 5. Petitioner contends that bearings are made according to a wide spectrum of precision grades. When a high grade bearing is required, a lower grade one cannot be substituted. This, however, does not warrant class or kind distinctions on the basis of precision grade. High precision bearings are exactly like "commodity" bearings, except that they are engineered and produced to more precise tolerances. In function and manufacture, however, they are essentially identical. Petitioner notes that a division between precision and non-precision bearings could require the carving out of many additional classes or kinds of merchandise.

SKF argues that high precision bearings, those with ABEC and RBEC precision ratings of 7–9, constitute a separate class or kind of merchandise. Ordinary bearings are not interchangeable with high precision bearings inasmuch as the latter are manufactured to higher standards and more demanding specifications, using different raw materials. High precision bearings are used in different applications and are marketed through different channels of trade to a different class of customers at very high prices.

A user of imported high precision ball bearings, the Precise Corporation, has submitted an exclusion request for high precision ball bearings (ABEC 7 and 9 with inner diameter less than or equal to 40mm).

DOC Position. Bearing precision is an application-specific requirement that we do not consider to be a sufficient basis for establishing a separate class or kind of merchandise in these investigations. See our discussion above in the general class or kind section. Although a high precision bearing may, in some sense, be a "better" bearing, it is a qualitative variation that could apply to any one of the five categories under investigation. Further, the functional characteristics are essentially the same as lower precision bearings of the same rolling element type. (*See also* our discussion of class or kind above.)

The request of Precision Corporation is based on economic considerations that are beyond the scope of our analysis.

Comment 6—Linear Motion Devices. Petitioner contends that, contrary to the allegations of several interested parties, linear motion bearings and linear motion guides (for purposes of this discussion collectively referred to as linear motion devices or LMDs) are included within the scope of these investigations. Petitioner argues that the characteristic of facilitating linear motion does not make LMDs something other than antifriction bearings and that LMDs

were always within the scope of these investigations. Petitioner also argues that it produces LMDs, even though there is no requirement that a petitioner manufacture every product that is subject to investigation. In addition, petitioner contends that Thomson Industries Inc., a domestic producer of LMDs, fully supports the petition.

Deutsche Star GmbH, SKF, THK, INA France, Nippon Thompson, and NSK individually argue that LMDs are not within the scope of these investigations. These interested parties offer several arguments in support of this assertion. Many interested parties contend that LMDs do not fall within any of the classes or kinds of merchandise defined by the Department for the purposes of these investigations and that LMDs constitute a separate class or kind of merchandise. Several interested parties state that LMDs are not antifriction bearings as they differ substantially from the subject bearings in terms of function and design. Certain interested parties contend that it is improper to categorize LMDs as antifriction bearings based solely on the type of rolling element employed within the device. Many interested parties provide extensive analysis of the differences between LMDs and antifriction bearings based on the criteria established in *Diversified Products Corp.* v. *United States*, 6 CIT 155 at 162, 572 F. Supp. 883 (1983). Certain interested parties argue that the petition lacks any mention of LMDs and that petitioner has sought to include LMDs retroactively. Certain interested parties submit that the Department should note the ITC's observation that LMDs are products which do not appear to be bearings. Furthermore, interested parties argue, LMDs are a separate class or kind of merchandise which must be excluded from the scope of these investigations as petitioner has failed to provide the Department with a reasonable basis for inclusion.

DOC Position. While petitioner and interested parties provide several arguments with respect to the inclusion or exclusion of LMDs from the scope of these investigations, we believe the description and definition of the subject merchandise covered by the petition to be the primary basis on which to determine whether LMDs are within the scope of these investigations. Based on the following analysis, we have excluded LMDs from the scope of these investigations.

The petition is silent with respect to LMDs. The petition expressly identifies the following products as included within the scope of these investigations:

> Ball bearings, cylindrical roller bearings, spherical roller bearings, spherical plain bearings, needle roller bearings, thrust bearings, tappet bearings, and all mounted bearings such as set screw housed units, bushings, pillow block units, flange, cartridge and take-up units and parts including balls, rollers, cages or retainers, cups, shields and seals. (Petition, page 13)

The petition clearly specifies certain products as covered by the investigations which otherwise might not generally be understood to be encompassed by the phrase "antifriction bearings." Petitioner provides specific reference to housed units and pillow block units as merchandise covered by the petition. Although petitioner adds that "[t]his petition covers *all* types of bearings and parts, except tapered roller bearings, regardless of whether they are depicted in Exhibit 3 or listed in Exhibit 4 [of the petition], and regardless of whether the foreign producers use different designations for the products," (Petition, page 16) the cited exhibits (which include petitioner's product lists) do not mention linear motion bearings or linear motion guides.

Furthermore, we have determined that LMDs are substantially different from antifriction bearings, as described in the petition. For example, LMDs do not contain the four basic components cited in the petition that most antifriction bearings contain: "outer ring or outer race, inner ring or inner race, a series of balls or roller elements which fit into openings in the separator or cage, and a separator or cage which keeps the balls or rollers equally distributed around the races." (Petition, page 15)

Linear motion guides (LMGs) generally consist of a mounting block to which the load is attached and rectangular rails on which the block rides. LMGs contain circulating balls (some use rollers) between the block and the rails to ensure smooth continuous motion necessary for repeated accurate positioning along a linear track. Examples of LMG applications are laser processing, machine tool equipment and photocopier equipment. Linear motion bearings (LMBs) generally consist of a shell that encloses a reciprocating shaft. LMBs contain recirculating balls riding on the inside of the shell to ensure proper alignment and smooth precise movement of the shaft. For example, LMBs are used in the operation of hydraulic dye presses where it is crucial that the press come straight down on the same spot every time.

The primary function of LMBs is to facilitate precise linear movement and that of LMGs is to facilitate precise linear positioning. The subject antifriction bearings, on the other hand, generally reduce friction and support a rotating load. Antifriction bearings do not facilitate the linear movement or linear positioning of a load. Thus, LMDs and the merchandise described in the petition are distinct products with fundamentally different functions. It cannot be assumed, therefore, that the petition was intended to include either linear motion guides or linear motion bearings in the scope of these investigations.

Accordingly, we have determined that the linear motion guides and linear motion bearings described above, and dedicated parts thereof, are not subject to these investigations.

Comment 7. Petitioner contends that there is no basis for excluding split cylindrical roller bearings since these products are split simply to facilitate installation.

Cooper Bearings contends that its split cylindrical roller bearing is a different class or kind of merchandise from the products included in these investigations and, as such, should be excluded from the investigations' scope. Cooper Bearings argues that its products are unlike any other bearing in these investigations in that they are manufactured to yield halved components which are assembled around a shaft, rather than slid onto the end of the shaft as in standard bearings. Cooper Bearings argues that, unlike standard bearings, its products are sold primarily to the replacement market in low volumes at high prices.

DOC Position. We agree with petitioner. The petition stated that it covered "*[a]ll* types of antifriction bearings, other than tapered roller bearings" (emphasis added). It is uncontroverted that split cylindrical roller bearings are antifriction bearings. These bearings contain the four essential elements which petitioner describes as typifying ball and roller bearings: Inner race, outer race, rolling elements, and separator or cage. (Petition at page 15.) Although Cooper emphasizes the advantages of its split cylindrical roller bearing in its mounting, it is clear that, once fixed onto a shaft, the split bearing operates no differently from more standard bearing designs.

While the Department does not challenge Cooper's claim that split cylindrical roller bearings have a special design aimed for the aftermarket, the intended application does not change the nature of the product itself, namely, that it is a cylindrical roller bearing. (*See* comment above regarding aerospace bearings.) The vast array of possible bearing end use applications

has led to a wide variety of designs, sizes, and specifications that can be viewed as engineering and design variants of a common theme. As such, the Department concludes that split cylindrical roller bearings are properly included within the scope of these investigations and properly fall within the cylindrical roller bearing class or kind.

Comment 8. Petitioner contends that wheel hub units are properly included within the scope of these investigations, since these items are simply mounted or packaged bearings. Petitioner also argues that the petition expressly names wheel hub units as a product under investigation.

The SKF companies and NSK contend that wheel hub units should be excluded from these investigations because they are more than an antifriction bearing. NTN contends that wheel hub units are not the same class or kind of merchandise as the bearings under investigation. In addition, all three companies apply the five *Diversified Products* criteria in support of their arguments. Respondents also cite a July 1983 Customs Service ruling which states that generations 2 and 3 wheel hub units "demonstrate functions which are in excess of those normally associated with ball or roller bearings."

DOC Position. We determine that wheel hub units (generations 1, 2, and 3) are properly within the classes or kinds of merchandise subject to these investigations.

The petition expressly included wheel hub units without limitation as to generation. Wheel hub unit generation 1 is essentially a double-row ball bearing. (Generation 1 may also contain two rows of tapered rollers but such units are not within the scope of these investigations.) The races of wheel hub unit generations 2 and 3 have been expanded, flanged, drilled, and/or splined.

Wheel hub unit generation 1 is clearly within the scope of investigation and no parties have sought their exclusion. With respect to generations 2 and 3, we find that they are simply bearings modified in ways similar to other bearings which have flanged or otherwise enhanced parts containing raceways. While wheel hub units may have features which allow them to serve additional functions such as facilitating mounting, they retain their essential bearing function. The additional features found on wheel hub units are simply engineering and design variations which do not alter the fundamental nature of the product as a bearing.

With respect to the Customs ruling, we note that such rulings are not determinative of the issue of which products are covered by an antidumping or countervailing duty petition, investigation or order. In addition, that ruling describes the items in question as "ball bearings" and notes that the company literature provided to the Customs Service refers to the wheel hub units as "bearing units."

Comment 9. Petitioner contends that, contrary to SKF's assertion, miniature/very small bearings and large-size bearings should not be considered separate classes or kinds of merchandise. Petitioner argues that, while different machines may be used to produce different size bearings, the length of the production run is as much a determinant of the machinery used as the size of the bearing. Machines with greater flexibility tend to be used for short production runs and dedicated machines for long production runs. Similarly, different equipment is used for different size bearings. Petitioner also argues that a single facility can produce a variety of bearing sizes and cites a 1968 Koyo catalogue which refers to Koyo's Takamatsu plant as producing miniature and instrument bearings, medium size ball bearings and power transmission bearings. Petitioner believes that neither size nor special application is a sufficient justification for distinguishing a class or kind of merchandise since all antifriction bearings possess the same general physical characteristics and perform the same general function.

SKF contends that miniature and very small-size bearings (*i.e.*, outside diameter less than 30mm) and large-size bearings (*i.e.*, outside diameter in excess of 420mm) each constitute a separate class or kind of merchandise. SKF argues that the miniature and very small-size bearings are physically different from ordinary and large-size bearings, are produced for specialized applications, and are sold through different distribution channels. In fact, in the United States, miniature bearing sales are handled by SKF Specialty Bearings, not by the SKF Bearing Industries/Bearing Services network that handles sales of ordinary bearings. Moreover, separate facilities and different production processes and equipment are used. Microscopes and "white rooms" are required. SKF offers similar arguments for separating out large-size bearings, maintaining that they are custom made in special facilities and are used in special applications.

DOC Position. We disagree with respondent. As discussed above in the general class or kind discussion, the Department has not distinguished between size, precision and application for the purposes of our class or kind decision. Each of the five classes or kinds under investigation is made in a wide range of sizes, which makes size a qualitative rather than a class or kind distinction. The mere existence of dimensional differences within product classes does not detract from the fact that all bearings within each class share the same general physical and functional characteristics as well as differences relative to the other classes. (*See* "Class or Kind of Merchandise" section of this Appendix.)

Comment 10. One respondent, SKF-FRG, argues that slewing rings are so substantially different in physical characteristics, use and customer expectations that they should be excluded from the scope of the investigations. SKF-FRG asserts that not only are slewing rings extremely large, they are designed generally to move in less than a 90 degree arc rather than to reduce friction between moving and fixed parts through rotation.

Another respondent, FAG-FRG, claims that petitioner's characterization of slewing rings as "large diameter ball bearings with gears cut in the cup" is disingenuous and misleading. FAG-FRG alleges that slewing rings are large, custom-made devices which, unlike a standard bearing, are an integral part of a machine. While FAG-FRG concedes that slewing rings may in some cases have balls or rollers, as well as gears, in other instances they lack these characteristics.

A third interested party, Rothe Erde Schmiedag AG (RES), points to the Department's June 13, 1988, scope memorandum in support of its contention that the Department explicitly excluded slewing rings at an early stage of the investigations. RES agrees with that decision, arguing that neither slewing rings nor their separate, machinery part tariff classifications were referenced in the petition. RES, like SKF-FRG, does not believe that petitioner is a producer of the product. Moreover, RES stresses that the exclusion of slewing rings is justified on the basis of different physical characteristics, distribution patterns, uses and costs.

RES adds that a reversal of the Department's exclusion decision would be unfair and deny RES its due process rights. If slewing rings were intended to be included, the Department should have solicited information on the product, particularly as it differs so much from other products investigated.

The Department solicited no such information, and there is no information on the record concerning sales of slewing rings. RES consequently has relied on the Department's actions and assurances that slewing rings are not included in the investigations.

Petitioner asserts that the petition covers a variety of bearing products, including slewing rings, and that it is a manufacturer of slewing rings. Petitioner characterizes slewing rings as basically bearings with gear teeth on the inner or outer rings (or both).

Petitioner therefore believes that the Department's June 13 memorandum improperly excluded slewing rings, particularly as the Department virtually ignored the fact that slewing "bearings" have physical characteristics, uses and channels of distribution identical to the other bearings under investigation. Petitioner states that slewing rings may be either plain, ball or roller bearings, but in all instances the physical characteristic that predominates is the presence of an inner ring and an outer ring. Arguing that case law and ITA precedent establish that the predominant function of an article identifies whether it should be in the class or kind of merchandise covered by an order (*see, e.g., Television Receivers, Monochrome and Color, from Japan,* 52 FR 8942 (1987)), petitioner contends that the addition of a gear on the inner or outer race of a slewing ring does not change the primary purpose of the bearing—*i.e.,* to permit motion while supporting a load.

Petitioner points to SKF's submission of June 13, 1988, to support its contention that the use and market for slewing rings are no different from those for other antifriction bearings. SKF's statements that "[s]lewing rings * * * are large-sized bearings specifically designed to accommodate oscillating movements," and that they "permit rotation of the mobile section of an assembly and accommodate tilting movements as well as axial and radial loads" are cited by petitioner as evidence that slewing rings, and cylindrical or spherical thrust bearings share the same applications. The use of slewing rings on construction machinery, hoisting and mechanical handling equipment and in the steel industry are, in petitioner's estimation, all applications and markets typical of antifriction bearings in general.

DOC Position. Following careful consideration of the information and arguments presented by all parties, the Department has concluded that slewing rings and slewing bearings (slewing rings) are within the scope of the investigations.

Although petitioner did not specifically refer to slewing rings in the petition, Torrington's May 26, 1988 submission points out that "[t]he petition also covers bearing products referred to by one or more respondents as * * * slewing rings." Furthermore, the Department notes, like petitioner, that arguments and information presented by both FAG–FRG and SKF–FRG refer specifically to slewing rings as "bearings." Moreover, it appears that petitioner intended to include slewing rings in the scope of these investigations since they possess inner rings, outer rings, and rolling elements, the broad general physical characteristics utilized by petitioner in characterizing the merchandise under investigation.

Respondents rely heavily on the fact that slewing rings tend to be custom-made for specialized applications, however, the same argument can be made for a number of other products which the Department has determined are properly within the scope of these investigations. (*See* comments and DOC positions with respect to high precision and large-size bearings).

Respondents have also suggested that the customary feature of gear teeth on a slewing ring causes the product to have two chief functional characteristics, and consequently renders it more than a bearing. However, after considering petitioner's counterarguments and consulting with the Department's industry analyst, we have determined that the additional gear function on many slewing rings is no more than an enhancement of the product common to many other bearings as well. This enhancement is insufficient to distinguish slewing rings from the classes or kinds of merchandise subject to these investigations.

Finally, the Department has carefully considered the "due process" argument made by RES. We are cognizant of the fact that our June 13, 1988, memorandum and our contacts with RES and other respondents at the early stages of these investigations initially indicated that slewing rings were considered outside the scope of investigation. Recognizing that we may not have been privy at that time to all the relevant facts and information, the Department's June 13 memorandum alerted interested parties to the possibility that our decision with respect to scope might be subject to change. We specified that our decision to exclude slewing rings was based in part on the "lack of convincing evidence by petitioner that these products are the same class or kind of merchandise as the bearings under investigation." We did not at that time close the door to petitioner to provide information at a later date that slewing rings were intended to be covered by the petition and resulting investigations. Since then, the petitioner has brought forward convincing evidence that slewing rings are of the same classes or kinds of merchandise as the other products under investigation. Since we have no compelling reason to depart from petitioner's definition of scope, we are clarifying that slewing rings are included in these investigations.

As for RES' argument that the investigations cannot include slewing rings when specific sales information on that product is lacking, we point out that the Department's price comparisons frequently involve less than the total universe of sales or products sold during the period of investigation. This is obviously the case where sampling or similar simplification procedures are deemed necessary, as occurred in these investigations. Furthermore, there is no requirement to conduct price comparisons on all types of merchandise within the class that is subject to an investigation. *Cellular Mobile Telephones and Subassemblies* from Japan (50 FR 45447, 45449 (1985)).

Comment 11. One interested party, Hugo Finkenrath OHG (Finkenrath), contends that split pillow block housings should be excluded from the scope of investigation because these products neither contain bearings nor are they bearing parts or subassemblies. Finkenrath points out that housings are not cited in the petition, and argues that these products were not intended to be covered by the petition. According to Finkenrath, split pillow block housings are distinct from bearings and bearing parts because they have completely different physical characteristics, are produced in different facilities using different processes, have different ultimate uses and user expectations, move in different channels of trade, and are advertised in different ways.

Petitioner states that the mere fact that pillow block housings enter under a separate tariff classification does not in itself place them outside the scope of the investigation. Petitioner observes that the petition specifically covered all parts of ground antifriction bearings, that mounted bearings such as pillow block units were also explicitly covered, and that there are many parts within the scope of the investigation that are different in one or more respects from finished or assembled bearings or their key parts.

DOC Position. We agree with Finkenrath that split pillow block housings should be excluded. Split pillow block housings were neither

explicitly nor implicitly mentioned in the petition. Notwithstanding petitioner's observations as to the variety of parts included within the scope of the petition, there is simply no substantive evidence that housings were intended or ought to be covered by the scope of these investigations. Indeed, the only factual information which has been provided indicates that pillow block housings are not bearings, they do not contain bearings, and they are not parts or subassemblies of bearings. Housings are used to align and mount bearings, and to support the weight of bearings in applications. They are made of different physical materials, by different producers, according to different production processes and for different applications and uses than are bearings. The "mounted bearings," such as pillow block units, that are specifically noted in the petition can be clearly distinguished from pillow block housings by the presence of the bearing itself. Therefore, based on these facts, we determine that split pillow block housings which do not contain a subject bearing are outside the scope of the investigations.

Comment 12. SKF Sweden contends that nuts, bolts, and sleeves manufactured by Mekanproducter are outside the scope of these investigations because they are not "antifriction bearings or components thereof." SKF Sweden argues that nuts, bolts, and sleeves are accessories to a bearing which assist in attaching other accessories to bearings. In addition, SKF Sweden argues that the tariff classification number which covers these products was not listed in the petition, the Department's questionnaire, or the scope of investigation section of the Department's preliminary determinations. Finally, SKF Sweden contends that these items do not fall under any of the Department's five classes or kinds of merchandise and were not among the list of products explicitly included in these investigations as set forth in Appendix V of the questionnaire.

DOC Position. We agree. Nuts, bolts, and sleeves which are not integral parts of a bearing are not subject to these investigations. Accordingly, where such items are imported separate from and unattached to a bearing under investigation, no antidumping duties will be assessed. However, where such accessories are imported attached to a bearing under investigation, they will be included in the scope of any orders issued, and the value of such accessories will be included in the assessed value of the entered product.

Comment 13. BNL Limited (BNL), a British manufacturer/exporter of thermoplastic bearings, contends that its bearings are not properly included in the scope of these investigations. BNL argues that the petition's written description of the scope of investigation refers only to *ground* bearings and that the product characteristics and production processes of the bearings described by the petition do not apply to thermoplastic bearings. Thermoplastic bearings are made of *molded* plastic which is neither ground nor heat-treated. They are not precision bearings. Some of BNL's thermoplastic bearings do incorporate stainless steel balls, but these balls are *not* ground. Therefore, no part of a thermoplastic bearing is ground.

BNL also contends that there are different consumer expectations and end uses for thermoplastic bearings. Thermoplastic bearings are not suitable for heavy load or high speed applications and are much less resistant to heat than the bearings described in the petition. On the other hand, thermoplastic bearings produce little or no noise, are self-lubricating, corrosion resistant, and suitable for use where magnetic interference of the bearing is of concern. BNL also argues that its products, unlike the bearings described in the petition, can be molded into shapes that would otherwise require the assembly of separate parts and components.

DOC Position. We determine that thermoplastic bearings are not within the scope of these investigations as defined by the petition. Petitioner describes the merchandise covered by the petition as *ground* antifriction bearings and parts thereof, both finished and unfinished. (Petition at page 13.) The inner and outer races of the thermoplastic bearings produced by BNL are not ground as the production process of such bearings does not include or require either heat treatment or grinding. Accordingly, we find that thermoplastic bearings are not within the scope of these investigations.

Comment 14. Harmonic Drive Division of Quincy Technologies, Inc. (HD) contends that harmonic drive wave generator bearings (wave generator bearings) made in Japan should not be considered by the Department to be within any of the existing bearing categories. HD requests that we separate our analysis of these bearings from our analysis of all other types of ball bearings.

HD contends that the wave generator bearings used by it are custom made to HD's specifications and have no use other than for the wave generator assembly in a harmonic drive. There are no U.S. bearing manufacturers currently in regular production of these bearings. The bearing itself is intentionally deflected into an elliptoid shape when incorporated into HD's products.

Petitioner maintains that since HD concedes the imported merchandise is a bearing, HD's request for exclusion is based on no more than an applications argument and should be rejected.

DOC Position. We have not treated wave generator bearings differently from other bearings under investigation. Based on information available to the Department at this time, we find no reason to believe that wave generator bearings are a separate class or kind of merchandise from the ball bearings under investigation. Apparently, wave generator bearings are simply thin race, annular ball bearings. As discussed above, unique application alone is an insufficient basis for separate treatment in these investigations. Absent convincing evidence that wave generator bearings are outside the scope of these investigations, or that they constitute a separate class or kind of merchandise, they are properly grouped with all other ball bearings for purposes of our analysis.

Comment 15. GAR International, on behalf of an importer, Young Engineers, contends that stainless steel hollow balls are not bearings in their imported form and should not be subject to any import duties resulting from these investigations. Young Engineers contends that stainless steel hollow balls are used in omni directional rollers, which are not bearings. Omni directional rollers are used in aircraft conveyor systems which allow containers to be rolled inside aircraft cargo holds. Young Engineers states that these stainless steel hollow balls as used in omni directional rollers are made exclusively for their company and there are no domestic manufacturers of this product. Therefore, Young Engineers contends that the stainless steel hollow ball should not subject to these antidumping duty investigations.

DOC Position. We agree with GAR as only solid steel balls are used in antifriction bearings, and are needed therein to perform a load bearing function. Hollow steel balls, on the other hand, are not designed to perform such a function and, to the best of our knowledge, are never used as rolling elements in the bearings under investigation. Therefore, stainless steel hollow balls are excluded from the scope of these investigations.

Comment 16. Petitioner contends that the Department's June 13, 1988, memorandum excluded certain textile-mill components from the scope of these investigations. Petitioner does not dispute that many textile-mill components are not bearings; however, petitioner argues that it provided the Department with a catalogue that demonstrates that many textile-mill "components" are antifriction bearings. Among such bearings are those in which the outer race has been finished with a groove on the outer surface of the raceway to serve as a pulley. Petitioner therefore contends that the Department should clarify in its final determinations that all antifriction bearings are covered by the investigations, regardless of tariff classification as a textile-mill component or any other component or part with a classification other than as identified in Appendix I to the Department's preliminary determinations.

FAG and SKF contend that textile-machinery components—ring spinning frame components, spindles, texturizing components, rotor spinning components, and miscellaneous textile machinery components—are not antifriction bearings and, thus, fall within a class or kind of merchandise not properly within the scope of these investigations.

FAG contends that textile-machinery components are not intended to reduce friction and are not expected to be purchased by the end user to achieve that result.

SKF bases its contention on the following points: (1) The petitioner does not domestically manufacture textile-machinery components, and SKF is unaware of any U.S. company that manufactures such components; (2) the petitioner has provided no evidence upon which to base LTFV or CVD allegations; and (3) textile-machinery components constitute a separate and distinct class or kind of merchandise. With respect to this last point, SKF contends that although textile-machinery components may contain rotating parts, such components are substantially more than bearings; only minor elements of such components resemble a typical bearing. The bearings incorporated into textile-machinery components, moreover, constitute a miniscule portion of the overall value of such components. Textile-machinery components also differ from antifriction bearings in terms of physical characteristics, ultimate uses, customer needs and expectations, channels of trade, and methods of advertising and display. Specifically, textile-machinery components perform functions much different from and more complex than those of reducing friction and wear between moving parts. Such products are not used for purposes of reducing friction; rather, such products are used exclusively in spinning and filament processing machines that manufacture yarn. The rotating element is merely a part of the textile-machinery component. SKF sells and distributes spinning frame components directly to textile mills and textile-machinery manufacturers, rotor spinning components to OEMs and distributors, and other textile-machinery components to distributors of its own selection. Replacement parts comprise approximately ninety-eight percent of these sales.

Reiter USA contends that antifriction bearings imported for ultimate incorporation into Reiter textile machines as part of service, repair, and maintenance operations should be excluded from the scope of these investigations. All bearings imported by Reiter USA are for incorporation into Reiter textile machines as part of customer repair operations. Reiter USA is neither a wholesaler nor a retailer of antifriction bearings. Reiter USA further contends that the final determinations should apply only to U.S. importers that import and then sell antifriction bearings to all industries. The final determinations should not apply to companies, like Reiter USA, that import bearings strictly to service the final product that such companies sell and distribute in the United States. Reiter USA finally contends that it is "unfair" for the Department to subject Reiter to an antidumping duty rate given that it is not dumping antifriction bearings into the United States.

Doc Position. We agree with respondents that textile-machinery components which are substantially advanced in function(s) or value (*i.e.*, products other than the bearings and parts under investigation) fall outside the scope of these investigations. In the Department's June 13, 1988 product coverage decision memorandum, we explicitly excluded such components from the scope of the investigations. We did so, partly because such products were not expressly or implicitly covered by the petition, and because such products are substantially more than bearings. Furthermore, where the value of the antifriction bearings incorporated into textile-machinery components constitute a relatively small portion of the overall value of such components, it appears obvious that the product is substantially more than a bearing.

However, bearings (including mounted or housed units, and flanged or enhanced bearings) which are ultimately utilized in textile machinery are clearly covered by these investigations.

Final application of a bearing under investigation does not remove it from the scope of investigation or result in a separate class or kind of merchandise, as discussed above in the general class or kind discussion. For example, the petition at page 18 specifically mentions "textile machinery" applications as being among the uses and applications of the antifriction bearings covered by these investigations.

We have insufficient information to determine whether specific items vaguely referred to as "textile machinery components" constitute one or more separate classes or kinds of merchandise. An important factor in our determination is the vagueness of the term itself and the variety of items which it may encompass. Accordingly, the Department is unable to be more specific in its response. However, it should be clear that any of the subject bearings, regardless of whether they may ultimately be utilized on textile machinery, aircraft, automobiles, or other equipment, are in fact within the scope of these investigations. It should also be clear that tariff classification numbers are *not* determinative of the products under investigation. *See Diversified Products;* cf. *Roquette Freres* v. *United States,* 583 F. Supp. 599, 605 (CIT, 1984). The written description of the scope of investigation defines the products under investigation.

We also disagree with Reiter's contention that antifriction bearings imported for ultimate incorporation into textile machines as part of service, repair, and maintenance operations should be excluded from the scope of the investigations. Under the U.S. antidumping duty statute, the Department directs the U.S. Customs Service to assess antidumping duties against the importer of record rather than the foreign exporter that is dumping. Therefore, if Reiter is the importer of record of the antifriction bearings imported for service operations, Reiter will be liable for any antidumping duties attributable to its suppliers.

Comment 17. Nissan Motor Company, Ltd., and its U.S.-affiliated companies contend that: (1) Wheel hub units imported as part of front and rear axle assemblies, (2) wheel hub units which include tapered roller bearings, and (3) clutch release bearings which are already assembled as parts of transmissions before importation should be excluded from the scope of these investigations.

DOC Position. We agree with Nissan with regard to all three products. First, axle assemblies for passenger vehicles and trucks constitute more than a bearing. Second, the petition is explicit with regard to tapered roller bearing products, stating that the petition covers all ground antifriction bearings and all parts thereof, both finished and unfinished, with the exception of tapered roller bearings. Third, petitioner has indicated that, while clutch release bearings are within the scope of these investigations, those which are imported in complete transmissions or as major subassemblies of automobiles are excluded.

Comment 18. Petitioner contends that Minebea's database is inadequate, because it failed to report sales of rod ends, spherical plain bearings, and bushings. Therefore, the Department should use as best information available the rate calculated for Minebea in the preliminary determination of 226.68 percent.

Minebea maintains that the Department's plain bearings product scope description was clear and unambiguous, and that Minebea prepared and furnished its response in accordance with its understanding of the plain bearing coverage described in amended Appendix V of the Department's questionnaire. Minebea further maintains that a respondent faced with deciding which products to report can only make its best interpretation of the Department's description of products subject to investigation and, if uncertain, request clarification from the Department. Minebea contends that it filed numerous requests for clarification and, on at least two occasions, met with Department officials to discuss product coverage.

Minebea maintains that the scope of the investigations as specified in amended Appendix V to the questionnaire was again amended as Appendix I to the preliminary determinations. The product scope in the preliminary determinations contained an additional sentence regarding the plain bearing category which stated: "These products include *all* plain bearings which do not employ rolling elements." Minebea contends that this additional sentence merely describes plain bearings as bearings that do not employ rolling elements, and that it ambiguously conveys the deliminting construction that plain bearings entering under TSUSA numbers other than 681.3900 are not subject to the investigations.

Minebea contends that the Department has a responsbility and obligation to respondents to notify them regarding product scope well in advance of the date established for the submission of the questionnaire response. It is clearly unfair to hold a respondent responsible for amendments to the specification of products subject to investigation which are first presented in the preliminary determination, unless the Department notifies the respondents of its scope change, requests a new submission in accordance with the new scope, and provides the respondent reasonsable time to submit its new response.

Accordingly, Minebea contends that it reasonably interpreted the Department's specification of the scope of the products subject to the investigations in excluding rod ends and all plain bearings other than those which entered under TSUSA number 681.3900. Furthermore, because the Department did not provide at an early stage a clear description of the product coverage, adhere to such coverage during the processing of the investigation, or provide timely guidance to Minebea's inquiries, it would be harsh and unfair to invoke best information available against Minebea. Moreover, Minebea submits that the best information in these investigations is the information reported by Minebea and verified by the Department. Minebea further contends, however, that if the Department does not use Minebea's information, the Department should use the rate of other respondents rather than petitioner's information as best information available.

DOC Position. We disagree with respondent. It is well established that the scope of an investigation, as defined by the petition, stands until the Department officially clarifies the scope and excludes a product or products therefrom. The express language of the petition and exhibits thereto specifically cover spherical plain bearings and rod ends. (*See* comments on spherical plain bearings, etc. above). After the Department published notices of initiation in these investigations, we received numerous submissions seeking clarification of the scope of investigation. As a result, the Department issued a decision memorandum on June 13, 1988, which clarified the coverage of these investigations. That memorandum explicitly states that "[r]od ends and rod end bearings * * * *are* subject to these investigations." (emphasis supplied in original). Since the express language of Exhibit 4 to the petition and the Department's decision memorandum refers, without any qualification, to rod-end bearings, the scope of these investigations covers rod ends with or without rolling elements.

At no time during these investigations did the Department exclude spherical plain bearings or rod ends from the scope of these investigations. (Plain bearings other than spherical plain bearings are not subject to investigation as explained above in the comment regarding those products.) Therefore, such products have always been subject thereto. Minebea, morever, should have been fully aware of our product coverage, at least as of June 13, 1988, the date of our decision memorandum. This date was well in advance of that established for the submission of the questionnaire response (*i.e.*, July 7, 1988).

Because Minebea failed to submit a complete questionnaire response with respect to sales of spherical plain bearings and rod ends, the Department must resort to best information otherwise available pursuant to section 776(c) of the Act. Section 776(c) authorizes the Department to resort to such information "whenever a party * * * refuses or is unable to produce information requested in a timely manner and in the form required * * *." (emphasis added). For these sales that Minebea failed to report, we used, as best information otherwise available, the highest rate calculated for another Japanese producer of spherical plain bearings. For those sales of spherical plain bearings and rod ends that Minebea reported, we used the information that we verified. We then took the weighted average of the best-information rate and the rate based on Minebea's verified information to arrive at an overall antidumping duty rate for spherical plain bearings and rod ends.

It is important to emphasize that Minebea took a calculated risk in not reporting these sales and then arguing that such products should not be included within the scope of the investigations. By contrast, other respondents who were unsure whether a particular product was included initially reported such sales in their questionnaire responses and then argued that such products should be excluded. As a result, the Department had no other option but to resort to best information otherwise available.

Comment 19. Petitioner contends that it is well established that the Department does not limit the scope of its investigations to the TSUSA numbers specified in the notices. Minebea's reliance on the TSUSA classification is thus inconsistent with the Department's general practice with regard to the scope

of an investigation, as well as the Department's specific actions in these investigations.

Minebea maintains that the first paragraph of amended Appendix V of the Department's questionnaire identified only rolling element bearings, and the second paragraph referred specifically to plain bearings. Minebea contends that it is most reasonable to assume that the specific reference to the first paragraph in the statement "rod ends entering under the TSUSA categories listed in the first paragraph" indicated that only the rolling element rod end bearings described by paragraph one are subject to the investigations and that rod ends without a rolling element identified by paragraph two are not included. In addition, Minebea contends that a rod end bearing may contain a ball or roller element or may be a sliding element bearing, and that a plain bearing is not a rolling element bearing. Plain bearings are not antifriction but high friction sliding element bearings. For these reasons, Minebea did not report rod ends with a rolling element.

DOC Position. We disagree with Minebea's contention that it was reasonable to assume that the rod ends subject to these investigations were only rolling element rod ends. As described previously, the express language of Exhibit 4 to the petition specifically lists "Rod End Bearings." The Department's June 13, 1988, product coverage memorandum explicitly states that rod end bearings, without qualification, are subject to these investigations. Page one of the amended Appendix V to our questionnaire clearly states that "rod end bearings" are subject to investigation. Minebea cannot rely on an apparent ambiguity in a later paragraph of that appendix as its basis for failure to report certain merchandise. If it were unclear to Minebea which products were subject to investigation, the company had a responsibility to bring this ambiguity to the attention of the Department and seek clarification. In addition, counsel met with and had many telephone conversations with Department officials during this time.

We also disagree with the contention advanced by Minebea and Rose that these companies had relied on the TSUSA numbers listed in Appendix V to the questionnaire in not reporting sales data for rod ends and all plain bearings other than those which enter under TSUSA numbers 681.3900. It is well settled that the Department does not limit the scope of an investigation based upon the TSUSA numbers listed in its notices, questionnaires, or any other document. The Department provided such numbers for guidance only; the written description of the product, as appearing in the petition and exhibits thereto, as well as in the Department's notices, remains dispositive with respect to the scope of an investigation.

Comment 20. AMTB, Dana, Deutsche Star, FAG–FRG, SKF–FRG, and SKF-France individually contend that one or more of the following products should be excluded from the scope of these investigations. The petitioner does not produce, and, therefore, lacks standing to file a petition against the following products: angular contact bearings, bearings under 30mm in outside diameter, "commodity bearings," linear motion guides and linear motion bearings (linear motion devices), "large-size," "miniature," and "small-size" bearings, and wheel hub units.

DOC Position. As discussed in previous comments, we have determined that linear motion devices are outside the scope of these investigations. Therefore the issue of standing is moot with respect to these devices.

We have determined that each of the remaining products are included within the five classes or kinds of merchandise under investigation. As we have determined that petitioner has standing with respect to each of the five classes or kinds, petitioner, therefore, has standing with respect to each of these products. (*See* also Standing section of this Appendix.)

Section 4: Basis for Cost of Production Investigations

Comment 1. Petitioner argues that the Department applied an incorrect standard in its decision to terminate investigations of sales being made below the cost of production with respect to cylindrical and needle roller bearings produced by SKF-Italy. Petitioner cites *Al Tech Specialty Steel Corp.* v. *United States,* 6 CIT at 250, and argues that the appropriate test for initiation of a cost investigation is whether the evidence submitted is sufficient to provide a specific and objective basis for believing that sales may have been made at prices below cost. Further in support of its argument, petitioner cites *Connors Steel Co.* v. *United States,* 2 CIT 242, 527 F. Supp. 350, 357 (1981), modified, 3 CIT 79, 566 F. Supp. 1521 (1982), which states that the level of evidence required to initiate a cost investigation is less than what is required to initiate an antidumping investigation.

DOC Position. The Department has already addressed the standard on which to initiate a cost investigation in its preliminary determinations. *See,* 53 FR 45312 through 53 FR 45368 (November 9, 1988).

Petitioner misunderstands the reasons why no cost investigation was initiated for cylindrical and needle roller bearings produced by SKF-Italy. The foreign market value for SKF-Italy's sales of cylindrical and needle roller bearings was based on constructed value because, although the home market was viable based on the class or kind of merchandise, there were no sales of such or similar merchandise in the home market for comparison. Therefore, there was no need for the Department to conduct a cost investigation because constructed value was already being used for FMV.

Comment 2. Petitioner contends that the Department incorrectly determined not to initiate cost of production investigations of needle and ball bearings produced by INA–FRG because petitioner submitted a sufficient level of evidence to create a reasonable belief of sales below the cost of production.

INA–FRG submits that the Department did not have a sufficient basis to reinstate the cost investigation of its sales of cylindrical roller bearings even after the petitioner submitted additional data.

DOC Position. With respect to INA–FRG's ball and needle roller bearings, the Department compared the cost of production provided by the petitioner to the reported home market prices. Since petitioner was unable to separate selling expenses from total SG&A, the Department compared cost, net SG&A, to home market prices less all movement charges, as well as all direct and indirect expenses claimed by INA–FRG. The results indicated that virtually all ball bearings and needle roller bearings were sold at prices *above* the cost of production. Therefore, the Department had no reason to believe or suspect that those bearings were being sold at prices below the cost of production.

However, using petitioner's information and the same methodology described above, the Department found that a substantial percentage of INA–FRG's home market sales of cylindrical roller bearings were below cost. This gave the Department sufficient basis to believe or suspect that INA–FRG made sales of cylindrical roller bearings at prices below the cost of production and a cost investigation was initiated.

Comment 3. GMN contends that the record demonstrates that any GMN sales below cost occurred only in isolated instances and were not made over an extended period of time. GMN

further argues that sporadic, below-cost sales may not be disregarded for purposes of computing foreign market value since one of the two conditions by which sales may be disregarded under the statute (19 U.S.C. section 1677b(b)) is if the below cost sales have been made over an extended period of time and in substantial quantities. Respondent cites *Toho Titanium Co., Ltd.* v. *United States,* 11 CIT —, 657 F. Supp. 1280 (1987) to support its position that sales below cost of production not be disregarded if such sales "occurred only sporadically or resulted from a typical, brief business practice * * *" (657 F. Supp. at 1285). Respondent states that *Timken Co.* v. *United States,* 11 CIT —, 673 F. Supp. 495 (1987) also emphasized that below-cost sales could be disregarded only if they "have been made over an extended period of time as well as in substantial quantities" and that the below cost provision was "designed to ensure that sales made at less than cost of production will not automatically be excluded from consideration."

DOC Position. As required by section 773(b) of the Act, we investigate whether sales that are made over an extended period of time are at prices which would permit the recovery of all costs within a reasonable amount of time. H.R. Rep. No. 571, 93d Cong., 1st Sess. 71; S. Rep. No. 1298, 93d Cong., 2d Sess. 7310 (1973). For purposes of our investigations, we consider the period of investigation to be "an extended period of time." *See, Toho Titanium Co.* v. *United States,* 657 F. Supp. 1280 (1987). In this investigation, we have determined that a *substantial* quantity of GMN's home market sales were at prices below the cost of production during the period of investigation. Therefore, we have not included these below-cost sales in our calculations.

Comment 4. Petitioner argues that the Department's decision not to reinstate cost investigations of SKF-France's sales of spherical roller bearings and INA-France's sales of ball, cylindrical, and needle roller bearings, was an abuse of discretion and contrary to law. Petitioner states that the Department required all allegations of sales below cost that were submitted after SKF-France's submission of data be based on product numbers and prices reported in SKF-France's submission. Petitioner contends that this requirement, as well as the ten-day deadline for the resubmission of data supporting below cost allegations, was unreasonable. Moreover, the allegations actually submitted by petitioner were based almost entirely on SKF-France's own information. Finally, petitioner contends that it was handicapped in using SKF-France's questionnaire response because SKF-France did not provide petitioner with a public version of its response that listed the product numbers reported.

Petitioner holds that an objective basis to believe or suspect sales below cost in a given country should exist on the basis of price levels in that country coupled with evidence of the most efficient producer's costs. Since all manufacturers price commodity bearings alike, and their prices are below the most efficient producer's costs, it is unreasonable to ask for a more objective indication of below cost sales.

Petitioner also states that the actual standard applied by the Department to the reinstatement of the cost investigations unlawfully required petitioner to make cost allegations based on home market sales data submitted by the respondents.

DOC Position. As the Department noted in its preliminary determinations, *see,* 53 FR 45312 through 53 FR 45368 (November 9, 1988), the petitioner is required to provide company-specific data in support of its cost allegations. *See, Al Tech Specialty Steel Corp.* v. *United States,* 575 F. Supp. 1277 (CIT 1983). In this case, the court concluded that "absent a specific and objective basis for suspecting that a particular foreign firm is engaged in home market sales at prices below its cost of production, the [Section 773(b)] standard has not been satisfied." *Ibid.* at 1282. (emphasis added). Petitioner wants the Department to initiate a cost investigation on mere speculation. However, the Department cannot justify initiating country-wide cost investigations based on such broad speculative allegations.

The Department did not reinstate a cost investigation of SKF-France's sales of spherical roller bearings because there were no sales of spherical roller bearings, cited in the petitioner's allegations, in the home market during the POI. Our views with respect to the adequacy of responses are addressed in the Administrative Protective Order and Public Summaries section of this appendix.

The Department did not reinstate cost investigations of INA-France's sales of ball, cylindrical, and needle roller bearings because petitioner did not submit new allegations after these investigations were discontinued. We informed petitioner in our letter of August 22, 1988, that the Department would consider new cost allegations submitted by petitioner. We received no further allegations.

Comment 5. NSK and NTN contend that they were deprived of their right to a hearing on cost of production issues because the Department did not inform them of its treatment of their reported cost information and methodology. NSK and NTN argue that the Department must therefore terminate its cost investigations of NSK and NTN.

DOC Position. Even though these cost investigations were not reinstated in time for data to be submitted and analyzed for consideration in the preliminary determinations, the Department reinstated cost investigations in time for data to be submitted and analyzed for consideration in the final determinations. This has been our practice in other cases as well. *See, Stainless Steel Hollow Products from Sweden,* 53 FR 37810 (October 9, 1987) and *Certain Internal-Combustion, Industrial Forklift Trucks from Japan,* 53 FR 12552 (April 15, 1988). Furthermore, respondents had the opportunity to rebut allegations in support of petitioner's request for the reinstatement of cost investigations and were able to reiterate their objection to the reinstatement of cost investigations at the public hearing held for these investigations.

None of respondents' rights have been abrogated in the course of these cost investigations. The methodology used by the Department in cost investigations is outlined in 19 CFR 353.7(a). In addition, our case-specific methodology used in previous investigations is available to respondents on the public record. Furthermore, if requested, respondents will be accorded a disclosure of the Department's final determinations with regard to these cost investigations. No such disclosure was previously accorded to respondents because, as explained above, respondents' cost data was not used for purposes of the preliminary determinations.

Section 5: Market Viability

Comment 1. NMB/Pelmec Singapore contends that the Department erred in basing home market viability on the class or kind of merchandise rather than upon such or similar merchandise as provided for in section 773(a) of the Act. NMB/Pelmec Singapore maintains that the viability test must be performed for each such or similar category in order to ascertain whether there is a sufficient quantity of comparable products to provide a reliable basis for calculating foreign market value, and that the viability test in this investigation does

not measure whether a sufficient quantity of such or similar products exists. In support of its argument, respondent cites *Lightweight Polyester Filament Fiber from Japan; Final Determination of Sales at Less Than Fair Value* (49 FR 472, January 4, 1984) (*LPFF*), where the Department rejected arguments that the viability test should be calculated on the class or kind of merchandise.

NMB/Pelmec Singapore also maintains that the Department was unfair and prejudicial by not providing any notice and opportunity for comment by interested parties who may be adversely affected by this change in practice.

DOC Position. To determine whether there are sufficient sales of the subject merchandise in the home market to serve as the basis for calculating foreign market value, our normal practice and preference has been to compare the volume of home market sales to the volume of third country sales within each respective such or similar category. In the case of *LPFF* cited by respondent, we rejected arguments in favor of determining home market viability based on the class or kind of merchandise because we were able to clearly establish such or similar categories of merchandise.

In developing criteria for such or similar comparisons in these investigations, we reviewed the matching criteria set forth in the *Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan* (52 FR 30790, August 17, 1987). In addition, as we stated in our preliminary determinations in these cases (53 FR 45343, November 9, 1988), we sought and considered comments from interested parties and consulted product experts at the U.S. Customs Service, the ITC, and the Department. Given the enormous number of products sold and the numerous physical permutations among bearing types, it would have been impossible to determine home market viability based on such or similar categories within each class or kind of merchandise within the statutorily-imposed time constraints of these investigations.

As explained in detail in Section B–2 of the questionnaire, in those instances where it was necessary to make similar product comparisons (*i.e.*, when a company had less than the minimum 33 percent by volume of identical matches for a given class or kind of merchandise), respondents were instructed to match exactly the following four criteria: (1) Number of rows of rolling elements; (2) load direction; (3) bearing design; and (4) precision rating. Selection of the most similar product was then based on the following four additional criteria: (1) Outside diameter; (2) inside diameter; (3) width; and (4) dynamic load rating. Respondents were instructed to select the home market product(s) that deviated from the U.S. product by ten percent or less with respect to each of these latter four criteria. From this pool of possible matches, respondents were then to determine the maximum of calculated deviations and select as the most similar merchandise the home product with the smallest maximum deviation.

Due to the number of physical characteristics needed to select most similar merchandise and the fact that the ten percent deviation is not a determinate factor, we determined that the only feasible method was to calculate home market viability on the basis of each class or kind of merchandise category which we have defined to include finished bearings and parts thereof.

With respect to respondent's argument that parties were not given the opportunity to comment on the methodology used to determine home market viability, this is simply inaccurate. As we stated throughout the questionnaire, if the respondents had any questions concerning categorization of products, they were to notify the Department immediately. We note that NMB/Pelmec Singapore did not raise any questions or submit any comments on the treatment of parts in the viability test until after we requested third country sales information. The methodology was explained in the preliminary determinations, as noted above, and all parties had opportunity to comment thereon. Furthermore, we have in fact considered comments submitted by NMB/Pelmec Singapore, as well as other respondents in these investigations, regarding the viability determination based on the class or kind of merchandise including parts, but none has persuaded us to change our decision (*see* also *DOC Position* to *Comment 3* below).

Comment 2. NMB/Pelmec Singapore contends that, contrary to the Department's statement that it was virtually impossible to identify such or similar categories within each class or kind of merchandise, the Department did in fact identify such or similar categories in Appendix V of the questionnaire in accordance with section 771(16) of the Act. Furthermore, respondent maintains that since the class includes parts, whereas the such or similar category does not, it would be easier to identify the such or similar category than the class.

DOC Position. At the time these investigations were initiated, we treated the merchandise outlined in the petition as one class or kind of merchandise. Accordingly, on May 31, 1988, we issued Section A of the questionnaire which identified on the first page of the "General Instructions" (which references Appendix V) five "such or similar" categories within that one class or kind of merchandise as follows: "(1) Ball Bearings and Parts Thereof; (2) Spherical Roller Bearings and Parts Thereof; (3) Cylindrical Roller Bearings and Parts Thereof; (4) Needle Roller Bearings and Parts Thereof; and (5) Plain Bearings and Parts Thereof." In addition, the format instructions for the sales listings which were appended to the questionnaire state that the product categories include parts. We instructed respondents to classify their sales information for viability purposes into these five categories of merchandise which specifically included parts. Therefore, it is clear that from the outset of these investigations, parts were included in the categories of merchandise on which the viability test was to be made.

On July 13, 1988, approximately six weeks after the issuance of Section A of the questionnaire, we determined that the subject merchandise constitutes five separate classes or kinds of merchandise corresponding to the previously-defined such or similar categories (*see* also discussion of Class or Kind of Merchandise section of this Appendix). The decision to establish five classes or kinds of merchandise did not in any way alter the inclusion of parts in those categories. Furthermore, for the reasons outlined in detail in the *DOC Position* to *Comment 1*, home market viability was calculated on the basis of each class or kind of merchandise which includes parts.

Comment 3. NMB/Pelmec Singapore and FAG–FRG have objected to the inclusion of parts in determining market viability, contending that parts and complete bearings are not such or similar merchandise. Moreover, because many parts are needed to produce a single complete bearing, the inclusion of parts in the calculation of market viability skews the results.

DOC Position. For the reasons stated above, we performed our market viability test on the basis of the class or kind of merchandise rather than individual such or similar categories. However, not until approximately six months after these investigations were

initiated, did parties first raise the issue that the results of the viability test might be skewed by the inclusion of parts in the calculation. In order to evaluate these problems, on October 19, 1988, we requested additional information from respondents on whether parts were included in their viability calculations and on the number of parts in a complete bearing. Based on our analysis of the responses, we determined that it would not be possible to equate a specific number of parts to whole bearings because of the varied factual situations. For example, most respondents did not sell all parts of bearings. Thus, it was inappropriate to assume that a certain number of parts were equivalent to a complete bearing. Given this situation and the fact that the scope of these investigations includes both parts and complete bearings, we deemed it appropriate to include parts in our viability calculations.

To address possible problems of skewed results arising from the inclusion of parts, we identified those companies and classes or kinds of merchandise where the home market was deemed non-viable through the inclusion of parts in the calculation and performed the viability test again, excluding parts.

In the case of SKF Sweden's spherical roller bearings, we found that the ratio of home market to third country sales was less than five percent whether or not parts were included in the viability calculation. Therefore, we determined that third country sales are the appropriate basis for determining foreign market value.

In the case of NMB/Pelmec Singapore, we found that the company's various submissions on value and volume of sales data were inconsistent with respect to which parts were reported and on what basis (*i.e.*, date of shipment vs. date of purchase order) they were reported. These anomalies contributed to our difficulty in assessing the viability of the Singapore home market. Furthermore, we found that the ratio of home market to third country sales did not increase substantially by excluding parts from the viability calculation. Therefore, we found that the inclusion of parts did not skew the results of the viability test in this case and that the home market was not viable. For this reason, we determined that third country sales are the appropriate basis for determining foreign market value for NMB/Pelmec Singapore.

However, we found for three companies—FAG–FRG, SKF Sweden (ball bearings), and SKF Italy—that the elimination of parts from the viability test led to a substantial increase in the ratio of home market to third country sales, indicating that the inclusion of parts had skewed the results of the viability test. For each of these companies, we then examined whether we would obtain more identical matches to products sold in the United States if we used home market or third country sales. Since we have already limited our comparisons to sales of identical merchandise (except in a very limited number of cases where the percentage of identical matches fell below 33 percent) (*see*, Alternative Reporting Requirements section of this Appendix), we believe that, in the context of our simplified matching methodology, it is appropriate in these three instances to base foreign market value on the market where we will obtain the largest number of comparisons within this limited pool in order to increase the accuracy of our results.

With respect to spherical roller bearings sold by FAG–FRG, we determined that home market sales serve as the most appropriate basis for foreign market value because (1) the home market is substantially larger than any third country market, and (2) the percentage of identical matches using the home market was so great that it is highly unlikely that any third country market would provide a greater percentage of identical matches to products sold in the United States.

However, with respect to ball bearings and parts thereof from SKF Sweden and SKF Italy, we found that there is a higher percentage of identical products sold in the third country market than in the respective home market. Therefore, we determined that third country sales serve as a more appropriate basis for foreign market value than home market sales.

Comment 4. NMB/Pelmec Singapore maintains that ball bearing parts cannot be considered as such or similar to finished ball bearings for the following reasons: (a) The sales value per part is only a small percentage of the sales value per finished bearing; (b) ball bearing parts are not of the same general class or kind of merchandise due to physical differences between ball bearing parts and finished bearings; (c) ball bearing parts are not like finished ball bearings in purpose; (d) ball bearing parts cannot reasonably be compared with finished bearings. Mixing similar complete bearings with dissimilar parts, none of which individually or in combination could be sufficient to constitute a finished, unfinished or substantially complete ball bearing, distorts the viability test. NMB/Pelmec Singapore also argues that because it does not sell any parts to unrelated parties and exports only a *de minimis* quantity of parts to the United States, the commingling of parts with completed bearings is distortive.

Furthermore, respondent argues that it would not be administratively feasible to compare parts and bearings, as this would involve comparisons of all price adjustments and charges for each, as well as cost adjustments. In addition, the Department's questionnaire did not treat parts and finished bearings as such or similar, nor did the Department's product comparison methodology suggest that parts should be compared with finished bearings.

Petitioner argues that NMB/Pelmec Singapore has incorrectly asserted that ball bearings and parts thereof do not constitute such or similar merchandise pursuant to 19 U.S.C. 1677(16)(A). The Department has determined that the scope of this investigation encompasses ball bearings and parts thereof. Given the language of the petition and notice of initiation, it is irrelevant that separate parts are not identical to a finished bearing. Furthermore, there is no statutory or regulatory requirement that the such or similar designation differ from the class or kind designation. Citing *Operators for Jalousie and Awning Windows from El Salvador* (51 FR 41520, November 17, 1986) and *Mirrors in Stock Sheet and Lehr-End Sizes from Portugal* (51 FR 43409, December 2, 1986), petitioner maintains that the Department has often based the viability test on a single such or similar category of merchandise coextensive with the class or kind of merchandise.

DOC Position. For the reasons explained in detail in the *DOC Position* to *Comment 1*, we calculated home market viability on each class or kind of merchandise including parts. However, we have not compared parts of bearings to complete bearings for purposes of our price-to-price analysis.

Comment 5. NMB/Pelmec Singapore maintains that related party sales of parts cannot be considered in assessing home market viability because there were no sales of parts to unrelated parties. In support of its argument, respondent cites *Color Picture Tubes from Korea* (*CPTs*) (52 FR 44186, November 18, 1987), in which case the Department excluded sales to related parties from the home market viability calculation because those sales were not made at arm's length and, thus, could not be used in calculating foreign market value. NMB/Pelmec Singapore further contends that parts may be properly included within the scope of an investigation only in those cases where an antidumping order already exists on

the finished product, and a company begins exporting parts, which are entered free of antidumping duties, and assembles these parts in the United States in order to circumvent the antidumping order.

DOC Position. Under section 773(a)(1) of the Act, the Department is required to determine whether home market sales form an adequate basis for comparison. Section 353.4 of our regulations establishes the test for making this determination. Normally, we require that the volume of home market sales comprise at least five percent of the volume of sales to third country markets in order for the home market to be deemed "viable." Neither the statute nor the regulations specifically addresses the issue of whether "sales" to related parties should be included for purposes of determining the viability of the home market.

Where home market sales are made through a related party seller, it would usually make little difference for purposes of performing the viability test if the producer reported sales to the related party or sales by the related party. Absent unusual circumstances, we would expect the amount of sales to the related party to approximate the amount of sales made by the related party.

Unlike these more normal situations, the *CPTs* case presented unique facts. Many of the home market sales by the CPT producers were to related parties who did not resell the CPTs. Instead, the related purchasers used the CPTs to produce color television receivers (CTVs). In that case, the first sale to an unrelated party was the sale of a completed CTV which was not considered to be within the same class or kind of merchandise as the CPT alone and which was outside the scope of the investigation. The *CPTs* case does not apply to the instant investigation because the ball bearing parts sold to related parties in the home market and third countries are used to produce complete ball bearings which are within the scope of the investigation and which are considered the same class or kind of merchandise as the ball bearing parts.

As we noted in the *DOC Position* to *Comment 3* above, we have taken into consideration the effect of sales of parts on the viability calculations and have found that, in the case of NMB/Pelmec Singapore, the inclusion of parts did not skew the results of the calculations.

With respect to respondent's argument regarding circumvention, we agree that one reason a petitioner may seek to include parts in the scope of an investigation may be to avoid potential circumvention problems. However, parts may also be included in a petition and, subsequently, in an investigation because of concerns about sales at less than fair value of the parts as well as of the completed merchandise. In these investigations, the petition included parts within the scope and, therefore, we have included them in the investigations.

Comment 6. FAG–FRG argues that although the Department preliminarily determined its home market was not viable for spherical roller bearings, it is inappropriate to use third country sales as the basis for foreign market value because (1) sales to individual third country markets constitute a smaller sales volume of complete bearings than that sold in the home market, and (2) most of its selling activity occurs in the home market. Therefore, FAG contends that, if the Department does not use home market as the basis for foreign market value, it should use the verified constructed value data for spherical roller bearings.

Petitioner maintains that FAG–FRG's home market sales of spherical roller bearings are inadequate, as concluded by the Department for purposes of the preliminary determination, and contends that the non-viable sales should not be used for the final determination.

DOC Position. We originally determined that FAG–FRG's home market for spherical roller bearings was not viable based on the ratio of home market to third country sales of spherical roller bearings and parts thereof. After consideration of FAG–FRG's arguments that the inclusion of parts in the calculation of home market viability skewed the results, we have reexamined this issue and determined that the home market is the most appropriate basis for foreign market value for the reasons stated in the *DOC Position* to *Comment 3* above.

Comment 7. INA–FRG maintains that the Department should determine home market viability on a product-by-product basis. Where the volume of sales of a particular product in the home market is less than five percent of the volume of sales of the same product in the U.S. market, which is the situation with inch-sized bearings, the Department should disregard these home market transactions. In support of its argument, INA cites the *Final Administrative Review of Sales at Less Than Fair Value: Red Raspberries from Canada* (*Red Raspberries*) (54 FR 6559, February 13, 1989), in which the Department disregarded certain home market sales that satisfied the home market viability test but which were negligible compared to the volume of sales to the United States. INA further maintains that if the Department deems that these sales should not be disregarded, then the Department should compare the U.S. price with the constructed value of the particular bearing.

Petitioner argues that on the basis of such or similar categories identified by the Department, INA's home market sales for each of the bearing categories produced by INA were viable. Petitioner maintains that INA's interpretation goes beyond the scope of the Department's determination in Red Raspberries. Furthermore, by excluding these sales from price comparisons, it would be uncertain whether reported sales would fall below the 33 percent threshold of comparison sales. In addition to conflicting with the statutory scheme for determining viability, INA's proposal is administratively unfeasible and impractical. Petitioner also takes issue with INA's argument that the Department should base foreign market value on constructed value, as this information has not been verified.

DOC Position. The purpose of the viability test is to establish the appropriate market for determining foreign market value through a comparison of the level of home market sales with the level of third country sales. For the reasons outlined in the preliminary determinations in these investigations and reiterated in the *DOC Position* to *Comment 1* above, due to the enormous number of products sold and the numerous physical permutations among bearing types, it would have been virtually impossible to determine home market viability based on such or similar categories within each class or kind of merchandise. The same reasons render even more impracticable respondent's suggestion that the viability test be performed on an individual product basis. Even if these investigations did not involve so many individual products, the Department normally performs the viability test on the basis of comparison of home market and third country sales within each such or similar category of merchandise (*see* also *Electrolytic Manganese Dioxide from Greece*, 54 FR 8771, March 2, 1989). We then make comparisons to the identical or most similar product within that group, regardless of the quantity sold (*see Final Determination of Sales at Less Than Fair Value: Mirrors in Stock and Lehr End Sizes from Portugal*, 51 FR 43409, December 2, 1986). (*See* also comments on Sales Not in the Ordinary Course of Trade in the Miscellaneous Issues section of this Appendix.) To do otherwise could result in a need to perform several thousands

of individual viability determinations, posing severe obstacles to resolution of the viability issue within the statutorily-imposed time constraints of antidumping duty investigations.

Further, respondent misconstrues the *Red Raspberries* determination. The Department found an unusual situation in that case, with the home market technically viable under the five percent test outlined in the regulations, but with home market and third country sales that were so small as to be "negligible". There was only one home market sale in that case. By contrast, in this case the volume of INA's home market and third country sales is both substantially greater than the volume of its U.S. sales and large in absolute terms as well.

For the reasons stated above, the issue of using constructed value as the basis of foreign market value for the products in question is moot.

Comment 8. NMB/Pelmec Singapore maintains that the sales figures it provided demonstrate that the home market is viable. Using the data of its July 18, 1988 submission, which reported sales of all finished bearings and bearing rings on a shipment basis, the viability ratio calculated only with respect to complete bearings is greater than five percent. When parts are included with bearings, the ratio is less than five percent. Using the data of the October 24, 1988 submission, which reported sales on a purchase order basis, the viability ratio with or without bearing parts is also greater than five percent. If sale of other parts such as retainers, shields and snap rings, which were not reported but which were obtained at verification, are included in addition to sales of rings in the viability analysis, the ratio far exceeds five percent. For these reasons, NMB/Pelmec contends that the home market sales exceed the regulatory standard of five percent of third country sales.

Petitioner maintains that the Department correctly rejected NMB/Pelmec Singapore's home market sales pursuant to 19 U.S.C. 1677(a) and 19 CFR 353.4. Respondent failed to perform the home market viability test as instructed by the Department and failed to consult with the Department regarding the home market viability test before submitting Sections B and C of the questionnaire response. Furthermore, petitioner maintains that respondent's arguments were raised after the Department performed the home market viability test based on the sales information submitted in Section A of the questionnaire response. For these reasons, the Department should not reverse its determination that the Singapore home market is not viable. In addition, petitioner takes issue with the discrepancies between the sales volume data reported in the July 18 response and the October 24 submission. Petitioner maintains that because discrepancies were found at verification, home market sales volume data provides an unreliable basis for determining foreign market value. Finally, citing *Certain Steel Wire Nails from Korea* (45 FR 34941, May 23, 1980), petitioner maintains that the Department's five percent guideline is not a mandatory number for determining home market viability.

For the above reasons, petitioner maintains that the Department should resort to the use of best information available and utilize the highest margin set forth in the petition for purposes of the final determination. Alternatively, petitioner argues that the Department should base foreign market value on third country sales or constructed value data which have been verified.

DOC Position. According to the original value and volume of sales data submitted by NMB/Pelmec Singapore on July 18, 1988 in response to Section A of the questionnaire and the data submitted on September 6, 1988 in response to Sections B–E of the questionnaire, sales in the home market account for less than five percent of sales to third country markets. This determination was based on a comparison of the volume of home market to third country sales of ball bearings and parts thereof. Therefore, on September 23, 1988, we notified NMB/Pelmec Singapore that its home market was not viable and requested that third country sales data be submitted.

Due to the numerous comments on the calculation of home market viability received from many respondents in the concurrent antidumping investigations involving antifriction bearings, we issued a short questionnaire on October 19, 1988, seeking clarification on how each respondent had treated parts in the reporting of its sales data (*e.g.*, parts separate from complete bearings) and how each calculated home market viability (*e.g.*, based on complete bearings only or based on the total of parts and complete bearings). On October 24, 1988, one week prior to the preliminary determinations, we received a response from NMB/Pelmec Singapore which provided revised value and volume of sales figures based on the date of the purchase order (as opposed to the date of shipment which was used as the basis for reporting the value and volume of sales figures in the July 18 and September 6, 1988 responses). This revised information indicated that the ratio of home market sales to third country sales, whether or not parts were included in the calculation, was slightly above the five percent guideline normally used as a determinant of home market viability.

It is incumbent upon the Department to establish early on in an investigation the appropriate market to use as the basis for foreign market value. Failure to identify the appropriate market during the early stages of an investigation would impose an overwhelming burden on respondents to submit complete data on all sales to all markets prior to a decision on market viability. We believe it more reasonable and advisable to assess market viability and then request the appropriate price data for the market deemed to be the appropriate basis for foreign market value. In this investigation, the information available to us early on was the July 18 and September 6, 1988 responses which indicated that the ratio of home market sales to third country sales including parts was below five percent, and the ratio excluding parts was only slightly above five percent. Therefore, we determined that it was appropriate to verify third country sales information and use that information as the basis for foreign market value.

The unusual circumstances in this investigation, including the complexity of the products, the fact that the exclusion of parts from the viability calculation does not alter significantly the results of that calculation, and the fact that respondent's sales data changed from one submission to the next, render the third country sales the most appropriate and reliable basis for foreign market value for NMB/Pelmec Singapore.

With respect to respondent's comment that the ratio of home market to third country sales would increase substantially by including in the calculation sales of parts not reported in any of the responses, we maintain that it is the obligation of respondent to provide an accurate and complete response prior to verification so that the Department may have the opportunity to analyze the information fully. (*See, Chinsung* v. *U.S.*, Slip Op. 89–15 at 8 (CIT, February 7, 1989). The fact that respondent presented new information at verification with respect to parts that were not reported but which should have been reported, cannot affect the original determination that the home market was not viable.

Comment 9. NMB/Pelmec Singapore maintains that sales figures were properly reported for the home market viability test. It argues that none of the

questions in the questionnaire requested a calculation of home market viability. NMB/Pelmec Singapore interpreted the instructions as meaning that only the questions themselves needed to be answered, and that the submission of data relevant and necessary to conduct the home market viability test was sufficient to satisfy any reference to home market viability made in the explanatory portion of the text. However, when the Department issued a separate home market viability questionnaire on October 19, 1988, NMB/Pelmec Singapore performed the viability calculation for this separate questionnaire. Furthermore, NMB/Pelmec Singapore maintains that the Department declined to provide any specific explanation regarding the basis of its determination that the Singapore market is not viable. NMB/Pelmec Singapore requests that the Department reconsider its position and provide justification to support its conclusion that the home market is not viable.

DOC Position. On July 31, 1988, we issued to all respondents in these investigations sections B–E of the questionnaire which includes on page B-2 specific instructions to perform a viability calculation and to show the calculations.

In its September 6, 1988 response, NMB/Pelmec Singapore provided the total value and volume of sales for both complete ball bearings and ball bearing parts, but did not perform the actual viability calculations as requested. After analyzing the sales data and performing the viability calculations, we determined that the home market was not viable and, therefore, did not provide an appropriate basis for foreign market value. Accordingly, on September 23, 1988, we informed NMB/Pelmec Singapore that its home market was determined to be non-viable and that it should provide third country data. The third country data was submitted too late to be fully analyzed for purposes of the preliminary determination. However, it was subsequently analyzed and verified and, therefore, has been used for purposes of the final determination.

Comment 10. NMB/Pelmec Singapore argues that if the Department insists upon the non-viability of home market sales, then the foreign market value should be based upon constructed value data. NMB/Pelmec contends that constructed value is a better estimate of home market prices than third country data and, furthermore, this data has been verified and found to be reliable.

DOC Position. For the reasons already stated above, we have determined that NMB/Pelmec Singapore's sales to Japan constitute the most appropriate basis for foreign market value. Furthermore, the statute and regulations express a strong preference for the use of prices (*see* section 773(a) of the Act, as amended; 19 CFR 353.4(b); Statements of Administrative Action, H.R. Rep. No. 153, pt. II, 96th Cong. 1st Sess. 411 (1979)). Since the third country data has been submitted, analyzed, and verified, we have determined that it is the most appropriate basis for foreign market value.

Comment 11. Petitioner contends that the Department's preliminary determination that the home market in Thailand is viable was based on domestic sales figures which incorrectly included cancelled sales and exports to Singapore. Petitioner further contends that bearings exported to Singapore and subsequently re-imported into Thailand should not be included as home market sales because (1) These products were not merely transshipped through Singapore, but were resold in Singapore to an unrelated party before re-importation into Thailand and, as such, these sales entered the commerce of Singapore; (2) it was not verified that NMB/Pelmec knew that these bearings would eventually return to Thailand; and (3) the public record in the companion countervailing duty investigation shows that sales to Singapore were deemed export sales by Thai Customs authorities for purposes of export statistics and for the export subsidy programs found to provide subsidies in the countervailing duty investigation. By excluding the cancelled sales and the exports to Singapore from the calculation of home market viability, petitioner contends that the home market in Thailand is not viable.

With respect to cancelled sales, NMB/Pelmec Thai contends that even by excluding such sales, the home market is still viable. With respect to the sales through Singapore, NMB/Pelmec Thai contends that these bearings, which were routed through a related selling agent in Singapore before being delivered to the ultimate unrelated purchaser located in Thailand, are properly considered home market sales because (1) NMB/Pelmec Thai knew at the time of the sale that the products were destined for delivery and consumption in the home market, and (2) the products did not enter the commerce of Singapore.

Citing *Hydrogenated Castor Oil from Brazil* (50 FR 51725, December 19, 1985), respondent argues that the Department considers knowledge by the manufacturer of the destination of the merchandise as the controlling factor in finding the existence of home market sales. Respondent further argues that knowledge of the destination is critical to a determination of dumping since dumping itself is price discrimination. If a company has no knowledge of the final destination, it cannot discriminate between the market of destination and other markets. Therefore, respondent maintains, the spirit of the antidumping law, as well as the policies set forth in the Department's practices and 1984 amendments to section 19 U.S.C. 1677b, dictate that these sales must be considered home market sales.

DOC Position. We found at verification that NMB/Pelmec Thai has knowledge that the sales which are transshipped through Singapore are ultimately destined for delivery and consumption in Thailand. However, there are unusual circumstances in this case that, on balance, argue in favor of characterizing these sales as export sales. For example, because these sales are exempt from certain taxes and import duties associated with other home market sales, the prices of these sales are not typical home market prices. In addition, the goods are physically exported from Thailand, and the first sale to an unrelated party takes place in Singapore. Therefore, contrary to respondent's assertion, these products do, in fact, enter the commerce of Singapore. Lastly, these sales earn export subsidies and are considered exports by the Government of Thailand for purposes of maintaining export statistics. All of these factors combined outweigh the importance of knowledge of the final destination in the determination of whether these sales are properly considered home market or third country sales. Therefore, we have determined that these sales are third country sales.

With respect to the comments on NMB/Pelmec Thai's cancelled sales, we have determined that these sales should properly be excluded from the home market database. Therefore, by excluding the products actually sold in Singapore and the cancelled sales, as well as NMB/Pelmec Thai's sales to related bonded warehouses, from the total home market sales reported, we have found that the Thai home market is not viable and, thus, does not provide the appropriate basis for establishing foreign market value. Accordingly, we have used verified constructed value data as best information available for purposes of this final determination.

Comment 12. NMB/Pelmec Thai contends that the different categorization of the same sales under U.S. antidumping and countervailing

duty laws is not contrary to either statute. The demands of the different laws require a different treatment of the same factual situation in order to comply with both laws.

Specifically, NMB/Pelmec Thai contends that the classification of the sales routed through Singapore as exports in the concurrent countervailing duty investigation is irrelevant in the antidumping proceeding. The classification of these sales in the two proceedings serves different purposes. In a countervailing duty proceeding, the object of classification of export versus domestic sales is to ensure that the *ad valorem* subsidy calculation is based on the appropriate sales value. The value of export subsidies is divided by the total value of eligible export sales for which such export subsidies were granted in order to arrive at an *ad valorem* amount. If export subsidies are granted for particular sales under Thai law, then such sales are correctly categorized as export sales under the U.S. countervailing duty law.

NMB/Pelmec Thai also argues that, for purposes of the antidumping proceeding, the paramount objective of categorization is to ensure that the Department properly measures price discrimination between markets. If the company knows at the time of sale that the merchandise is destined for the home market, then such sales are appropriately considered domestic sales under the U.S. antidumping duty law.

Petitioner asserts that a discussion of the issue of how export subsidies bestowed on home market sales should be treated for purposes of a U.S. price comparison shows the inherent contradiction in treating NMB/Pelmec Thai's sales to Singapore as home market sales. Petitioner contends that disparate treatment is unreasonable given that the intent of both the antidumping and countervailing duty laws is to identify and distinguish home market sales for the purpose of determining whether there is unfair trade. Citing *Bingham & Taylor* v. *U.S.*, 815 F.2nd 1482, 1486 (Fed. Cir. 1987), petitioner argues that a similar approach adopted by the ITC has been rejected by the Federal Circuit.

DOC Position. We have determined that the sales at issue are export sales for purposes of the concurrent countervailing duty investigation because such sales earn export subsidies and are considered exports by the Government of Thailand for trade statistics purposes. (*See* the *Final Affirmative Countervailing Duty Determination and Partial Countervailing Duty Order: Ball Bearings and Parts Thereof from Thailand* published in this issue of the **Federal Register.**) We have also determined that such sales are export sales for purposes of the antidumping investigation because the goods are physically exported from Thailand, with the first sale to an unrelated party taking place in a third country. Therefore, we consider that the goods enter the commerce of that third country.

Furthermore, it would be inappropriate to treat these sales differently in this case than we did in the countervailing duty case. The antidumping and countervailing duty laws comprise two separate, statutory provisions of the same statute—the Trade and Tariff Act of 1930, as amended. Although these two provisions are separate and distinct, their purposes are the same; that is, to offset any unfair trade advantage enjoyed by a foreign exporter. *Cf. Bingham & Taylor Div., Va. Industries* v. *U.S.*, 815 F.2nd 1482, 1486 (Fed. Cir. 1987). As such, the Department must interpret consistently similar or identical factual situations arising under the two statutory provisions to ensure that these provisions operate harmoniously. *Cf. Ambassador Div. of Florsheim Shoe* v. *United States*, 748 F.2nd 1560, 1565 (Fed. Cir. 1984).

Comment 13. NMB/Pelmec Thai contends that the Department's interpretation of the statutory preference for home market sales under section 773 of the Act and its viability regulation, 19 CFR 353.4, clearly indicates that if the five percent threshold is met, the use of home market sales as the basis for foreign market value is mandatory. NMB/Pelmec Thai further contends that the flexibility in using the five percent standard as a guideline has not been applied in situations in which the viability ratio exceeded the five percent. To do so, respondent contends, would violate the strong statutory preference for home market sales.

DOC Position. We have found that, by excluding NMB/Pelmec Thai's cancelled sales, the sales found to be made to Singapore, and sales made to related bonded warehouses, the ratio of the volume of NMB/Pelmec Thai's home market sales to third country sales does not reach the five percent threshold normally used to establish home market viability. Therefore, we have not used home market sales as the basis for foreign market value. In the absence of third country sales data, as best information available, we have used NMB/Pelmec Thai's verified constructed value data.

Comment 14. NMB/Pelmec Thai contends that its July 18 response separated home market and third country sales depending on whether the sales were to related parties or unrelated parties. Respondent further states that related party sales were included in the viability calculation because these sales were made at arm's length.

Petitioner contends that related party sales should not be included as domestic sales for purposes of determining home market viability. Petitioner further argues that respondent was unable to demonstrate that these sales were, in fact, made at arm's length.

DOC Position. As a matter of standard procedure, Section A of the Department's questionnaire requests total value and volume of sales data for the domestic market and third country markets broken down by related and unrelated sales. In its July 18, 1988 response, NMB/Pelmec Thai reported its sales data accordingly. Based on the data contained in that submission, the Department determined that NMB/Pelmec Thai's home market was viable. Neither the statute nor the regulations specifically addresses the issue of whether "sales" to related parties should be included in the calculation of home market viability. Furthermore, it is our normal practice to include related party sales for purposes of determining home market viability. That is not to say, however, that the inclusion of related party sales in the viability calculation indicates that such sales are necessarily at arm's length.

During verification, the Department discovered problems with NMB/Pelmec Thai's home market database, such as the inclusion of cancelled sales, sales actually found to be made to Singapore, and sales made to its related bonded warehouses (*see DOC Position* to *Comment 11* above). The exclusion of these sales rendered the home market non-viable. In addition, NMB/Pelmec Thai was not able to demonstrate at verification that the home market sales to related parties were arm's-length transactions because there were no sales of the same products to unrelated parties to serve as a basis for comparison.

In the absence of a viable home market, the Department prefers the use of third country data over constructed value. However, because we did not discover until verification that the home market was not viable, we were unable to obtain third country prices. Therefore, we have relied on the verified constructed value data, as best information available, to calculate foreign market value.

Comment 15. Petitioner contends that NMB/Pelmec Thai divided its domestic sales volume (based on purchase order date) by its third country sales volume (based on shipment date) to calculate home market viability. Petitioner contends that for purposes of determining whether the Thai home market is viable, home market and third country sales should be compared on a consistent basis. Therefore, for purposes of the final determination, the Department should base the calculation of home market viability on the sales data reported in the Section A deficiency response, as domestic and third country sales are comparably reported.

DOC Position. For the reasons set forth in the *DOC Position* to *Comment 11* above, we have determined that the Thai home market was not viable. Therefore, this issue need not be addressed.

Comment 16. Petitioner contends that the home market in Thailand is not viable and, therefore, the Department should apply the special rule for multinational corporations (MNC provision) for the final determination, in accordance with section 1677b(e) of the Act. Petitioner maintains that it has demonstrated all three elements required to trigger the application of the MNC provision and, therefore, the use of third country prices is the appropriate basis for foreign market value. However, since the Department has not verified third country sales data, petitioner argues that the best surrogate for Minebea Japan's prices is the highest Japanese price for part numbers identical to U.S. part numbers sold by another manufacturer in Japan as identified in the petition. If the Department does not apply the MNC provision, petitioner argues that constructed value should be used as best information available.

NMB/Pelmec Thai contends that the MNC provision does not apply because the Thai home market is viable, and because petitioner failed to establish that the foreign market value of merchandise produced outside of Thailand is higher than the foreign market value of the merchandise produced in Thailand. Neither the Japan prices based on Torrington's market research nor the prices charged by Koyo Seiko, which were used by petitioner to demonstrate this condition, relate to the foreign market value of such or similar merchandise in one or more of the facilities outside the country of exportation as required by section 773(d) of the Act. The statute requires a showing relating to the foreign market value of merchandise produced in one or more of the facilities of the multinational corporation under investigation. Neither the general Japanese prices based on Torrington's market research nor the prices of Koyo Seiko which were provided by petitioner are sufficient because they do not concern the merchandise produced by the Minebea company. Moreover, the Japanese price data provided by petitioner indicate that the prices charged by NMB/Pelmec Thai are actually *higher* than the prices charged in Japan.

DOC Position. We agree with respondent. To invoke the MNC provision, the petitioner must satisfy three criteria. Specifically, the petitioner must demonstrate that:

(1) merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm or corporation which also owns or controls, directly or indirectly, other facilities for the production of such or similar merchandise which are located in another country or countries;

(2) the sales of such or similar merchandise by the company concerned in the home market of the exporting country are nonexistent or inadequate as a basis for comparison with the sales of the merchandise to the United States; and

(3) *the foreign market value of such or similar merchandise produced in one or more facilities outside the country of exportation* is higher than the foreign market value of such or similar merchandise produced in the facilities located in the country of exportation * * *

19 U.S.C. 1677(b)(d).

Petitioner failed to satisfy the third criterion of the MNC provision. Under the third prong, petitioner is required to demonstrate that the foreign market value of such or similar merchandise produced in Minebea's facilities located in Japan or Singapore is higher than the foreign market value of such or similar merchandise produced in the Minebea facilities located in Thailand. The information provided by petitioner—Japanese prices based on Torrington's market research and prices charged by Koyo Seiko—is not adequate to satisfy this requirement. Accordingly, we have determined that the MNC provision is not applicable in this case.

Because the Thai home market was found to be non-viable for the reasons set forth in the *DOC Position* to *Comment 11* above, we believe that third country prices are the most appropriate basis for establishing foreign market value. However, in the absence of third country data, we have used verified constructed value information to establish foreign market value, as best information available.

Because we have determined that the MNC provision does not apply in this case, the remainder of petitioner's and respondent's contentions relating to the MNC provision need not be addressed.

Section 6. Alternative Reporting Requirements

At the outset of these investigations, it became apparent that because of the sheer number of transactions involved and the complexity of the issues, the Department would have to depart from its standard procedures for handling antidumping investigations in order to complete these cases in a fair and timely manner. In making our initial decisions with respect to the classes or kinds of merchandise subject to these investigations and the specific products covered by the scope of these investigations, we became fully cognizant of the vast number of bearing types and the immense complexity of making product comparisons. Subsequent to our questionnaire presentations, virtually all respondents notified the Department that these investigations posed an unusually burdensome task for all parties involved. For example, one respondent noted that it produced over 30,000 different products regularly and many thousands more specialty products. Another respondent informed us that its transactions alone would number in the hundreds of thousands. Other respondents indicated that over 500,000 transactions would have to be reported. In addition to the enormous amount of information that would be required and the short deadlines (even with extensions), identifying the most similar merchandise under our normal requirements and verifying that the most similar merchandise had been reported by the respondents would have been an overwhelming task.

Therefore, on July 15, 1988, we solicited the views of all parties to the proceedings concerning alternative reporting requirements. After considering the problems and the views of the parties to these proceedings, the Department concluded that one method of ensuring that these investigations could be completed in a fair and timely manner would be to reduce the sales reporting requirements for respondents.

The statute itself does not establish any particular reporting or coverage requirements for fair value investigations. *Cf., British Steel Corp.* v. *United States,* 8 CIT 86, 93–94 (1984), *quoting from American Spring Wire Corp.* v. *United States,* 8 CIT 20 (1984). By regulation, the Department "normally seeks to examine at least 60 percent of

the dollar volume of exports to the United States from any country subject to an antidumping duty investigation." 19 CFR 353.38. However, as the regulation expressly provides, the 60 percent standard is a "normal" requirement, and the Department has the authority under the regulation to examine a lower percentage where the circumstances so warrant.

For the reasons described above, the Department concluded that it would not be feasible to examine 60 percent of the exports involved in these proceedings. Therefore, the Department decided that it would examine at least 33 percent of the volume of exports to the United States for each class or kind of merchandise. This would allow the Department to complete these investigations on time, while also providing a sufficiently large data base to avoid undue distortions in the results of the Department's analysis.

In order to achieve the goal of at least 33 percent coverage, the Department adopted the following methods. First, for each respondent, the Department attempted to compare only those products sold in the United States for which there were sales of identical merchandise in the market used to determine foreign market value. If the U.S. sales of these identical products accounted for at least 33 percent of the exports of a particular respondent, the Department limited its comparisons to all identical matches. If such a comparison failed to account for 33 percent coverage, the Department then compared the largest volume of products sold in the United States for which there were no identical matches, but for which there were sales of similar merchandise in the relevant foreign market. The Department repeated this last step until the 33 percent threshold was satisfied.

Comment 1. Several respondents contend that the Department must exclude from its LTFV calculations, sales of finished bearings manufactured or assembled in the United States that contain imported components. INA, NSK, and FAG argue that the value added in the United States is so significant that the finished bearings containing imported components are substantially transformed and become products of the United States. NSK further contends that its U.S. facilities contribute the "essential characteristics" to the finished antifriction bearings. Accordingly, sales of these bearings should be excluded from these investigations.

INA contends that it is not necessary for the Department to calculate LTFV margins for imported components where, as in these investigations, imports of these components will be covered by the Department's findings regarding sales of finished bearings and components sold directly to unrelated customers without further manufacture or assembly.

INA and NTN contend that, if the Department does calculate LTFV margins for imported components, the Department is required by section 772(e)(3) of the Act, the Department's regulations and past practice, to deduct the U.S. value added when the related party in the United States performs further manufacturing on, or assembly with, the imported product. In the instant case, however, the Department's own actions preclude the use of the required methodology in determining exporter's sales price since the Department did not request the cost data necessary to make the required comparisons.

NTN argues that it is unlawful for the Department to calculate dumping margins on merchandise manufactured in the United States or on imported components which are not sold to an unrelated purchaser in the United States.

Petitioner believes that the proper method for determining margins on components used by a related U.S. subsidiary of finished bearings is to deduct all value added in the United States to arrive at a proxy import price for the component that is based on actual prices in the United States, citing 19 U.S.C. 1677a(e)(3). Since the Department does not have the requisite information to perform such a calculation, however, petitioner argues that the Department should either perform a margin analysis based on sales of the same components to unrelated U.S. purchasers or to assign sales of components the same margins found on the class or kind of completed bearing to which the component belongs. With respect to the Japanese respondents, petitioner argues that use of the U.S. price of a finished bearing, albeit finished in the United States, as compared to the foreign market value of an identical finished bearing provides a reasonable basis for comparison. Petitioner also suggests with respect to the Japanese respondents, that, given the fact that the Department does not have information on the value added in the United States, it ought to take a "best information available" approach to the U.S. sales of merchandise finished from imported parts.

DOC Position. As stated above, because of the massive number of transactions involved in these proceedings and the complexity of the investigations, the Department departed from its normal reporting requirements and sought at least 33 percent coverage of the merchandise under investigation. To facilitate the achievement of this goal, the Department decided that, where U.S. subsidiaries of foreign bearings producers imported components and parts to be assembled before sale to an unrelated customer in the United States, the respondents needed only to report (1) the price of the assembled bearing as sold to the unrelated customer, and (2) the price of an identical bearing sold in the relevant foreign market. In other words, the respondents did not have to deduct the value added in the United States to arrive at a "constructed" U.S. price of the components and parts in their condition as imported.

In reaching this decision, the Department considered the fact that fair value investigations, such as these, result only in an estimate of the dumping margins, if any, that exist. 19 U.S.C. 1673e(a)(3). As the U.S. Court of International Trade acknowledged in a decision upholding the Department's use of regression analysis (rather than standard arithmetical techniques) for purposes of a fair value determination, "It was clearly the intention of Congress to give Commerce flexibility at the fair value stages of its investigation." *Southwest Florida Winter Vegetable Growers Ass'n* v. *United States*, 584 F. Supp. 10, 17 (Ct. 9 Int.l Trade 1984), citing *F.W. Myers & Co.* v. *United States*, 376 F. Supp. 860, 878 (Cust. Ct. 1974). Moreover, it is not clear that in the context of these proceedings, a deduction of U.S. value added would be required even if these were not fair value investigations.

In view of the greater methodological flexibility possessed by the Department at the investigatory stage of a proceeding, the Department reasoned that price-to-price comparisons based upon bearings in their condition as sold in the United States (rather than in their condition as imported) would provide a reasonable estimate of the dumping margins that would have been calculated if the Department had "backed out" the value added in the United States and compared the "constructed" price of a component or part to the price of that same component or part in the relevant foreign market. Furthermore, by not requiring respondents to report the merchandise as imported and the myriad costs involved in further manufacturing the product in the United States, we reduced the reporting burden on respondents. Moreover, by avoiding the difficult and time-consuming analysis and

verification involved in value-added deductions, the Department would be able to complete these investigations within the statutory deadlines.

Respondents have made a number of factual arguments to the effect that in certain instances substantial value has been added to imported components and parts prior to the first sale to an unrelated customer in the United States. We agree that there may be situations where the amount of value added in the United States is so substantial as to render the merchandise outside the scope of these proceedings. See, *e.g., Expanded Metal of Base Metal from Japan*, 48 FR 5394 (1983); and *Roller Chain from Japan*, 48 FR 51801 (1983). However, decisions to exclude merchandise in these types of situations are very fact-specific. Because of our initial decision to compare merchandise on an "as sold" basis, we did not request or verify information concerning value added in the United States. Thus, at this point in these proceedings, we are unable to evaluate respondents' contentions that certain items of merchandise should be excluded from coverage.

However, we are concerned that our initial approach could rely on an analysis of sales of merchandise not covered by these proceedings. Moreover, where the costs incurred in adding value in the United States were significant or differed significantly from similar costs that would have been incurred in the home market, not deducting U.S. value added could skew the dumping calculations considerably. Therefore, for purposes of these final determinations, we have excluded from our calculations all ESP sales of bearings with valued added in the United States. Although in some instances this decision has prevented us from achieving our initial 33 percent threshold, we believe that the remaining sales provide an adequate basis for a final determination.

The fact that we have excluded ESP value-added sales from our calculations does not mean that the imported merchandise involved in such sales is excluded from the scope of these proceedings.

Comment 2. GMN requests that the Department abandon the "identical sales match" sampling technique and compute margins based on all of GMN's U.S. sales. GMN argues that application of this identical sales match approach to GMN is contrary to U.S. law and the General Agreement on Tariffs and Trade in that it yields unrepresentative and unfair results for GMN. In particular, GMN contends that application of the identical sales match sampling results in an analysis which limits sales comparisons to products at the low end of the company's product line and excludes most of the more sophisticated products, such as its high precision spindle and machine tool bearings, which represent the bulk of its sales revenue.

Petitioner initially cautioned the Department that the "33 percent identical" option could lead to skewed results, and that it might result in over-representation of everyday commodity bearings which would drive down the margins. Therefore, petitioner urged the Department to compare all sales in the U.S. market wherever possible to determine whether sales were made at less than fair value (LTFV). However, petitioner now supports the uniform application of the 33 percent reporting requirement to all respondents.

DOC Position. We are following the alternative reporting requirement described above. We agree with petitioner that it would be improper to treat GMN differently from any other respondent. As petitioner's counsel stated at the FRG hearing, "once an agency adopts an approach, it cannot permit those who believe a different approach would be of benefit to them to step forward seeking such benefit." (*See* Transcript of Proceedings, Hearing on the Antidumping Investigation of Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, February 22, 1989 at 157.)

Furthermore, we note that over 70 percent by volume of GMN's U.S. sales were examined for purposes of calculating the LTFV margins. We have no reason to believe that a "representative sample" would be better achieved by capturing those products representing the bulk of sales revenue rather than volume sold.

Section 7: Critical Circumstances

Comment 1. When deciding whether there have been massive imports for purposes of making its critical circumstances determinations, petitioner argues generally that the Department should follow the methodology outlined in its CVD regulations. At one point the petitioner argues that these regulations indicate that the Department should compare the period three months before the initiation to the period three months after the initiation, while at another point, petitioner argues that the regulation should be viewed more broadly as meaning the Department should examine the seven month period between the initiation and the preliminary determination in antidumping proceedings.

The SKF Group companies and GMN argue that the Department should make its massive imports determination based on the seven-month period between initiation and the preliminary determination. In addition, FAG–FRG, FAG–Italy, and NTN also emphasize that the Department must not limit itself to looking at just this period, but must also consider historical trends and sporadic shipment levels. Finally, INA–FRG and NTN argue that the Department must take into consideration the increased demand for AFBs during this period. If imports increase simply in response to increased demand, the Department should not find critical circumstances to exist.

DOC Position. In determining whether there have been massive imports in these investigations, the Department has compared the seven-month period after the filing of the petition to the seven-month period prior to the petition's filing. This period, running from April through October, represents the months from the beginning of the investigations until the preliminary determinations. We have chosen this time period because it is the period in which respondents could take advantage of their knowledge of the dumping investigations to increase exports to the United States without being subject to antidumping duties. (*See, Certain Internal-Combustion, Industrial Forklift Trucks from Japan*, 53 FR 12552, 12566 (1988).

As stated in the "Critical Circumstances" section of each notice, where massive imports were found to exist, we also examined shipment data to ensure that the increase in shipments did not simply reflect historical trends. The historical data did not indicate any trends, such as regular seasonal increases in shipments, that would lead one to expect that April through October shipments would consistently be greater than September through March shipments. In fact, in many cases, data from 1986 and 1987 indicated that April-October shipments actually dropped in comparison to September-March shipments. Thus, there was no distinct pattern of seasonality in any case.

Although some increases in April-October shipments to the United States may have been tied to increased demand, there was no consistent increase in shipments from one company or country within a particular class or kind of merchandise. Again, neither our data nor the information provided by the respondents shows with any degree of certainty that the increase in shipments can be explained by greater demand.

Comment 2. FAG–FRG argues that, given the original scope of the petition covered only one class or kind of merchandise, it is inappropriate to base the critical circumstances determination on five classes or kinds of merchandise until such time as the Department made public its division of the subject merchandise into five classes or kinds. FAG–FRG states that 733(e)(1)(A) of the Act expressly provides that critical circumstances be determined with respect to the "class or kind of merchandise which is subject to the investigation." Therefore, because the fair value investigation covered only one class or kind of merchandise until July 13, 1988, whether critical circumstances exist, at least until that date, can only fairly be considered with respect to that class or kind, not with respect to the five classes or kinds which did not exist as investigative entities until that date.

DOC Position. The purpose of the critical circumstances provision is to deter exporters whose merchandise is subject to an investigation from circumventing the antidumping duty law by increasing exports to the United States during the period between initiation of an investigation and the preliminary determination so as to avoid possible duties. At the time of initiation, the scope of these investigations included all AFBs (except tapered roller bearings) from the FRG and eight other countries. Once we announced our initiation, FAG–FRG was on notice that any massive increase in exports of AFBs prior to a preliminary determination would be potentially subject to antidumping duties. The fact that we later subdivided the merchandise subject to investigation into five classes or kinds of merchandise did not expand the breadth of the investigations. We are directed to make a critical circumstances determination with respect to each class or kind of merchandise. Since we determined that AFBs consist of five classes or kinds of merchandise, it does not make sense to determine critical circumstances based on aggregate figures for all five classes or kinds.

Comment 3. INA–FRG suggests that the Department should examine the level of imports in terms of volume and value. When examined in terms of value, INA–FRG contends that the value of its imports decreased in the post-initiation period as compared to the corresponding time period preceding the initiation.

RHP also contends that the Department should consider the value and volume of its imports in determining whether there have been massive imports over a relatively short period of time. RHP argues that the examination of its import value data, particularly with respect to cylindrical roller bearings is appropriate in this investigation since volume figures may be distorted by imports of loose bearing components, especially loose balls and rollers.

DOC Position. We agree that the use of import volume in some instances may create some distortions. However, if imports prior to the initiation of the investigations included components and finished bearings and the same product mix was maintained after initiation, the use of volume data would not distort the measurement. Moreover, the use of value data potentially causes many of the same distortions as the use of volume data, especially when it reflects imports of potentially dumped or unusually expensive products. INA–FRG and RHP have failed to provide compelling evidence that value data is a better indication of massive imports, nor have they shown that import volume information is so distortive as to constitute an unreasonable measure for purposes of determining massive imports.

Comment 4. INA–FRG submits that it has eliminated a distortion in its data by reporting discrete rolling elements as single units since they are sold in increments of 1,000 pieces and by adjusting the previously submitted monthly data so as to more accurately reflect the level of shipments. As such, INA–FRG states, the adjusted data shows that there have been decreases in each product category during the period of comparison. INA–FRG contends that the Department should use the adjusted data in making its critical circumstances determinations.

DOC Position. INA–FRG submitted new critical circumstances data as an exhibit to its post-verification brief and as such it constitutes new, unverified information. Although we were able to verify INA–FRG's data submitted prior to the preliminary determinations, these data did not include September and October 1988 shipments. Therefore, in accordance with section 776(c) of the Act, we are assuming that imports of all classes or kinds of merchandise from INA–FRG have been massive over a relatively short period of time as best information available. (*See,* Critical Circumstances section of the FRG Notice.)

Comment 5. Petitioner contends that because the Department was unable to verify either the critical circumstances data submitted prior verification or the data submitted after verification, the quantities and values reported by SKF Group companies should not be used as the basis for the final determination. Petitioner argues that the Department should use the information provided by petitioner as the best information available and determine that critical circumstances exist with respect to all bearings from SKF Group companies.

SKF Group companies contend that the Department should base its critical circumstances decision on the best information available, which it asserts is the data it submitted showing the volume of entries of AFBs into the United States. The shipment data previously submitted by SKF Group companies reflects shipments of outstanding orders placed prior to the initiation of these investigations and are not the best measure of entry of imports. Furthermore, SKF Group companies contends that it is illogical to assess the impact of goods that have not entered the United States.

DOC Position. The Department routinely asks for shipment data rather than entry data for critical circumstances due to the fact that in purchase price situations, the exporter often does not know the date the merchandise enters the United States. In response to our August 23, 1988 request, SKF Group companies provided monthly shipment data. It was only on January 4, 1989, four days prior to the ESP verification, that SKF Group companies provided entry data along with its argument that entry data is superior to shipment data for the purposes of a massive imports determination. Moreover, SKF Group companies did not present any meaningful data to demonstrate that entry data results in a substantially different picture of the pattern of imports after initiation than shipment data.

Therefore, we believe that SKF Group companies shipment data is the best measure of whether imports have been massive over a relatively short period of time. We were, however, unable to verify SKF Group companies shipment data. In accordance with section 776(c) of the Act, as best information available, we are assuming that imports of all classes or kinds of merchandise from SKF Group companies have been massive over a relatively short period of time.

Comment 6. Petitioner argues that, since SKF companies in the FRG and Sweden have admitted that the U.S. sales of ball bearings they have reported could include "support production" sales of ball bearings that they did not manufacture, the import figures from SKF–UK will not be accurate. Therefore,

petitioner argues, the Department should use best information available and find critical circumstances as to the SKF Group companies' ball bearings imports from all the countries subject to these investigations.

DOC Position. For reasons other than "support production," we were unable to verify SKF Group companies' import shipment data for the subject merchandise. Therefore, as best information available, we are assuming that imports of all classes or kinds of merchandise from SKF Group companies have been massive over a relatively short period of time. (*See,* Miscellaneous section of this Appendix and the Critical Circumstances section in the FRG, France, Italy, Sweden and the U.K. Notices.)

Comment 7. SKF Group companies contend that the Department erroneously found critical circumstances existed with respect to spherical plain bearings from SKF-FRG and ball bearings from SKF-Italy, despite the fact that petitioner never alleged critical circumstances with respect to spherical plain bearings from the FRG or ball bearings from Italy. SKF Group companies submit that since the Department repeatedly has rejected the sufficiency of a single sales at less than fair value allegation for all AFBs and for sales being made below the cost of production, it cannot accept critical circumstances allegations that are not specific to a class or kind of merchandise. As there is no allegation, SKF Group companies state that there is no statutory basis for these determinations and they should be rescinded for the final determinations.

Petitioner contends that its critical circumstances allegations apply to all such or similar categories of AFBs imported from the FRG and Italy. Furthermore, petitioner contends that critical circumstances allegations were made with respect to all AFBs since it continues to believe that AFBs constitute one class or kind of merchandise. Petitioner further argues that with respect to spherical plain bearings, the import statistics available were basket TSUSA categories which contain a number of products not subject to these investigations. Petitioner states that the submission included information on all imports of AFBs from the FRG and Italy, which by definition included spherical plain bearings and ball bearings. Petitioner concludes that, in light of these facts, the Department has the authority to make an affirmative critical circumstances determination regarding spherical plain bearings from the FRG and ball bearings from Italy.

DOC Position. We agree that the plain language of the statute and its legislative history require that a determination of critical circumstances can be triggered only upon the allegation of the petitioner. However, we have determined that petitioner made an adequate allegation of critical circumstances with respect to spherical plain bearings from the FRG and ball bearings from Italy.

In its submission of August 1, 1988, petitioner alleged critical circumstances with respect to all AFBs due to its continued belief that AFBs constitute a single class or kind of merchandise. In support of its allegations, petitioner provided information on particular classes or kinds of AFBs, where import statistics permitted such a breakdown. Simply put, in its August 1, 1988 submission, petitioner supported its allegation of critical circumstances with all information reasonably available to it. Therefore, the Department requested and received critical circumstances data concerning all classes or kinds of merchandise under investigation. Based on submitted data and in some instances the best information available, the Department preliminarily determined, pursuant to section 733(e) of the Act, that there was a reasonable basis to believe or suspect that critical circumstances existed with respect to ball bearings from Italy and spherical plain bearings from the FRG.

Any ambiguity as to petitioner's allegation regarding ball bearings from Italy and spherical plain bearings from the FRG was eliminated in the FRG's post-hearing brief and in its March 7, 1989 clarification. Here petitioner confirmed its intent to include ball bearings from Italy and spherical plain bearings from the FRG within its critical circumstances allegations of August 1, 1988. Therefore, since petitioner has made a critical circumstances allegation with respect to ball bearings from Italy and spherical plain bearings from the FRG, we are required, pursuant to section 735(a)(3) of the Act, to determine whether critical circumstances exist with respect to this merchandise.

Comment 8. Petitioner contends that, because SKF-USA cannot segregate its bearings by country of origin, the Department should determine on the basis of best information available that critical circumstances exist with respect to all classes or kinds of merchandise from the FRG, Italy, Sweden, and the UK.

DOC Position. For reasons other than SKF-USA's country of origin assignment methodology, we have determined, however, not to use SKF Group companies' data for purposes of our critical circumstances determinations as we were unable to verify the import shipment data provided, and have assumed massive imports as the best information available in accordance with section 776(c) of the Act. (*See,* Miscellaneous section in this Appendix B and the Critical Circumstances section in the FRG, France, Italy, Sweden, and the UK Notices.)

Comment 9. Petitioner argues that as Koyo's response has been rejected without verification, and the figures cannot be relied upon for the purposes of the final determinations, the Department should render an affirmative critical circumstances determination with respect to Koyo on all product groups.

Koyo argues that although its questionnaire response was not verified, the data provided are the best information available to assess petitioner's claim of critical circumstances. Koyo argues that shipments of needle roller bearings and cylindrical roller bearings decreased and shipments of ball bearings increased only slightly in the three-month period immediately following the filing of the petition. Koyo contends that shipments of spherical roller bearings did increase significantly in the later period, but this increase is solely a function of the fact that imports of spherical roller bearings are miniscule. Koyo argues that any increase in import volume is accounted for by the strong demand of U.S. user industries and the inability of the U.S. bearings industry to meet that demand.

DOC Position. For reasons previously discussed, we have determined to use best information available with respect to Koyo. (*See,* Best Information Available section of this Appendix.) Therefore, as best information available, we are assuming that imports of the all classes or kinds of merchandise from Koyo have been massive over a relatively short period of time. (*See,* Critical Circumstances section of the Japan Notice.)

Comment 10. Petitioner argues that because Minebea's sales figures did not include rod end bearings and other bearings it considers airframe components, Minebea's data cannot be relied upon as the basis for the Department's critical circumstances determination. Accordingly, petitioner contends that, as best information available, the Department should make an affirmative critical circumstances determination with respect to Minebea

Japan's exports of spherical plain bearings.

DOC Position. Because Minebea Japan failed to report all sales of spherical plain bearings, the monthly shipment data verified for purposes of our critical circumstances determination was not complete. In the absence of complete and verified data, we are unable to determine whether Minebea Japan's imports of spherical plain bearings from Japan have been massive over a relatively short period of time. Accordingly, as best information available, we have determined that imports of spherical plain bearings have been massive over a relatively short period of time. (*See,* Critical Circumstances section of the Japan Notice.)

Comment 11. Minebea Japan contends that critical circumstances do not exist and with respect to its ball bearing exports because the quantity and value of such exports are negligible. Minebea Japan also contends that the Department verified the total quantity and value of ball bearing exports to the United States during the POI. Moreover, Minebea Japan states that its exports of ball bearings decreased during the six-month period following the filing of the petition.

DOC Position. Minebea Japan chose not to report any information on ball bearings from Japan. During verification, as part of our sales verification, we verified the total quantity and value of ball bearings exported to the United States during the POI. However, Minebea did not provide, nor did we verify, monthly shipment data for the period used for critical circumstances purposes—between the date of initiation and the preliminary determinations. Therefore, as best information available, we are assuming that imports of ball bearings from Minebea Japan have been massive over a relatively short period of time. (*See,* Critical Circumstances section of the Japan Notice.)

Comment 12. Petitioner submits that since TIE's shipments made in July, August, September, and October were not reported or verified, these data for spherical roller and ball bearings should be rejected and an affirmative critical circumstances determination made based on the best information otherwise available.

TIE contends that the Department incorrectly found that critical circumstances existed for the preliminary determination. TIE states that since certain clarifications have been provided and verified, the Department should render a negative final determination with regard to critical circumstances.

DOC Position. We have determined that the information provided at verification constitutes a minor revision to TIE's original submission of shipment data and that TIE's critical circumstances response verified. Thus, we are using TIE's verified data for the purposes of determining whether or not imports from TIE have been massive over a relatively short period of time. (*See,* Critical Circumstances section of the Romania Notice.)

Comment 13. Petitioner contends that, based on unverified data from INA–UK, the Department should determine that there have been massive imports. Furthermore, petitioner argues that, based on the size of the margins calculated, the Department should impute knowledge to the importer and issue affirmative critical circumstances determinations.

DOC Position. For reasons previously discussed, we have determined to use best information available with respect to INA–UK. (*See,* Best Information Available section of this Appendix.) Therefore, as best information available, we are likewise assuming that imports of needle roller bearings from INA–UK have been massive over a relatively short period of time. (*See,* Best Information Available section of this Appendix and Critical Circumstances section of the UK Notice.)

Section 8: Administrative Protective Order Issues

Comment 1. Petitioner argues that the following respondents' submissions should be rejected by the Department because the public and administrative protective order (APO) versions were in direct violation of the Department's regulations: INA-France; SKF-France; SKF–UK; FAG–FRG; and NTN-Japan. Petitioner contends that the failure of these respondents to submit adequate public and APO versions of their submissions has prevented the domestic industry (specifically, petitioner's in-house counsel and accounting experts) and its counsel from knowing the full extent and significance of respondents' claims and from addressing these allegations on the record.

With regard to SKF-France, petitioner alleges that respondent's failure to provide adequate public versions of its responses materially contributed to the Department's decision not to reinitiate a cost of production investigation with regard to spherical roller bearings.

With regard to NTN-Japan, petitioner argues that NTN has refused to provide public summaries of virtually all numerical information submitted and that NTN has not identified its part numbers despite the fact that its U.S. and home market catalogues are in the public domain and are part of the public record in these investigations.

SKF contends that a review of the voluminous submissions of all SKF companies shows that every document is accompanied by an adequate public summary of the proprietary information or a complete explanation as to the lack of susceptibility to summarization. SKF argues that the nature of the data for which SKF requested proprietary treatment meets the Department's standards for confidentiality and that SKF has complied with the law governing access to information. With regard to adequate APO versions, SKF maintains that the Department's February 17, 1989 determination, which ordered the release of contested information, renders moot petitioner's argument regarding the adequacy of those versions. SKF holds that the Department should use SKF's submitted information and dismiss the petitioner's claims as unfounded.

NTN states that the Department has acted properly in accepting NTN's public versions of its various responses. NTN argues that it has complied with the Department's requests in instances where the Department has requested a revised public summary or an explanation as to why data is not capable of summarization. Finally, NTN argues that the Department accepted the same types of public summaries as presented in the *Final Determination of Sales at Less than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan* (52 FR 30700, October 17, 1987).

DOC Position. The Department's determinations on the adequacy of the public summaries in these investigations are in accordance with the law given the voluminous nature of the submissions made in these investigations by all parties and the extraordinarily complicated nature of these investigations. The rights of all parties were adequately protected in these investigations.

We do not agree with petitioner's contention that SKF's and NTN's submissions should be rejected because of a lack of access to proprietary information and that the Department should use the best information available for its final determinations. With the exception of customer or supplier names or identifiers, sources of information, verification exhibits and trade secrets, petitioner's counsel received access to all business proprietary information, including the computer tapes, under administrative protective orders (APO) issued by the

Department. Any objections to the Department's decisions not to release certain limited information had to be taken to the Court of International Trade within ten days of that decision. 19 U.S.C.1677f(c)(2).

We do not agree with petitioner's contention that respondent's failure to provide sufficient public versions of its responses for SKF-France materially contributed to the Department's decision not to reinitiate a cost of production investigation with regard to spherical roller bearings. This contention is not justified because our determination was based upon the relevant information of record. In this instance, the information of record showed that the Department had no basis upon which to initiate a cost of production investigation with respect to spherical roller bearings since the products on which petitioner's allegation was based were not sold in the home market during the period of investigation. The perceived lack of access by petitioner to a sufficient public summary of proprietary data would not have affected the Department's determination.

Furthermore, we agree with counsel for SKF that the Department's February 17, 1989 decision memorandum, which determined that the information should be released under APO, renders moot petitioner's arguments regarding the adequacy of SKF's APO versions of submissions. As a result of this determination, SKF provided petitioner access to all of the contested information.

Comment 2. Petitioner argues that the Department should abandon its past practice of not releasing verification exhibits and release the verification exhibits in these investigations under section 1332 of the Omnibus Trade and Competitiveness Act of 1988. Petitioner contends that the Congress intended for the release of verification exhibits.

Nachi and NTN claim that verification exhibits should not be released to petitioner, and argue that section 1332 of the Omnibus Trade and Competitiveness Act of 1988 does not apply to this investigation. Nachi states that the legislative history of the 1988 Act shows that Congress did not intend that the Department release to the petitioner's counsel all of the business proprietary data which it collects in an investigation. Nachi and NTN argue that the verification exhibits are not obtained as submissions of new information, but rather are collected by the Department solely for its convenience, and to verify data already on the record.

DOC Position. In these investigations, we denied the release of the verification exhibits pursuant to 19 U.S.C. 1677f(c) in the Department's decision memorandum dated December 2, 1988. Petitioner did not challenge this decision in the Court within ten days and therefore the decision is final. The issue is moot and we will therefore not address it here.

Comments 3. Koyo contends that the divulging of APO material by petitioner's counsel in this case, however unintentional, calls into question the adequacy of petitioner's safeguard procedures. The Department should consider applying appropriate sanctions, and, at the very least, view counsel's continuing efforts to expand the frontiers of access with renewed skepticism.

DOC Position. The Department views any allegation or violation of an APO, inadvertent or otherwise, as a very serious matter. The Department has established procedures as set forth in 19 CFR Parts 353, 354 and 355 entitled "Procedures For Imposing Sanctions for Violation of an Antidumping or Countervailing Duty Protective Order." Any allegation concerning an APO violation is considered separately from the administrative proceeding.

Other Issues

Section 9: Best Information Available

To determine whether sales of AFBs from the FRG, France, Italy, Japan, Sweden, and the U.K. were made at less than fair value, we compared the United States price to the foreign market value as discussed in the *Fair Value Comparisons* section of each notice. For the reasons cited below and in the comment portion of this section, we have determined, in accordance with section 776(c) of the Act, that the total or partial use of best information available is appropriate for certain classes or kinds of the subject merchandise from INA-FRG, INA-U.K., Koyo, Minebea Japan, SKF-FRG, SKF-France, SKF-Italy, and SKF-Sweden. Section 776(c) requires the Department to use the best information available "whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation."

In deciding what to use as best information available, the Department's regulations provide that the Department may take into account whether a party refuses to provide requested information. 19 CFR 353.51(b). Thus, the Department may determine on a case-by-case basis what is the best information available. For the purposes of these final determinations, we have applied two tiers of best information available depending on whether the companies attempted or refused to cooperate in these investigations. First, when a company refused to provide the information requested in the form required, or otherwise significantly impeded the Department's investigation, we determined that it is appropriate to assign to that company the highest margin for the relevant class or kind of merchandise among (1) the margins in the petition, (2) the highest calculated margin of any respondent within that country that supplied adequate and verified responses for the relevant class or kind of merchandise, or (3) the estimated margin found for the affected company in the preliminary determination. We have applied this methodology to the following companies for certain classes or kinds of merchandise for the reasons cited below and in the comment portion of this section: INA-U.K., SKF-France, and Minebea Japan.

Second, when a company has cooperated with our requests for information but failed to provide the information requested in a timely manner or in the form required, we have determined that it is appropriate to assign the affected company the higher margin for the relevant class or kind of merchandise between (1) the highest calculated margin for any respondent within that country that supplied adequate and verified responses for the relevant class or kind of merchandise, or (2) the estimated margin found for the affected company in the preliminary determination. However, in the event the affected company is the only producer or exporter of the relevant class or kind of merchandise, we have determined that it is appropriate to assign the higher margin between (1) the estimated margin found for the affected company in the preliminary determination, or (2) the margin in the petition. We applied this methodology to the following companies for certain classes or kinds of merchandise for the reasons cited below and in the comment portion of this section: INA-FRG, Koyo, SKF-FRG, SKF-Italy and SKF-Sweden.

The following discussion and comment section itemize the factual events with respect to each of the aforementioned companies:

INA-U.K.: INA-U.K. informed the Department that it would not permit verification of its sales response. Furthermore, it did not respond to our cost of production questionnaire. Because of these actions, and in the absence of verified information, we used the best information available as described above.

SKF-France: SKF-France did not report sales of spherical plain bearings sold during the POI. Despite numerous requests for information, SKF-France did not respond to our questionnaires with respect to this class or kind of merchandise. SKF-France contends that the products manufactured at its Sarma facility are outside the scope of these investigations. As such, they did not report any sales of spherical plain bearings or rod ends in either market during the POI. At verification, we confirmed that the unreported merchandise in question was spherical plain bearings and rod ends, as defined by and contained within the scope of these investigations. Because of SKF-France's actions, we have used the best information available as described above.

Minebea Japan: Minebea Japan did not report sales of ball bearings during the POI and did not answer the Department's requests for information regarding this class or kind of merchandise. Because of Minebea Japan's actions, we are using the best information available as described above.

Koyo: Immediately prior to the scheduled verification date, Koyo submitted a new response which purportedly corrected a major error in its earlier submissions as well as other deficiencies in the response that the Department had used for its preliminary determinations. The major error affected the U.S. matched sales listing, the home market matched sales listing, the model match concordance, the constructed values, and the cost of production data. Thus, the number of models reported and the number of transactions submitted in the new response for each class or kind of merchandise changed drastically. The Department determined that the revisions submitted by Koyo were so substantial that such revisions constituted a new response. While the Department normally allows minor revisions to questionnaire responses after the preliminary determination and during verification, it is our well established policy not to accept new responses that are filed after the preliminary determination. In this case, the revisions made in the response were of such magnitude that the Department essentially would have had to recommence its investigation of Koyo at verification. This, in turn, would have denied the petitioner and other interested parties their statutorily mandated opportunity to comment on the new response and otherwise to participate in these investigations with regard to Koyo. For the aforementioned reasons, we have not accepted Koyo's November 9, 1988 response for use in these determinations and, in the absence of verified information, we have used the best information available as described above.

SKF-FRG, SKF-Italy and SKF-Sweden: Prior to the scheduled date of verification, we received revised and new worksheets and sample calculations for numerous charges and adjustments related to home market sales for SKF-FRG and third country sales for SKF-Italy and SKF-Sweden. For some of the charges and adjustments received, the Department determined that the necessary revisions to SKF's information were so substantial that such revisions constituted new information. While the Department allows minor revisions to questionnaire responses after the preliminary determination and during verification, it is a well established Department policy not to accept new information that is filed after the preliminary determination. *Final Determination of Sales at Less than Fair Value; Certain Internal-Combustion Industrial Forklift Trucks from Japan,* (53 FR 12552, April 13, 1988). Consequently, the Department informed SKF-FRG during verification that it would not accept new submissions correcting the deficiencies and errors noted above. The Department nevertheless completed its sales and cost of production verifications, as the new information provided did not appear to undermine the credibility of the entire database.

However, during the course of verification, the Department found numerous discrepancies, errors in methodology and mathematical errors with respect to SKF-FRG home market sales and SKF-Italy and SKF-Sweden third country sales. In addition, SKF-FRG was unable to provide supporting documentation to substantiate major portions of its home market and third country sales responses at verification. The deficiencies found are outlined in detail in the public version of our verification report which is on file in room B-099 of the Main Commerce building. Given the substantial number of discrepancies and errors contained in the questionnaire responses, the magnitude of the problems encountered at verification, and the submission of new unverified information subsequent to verification, we have used the best information available for the purposes of our final determinations with respect to all classes or kinds of merchandise produced and sold by SKF-FRG and for those classes or kinds of merchandise sold by SKF-Italy and SKF-Sweden for which sales to the FRG were considered to be the most appropriate basis for determining foreign market value.

INA-FRG: With respect to INA-FRG, the Department found numerous discrepancies and errors in methodology and mathematical calculations at the cost of production verification for cylindrical roller bearings. INA-FRG consequently was unable to support substantial portions of its cost response at verification. These deficiencies undermine the credibility of the entire database. The deficiencies found are outlined in detail in the public version of our verification report which is on file in room B-099 of the Main Commerce building. For these reasons, we have used the best information available with respect to cylindrical roller bearings produced and sold by INA-FRG for the purposes of our final determinations as described above.

Comment 1. Since INA-U.K. did not respond to Section D of our questionnaire and did not permit verification, petitioner contends that the Department should calculate best information available by taking into consideration the allegations that INA-U.K. is selling in the home market at prices which are less than cost of production and the fact that INA-U.K. included improper allocations in its reporting of sales data. Specifically, petitioner states that the Department should adjust INA-U.K.'s home market prices upwards to reflect the level of below cost sales alleged by petitioner and the statutory minimum profit in constructed value. Petitioner also argues that the Department should reject improper allocations of inland freight and packing expenses. Petitioner claims that since INA-U.K.'s response was not verified, no claimed adjustments should be allowed to foreign market value and all claimed adjustments should be made to U.S. price.

DOC Position. As discussed above with respect to INA-U.K., we have applied best information available. We have not adopted petitioner's suggestion in this case that the margin should be further adjusted to reflect alleged below cost sales. Given the number of companies to which best information available has been applied, we do not believe we should correct perceived deficiencies in the best information available rate we have applied. If we were to do this for INA-U.K., we would then be required to correct perceived deficiencies in all other responses of the foreign manufacturers subject to best information available. Therefore, we have assigned INA-U.K., as best information available, its estimated

margin for needle roller bearings found at the preliminary determination.

Comment 2. Petitioner contends that the number and nature of deficiencies in SKF-France's response should lead the Department to reject that response in its entirety and use the most adverse information otherwise available as best information available. Specifically, petitioner claims that: (1) Inadequate public versions of the responses handicapped its participation in the investigation; (2). SKF-France's protective order versions of its responses were incomplete; and (3) the reported databases were incomplete because sales of spherical plain bearings were not reported, country coding problems may mean that reported sales were incomplete or included products not manufactured in France, purchase price sales were not adequately reported, sales by related parties were omitted from the home market sales listings, U.S. sales between September 28 and 30 were not reported, and a number of sales were "lost."

SKF-France claims that during the verification the Department found no major discrepancies in the databases. The allegedly unreported sales of spherical plain bearings were sales of products not within the scope of this investigation. Moreover, because petitioner's allegations of sales at less than fair value for spherical plain bearings were deficient, the best information available supports the Department's preliminary negative determination on these products.

Furthermore, SKF-France submits that with respect to the other claimed deficiencies, the Department examined thoroughly the manner in which SKF's U.S. sales were reported and verified that "support production" sales, *i.e.*, sales by SKF-France of merchandise produced by SKF facilities in another country, were miniscule. The number of unreported purchase price sales were *de minimis* and none had identical matches in the home market. Therefore, there was no reason to report them. Finally, the number of unreported home market sales by related parties, the number of U.S. sales of ball bearings by Sarma, and the number of "lost sales" were also *de minimis*, and could not in any way affect the estimated margins.

DOC Position. We have determined that the deficiencies in SKF-France's response are not so great as to require us to reject the response in its entirety. Our views with respect to the adequacy of the public and protective order responses are discussed in the "Administrative Protective Orders and Public Summarizations" section of this Appendix. However, we agree with petitioner that certain deficiencies in the response warrant the application of best information available, as discussed below.

With respect to spherical plain bearings, we do not agree with SKF-France that these sales were of products outside the scope of the investigation or that petitioner's allegation of sales at less than fair value was deficient for this product. Therefore, we have applied the estimated margin contained in the petition for spherical plain bearings as best information available for this class or kind of merchandise from SKF-France as discussed above.

With respect to ball bearings and spherical roller bearings from SKF-France, we agree with petitioner that SKF incorrectly included sales to related parties rather than sales by those parties to the first unrelated customer. Because SKF-France did not demonstrate that the sales to related parties were made at prices comparable to sales to unrelated parties, we have dropped the sales to related parties from the home market database pursuant to 19 CFR 353.22(b). In instances where deletion of those sales resulted in dropping the percentage of U.S. sales for which identical sales were reported below the 33 percent threshold, we have applied best information available for those sales to achieve the 33 percent threshold. We have used SKF-France's calculated margin as best information available since this rate was higher than the rate calculated for this class or kind of merchandise for any other respondent in France.

Regarding the other deficiencies claimed by petitioner, we closely examined SKF's method for assigning U.S. sales to particular SKF–AFB manufacturing facilities in Europe at verification. The Department's preference for determining country of origin is on a sale-by-sale basis. However, given the manner in which SKF–USA maintains its records and the enormous effort that would have been required to establish definitively the SKF manufacturing facility which produced the specific merchandise, we have determined that SKF's assignment methodology is reasonable and accepted it for these investigations.

We also reviewed carefully the problem of "support production." Because the merchandise produced in another SKF facility would be sold at the same price that would be charged for merchandise produced by the SKF facility in the country in question, and because the amounts of such sales were relatively small, we have concluded for purposes of these investigations that their inclusion in the database does not distort the calculation of foreign market value. Therefore, we have determined it is appropriate to accept SKF-France's response.

Finally, with respect to the other omissions, we agree with SKF-France that these omissions are too minor to affect the antidumping margins for the products concerned.

Comment 3. Petitioner contends that, because Minebea Japan elected not to respond to the Department's questionnaire with respect to ball bearings, the Department is required to use best information available for the final determination in accordance with section 776(c). Petitioner argues that the final dumping margin should be the highest rate alleged in the petition for Japan, which is 225.68 percent for spherical plain bearings. However, if the Department adheres to its decision that the subject merchandise constitutes five classes or kinds of merchandise, the dumping margin should be the highest rate alleged in the petition for ball bearings from Japan, which is 106.61 percent.

DOC Position. Where a respondent has failed to respond to our questionnaire or otherwise cooperate with our investigation, we have used best information available as discussed above. Therefore, in the case of ball bearings from Minebea Japan, we have used the highest margin for ball bearings contained in the petition as best information available.

Comment 4. Petitioner argues that, using the best information available, the Department should assign to Koyo by class or kind of merchandise the higher of (1) the rate set forth in the petition or (2) the highest rate determined to exist for any other respondent. Koyo requests that, if the Department maintains its position to use best information available for the final determinations, it should use a less punitine form, given Koyo's good-faith efforts in these investigations. It suggests that the most appropriate form would be to assign Koyo the "All Other" rate or, at worst, the highest rate determined to exist for any other respondent.

DOC Position. Where a respondent has cooperated with our requests for information but was unable to provide the information requested in a timely manner or in the form required, we have used best information available as discussed above. As a result, Koyo's attempts to cooperate were properly recognized in our selection of the appropriate best information available for each class or kind of merchandise. Therefore, in the case of Koyo, we have used as best information available, for

each class or kind of merchandise the higher of the following: the margin found for Koyo in the preliminary determination or the highest calculated margin for any Japanese company that supplied adequate and verified responses.

Comment 5. Petitioner supports the Department's decision to decline to verify Koyo's revised response, as the response submitted was deficient and the correct response was untimely.

Koyo contends that the Department should have verified the revised response and used it for the purposes of the final determinations. Koyo argues that the Department had time to review the corrected response and verify it, as the Department extended the deadline for the final determinations by the full 135 days. It also points to the fact that the Department had ample time to verify Rose Bearings, which was not issued a questionnaire until the week before the preliminary determinations. Koyo concludes that the Department has not treated it equitably with respect to other respondents, as in the case of Rose Bearings. It also cites the Department's acceptance of data from NSK, which made an error similar to Koyo's in product matches. Because NSK based its matches on product codes that in some instances included customer-specific prefixes and bearing etching differences, NSK (like Koyo) did not report all of its identical sales. For these reasons Koyo contends that the Department should accept and use the information that it has provided.

DOC Position. We disagree with Koyo. The Department maintains its position that Koyo's submitted response was deficient and that its corrected response was untimely. The magnitude of the changes in Koyo's response was such that it would have required the Department to start over its investigation of Koyo after the preliminary determinations. For this reason the Department rejected the response and decided to use best information available for purposes of the final determinations.

This decision is consistent with both the Department's general practice and its approach in these investigations. In our concurrent investigation of AFBs from the U.K., it is true that Rose Bearings' response was filed and accepted after the preliminary determinations. The reason for this was that Rose Bearings was not identified and issued an antidumping questionnaire until one week before the preliminary determinations. In the course of these investigations it was determined that the subject merchandise constitutes more than one class or kind of merchandise. As a result of this determination, the Department requested petitioner to resubmit LTFV allegations with respect to each class or kind of merchandise imported from each country. The petitioner made a sufficient LTFV allegation with respect to spherical plain bearings from the U.K. However, none of the U.K. respondents included at that point in the investigation produced and exported spherical plain bearings. Therefore, we sought information from petitioner and U.S. government sources to identify a producer and exporter of spherical plain bearings from the U.K. After receiving such information, we identified Rose Bearings as a respondent with respect to spherical plain bearings from the U.K. and requested a questionnaire response. Because the Department did not bring this respondent into the investigation until a late date, and because of the Department's desire to treat all respondents equitably, Rose Bearings was given a reasonable amount of time to respond to the questionnaire. Koyo's situation is not analogous. Koyo did not identify its reporting error until five and a half months after it had become a respondent and began preparing its response. Thus, the Department's treatment of Rose Bearings is clearly distinguishable from, and consistent with, its treatment of Koyo. (See, Comment 16 in this section with respect to Rose Bearings.)

The Department's treatment of NSK is also consistent with its treatment of Koyo. As Koyo has asserted, the Department did identify at verification that NSK had made an error in its reporting of identical merchandise, where sales with customer-specific prefix codes and bearing etching differences were not properly matched. The Department was able to quantify this error and has applied best information available for those misreported identical sales. This application of best information available is consistent with the Department's application of best information available to Koyo; the only difference arises from the magnitude of the misreporting. NSK's error had a relatively minor impact on the entirety of its response, while Koyo's resulted in a substantially new response. Best information available has been applied to both companies based on the degree of error which existed in their responses.

Comment 6. Petitioner contends that (1) at verification, the Department was unable to confirm that all of SKF-FRG's home market sales consisted of bearings produced in the FRG, and (2) SKF-FRG's submissions relating to the Department's verification reports should properly be considered as comments on, rather than corrections to, the report. Petitioner contends that the Department should reject all information submitted immediately prior to verification, such as revised calculations for home market freight, packing, technical services, and revised calculations for U.S. adjustments for ocean freight and foreign inland freight. Therefore, the Department must reject SKF-FRG's response and rely upon the best information available.

SKF-FRG states that the Department should reject petitioner's advice to artificially inflate SKF-FRG's dumping margins. SKF-FRG contends that the data submitted are reliable, accurate, and verified, and should be the basis of the Department's final determinations. Furthermore, SKF-FRG argues, as the size and complexity of these investigations caused the Department problems in defining the case and the requests for information, it also resulted in certain errors by SKF-FRG in its initial submissions of information. SKF-FRG contends that each of the corrections was verified or verifiable by reference to verified data in the exhibits to the Department's report. Therefore, SKF-FRG states that arbitrary adjustments following petitioner's advice would be unjust. SKF-FRG further states that the Department has a legal obligation to attempt to estimate the LTFV margins as accurately as possible and there is no reason for the Department to utilize information other than SKF-FRG's to make its final determinations.

DOC Position. In accordance with section 776(c) of the Act, we have applied best information available for all classes or kinds of merchandise sold by SKF-FRG and for the classes or kinds of merchandise sold by SKF-Italy and SKF-Sweden where foreign market value was based on sales to the FRG. We have rejected these responses because we were not able to verify their completeness or accuracy.

For example, we were provided with revised amounts for the quantity and value of sales at verification and SKF company officials were not able to explain why these revisions were necessary or how the revised numbers related to the information provided in the original responses. Company officials were unable to explain inconsistencies and discrepancies found during verification which undermined the credibility of their home market, third country, and U.S. sales databases. Similar revisions were provided for virtually every adjustment to those sales and, again, SKF company officials could

not explain the errors in calculating the original responses which necessitated the revisions. Essentially, we were provided with entirely new responses at verification. Moreover, since verification, these SKF companies have continued to submit new information which differs substantially from the information provided at verification.

Faced with responses containing numerous fundamental flaws, the Department could not properly base its determinations on the information submitted by SKF–FRG or the third country sales of SKF–Italy and SKF–Sweden. Nor is it acceptable, in such situations, that the Department bear the responsibility of attempting to identify and perform numerous and substantial recalculations necessary for the development of accurate sales data. Such a role would place too great a burden on the resources of the Department under the time constraints and procedural framework of these investigations.

As stated in *Photo Albums and Filler Pages from Korea; Final Determination of Sales at Less Than Fair Value* (50 FR 43754, October 29, 1985): "[I]t is the obligation of respondents to provide an accurate and complete response prior to verification so that the Department may have the opportunity to fully analyze the information and other parties are able to review and comment on it." A respondent cannot shift this burden to the Department by submitting incomplete and inaccurate information and expect the Department to correct its response during the course of verification. Verification is intended to establish the accuracy of a response rather than to reconstruct the information to fit the requirements of the Department or to perform the recalculations necessary to develop accurate information. *Chinsung Indus. Co., Ltd. v. United States,* Slip Op. 89–15 at 7–8 (February 7, 1989)

For all the reasons described above, we have determined that rejection of SKF–FRG's responses and the third country responses of SKF-Italy and SKF-Sweden and use of best information available is appropriate for these determinations. For the reasons discussed above, we have determined that the estimated margins found for SKF–FRG in the preliminary determinations for ball bearings, cylindrical roller bearings and spherical plain bearings are the best information available for SKF–FRG. We have determined that the calculated margin for needle roller bearings from FAG–FRG is the best information available for needle roller bearings from SKF–FRG. As best information available for ball bearings from SKF-Italy, we have used the estimated margin found for this product in the preliminary determination for SKF-Italy. We have used, as best information available, the margins in the petition for ball bearings and spherical roller bearings from SKF-Sweden. Furthermore, because we have used best information available with respect to these companies, petitioner's and respondent's comments pertaining to specific charges and adjustments, and other issues are moot.

Comment 7. Petitioner contends that SKF-Italy's final rate should be based on best information available, which is the higher of the rate calculated in the petition or the highest rate for any respondent which submitted an adequate response. SKF-Italy's delayed submission of information has limited the Department's and petitioner's opportunity for review and analysis of such information. Petitioner further contends that SKF-Italy has selected the information it has reported and that any useful information is unexplained, otherwise deficient, and untimely. Because the final determination must fairly reflect the amount of dumping, it should not be based on incomplete, unexplained, and distorted reporting.

SKF-Italy claims that it expended enormous efforts to comply with every request made by the Department and that petitioner's charges are unfounded. SKF has met the Department's deadlines and has furnished all data in full cooperation with the Department. Therefore, petitioner's allegations should be disregarded.

DOC Position. As discussed in Comment 6 above, we have determined to use the best information available for ball bearings sold by SKF-Italy because we were not able to verify its third country response. We have, however, used SKF-Italy's constructed value and U.S. sales responses for cylindrical and needle roller bearings. These responses were received by the Department in sufficient time, were verified, and petitioner and the Department have had ample opportunity to review and analyze them. Furthermore, at verification we found these responses to be substantially complete and accurate.

Comment 8. Petitioner contends that the final determination for SKF-Sweden should be based on best information available. In support of its contention, petitioner claims that SKF-Sweden's public and APO versions of the response are inadequate, that SKF-Sweden has not reported complete home market or U.S. sales, and that SKF-Sweden's reported sales contain products it did not produce.

Petitioner further claims that the best information otherwise available for U.S. and home market sales of part numbers or products produced in another country is the highest margin found for any other SKF-Sweden part number or product, or the highest margin in the petition. Furthermore, as SKF-Sweden has acknowledged the incompleteness of its sales listings and its inability to respond fully to the questionnaire, petitioner urges the Department to indicate that it is using SKF-Sweden's response only as best information available and not because the database is complete.

SKF-Sweden claims that during the verification of the six SKF facilities in Europe and SKF–USA, the Department found no major discrepancies in its database. With respect to "support production," *i.e.,* sales produced by SKF facilities in another country, it accounted for a miniscule percentage of the total part numbers reported. Moreover, the SKF companies do not price their products any differently depending on country of manufacture. Finally, much of petitioner's concern with the completeness and accuracy of the response arises from its misreading of the verification report and a typographical error in that report.

DOC Position. SKF-Sweden exports three types of AFBs to the United States—ball bearings, spherical roller bearings, and cylindrical roller bearings. We have used best information available for ball bearings and spherical roller bearings because we were not able to verify SKF-Sweden's third country response with respect to this merchandise, as discussed above in Comment 6.

We have, however, accepted SKF-Sweden's response with respect to cylindrical roller bearings because we found it to be substantially complete and accurate. Our views with respect to the adequacy of the public and protective order responses are discussed under the Administrative Protective Order and Public Summarization section of this Appendix.

Regarding the other claims made by petitioner, we examined closely SKF's method for assigning U.S. sales to SKF–AFB manufacturing facilities in Europe at verification. As noted above, the Department's preference for determining country of origin is on a sale-by-sale basis. However, given the manner in which SKF–USA maintains its records and the enormous effort that would have been required to establish definitively the SKF manufacturing facility which produced the specific merchandise, we

have determined that SKF's assignment methodology is reasonable and accepted it for these investigations.

Finally, we verified that there is no "support production" for cylindrical roller bearings sold by SKF-Sweden in the home market. Therefore, all home market sales were of merchandise produced by SKF-Sweden.

Comment 9. Petitioner claims that the record in these proceedings does not support the use of third-country sales to determine foreign market value for SKF-Sweden's ball bearings and spherical roller bearings. As with SKF-Sweden's home market sales, the record lacks evidence that the reported third country sales are actually produced in Sweden. Moreover, based on information gathered at verification, the FRG was not the largest third country market in terms of the volume of sales. Finally, petitioner alleges that third-country sales of the products under investigation were omitted from the response.

SKF-Sweden contends that the Department was able to verify the completeness and accuracy of its third-country response. The difference between the quantities reported in the response and the quantities provided at verification was minimal. Moreover, the statement in the Department's verification report that company officials were unable to show that product source codes were definitive should be disregarded as unsupported. Also, the Department was able to trace the reported sales to the company's business records. Finally, SKF-Sweden was correct in reporting sales to the FRG because it is a substantial market and contained identical merchandise to that sold in the United States.

DOC Position. For the reasons discussed in the Market Viability section of this appendix, we determined that SKF-Sweden's sales to the FRG served as the most appropriate basis for determining the FMV of SKF-Sweden's ball bearings and spherical roller bearings. However, we were not able to verify SKF-Sweden's third country response and have applied the best information available for these classes or kinds of merchandise as discussed in Comment 6 above.

Comment 10. Petitioner asserts that the Department was unable to verify INA-FRG's quantity and value figures for the products under investigation because INA-FRG does not distinguish between export and domestic sales in its financial statements. Also, for U.S. sales, INA-FRG based all of its allocations for U.S. price adjustment purposes upon a sales figure that included products outside the scope of these investigations. For these reasons, petitioner argues that the Department should reject INA's response and use the best information available.

DOC Position. We have used INA-FRG's responses for the purposes of our final determinations with respect to ball bearings and needle roller bearings. Despite the fact that INA-FRG does not distinguish between domestic and export sales in its financial statements, we were able to verify the quantity and value of sales of the products under investigation because INA-FRG was able to retrieve this information from its computerized sales database. At verification, we reviewed its product classification and the computer program, and found only minor discrepancies. Therefore, we conclude that the quantity and value of sales of the products under investigation were verified.

Although our preference is for product-specific expenses, we have accepted INA-FRG's allocations for U.S. sales. Given that INA-FRG does not maintain these types of expenses on a product-specific basis, the number of products sold by the company and the difficulty of assigning specific expenses to specific products, we find it reasonable to accept allocations which include products not covered by these investigations as best information available.

With respect to cylindrical roller bearings from INA-FRG, where a respondent has cooperated with our requests for information but was unable to provide the information requested in a timely manner or in the form required, we have used as best information available as discussed above. Therefore, we have used the margin calculated for cylindrical roller bearings from FAG-FRG in the final determination as best information available for cylindrical roller bearings from INA-FRG. (*See,* Cost of Production (company-specific) section of this Appendix.)

Comment 11. Petitioner contends that SKF-U.K.'s response should be rejected in its entirety in favor of best information available. In support of its contention, petitioner claims that: (1) The Department did not adequately verify the accuracy or completeness of SKF-U.K.'s home market sales; (2) country coding problems may mean that reported sales were incomplete or that products were included which are not produced in the U.K.; and (3) the public and protective order versions of SKF-U.K.'s responses were inadequate. Best information available should be based on the higher of the information in the petition or the rate for a responding firm.

SKF-U.K. states that its database is accurate and reliable. It maintains that no major discrepancies were detected at verification and that its databases should be used for purposes of the final determinations. Furthermore, SKF-U.K. contends that the country of origin of the products and the country of manufacture reported to the Department were fully verified and the fact that SKF does not maintain country of origin records is totally irrelevant. SKF-U.K. argues that support production impacts a small proportion of the part numbers reported by SKF, that all sales subject to support production were reported, and that SKF does not price its products differently depending on country of manufacture.

DOC Position. Our views with respect to the adequacy of public and protective order responses are addressed in the Administrative Protective Order and Public Summarization section of this Appendix.

We disagree with petitioner's contention that the Department did not adequately verify SKF-U.K.'s home market sales response. The purpose of verification is to spot-check the respondent's questionnaire response and is not intended to be an exhaustive examination of the response. *See, Monsanto Company* v. *United States,* 698 F. Supp. 285 (CIT 1988). In this case, we were satisfied that SKF-U.K.'s transactions were accurately reported based on those we verified.

At verification, we also examined closely SKF's method for assigning U.S. sales to the SKF-AFB manufacturing facilities in Europe. The Department's preference for determining country of origin is on a sale-by-sale basis. However, given the manner in which SKF-USA maintains its records and the enormous effort that would have been required to establish definitively the SKF manufacturing facility which produced specific merchandise, we have determined that SKF's assignment methodology is reasonable and have accepted it for these investigations.

Finally, we also reviewed carefully the problem of "support production." Because the merchandise produced in another SKF facility would be sold at the same price that would be charged for merchandise produced by the SKF facility in the country in question and because the amounts of such sales were relatively small, we have concluded for purposes of these investigations that their inclusion in the database does not distort the calculation of foreign market value. Therefore, we have determined it appropriate to accept SKF-U.K.'s response.

For these reasons, we have not applied best information available to SKF-U.K.

Comment 12. Instead of using SNR's claimed home market deductions for the final determinations, petitioner contends that the Department should use information supplied by petitioner or other respondents as best information available for the following reasons: (1) SNR used 1987 expenses to calculate allocation percentages (petitioner argues that only the Department has the right to define the POI), (2) SNR's use of 1987 expenses are not representative of the POI, (3) these 1987 home market expenses were not verifiable, and (4) SNR's home market allocation percentages are based on products outside the scope of the investigation.

DOC Position. We are accepting SNR's data for purposes of calculating adjustments to foreign market value. Although we prefer that respondent report expenses covering the full period of investigation, we have accepted SNR's 1987 data as best information available. Also, while our preference is for product-specific expenses, given the number of products sold by SNR and the difficulty of assigning specific expenses to specific products, we believe it reasonable to accept allocations which include products not subject to these investigations. Finally, although the consolidated expenses were not reported in the company's 1987 financial expenses, we were able to verify independently the amounts that went into these consolidated figures.

Comment 13. Petitioner contends that the final determination for ICSA/SNRI should be based on best information available. Specifically, petitioner contends that: (1) ICSA's margins should be based on sales by each member of the ICSA group to the first unrelated customer in both markets, but as the Department failed to collect this information, a combined rate based on FAG-Italy and SKF-Italy spherical roller bearings should be used; (2) the date of invoice could not be verified as the date of sale in a number or instances; and (3) charges and adjustments to home market prices are based on 1987 expenses and sales, rather than data for the period of investigation. With respect to the latter deficiency, if the Department uses ICSA/SNRI's response, all charges and adjustments should be treated as indirect selling expenses.

DOC Position. We have determined that it is appropriate to use ICSA/SNRI's response for the final determination. With respect to petitioner's first comment, the Department elected to send a questionnaire only to ICSA/SNRI because this company accounted for more than 60 percent of U.S. imports of spherical roller bearings from Italy. We are also satisfied that date of invoice is an acceptable proxy for date of sale for this company. In most cases, the invoice was issued on the date of sale. On balance, there is no reason to believe use of invoice date as the date of sale has distorted the home market database.

Finally, we have determined it appropriate to accept ICSA/SNRI's use of 1987 data for purposes of calculating adjustments to foreign market value. While we prefer that respondents report expenses covering the full period of investigation, we have accepted SNR's 1987 data as best information available.

Comment 14. Petitioner argues that the revised computer tape containing home market and U.S. sales which RHP submitted to the Department after verification was not verified. Petitioner argues that the extensive number of changes after verification made by RHP constitutes a major reconstruction of its response and requires the Department to reject the resubmission in favor of best information available. Furthermore, petitioner states that if the revised data is used, the agency should run a computer analysis of the new submission to confirm that all of the changes requested were properly made. Petitioner suggests that if any discrepancy is found, the submission must be rejected in favor of best information available.

RHP contends that the Department verified RHP's U.K. and U.S. sales listings and that the slight revisions made in the computer tapes were based on verified information and at the request of the Department.

DOC Position. The revisions made to RHP's U.S. and home market sales computer tape incorporated data the Department reviewed at verification. We view these changes as minor and as such, they do not warrant rejection of the resubmitted tapes. Moreover, it is the Department's practice to review revised tapes to ensure that no data from previously submitted tapes has been altered and that the revisions are in accordance with the Department's findings at verification. As no discrepancies were found in our review of RHP's tapes, we are using them for purposes of the final determination.

Comment 15. Petitioner maintains that for purposes of the final determination, the Department should reject, on the basis of incompleteness and untimeliness, NMB/Pelmec Singapore's data and use the highest margin alleged in the petition as best information available pursuant to 19 U.S.C. section 1677e(b). Although the Department determined that the home market was not viable, respondent failed to submit third country sales data in a timely manner. Therefore, petitioner contends that it is inappropriate for the Department to rely on the third country data submitted. Furthermore, petitioner claims that NMB/Pelmec Singapore failed to report all U.S. sales of Pelmec products and third country sales to a related party which were made at higher prices than sales of the same products to unrelated parties.

DOC Position. We disagree with petitioner's general assertion that NMB/Pelmec Singapore's response should be rejected. On September 23, 1988, we determined that NMB/Pelmec Singapore's home market was not viable and requested that third country data be submitted. On October 7, 1988, NMB/Pelmec Singapore submitted third country data. Although we did not receive this information in sufficient time to analyze fully and use for purposes of the preliminary determination, we were able to fully analyze it prior to verification and, thus, to verify it. Therefore, we have used this information for purposes of the final determination.

With respect to NMB/Pelmec Singapore's unreported U.S. sales of Pelmec products, we found at verification that the unreported sales constitute only one tenth of one percent by volume of the 33 percent of sales reported pursuant to our simplification procedures and that the unit prices on these unreported sales were nearly three times greater than the unit prices for the same products to other customers which were reported in the sales listing. Therefore, we found that NMB/Pelmec Singapore's failure to report these salea would have a negligible effect, if any, on our price comparisons.

With respect to petitioner's assertion that the third country related party sales should have been reported, the sales in question were to a related OEM that used the bearings in the production of products which fall outside the scope of investigation. In accordance with section 353.22(b) of our regulations, it is our normal practice to disregard related party sales. Rather, we require that respondents report the first sale to an unrelated party, unless the respondent makes arguments and provides sufficient information to enable us to analyze the comparability of related and unrelated sales. In the case of NMB/Pelmec Singapore, it was unable to report the first sale to an unrelated party because the first sale to an unrelated party was of a product not within the scope of investigation.

To perform an analysis of the comparability of related and unrelated sales, we generally require that a respondent provide sales-specific or customer-specific payment terms for credit expenses, as well as sales-specific information on commissions, rebates, and discounts. Without such information, we are unable to determine that sales to related parties are comparable to sales to unrelated parties. In this case, NMB/Pelmec Singapore made no argument that its sales to related parties should be used on the basis that they are comparable to sales to unrelated parties. During verification, we noted that the sales prices to a related OEM were higher than the prices for the same product to unrelated parties. However, we did not examine other factors such as credit terms, commissions, rebates, and discounts. Therefore, we were not able to determine whether such sales were, in fact, made at arm's length, and we did not request that respondent report complete information on these related party sales.

Comment 16. Petitioner contends that the questionnaire response submitted by Rose Bearings was untimely and that verification of its response was too late to permit all parties a fair opportunity to comment. Therefore, the Department should use best information available in accordance with 19 U.S.C. 1677e(b).

DOC Position. Subsequent to our determination that the subject merchandise constitutes more than one class or kind of merchandise, we found that we had no respondent for spherical plain bearings from the U.K. Petitioner was unable to identify a producer of spherical plain bearings in the U.K., and we did not identify Rose Bearings as a producer of spherical plain bearings until mid-October. At that time we issued a questionnaire to Rose Bearings, dated one week prior to the preliminary determinations. Rose Bearings used the same amount of time as other respondents in these investigations to complete its response to the questionnaire. Thus, we determined that it was appropriate to verify Rose Bearings, response. Furthermore, both petitioner and Rose Bearings were afforded the opportunity to comment on the verification report.

Comment 17. Yamaha Parts Distributors, Inc., and Subaru of America Inc., importers of AFBs from Japan, argue that it is unfair to include margins derived from using best information available (BIA) in calculating the "all other" country-wide rate for ball bearings and spherical plain bearings. They request that the Department compute the all other rate in a manner that more accurately estimates actual country-wide dumping margins. They also state that the Department has refused to include best information available rates in country-wide calculations in countervailing duty investigations, citing the *Final Affirmative Countervailing Duty Determination; Certain Granite Products From Spain* (53 FR 24340, June 28, 1988) and *Preliminary Affirmative Countervailing Duty Determination; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from the Republic of Korea* (53 FR 48672, December 2, 1988).

DOC Position. We believe that including the margins for all respondents, even those which were derived from using best information available, does accurately reflect the estimated country-wide dumping margin. One reason a company may choose not to respond to our questionnaire is that it believes that any rate assigned to it using best information available would not be significantly different from the rate that would be derived on the basis of its own information. If the two rates are judged by the potential respondent not to be significantly different, that company is likely to conclude that participation in the investigation is not worth the trouble and expense. Therefore, there is no reason to believe that the inclusion of margins based on best information available will necessarily distort the country-wide margin. Furthermore, companies not selected as respondents such as Yamaha and Subaru, but desiring their own margin based on their actual sales information, may voluntarily submit a response to our questionnaire. Yamaha and Subaru chose not to do so.

Yamaha and Subaru have misinterpreted our current practice in calculating country-wide rates in countervailing duty investigations. The Department's policy in fact has been to include calculations based on best information available in the country-wide rate. In *Industrial Belts from Korea,* we calculated a separate rate for one company, based on best information available because its estimated net subsidy differed significantly from the country-wide rate. In *Certain Granite Products from Spain,* we used best information available in calculating the estimated net subsidy for two companies that did not respond to our questionnaire. In our final determination in that case, we indicated that we were unable to include those two companies in the calculation of the country-wide rate because we did not have information on the value of their exports of the subject merchandise to the United States. It was for that reason, not because we used best information available, that they were not included in the calculation of the country-wide rate.

Comment 18. Petitioner contends that Minebea Japan's database is inadequate because it failed to report sales of rod ends, spherical plain bearings, and bushings. Therefore, the Department should use as best information available the rate calculated for Minebea in the preliminary determination of 226.68 percent.

DOC Position. We agree with petitioner that Minebea Japan's database is deficient to the extent that it failed to report rod ends and certain spherical plain bearings. Therefore, for Minebea's unreported rod ends and unreported spherical plain bearings, we have used the rate calculated for NTN's spherical plain bearings as best information available. We then calculated a weighted average of this result, by quantity, with the rate calculated for those products which were reported and verified. The total quantity figure used for the unreported sales in this calculation was verified. On this basis, we calculated an estimated dumping margin as best information available for Minebea Japan's exports of spherical plain bearings.

Comment 19. Petitioner states that certain sales claimed by NSK as "samples", including inch-size bearings and prototypes used for customer trials, should not be excluded from the home market sales listing. Petitioner states that the classification of sales as "not in the ordinary course of trade" should follow the standards articulated in the *Final Determination of Sales at Less than Fair Value: Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof from Japan,* 52 FR 30704 (August 17, 1987), which required that the bearings in question be sold in extremely small quantities and at prices substantially higher than the vast majority of sales in the ordinary course of trade. Petitioner furthermore contends that high home market prices or low sales volume cannot in and of itself establish that sales were outside the ordinary course of trade. Based on the statutory definition of "ordinary course of trade" (19 U.S.C. 1677(15)) and that of "usual commercial quantities" as defined in the Trade and Tariff Act of 1984, section 612(a)(4), the fact that sales are made in small quantities does not disqualify such sales from the calculation of foreign market value. Additionally, NSK failed to support its

claim that five specific part numbers were not sold in the ordinary course of trade in the home market.

DOC Position. We agree with petitioner with respect to the five specific bearing models cited and sold in large quantities in the United States. NSK was unable to show that these bearings were not sold in the ordinary course of trade in the home market. The quantities sold of these bearings in the home market are comparable to the quantities of similar bearings sold in the home market. Therefore, we have applied a best information available rate for the quantity of these five bearings excluded by NSK for comparison. We verified that certain other excluded bearings were outside the ordinary course of trade.

Section 9: Date of Sale

Comment 1. Petitioner contends that the Department should include INA-FRG U.S. sales made pursuant to a long-term contract in the fair value comparisons. Petitioner alleges that even though the parties entered into the contract prior to the period of investigation, the primary terms of the contract varied up to the date of shipment which fell within the period of investigation. Respondent, INA-FRG, claims that the Department should exclude the sales made pursuant to the contract which was executed prior to the period of investigation.

DOC Position. The Department determined during verification that the material terms of the contract (*e.g.*, price and quantity), were subject to modification up to the date of shipment. Because the material terms of the contract were not fixed until the date of shipment, the shipment date is the appropriate date of sale. Therefore, the Department has included these sales in the fair value comparisons. The Department also notes that INA-FRG's request that the Department use date of contract rather than date of shipment as the correct date of sale, departs from all INA-FRG's previous submissions which designate date of shipment as the appropriate date of sale.

Comment 2. SKF claims that for all SKF companies, the primary terms of sale continue to change until the invoice is issued. Therefore, the appropriate date of sale is the invoice date which directly corresponds to the date of shipment.

DOC Position. The Department agrees with respondent. The date of sale is the date of the earliest written evidence firmly establishing the material terms of sale. *Certain Forged Steel Crankshafts from the Federal Republic of Germany,* 52 FR 28170, 28172 (July 28, 1987). Verification conclusively revealed that the date the invoice is issued is the point at which the material terms of the first sale become fixed. Therefore, the invoice date constitutes the date of the earliest written evidence which firmly establishes the material terms of sale. Thus, the invoice date is the appropriate date of sale. The Department notes that the invoice date is identical to the shipment date.

Comment 3. Petitioner claims that FAG-FRG incorrectly reported the date of sale for those sales made pursuant to a long-term contract. Petitioner argues that the material terms of the sales vary between the date of contract and the date of shipment of the merchandise. Therefore, the date of shipment rather than the date of contract represents the correct date of sale.

Petitioner maintains that the effect of allowing FAG-FRG to report date of contract as date of sale, is that FAG-FRG can take advantage of more favorable exchange rates in effect on the date of contract as compared to the date of shipment. Petitioner further argues that sales pursuant to long-term contracts entered into before the period of investigation were excluded even though the bearings were shipped within the period or price and quantity terms changed during the period of investigation. Petitioner argues that exclusion of the subject sales may affect the 33 percent threshhold requirement and viablility tests. Therefore, the Department should reject FAG's home market sales database and apply the best information available for the purpose of the final determinations.

With regard to order entry sales, petitioner argues that FAG-FRG excluded sales with order entry dates which occurred before the period of investigation but whose invoice dates fell within the period of investigation. Conversely, FAG-FRG included sales with order entry dates which fell within the period but which were modified after the period.

FAG-FRG claims that the reported date of sale for sales made pursuant to a long-term contract are correct because the company reported sales as of either (1) the date of contract, which fell within the period of investigation, or (2) the date of renegotiation, if changes to material terms occurred after the parties entered into the contract. Therefore, because the dates submitted by respondent are the correct dates of sale, the sales database is complete and viability is unaffected.

For order entry sales, the reported date of sale is the time of order entry. FAG-FRG admits that some changes in the terms of sale occurred after date of order entry; however, such changes were rare. Therefore, the Department should accept the date of order entry as the date of sale because price and quantity terms were fixed at that time.

DOC Position. The Department agrees with respondent. The date of sale is the date on which the material terms of the contract are finalized. *Cellular Mobile Telephones and Subassemblies From Japan,* 50 FR 45447, 45451 (October 31, 1985). Verification conclusively established that for long-term contract sales, (1) FAG reported date of sale as of the time the material terms were fixed in the contract; (2) in the event of contract renegotiations, FAG reported date of sale as of the date of renegotiation; and (3) the sales database was accurate and complete. Therefore, the Department has used either the date of initial contract or in the event of a renegotiation, the date of renegotiation as the date of sale for those sales made pursuant to a long-term contract.

With respect to petitioner's argument on exchange rates, the home market dates of sale are accurately reported and the foreign market value has been converted to dollars using the exchange rate in effect on the date of the U.S. sale in accordance with 19 CFR 353.56. Therefore, we do not understand how respondent has availed itself of favorable rates.

The Department is satisfied that the date of order entry for sales other than sales made under a long-term contract is the appropriate date of sale. While terms did change subsequent to the entry order date, the instances in which this occurred were rare. Therefore, the Department has determined that the use of order entry date as the date of sale is reasonable.

Comment 4. Petitioner contends that FAG-Italy incorrectly reported the date of sale for those sales made pursuant to a long term contract. Petitioner argues that the material terms of the sales vary between the date of contract and the date of shipment of the merchandise. Therefore, the date of shipment rather than the date of contract represents the correct date of sale. Petitioner further argues that as a result of the erroneous date of sale method used by FAG-Italy, the long-term contract sales within the period of investigation were excluded. Therefore, the Department should apply the best information available for the purpose of the final determinations.

DOC Position. The Department disagrees with petitioner. (*See, DOC Position* to *Comment 3* above.)

Comment 5. Nachi contends that the Department should allow an adjustment in price for exchange rate fluctuations

occurring after the date of contract. Pursuant to a contractual agreement with Nachi's trading companies on purchase price sales, the risk of exchange rate fluctuations is evenly apportioned between Nachi and certain trading companies where the exchange rate fluctuates beyond a predetermined range between the date of contract and the date of payment. For example, if the yen depreciates against the dollar above the agreed upon range, then Nachi pays half of the difference in cost to the trading company. If the yen appreciates below the range, then the trading company pays half the difference in cost to Nachi. Therefore, Nachi asserts that the "yen clause" constitutes merely an "adjustment to price made after the contract but according to terms fixed at the time of contract."

Petitioner argues that the Department should deny the claimed "yen clause" adjustment because the price to the ultimate purchaser is unaffected. Petitioner also claims that if the Department accepts the "yen clause" adjustment for purposes of the final determinations, the Department will have used incorrect dates of sale in that the price was not fixed at the time of contract in so far as the adjustment to price occurred after the date of contract.

DOC Position. The Department agrees with respondent. The yen clause adjustment serves to apportion the burden of exchange rate risk between Nachi and its trading companies. The price is set at the date of contract, as is the predetermined range in which exchange rate fluctuations result in no adjustment to price. Although adjustments to price were made after the date of contract, such adjustments were made pursuant to a provision within that contract.

In *Voss Intern. Corp.* v *United States,* 628 F.2d 1328 (CCPA, 1980), the Court of Customs & Patent Appeals held that the price was "determined," despite the fact that the U.S. purchaser did not know the exact amount in U.S. dollars it would have to pay for the merchandise, because the parties had nothing more to negotiate or agree to regarding price. The parties in *Voss* had agreed to renegotiate the price to factor in the dollar/yen exchange rate fluctuations. The Court in *Voss* found that the parties had agreed to a "definite and determinable price" notwithstanding the fact that one party would pay "more or less dollars in accordance with exchange rate fluctuations * * *" Id. at 1335.

As in *Voss,* the parties here had nothing more to agree to, and a definite and determinable price existed as of the date of contract. Therefore, for the purpose or the final determinations, the Department has found that the appropriate date of sales is the date Nachi entered into this contract with its trading partner.

The Department accepts the yen clause adjustment as a circumstance of sale adjustment because the "yen clause" provision is part of a contractual arrangement with Nachi's customer and changes the actual amount paid to Nachi by the trading company. Therefore, the ultimate price paid on these U.S. sales has been changed.

Comment 6. Petitioner argues that the date of order acknowledgment, which Rose listed as the date of sale for home market sales, could not be fully verified. In addition, for U.S. sales, the date of shipment is used as the date of sale. Because of these discrepancies and the time lag between different steps in the sales process, petitioner argues that the Department should use the date of shipment as the date of sale. Rose contends that its method of establishing the date of sale is consistent with the Department's practice.

DOC Position. In its questionnaire response, Rose listed the date of order acknowledgment as the date of sale for both home market and U.S. sales. At verification, we confirmed that the order acknowledgment date was the date when price and quantity terms were first set, and we have used that date as the date of sale.

Although some order acknowledgment dates were incorrectly reported in Rose's questionnaire response, these were for sales to companies that had changed their names between the time an order was taken and the time the order was actually shipped. Rose had re-entered new order acknowledgments when the companies changed their names. Since price and quantity terms were not affected by the name changes, we considered the date of the original order acknowledgment to be the date of sale.

Comment 7. Rose contends that, although a discrepancy was found at verification regarding the date of sale for certain home market transactions, even if these sales were not considered for comparison purposes, there would still be over 33 percent, by volume, of U.S. products matched to home market sales of identical products.

DOC Position. The Department agrees with Rose. We have not considered certain home market transactions with dates of sale outside the period of investigation, but we have still found identical home market matches for over 33 percent of U.S. sales by volume.

Comment 8. Petitioner contends that, for NMB/Pelmec Thai's sales to Singapore which were included as home market sales, the date of the forecast under the blanket purchase order is the correct basis for the date of sale because liability under the purchase order is the quantity on the forecasts; thus the date of the forecast is the date the terms are agreed.

DOC Position. NMB/Pelmec Thai has reported the date of the forecast as the date of sale, as petitioner suggests. However, because we have considered the sales in question to be export sales, this issue is moot (*See,* Market Viability section of this Appendix).

Comment 9. Petitioner contends that a significant discrepancy was found during verification of NMB/Pelmec Thai regarding the date of sale and the reporting of U.S. sales. According to petitioner, NMB/Pelmec Thai executed a contract on April 6, 1988, covering sales that had been shipped since December 2, 1987. To the extent such shipments were not reported, petitioner argues that NMB/Pelmec Thai's U.S. sales listing is incomplete and should be rejected.

Petitioner also maintains that there was an unshipped balance under the contract as of March 31, 1988, and that NMB/Pelmec Thai included these sales as sales within the period of investigation, although the date of sale was reported as March 31, 1988 rather than the April 6, 1988 date of contract. Petitioner contends that it is improper to include NMB/Pelmec Thai's post-March 31, 1988 shipments in its U.S. sales listing absent evidence that an agreement had been reached prior to April 6, or absent other information establishing the date of sale. Petitioner further contends that the reduction in "identical" U.S. sales may affect the 33 percent reporting requirements and, therefore, the Department should re-examine whether NMB/Pelmec Thai reported a sufficient volume of U.S. sales.

NMB/Pelmec Thai contends that it demonstrated at verification that the contract was operable before the date of signature because shipments were being made under that contract during the period of investigation. Respondent further argues that it reported a large percentage of the sales under this contract which were shipped or scheduled for shipment. Because the contract called for additonal expected shipments and because the contract was operable, NMB/Pelmec Thai correctly treated the remainder as unshipped sales falling within the period of investigation.

DOC Position. During verification we established that the April 6, 1988 contract was operable for shipments

beginning on December 2, 1987 covering a stipulated minimum quantity of ball bearings. NMB/Pelmec Thai reported all shipments made pursuant to this contract using the date of shipment as the date of sale. We also verified that, for those sales not shipped as of March 31, 1988 but made pursuant to the April 6 contract, NMB/Pelmec Thai considered these sales to be within the period of investigation and reported the date of sale as March 31, 1988.

We have determined that NMB/Pelmec accurately reported the date of shipment as the date of sale for all shipments made during the period of investigation pursuant to the April 6, 1988 contract. The fact that the merchandise was delivered and paid for indicates the existence of an agreement for sale. As such, the date of shipment constitutes the date of sale. (*See, Final Determination of Sales at Less Than Fair Value: Forged Steel Crankshafts from the Federal Republic of Germany*, 52 FR July 28, 1987.)

With respect to the unshipped balance under the contract as March 31, 1988, we have excluded these sales from our analysis because we consider them to be sales after the period of investigation. In addition, we have examined the effect of excluding the unshipped balance from the U.S. sales database and have determined that there was sufficient coverage to meet our minimum reporting requirements.

Comment 10. Petitioner contends that the date of sale for NMB/Pelmec Thai's home market sales was incorrectly reported based on the manufacturing order date rather than the purchase order date. Petitioner further contends that the reporting of sales based on the date of the purchase order might reveal a significant number of additional home market sales of bearings identical to those exported to the United States during the period of investigation.

NMB/Pelmec Thai contends that the manufacturing order date is the appropriate basis for date of sale for home market sales because the price and quantities are set at that date. Any undelivered quantities are placed in the backlog for that customer, and the customer is obligated to purchase the whole amount if it ceases its regular orders.

NMB/Pelmec Thai argues that, even if the Department considers the date of sale to be the purchase order date, the model matches do not change. The same models were sold during the period of investigation, regardless of the manner in which the date of sale is established. Respondent further maintains that the impact of the slightly different product mix depending on the date of sale methodology on the weighted-average foreign market value is insignificant, since these products were matched to a limited number of units sold in the United States.

DOC Position. Because we have determined that the Thai home market was not viable, we have not used home market sales as the basis for foreign market value. Therefore, this issue need not be addressed.

Section 10: Movement Charges

A. Allocation Methodology

Comment 1. Petitioner contends that ADR (an SKF company in France) originally claimed that its inland freight allocation was on the basis of weight and that verification revealed that freight was allocated based on the per unit cost of manufacture. Petitioner argues that this reallocation results in a redistribution of freight expenses away from high volume part numbers regardless of the weight or size of the bearing. Moreover, petitioner states that the data should not be considered verified because verification was based only on a sample that was selected by ADR at that time.

SKF-France contends that the original calculation of inland freight on ADR's home market sales was incorrect and was explained during the cost of production verification. SKF-France states that the correct and verified information is reflected in the revised U.S. and home market sales listings.

DOC Position. We verified that the revised allocation was reasonable and have adjusted SKF–ADR's U.S. and home market prices for the inland freight expense as reported in the revised U.S. and home market sales listings.

Comment 2. Petitioner argues that, because the inland freight calculations account for products that are not subject to investigation, the inland freight charges reported by FAG-Italy should not be treated as a direct selling expense.

FAG-Italy maintains that use of 1987 data covering shipments of products both investigated and not investigated is nondistortive. In light of the fact that this data was the only complete information on actual costs available from normal accounting records, the Department should use the claimed expenses for the final determination.

DOC Position. Although our request for information and methodological preference is for the reporting of expenses covering the full period of investigation, we verified that the allocation methodology employed by FAG-Italy to calculate inland freight was reasonable. Therefore, as best information available, we have accepted FAG-Italy's use of 1987 data for purposes of calculating the claimed charges in these determinations.

Comment 3. Petitioner contends that FAG–FRG did not submit actual transaction-specific data relating to home market inland freight charges. Therefore, the Department should disallow any deductions from foreign market value for such charges.

FAG–FRG argues that it does not maintain inland freight records on a transaction-specific basis nor does the Department require that freight expenses be reported as such. Therefore, the Department should use the verified inland freight expenses for FAG–FRG and the revised costs for Elges (another FAG company in the FRG) in the final determinations.

DOC Position. We verified that FAG–FRG does not maintain inland freight records on a transaction-specific basis. Verification confirmed that the allocation methodology used by respondent was reasonable. Therefore, we have used the verified costs for FAG–FRG and the revised costs for Elges for purposes of these determinations.

Comment 4. Petitioner contends that the Department should reject GMN's information regarding inland freight expense and allow no adjustment to foreign market value for this expense. Petitioner claims that GMN provided worksheets of freight costs on a per gram basis at verification in response to the Department's statement in its preliminary determination that GMN's estimated inland freight expense would have to be supplemented and verified in order to be used in the final determination. Petitioner argues that it is the policy of the Department not to accept new information at verification. Petitioner submits that since the information was provided at verification and could not be reviewed beforehand by the Department or the petitioner, and since the Department could not tie the expense allocation used by GMN to actual production or shipments, the information should be rejected.

DOC Position. In our preliminary determination of October 27, 1988, we stated that we had accepted GMN's inland freight expense, but that for the final determination we would require an allocation of this expense by weight. GMN had originally submitted a home market inland freight expense based upon value for a representative sample of home market bearing shipments. In the cover letter to our supplemental questionnaire dated November 1, 1988,

we stated that any information not received by the Department in time to be fully analyzed prior to verification might not be considered for purposes of our final determination. On November 8, 1988, we received from GMN an allocation of freight expenses on the basis of value for home market ball bearing shipments during the period of investigation. GMN claimed that it did not maintain records which would enable it to report the total weight of ball bearing shipments for the period of investigation. At verification, GMN reallocated this expense based on the weight of the bearings produced during the period under the *hypothetical assumption* that it was operating at full capacity during the period of investigation. At that time, we gave no indication whether that information would be used for purposes of the final determination. Given that the reallocation constituted new information and a significantly revised methodology presented for the first time at verification, we have used GMN's value allocation submitted prior to verification as the best information available for purposes of the final determination. (*See, Roller Chain, Other Than Bicycle, from Japan,* 54 FR 3099, January 23, 1989). *See* also *DOC Position* to *Comment 7* for further discussion of freight allocation based on weight versus sales value.

Comment 5. Petitioner contends that ICSA's allocation methodologies for foreign inland freight, foreign inland insurance, ocean freight, marine insurance, U.S. inland freight, and packing and containerization on U.S. sales should be rejected for the following reasons: (1) They are based on either value or volume rather than weight, (2) some apply a percentage charge determined from total 1987 sales to sales in the period of investigation, and (3) the methodologies are inconsistent from one charge to another. Petitioner makes similar comments with respect to ICSA's home market inland freight, inland insurance, and packing expenses.

DOC Position. We verified that the allocation methodologies used by ICSA for the above-mentioned movement and packing expense claims are reasonable. Even though our request for information and methodological preference is for the reporting of expenses covering the full period of investigation and the allocation of movement and packing expenses based on weight, we have accepted ICSA's use of 1987 data and its value-based allocations for purposes of calculating adjustments to U.S. price as best information available. *See, DOC Position* to *Comment 7* for further discussion of allocation issue.

Comment 6. Petitioner argues that the Department should disallow INA-FRG's response regarding the following adjustments to foreign market value: interest expense, technical services, warranties, advertising, quality control expenses and indirect selling expenses. According to petitioner, INA-FRG improperly calculated these expenses by dividing the total corporate expense by total domestic sales, which include sales of products not subject to investigation. Petitioner asserts that the Department was unable to verify the actual quantity and value of domestic sales. Furthermore, petitioner maintains that because the Department has divided the subject merchandise into five classes or kinds of merchandise, respondent should have been required to report expenses by product type. Because INA did not provide such a breakdown, its response should be rejected.

DOC Position. With regard to the quantity and value of domestic sales, we found only a minor discrepancy in INA's response, and we were able to verify the accurate amount. With regard to the selling expenses noted by petitioner, we verified that INA does not maintain records in such a way as to enable it to report its expenses for each separate class or kind of merchandise. Therefore, we found INA's allocation of expenses over total sales of all products, including products not under investigation, to be reasonable. Accordingly, we have accepted INA's reported expenses as best information available for purposes of these determinations.

Comment 7. Petitioner argues that the Department should disallow INA-FRG's and INA-France's responses regarding freight and packing adjustments to foreign market value. According to petitioner, INA-FRG and INA-France improperly calculated these expenses using an allocation based on sales value, rather than actual costs or an allocation based on weight. Petitioner contends also that the Department should reject this allocation because it includes sales of products not subject to investigation. Petitioner makes similar arguments regarding the freight allocations used by ICSA, NSK, NTN, GMN, Rose, and SNR.

INA-FRG and INA-France argue that the Department should accept these adjustments to foreign market value. They assert that their allocation methodology based on sales value for certain costs such as freight, insurance, packing, and duties was reasonable. As examples of cases where the Department has accepted alternative allocation methodologies, INA cites *Color Picture Tubes from Singapore,* 52 FR 44190, 44195, (November 18, 1987), *Color Picture Tubes from Japan,* 52 FR 44171, 44180, (November 18, 1987), *Color Television Receivers from Korea,* 51 FR 41365 (November 14, 1986), and *Choline Chloride from Canada,* 49 FR 36532, 36534 (September 18, 1984). INA emphasizes the complexity of calculating these costs on any basis other than value and maintains that its allocation methodology closely approximates actual costs incurred. INA argues further that an allocation by weight is no more accurate than its allocation by value.

DOC Position. We agree with petitioner that expenses incurred for freight and packing are usually based on the weight or physical volume of the merchandise. Acccordingly, our methodological preference is for allocation of these expenses on the basis of the unit weight of the individual products shipped or packed. We therefore requested respondents to calculate freight and packing expenses by weight. However, many of the respondents were unable to allocate these charges on this basis. Rather, they used an allocation methodology based on sales value, which they argued was reasonable based on their record-keeping systems. Verification confirmed that this was the case for many of the respondents. Furthermore, we have accepted the allocation of these expenses by value in past cases as cited by respondents. Therefore, we used the respondents' value-based allocations as the best information available in the cases of INA-FRG, INA-France, ICSA, GMN, NSK, NTN, Rose, and SNR for purposes of the final determinations. *See* also respective company-specific comments on this issue in this section of the appendix.

Comment 8. Petitioner contends that the Department should compare INA-France's reported movement expenses (which include foreign inland freight/insurance, brokerage and handling/ocean freight, marine insurance, collected export duties and taxes, uncollected and rebated duties and taxes, U.S. inland freight/insurance) with those of other companies under investigation and use the more adverse information, if available, as best information available. Petitioner points out that respondent used data related to FRG sales to derive the reported foreign inland freight and foreign inland insurance charges. Petitioner also noted that while the method of calculating home market inland freight appeared equally applicable to ESP foreign inland

freight, INA instead calculated ESP foreign inland freight on the basis of three shipments, which the verification team noted did not seem to be representative of the entire period of investigation.

DOC Position. At verification, we found that INA-France had applied an allocation methodology for foreign inland freight and foreign inland insurance based on FRG sales data instead of French sales data. Therefore, as best information available, we have used the home market inland freight and home market inland insurance allocations as surrogates for ESP inland freight and ESP inland insurance, respectively. Furthermore, we have accepted INA's allocation for brokerage and handling as best information available because INA could not provide separate allocations for the expenses which are included in brokerage and handling based on its record-keeping system.

Comment 9. Petitioner argues that INA–France's home market sales response should be rejected because (1) the reported expenses are average costs based on 1987 yearly data and cannot be directly tied to specific transactions; (2) the reported data was aggregated for all products sold during 1987, including products outside the scope of the investigation.

INA-France argues that it is customary for the Department to rely on annual data to establish the appropriate amount of costs because consideration of a period shorter than a fiscal year could result in a distortion of the data by reason of the over-representation of specific costs during a narrower timeframe.

DOC Position. At verification, we reviewed what INA-France reported as total 1987 turnover and found no major discrepancies. We noted that INA does not incur its expenses on a regular basis throughout the year. Given the way the expenses were incurred, we find it reasonable to allocate expenses across a fiscal period. Use of a shorter period would probably result in the understating of some expenses and the overstating of others. Also, because INA-France does not maintain its records in such a way to enable it to distinguish its costs for each separate class or kind of merchandise, we found INA's allocation of expenses over total sales of all products, including products not under investigation, to be reasonable. Therefore, we have used INA's information as best information available.

Comment 10. Petitioner contends that the Department should not accept Nachi's revised freight allocations because the errors in the original tape did not result from a lack of information at the time of response preparation. Accordingly, the Department should use the information contained in the original response.

DOC Position. We have considered the revised freight allocations to be timely and an accurate representation of the amount of freight expenses actually incurred. Therefore, we have used the revised figures for inland freight.

Comment 11. Petitioner contends that to the extent that the Department has been unable to trace NMB/Pelmec Singapore's actual charges (*e.g.*, movement, brokerage, import duties) allocated to bearing sales during the period of investigation, or an unreasonable methodology for allocating these expenses has been utilized, the respondent's data should be rejected for purposes of the final determination. Furthermore, petitioner takes issue with an alleged calculation error for freight forwarding expenses incurred in Singapore on U.S. sales of Pelmec ball bearings, and maintains that the Department should ensure that such errors have been corrected.

DOC Position. At verification, the allocation methodology used by NMB/Pelmec Singapore for all movement expenses (*e.g.*, freight forwarding, inland freight, import duties, brokerage and handling) was found to be reasonable and an accurate representation of actual charges incurred. Therefore, we have used this information for purposes of the final determination. Regarding freight forwarding expenses incurred in Singapore on U.S. sales, the statement made in the verification report about the calculation error was incorrect. Only the quantity figure was found to be slightly lower than what was reported, a difference which had no ultimate effect on the per unit charge. Therefore, we have used the reported per unit charge in our calculation of U.S. price.

Comment 12. Petitioner argues that no adjustment should be granted for inland freight because NSK allocated freight on the basis of sales value which is distortive.

DOC Position. At verification, NSK demonstrated that its methodology was reasonable and that it was not possible to allocate freight on a weight/volume basis in a reasonable manner based on its record-keeping system. Therefore, as best information available, we have used NSK's value-based allocation for purposes of the final determinations. *See, DOC Position* to *Comment 7* above for further discussion of this issue.

Comment 13. Petitioner states that NTN incorrectly reported freight charges based on sales value, rather than on the basis of weight and/or volume, as the Department requested. Petitioner further contends that NTN's reporting on the basis of sales value is inherently distortive, in that a very expensive, yet lightweight, bearing might be allocated far more freight expense than a commodity bearing. To the extent that U.S. sales are at less than fair value, this method allocates smaller freight charges to parts sold at less than fair value.

NTN states that the Department verified why it could not allocate freight on a weight or volume basis; therefore, the Department should accept its allocation of freight on a sales value basis.

DOC Position. At verification, NTN demonstrated that based on its record-keeping system and verifiable data, its allocation methodology was reasonable. Though it is preferable to allocate freight expenses on a weight/volume basis, it was not possible for NTN to do so based on the way it keeps its accounting records. During the verification in Japan, NTN explained that in some cases it contracts a truck to go anywhere and carry any product, regardless of weight or distance, for a fixed period of time. In other cases often involving the same contractor, NTN is billed based on the weight or distance of the goods transported. As a result, NTN maintained it would not be possible to break down its freight expense by weight and distance for particular sales. During the ESP verification, NTN explained that it could not report freight on a weight basis because its accounting system is not set up to track freight expenses on a sale-by-sale basis. Product weights are listed in NTN's computer system only for the subject merchandise and distance to each customer is not recorded. NTN was unable to devise a rational allocation methodology to account for the weight of each product in each shipment to a given destination. Therefore, as best information available, we have accepted NTN's freight expenses as reported for purposes of these determinations. *See DOC Position* to *Comment 7* above for further discussion of this issue.

Comment 14. Petitioner argues that the Department should not allow any deductions from Rose's home market prices for freight and inland insurance because Rose did not allocate these expenses to specific sales by weight or by volume.

Rose notes that it does not keep records of the weight of its individual products and that an allocation on a per unit basis would skew these charges. Therefore, it claims that its allocation

based on sales revenue is the only reasonable method available to it.

DOC Position. We verified that Rose ships its bearings in mixed batches and that shipping charges could not be tied directly to individual bearings. Verification confirmed that based on its record-keeping system, Rose could not allocate freight and inland insurance on the basis of weight. Therefore, as best information available, we have accepted Rose's methodology for allocating these expenses on a sales value basis. *See, DOC Position* to *Comment 7* above for further discussion on this issue.

Comment 15. Petitioner contends that the following charges related to sales of SKF-France in the United States should be disallowed: ocean freight, U.S. inland freight, brokerage and handling, marine insurance, duties, and packing. Petitioner contends that the reported U.S. charges cannot be directly tied to specific transactions and the allocation methodologies used are incorrect. Petitioner further argues that the Department should use the higher of (1) charges incurred on SKF–USA's sales of merchandise from the other countries under investigation, or (2) the charges reported from either of the other two respondents in the investigation of AFBs from France.

SKF contends that it has adequately explained or reported all of the expenses noted by petitioner. Specifically, SKF states the following: (1) SKF–USA's marine insurance policy covers transportation by air or ocean from Europe to U.S. ports; (2) adjustments for freight are based upon verified information; and (3) U.S. duty was correctly applied to the ex-factory transfer price. SKF-France further contends that they have completely responded to each of the Department's requests for information and that all charges and adjustments which were not specifically addressed during verification, should be considered verified.

DOC Position. At verification, SKF-France and SKF–USA demonstrated to our satisfaction that they were unable to consistently and accurately report the above-mentioned charges on a transaction-specific basis. We did not examine source documentation and the allocation methodology for each of the cited charges. However, the examination of selected charges revealed that the allocation methodologies used accurately reflected the charges incurred. Therefore, we have used the amounts reported for each of the expenses noted above for purposes of these determinations.

Comment 16. Petitioner contends that SNR's home market inland freight and home market inland insurance expenses should not be deducted from the home market price for the following reasons: (1) SNR did not report these home market charges on a transaction-specific basis; (2) SNR's allocation methodology was based on 1987 expenses rather than expenses from the period of investigation; (3) response is inconsistent regarding who assumes these movement charges and whether these movement charges are included in or excluded from the gross unit price; and (4) the Department was unable to verify inland freight expenses or the amounts incurred by SNR for transportation between its regional warehouses and its warehouse in Annecy.

DOC Position. In response to petitioner's arguments regarding home market inland freight, SNR reported these charges on a transaction-specific basis and we verified those instances where the customer, rather than SNR, paid for freight. Furthermore, we have treated the verified charges for deliveries between regional warehouses and customers as a direct expense, and the remaining factory to warehouse freight charges verified in Annecy as an indirect expense. In response to petitioner's arguments regarding home market inland insurance, we verified that it was not possible to report these charges on a transaction-specific basis since the insurance policy is paid on a yearly basis. Furthermore, we have verified that inland insurance charges were excluded from the gross unit price. As for SNR's use of 1987 expenses in its allocation methodology for both home market inland freight and inland insurance, even though our request for information and methodological preference is for the reporting of expenses covering the full period of investigation, we have accepted the information as best information available.

Comment 17. Petitioner argues that the Department should disallow SNR's reported home market packing expenses because they were based on 1987 expenses and were not reported on a transaction-specific basis. Alternatively, if these home market packing charges are used, petitioner argues that the Department should disallow industrial packing expenses and the corresponding labor expenses because these expenses represent new and unverified information.

DOC Position. We have allowed SNR's reported home market packing expenses. Although our request for information and methodological preference is for an allocation of packing expenses based on weight, we have determined that it is appropriate to accept a value allocation in the case of SNR where (1) the number of transactions is very large, (2) the number of various products with different weights and dimensions is great, and (3) numerous bearings of various sizes/weights are often included in a single shipment. It would have been administratively impossible to compile this data on a transaction-by-transaction basis in the time provided for the completion of the response. (*See DOC Position* to *Comment 7.*) Therefore, we have accepted SNR's value-based allocation as the best information available for purposes of these determinations. As for SNR's use of 1987 data for home market packing expenses, even though our request for information and methodological preference is for the reporting of expenses covering the full period of investigation, we have accepted this data as best information available. However, we did not accept SNR's home market industrial packing and labor costs since they constituted substantial, new information presented on an untimely basis for proper consideration and analysis. *See, Roller Chain, Other Than Bicycle, from Japan,* 54 FR 3099 (January 23, 1989).

B. Brokerage and Handling Expenses

Comment 18. Petitioner contends that since FAG–USA imports bearings both under and not under investigation, it was not possible to calculate a brokerage and handling expense specific to the subject merchandise. Therefore, the Department should use the higher of the revised, verified charge, or the highest transaction-specific charge reported by SKF-Italy.

FAG–FRG contends that the Department should use FAG–USA's verified brokerage and handling factor.

DOC Position. At verification, we found that FAG–FRG was not able to calculate a brokerage and handling expense specific to the subject merchandise since the charges incurred on shipments entering the U.S. during the period of investigation covered the antifriction bearings under investigation as well as other products. Verification confirmed that FAG–FRG's allocation methodology was reasonable and, therefore, we have used the revised, verified brokerage and handling expense for purposes of these determinations.

Comment 19. Petitioner submits that the verification of FAG-Italy established that none of its reported brokerage and handling charges can even be indirectly related to the U.S. sales under investigation. Accordingly, as best

information available, the Department should use the higher of the revised, verified charge, or the highest transaction-specific charge reported by SKF-Italy.

FAG-Italy contends that it properly calculated average brokerage and handling costs, as it incurs such expenses on a shipment basis and shipments include products not under investigation. Because the allocation used was not distortive, the Department should use the claimed expenses in the final determinations.

DOC Position. We have used FAG-Italy's claimed expenses, as the allocation methodology on which they were based was found to be reasonable.

Comment 20. Petitioner points out that INA–FRG calculated brokerage and handling expenses by aggregating a number of different expenses, none of which, according to INA, could be reported separately. Petitioner argues that the Department should either apply this expense to the U.S. price as best information available, or apply the brokerage and handling rate found for other companies in the FRG exporting to the United States, if these rates are higher than those of INA.

INA–FRG calculated an allocation rate for movement charges which included costs for ocean freight, inland insurance and brokerage and handling. INA argues that the Department should accept this methodology because it was in place prior to this investigation and is used internally to determine movement charges. INA maintains that this method of allocation results in a per transaction charge that is reasonable and more accurate than could be derived by any other means of calculation. In order to demonstrate the Department's acceptance of alternative allocation methodologies, INA cites *Color Picture Tubes from Japan* (52 FR 44171, 44180), *Color Television Receivers from Korea* (51 FR 41365), and *Choline Chloride from Canada* (49 FR 36532).

DOC Position. We have accepted INA's allocation as best information available. Due to the manner in which INA keeps its records, there was no reasonable way to separate brokerage and handling expenses from other movement expenses. Therefore, INA could not provide separate allocation rates for the individual expenses which are included in brokerage and handling. At verification, we found that INA tracks its movement charges from the European port to its U.S. warehouse using two aggregated rates. One rate is for products shipped from its Schaeffler Walzlager oHG (SWH) plant, and another is for products from all other plants. SWH has its own brokerage and handling rate because it has a sales organization independent of the other plants. Therefore, we have accepted INA's allocation as best information available.

Comment 21. Petitioner asserts that the Department should reduce SKF-Sweden's U.S. price on the basis of the actual brokerage and handling costs for each sale. Petitioner states that in the preliminary determinations, the Department based its reduction on charges which were allocated on the basis of ex-factory transfer price.

DOC Position. We disagree. The Department verified SKF-Sweden's movement charge methodology, which uses ex-factory transfer prices, and found it to be reasonable. Therefore, we are allowing this adjustment to U.S. price for purposes of the final determination.

C. Packing

Comment 22. Petitioner asserts that no deduction for intermediate packing costs for shipment to a regional warehouse should be granted to FAG–FRG because such costs are an overhead expense and are not directly related to sales under consideration. Petitioner also asserts that no adjustment should be made for material or labor expenses for packing claimed by FAG–FRG since its material expenses were based on June/July 1988 figures and its labor expenses were based on the 1987 annual figures, neither of which were related to the period under review. Furthermore, petitioner maintains that packing and freight revenues claimed by FAG–FRG, which represent revenue received for special packing on home market sales or for freight paid by any customers, should be added to foreign market value based on the fact that the verification team found no discrepancies with respect to this claimed expense.

FAG–FRG contends that its use of June/July 1988 data on packing material costs in no way distorts the calculation. Likewise, its use of annual 1987 labor cost data fully capture annual bonuses and other fringe benefits that accrue at different points in the year. Therefore, based on its nondistortive methodology and verified data, the Department should use FAG–FRG's packing material and labor costs in the final determinations.

DOC Position. Based on our review of packing costs at verification, we determined that the intermediate packing costs should be considered part of packing expenses and, accordingly, we have adjusted the foreign market value for home market and U.S. packaging expenses. Regarding FAG–FRG's use of June/July 1988 data for packing material costs, at verification FAG management explained that the packing materials records are a minor expense and are deleted from the system after three months. Although our request for information and methodological preference is for the reporting of expenses covering the full period of investigation, we have accepted FAG–FRG's use of June/July 1988 data for material expenses and the use of annual 1987 data for labor expenses as best information available. Therefore, we have used the verified packing material and labor costs in our calculations. Furthermore, we agree with petitioner that packing and freight revenue should be added to foreign market value, and have done so based on the fact that this information was verified.

Comment 23. FAG-Italy contends that the Department's use of home market packing expenses as best information available in its preliminary determinations for FAG's alleged failure to report U.S. packing should be reversed for the final determinations.

DOC Position. As merchandise sold on an ESP basis passes through the FRG in route to the United States, FAG–Italy incurs packing expenses in both Italy and the FRG on behalf of these U.S. sales. FAG-Italy did not report export packing expenses incurred in Italy since the incurred amount was insignificant. In our preliminary determinations, as a surrogate for export packing expenses incurred in Italy, we used home market packing expenses as best information available. Even though FAG-Italy contends that the unreported packing expenses are inconsequential, there is nothing on the record to document that claim. Therefore, for these determinations, we have considered export packing expenses incurred in Italy as representative of the export packing expense incurred in the FRG and have included that amount in the overall export packing expense.

Comment 24. Petitioner points out that packing costs incurred by INA–FRG and INA-France in shipping the subject merchandise from the country of manufacture to the United States were not considered in the U.S. packing expense. Because of this fact, petitioner argues that, as best information available, the Department should deduct both INA's U.S. and home market packing costs from the U.S. price. Alternatively, petitioner maintains that for INA–FRG's packing expenses the Department should use the highest packing rate for U.S. sales reported by any German company in this investigation.

DOC Position. At verification, we found that the U.S. packing expense reported by INA-FRG and INA-France included only the costs for repacking in the United States. INA did not include the packing costs incurred in shipping the merchandise from Germany and France to the United States. Therefore, we used the home market packing expense which we calculated based on verified data as the best information available for the U.S. packing expense. This expense was applied to the home market price in the calculation of foreign market value. Expenses incurred for repacking in the United States were treated as direct selling expenses and deducted from the U.S. price.

Comment 25. Petitioner contends that, because Minebea Japan failed to report accurate information regarding packing costs, the Department should assume, as best information available, that packing costs are identical in the U.S. and Japanese markets and should make no adjustment for differences in packing costs.

DOC Position. During verification, we discovered that Minebea Japan inadvertently failed to report expenses associated with packing the merchandise at the factory for both home market and U.S. sales. The packing expenses reported in the response were those expenses associated with repacking the merchandise for delivery to home market customers only. Therefore, as best information available, we have assumed that packing costs are the same for both home market and U.S. sales and have made no adjustment for differences in packing costs.

Comment 26. Petitioner argues that the Department should not allow any deduction from home market price for packing because SKF-UK's packing data did not verify. SKF-UK maintains that the packing adjustment contained in the verification exhibits is correct. SKF-UK argues that the Department has accepted minor changes at verification in past cases and that the error found at verification was minor.

DOC Position. We agree with petitioner. SKF-UK reported that the material cost portion of packing cost was comprised of several components. At verification, we were unable to satisfactorily trace any one of these components back to source documentation. Additionally, more material components were added to the total material cost portion. When we attempted to verify the labor cost portion of the packing cost, we found that the supporting documentation was based on labor costs in an area where packing was not performed. Because both home market and export sales undergo similar packing procedures, and packing costs for all sales were not verified, we have made no adjustment for packing.

Comment 27. SKF-Italy contends that it made a mathematical error in its calculation of warehouse packing. This error was corrected and was brought to the Department's attention prior to verification. The revised information was verified. Based on established Department practice, SKF claims that this information is acceptable and should be used in the final determinations. To show that the Department has in the past allowed minor revisions to the questionnaire responses after the preliminary determination and during verification, SKF cites *Certain Internal-Combustion, Industrial Forklifts from Japan,* 53 FR 12552 (April 15, 1988).

DOC Position. The revisions to warehouse packing expenses incurred in Italy for U.S. sales were minor and did not involve any change in the methodology reported prior to verification. Because they were brought to our attention at the beginning of verification, we were able to verify the revised information, and have used that information for purposes of these determinations.

D. Marine/Inland Insurance

Comment 28. Petitioner contends that FAG-Italy's claimed home market inland insurance costs were not verified and, therefore, cannot be used for the final determinations.

DOC Position. The purpose of verification is to spot-check the respondent's questionnaire response and is not intended to be an exhaustive examination of the response. *See, Monsanto Company* v. *the United States,* 698 F. Supp. 285 (CIT 1988). Although FAG-Italy's inland insurance expense was not examined during verification, we have accepted the claimed expenses for purposes of the final determinations because we found that FAG-Italy's response was generally accurate and reasonable. Furthermore, the claimed expenses for inland insurance represented a miniscule amount of overall home market expenses.

Comment 29. Petitioner contends that since the insurance policy charge claimed by RHP covers inland insurance and marine insurance on a worldwide basis, it should be allocated over all sales including overseas sales. Petitioner further contends that, where U.S. price is based on purchase price, there is no basis for any deduction for these expenses, which are indirect expenses, because adjustments may be made to purchase price only for expenses directly related to the sales under consideration.

RHP contends that, contrary to petitioner's assertion, the expense for transit insurance was allocated over total sales. Furthermore, respondent states that it does not object to petitioner's argument that transit insurance premiums be treated as indirect selling expenses as long as this approach is consistently applied to home market, purchase price, and exporter's sales price transactions. If the Department were to adopt this methodology, transit insurance should be deducted from the home market and ESP prices but not from purchase price.

DOC Position. RHP reported, and the Department verified, that its claim for transit insurance was allocated over total sales. We have allowed an adjustment for transit insurance on purchase price sales because the transit insurance expense is a movement expense for transporting the merchandise from the factory to the U.K. port. Petitioner's argument that there is no basis for any deduction for these indirect expenses is without merit since the Department has consistently treated transit insurance as a movement charge and deducted such expenses from purchase price sales.

Comment 30. Petitioner argues that, to the extent SKF-Sweden's marine insurance charge on U.S. sales covers only shipments made by ocean, the cost of any insurance covering air shipment should be computed and deducted from U.S. price.

SKF-USA contends that the marine insurance policy covers transportation by air or ocean from Europe to U.S. ports.

DOC Position. Although SKF-Sweden's marine insurance expense was not examined during verification, we have accepted SKF's claim and explanation for purposes of the final determination because we found that SKF-Sweden's response was generally accurate and reasonable. The purpose of verification is to assess the overall accuracy of the respondent's questionnaire response and is not intended to be an exhaustive examination of the response. *See, Monsanto Company* v. *the United States,* 698 F. Supp. 285 (CIT 1988).

E. Import Duties

Comment 31. Petitioner contends that the Department should deduct customs charges identified as "merchandise processing fees" and "harbor maintenance fees" from U.S. price on

NTN's purchase price and ESP transactions.

DOC Position. We have deducted these expenses from U.S. price where we have used ESP as the basis for U.S. price. Since we did not make comparisons involving purchase price transactions, the issue of whether such expenses should be deducted from U.S. price in the case of purchase price transactions is moot.

Comment 32. Petitioner contends that the duty deducted from U.S. price on SKF-Sweden's U.S. sales should be calculated on the basis of the TSUSA duty rates and should be applied to all transactions for each class or kind of merchandise.

SKF-Sweden contends that petitioner misunderstands SKF–USA's reporting of duty paid on imports and that the U.S. duty was calculated in the same manner as it was incurred.

DOC Position. Although the duties claimed on SKF-Sweden's U.S. sales were not examined during verification, we have accepted the amounts reported for purposes of the final determination because we found that SKF-Sweden's response was generally accurate. As stated in the *DOC Position* to *Comment 28* and *Comment 30* in the Marine/Inland Insurance section above, the purpose of verification is to assess the overall accuracy of the respondent's questionnaire response and is not intended to be an exhaustive examination of the response.

F. Inland Freight

Comment 33. Petitioner contends that the Department should deny an adjustment to Nachi's foreign market value for inland freight to delivery centers because the charges were not incurred pursuant to a contract and did not constitute a "term of sale."

DOC Position. Nachi reported two types of inland freight: (1) Inland freight to a customer and (2) inland freight to a warehouse or delivery center. Because the inland freight to a warehouse or delivery center occurred before the date of sale, we treated such charges as indirect expenses.

Comment 34. Petitioner contends that the Department should exclude freight charges from the calculation of foreign market value for Nachi's inland freight on returned merchandise because such freight expenses are not related to the sale of the merchandise.

DOC Position. Nachi's allocation of inland freight expenses included freight charges on returned merchandise. For purposes of the final determination, we have made a downward adjustment to Nachi's claimed home market inland freight expenses to take into account the expenses relating to the returned merchandise.

Comment 35. Petitioner argues that no adjustment should be granted for NSK's inland freight because the reported freight costs included such non-freight charges as office courier expenses, fuel expenses at delivery centers, the cost of transferring items between various NSK plants, and freight for returns of merchandise from NSK's customers. In addition, the amount reported by NSK for foreign inland insurance was actually for fire and casualty insurance to NSK's property, rather than a movement expense. Further, the inland freight amount claimed includes freight from the factory to the distribution center, which is not a proper adjustment since the date of sale is the date of shipment from the distribution centers.

DOC Position. At verification, NSK corrected its reported home market freight expenses to exclude the non-freight costs. However, we agree with petitioner that the portion of the inland freight expense in the home market attributable to factory-to-warehouse transportation should not be treated as a direct expense. Because NSK did not break out the inland freight expense to allow us to segregate the portion attributable to pre-sale transportation, we have treated the entire amount as an indirect expense. As for the amount reported for foreign inland insurance, we have excluded the amount attributable to the fire and casualty insurance premium.

Comment 36. Petitioner contends that NTN's reported freight expenses contain an amount for transportation between the factory and distribution centers, and that this portion of the freight expense is not permitted under *Silver Reed America, Inc.*, v. *United States*, 7 CIT 23, 34 (1984), nor is it in accordance with the Department's practice, citing *Portable Electric Typewriters from Japan*, 53 FR 40937 (1988). Petitioner further argues that, since the date of sale in the home market is the date of shipment, freight expenses to NTN's distribution centers are by definition a pre-sale expense.

DOC Position. We agree with petitioner that the freight expenses to NTN's distribution centers are pre-sale expenses, and have treated the portion of the inland freight expense in the home market attributable to factory-to-warehouse transportation as an indirect expense. Where a respondent failed to break out the inland freight information to allow us to segregate the portion attributable to factory-to-warehouse, as in the case of NSK, we have treated the entire amount as an indirect expense. (*See, DOC Position* to *Comment 35* above.) In the case of NTN, from the information submitted on the record, we have calculated the average ratio of factory freight expenses to total freight expenses by type of customer. As best information available, we have assumed that all factory freight expenses are to warehouses and considered this portion to be a pre-sale expense. Accordingly, we deducted from the total home market inland freight claim the amount of the pre-sale freight expense, and have treated this portion of the claimed expense as an indirect expense.

Comment 37. Petitioner submits that the inland freight claimed by SKF-France for home market sales by Clamart (an SKF company in France) erroneously included freight charges from Clamart's factory to the warehouse, which should be considered overhead. In addition, petitioner states that the domestic freight expense includes all charges for inland freight paid by Clamart and that total shipping weight is the weight of all products sold in France, whether or not produced by Clamart. Petitioner contends that Clamart's freight revenue was similarly distorted. Therefore, petitioner argues, the Department should disallow the deduction for inland freight on Clamart's home market sales.

SKF-France argues that charges for inland freight from Clamart's factory to the warehouse on home market sales comprise only a small percentage of Clamart's total freight costs per quarter. SKF-France argues that the Department verified inland freight revenue. SKF-France further argues that the freight revenue and shipping weight are reported for domestic sales of products both domestically produced and imported.

DOC Position. SKF-France erroneously claimed factory-to-warehouse freight charges as adjustments to the foreign market value. SKF-France's post-verification approximation of factory-to-warehouse charges, submitted a month after the verification report was released and over two months after verification, was untimely. Moreover, SKF-France's allocation methodology took into account sales of merchandise not subject to the investigations (*i.e.*, imported bearings from SKF companies in other European countries) that SKF-France had already demonstrated it could separate from the sales under investigation. The Department was not able to verify SKF-France's inland freight charges in the home market claimed for the subject merchandise produced by Clamart, and therefore has not deducted them from foreign market

value. This decision does not affect home market inland freight charges claimed by ADR, which the Department has verified.

Section 12: Credit and Inventory Carrying Costs

Comment 1. Petitioner argues that the Department should not deduct inventory carrying costs incurred in the home market from foreign market value or U.S. price. Petitioner states that an adjustment for inventory carrying costs is properly made to ESP transactions for "time on water" and for time in inventory in the United States because the foreign parent is financing its U.S. subsidiary's costs. Petitioner contends that the Department should treat these expenses differently because in the home market, these types of expenses are incurred entirely at the discretion of the foreign seller which can either choose to produce to order or to sell from inventory. Therefore, if the foreign seller elects to hold merchandise in inventory in the home market, the costs of doing so are in the nature of overhead rather than selling expenses.

Moreover, petitioner disagrees with the Department's more recent practice of beginning the period for computing inventory carrying costs from the date of production (*See, Final Determination of Sales at Less Than Fair Value: Industrial Phosphoric Acid from Belgium* (52 FR 25436, July 7, 1987) and *Final Determination of Sales at Less Than Fair Value: Industrial Forklift Trucks from Japan* (53 FR 12552, April 15, 1988).) Petitioner asserts that the reason the Department originally began to take inventory carrying costs into account was its concern that expenses could be shifted from the books of the related selling subsidiary in the United States to the books of the foreign parent. Under this scenario, petitioner states that the Department determined the appropriate period for calculating when such expenses can be shifted back to the parent as being between the dates of shipment and payment, rather than between the dates of production and payment.

Further, petitioner states that while the deduction of inventory carrying costs from both ESP and foreign market value achieves parity, it goes beyond what the Department originally set out to do. Petitioner also contends that such a methodology also leads to greater distortion in the treatment of purchase price versus ESP sales.

Therefore, petitioner argues, the Department should (1) limit its adjustment for inventory carrying costs to the U.S. side of the equation and (2) begin calculating the adjustment from the date the product is shipped from the home country. Petitioner requests that if the Department continues the practice followed in the cases cited above, it should at least articulate its rationale due to the wedge it drives between purchase price and ESP transactions.

Respondents state that there is no justification for the Department to depart from its well-established practice of treating inventory carrying costs as an indirect selling expense. Respondents claim that the Department's imputed inventory interest adjustment reflecting the opportunity cost of holding inventory, is incurred on U.S., third country, and home market transactions. Respondents cite *Smith Corona Group, Consumer Products Div., SCM Corp.* v. *United States,* 713 F.2d 1568, 1578 (Fed. Cir. 1983), *cert. den.,* 465 U.S. 1022 (1984) and *Silver Reed America, Inc.* v. *United States,* Slip Op. 88-37, _____ CIT _____ (March 18, 1988) to support their contention that the adjustment must be made to all markets if the Department's calculations are to provide a true apples-to-apples comparison and to allow for an equitable price comparison in all markets.

Respondents state that petitioner's argument that the cost of inventory in the home market is not an indirect selling expense, while the cost of inventory in the United States is an indirect selling expense, is completely illogical. Respondents maintain that it should be treated as an indirect selling expense in the ESP calculation and included in the ESP offset adjustment cap as prescribed by Commerce regulation § 353.15(c). Respondents state that inventory is inventory wherever it is held and that the Department should reject petitioner's argument and use the methodology employed in the final determinations of *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan* (52 FR 30700, August 17, 1987), *Industrial Phosphoric Acid from Belgium* (52 FR 25436, July 7, 1987), and *Digital Readout Systems from Japan,* (53 FR 47844, November 28, 1988).

DOC Position. We agree with respondents. While the Department's original adjustment for inventory carrying costs may have been motivated by concerns that costs normally borne by a U.S. subsidiary could be shifted to the foreign parent, in order for comparisons to be fair, it is necessary to make similar adjustments to foreign market value. That the foreign seller chooses to sell from inventory in the home market is no different from a seller's decision to undertake ESP transactions in the United States. Because the seller incurs the opportunity cost of holding inventory in both markets, and because we adjust for that cost in the U.S. market, we must also adjust for the same cost in the home market.

Given that we make an adjustment on both sides of the equation, we have determined that the starting point for measuring inventory carrying costs for both sides should be the same. Ideally, we would start at the point where home market and U.S. merchandise are separated, *i.e.,* the last common point of the production/distribution chain for home market and U.S. merchandise. In many cases, such as in these investigations, this will be when the merchandise rolls off the production line.

With respect to the alleged wedge this methodology drives between ESP and purchase price transactions, we disagree with petitioner's underlying premise that the purpose of the inventory carrying cost adjustment is to "transform" an ESP sales price into the price that would have been charged had the sale been made directly to an unrelated purchaser in the United States, *i.e.,* a purchase price sale. The Act requires many adjustments to ESP transactions that are not required to be made to purchase price transactions, and fairness requires that when the inventory carrying cost adjustment is made to ESP, it must also be made to foreign market value.

Comment 2. Petitioner argues that the Department should use the revised allocation rate for inventory carrying costs which INA-FRG reported in its November 8, 1988 submission. Petitioner asserts that the revised rate was based on actual interest expense.

INA-FRG argues that the Department should use the allocation methodology it first presented to the Department, *i.e.,* dividing its interest costs by the value of assets, and not the methodology provided on November 8, 1988 at the Department's instructions, *i.e.,* using an effective interest rate and an average time in inventory including inventory time in the FRG. However, INA-FRG argues that if the Department uses the revised methodology, it should use the FRG short-term interest rate for the period of time the product remained in inventory in the FRG.

DOC Position. We used verified information regarding the average number of days in U.S. inventory and average U.S. interest expense during the POI. For time in inventory in the FRG and in transit, INA-FRG estimated an amount which it was unable to substantiate at verification. Therefore, we used verified home market information to determine an amount of

time in inventory in the FRG. This information included data on all products held in inventory for both domestic and export sales. Because we had no information on time in transit, as best information available we used the number of days in ocean transit for another company under investigation in the FRG. We added together the number of days in inventory in the FRG and in ocean transit and multiplied this amount by the verified FRG short-term interest rate. This was added to the inventory carrying costs incurred in the United States to determine the new inventory carrying costs on ESP transactions.

Comment 3. SKF-Sweden states that the necessary change in the application of its inventory carrying cost factor to the per unit price has been made in its revised computer tapes. SKF-Sweden therefore contends that, as the underlying data for this revision have been verified and the change is *de minimis* both in scope and effect, the revised factors should be applied in making the inventory carrying cost adjustment to SKF-Sweden's prices.

DOC Position. We agree. SKF-Sweden reported inventory carrying costs for home market and export sales based on the average time in inventory for products in both its international and domestic warehouses. At verification in Sweden, we found that export sales are only processed through the international warehouse. SKF-Sweden has, therefore, properly deducted the average time in inventory in Sweden for export sales attributable to the domestic warehouse. Because all data had been reported prior to verification and was verified, we have allowed this minor change to the data base.

Comment 4. SKF–UK asserts that it correctly calculated home market inventory carrying cost based on the instructions in the Department's questionnaire and that this information was verified. SKF–UK states that it calculated inventory carrying cost from the date of production to the date of shipment in accordance with the Department's decision in *Forklifts from Japan.* Therefore, respondent argues that the Department should accept its calculation as reported.

DOC Position. Prior to verification, SKF–UK reported that home market inventory carrying cost was based on time in inventory in the international warehouse. At verification, SKF–UK claimed that products sold in the home market spend additional time in a domestic warehouse and wanted to increase the inventory carrying cost for those sales accordingly. Because we determined that the information regarding additional time in warehouse constituted new information and a revised methodology, we verified only the time spent in the international warehouse that was originally reported. We, therefore, have allowed SKF–UK's claimed adjustment for inventory carrying cost based on the information submitted prior to verification.

Comment 5. Petitioner argues that, because none of the RHP inventory maintained by the European sales division or international sales division is related to home market sales, the Department should not account for any expenses associated with such inventories.

DOC Position. RHP based its calculation of home market inventory carrying cost on the value of the inventory carried by both the Industrial and Precision Divisions during the POI. RHP does not maintain separate inventory records for merchandise destined to be sold outside of the United Kingdom and merchandise destined for sale in its home market. Each division of RHP maintains its own inventory records of the merchandise it has in stock. Therefore, the Department has used the inventory carrying cost information submitted by RHP and verified by the Department.

Comment 6. Petitioner argues that FAG-Italy's claimed costs for imputed credit were based on 1987 data, which has no fixed relationship to costs incurred during the second half of the POI, and should, therefore, not be used by the Department.

DOC Position. For its calculation of inventory carrying costs, FAG-Italy used an average short-term interest rate, and an average number of days in inventory, based on data covering the entire POI. To derive an average cost of inventory, FAG–Italy used 1987 data only. While we requested and prefer that expenses covering the entire POI be included in the calculation of inventory carrying costs, we have accepted the FAG-Italy 1987 valuation as best information available.

Comment 7. Petitioner contends that the interest rate used to calculate credit expenses and inventory carrying costs on Minebea Japan's U.S. sales should be based on NMB–USA's actual cost of borrowing rather than the average inter-company rate verified by the Department. Petitioner maintains that the interest rate charged by a corporation to its wholly-owned subsidiary must be presumed not to be at arm's-length. Therefore, as best information available, the Department should use the greater of either the rate reported by NMB–USA or the U.S. prime rate in calculating both U.S. credit expenses and U.S. inventory carrying costs.

Minebea Japan maintains that it reported the short-term average interest rate received from unrelated lenders, which the Department verified.

DOC Position. We agree with respondent. We found at verification that the loans used to calculate the U.S. short-term interest rate were from unrelated lenders. These loans consisted of short-term commercial bank loans and commercial paper loans. The interest rates charged on the commercial paper loans consisted of the interest expense plus a cost mark-up, which is an inter-company commission but is treated as a loan for financial purposes. Because this mark-up increases the interest expense on U.S. sales, which thereby increases the interest rate, we have determined that the rate reported by Minebea Japan and verified by the Department is an appropriate interest rate to use in the calculation of U.S. credit expenses and U.S. inventory carrying costs for Minebea Japan, NMB/Pelmec Singapore, and NMB/Pelmec Thai.

Comment 8. Petitioner maintains that imputed inventory carrying costs on NMB/Pelmec Singapore's U.S. sales have been understated. Petitioner asserts that NMB/Pelmec Singapore failed to report average standing time in Singapore prior to shipment. Petitioner maintains that this expense must be deducted from ESP.

Furthermore, petitioner states that if the Department does deduct inventory carrying costs from foreign market value, the reported inventory carrying costs should be recalculated pursuant to the Department's methodology, *i.e.,* transit time and standing time should be calculated based on the interest rate in Singapore.

DOC Position. At verification in Singapore, we verified the average time from date of production to date of shipment from Singapore. This average time in inventory has been included in the calculation of U.S. inventory carrying costs.

We also have deducted inventory carrying costs from foreign market value (*see,* Comment 1 above). For purposes of this rate for calculation, we used the Singaporean short-term interest rate for time in inventory in Singapore. However, because we verified that title to the products changed hands at the Singapore port, we have used the corresponding Japanese interest rate for time in transit.

Comment 9. NSK claims that the Department should calculate the imputed credit expense for inventory

carrying costs on U.S. sales on the basis of NSK's home market short-term borrowing rate because the parent company incurs the full costs of carrying the inventory of products imported into the United States.

DOC Position. The Department disagrees with NSK's contention that the Japanese parent company incurs the full expense of carrying the inventory of products imported into the United States. At verification, we determined that the U.S. subsidiary records the goods from Japan into its inventory as of the bill of lading date, which was also consistent with its audited financial statement. Consequently, we have calculated the ESP inventory carrying cost by applying the U.S. interest rate for the average time period from bill of lading to sale to the first unrelated purchaser in the United States, as reported by NSK.

Comment 10. Petitioner claims FAG-Italy erroneously reported U.S. short-term interest rates based on the period ending December 31, 1987. Since this does not represent the rate for the entire POI, petitioner contends that the Department should use the U.S. prime lending rate for the POI as a reasonable estimate of short-term borrowing rates on U.S. sales.

FAG-Italy contends that it properly calculated an average interest rate based on actual short-term interest costs incurred during the entire POI.

DOC Position. We used the verified average interest rate, which was based on actual short-term interest costs incurred during the entire POI.

Comment 11. Petitioner claims that for sales where FAG-Italy has not yet received payment as of the date of the ESP verification, the date of verification should be used as the payment date on such transactions.

DOC Position. We disagree. For those sales where payment was not received as of the date of verification, credit expenses were calculated using customer-specific data on the average number of days accounts were outstanding.

Comment 12. Petitioner contends that FAG-Italy's calculation of home market credit expenses based on average credit terms extended to home market customers permits FAG-Italy to adjust foreign market value irrespective of the diverse terms of payment accorded to different types of customers.

FAG-Italy asserts that use of customer-specific average credit days outstanding in no way distorts the credit calculation as foreign market value itself is based on averages for sales over the six-month POI.

DOC Position. The Department prefers to have credit reported on a transaction-by-transaction basis. However, given the massive number of transactions in these investigations, we do not consider a methodology based on average credit days outstanding on a customer-specific basis to be unreasonable. At verification, we determined that FAG-Italy based its credit amount claimed on a customer-specific average due to the manner in which the records were kept. We note that this methodology does take into account the different terms of payment accorded to different types of customers. Therefore, we are using FAG-Italy's credit costs, as reported and verified, in these final determinations.

Comment 13. Petitioner maintains that FAG-Italy and FAG–FRG's U.S. credit costs are understated in the case of multiple payments against one invoice since the reported payment date is the date of the first payment and the last payment may not have been captured within the reporting time frame. Petitioner contends that FAG-Italy's verification report provides no discussion of how sales with multiple payment dates were verified. Accordingly, the Department should use the date of the last payment since FAG-Italy is incurring credit costs on transactions with multiple payment dates. Additionally, petitioner claims that for those transactions for which an outside shipping service was used, the information did not verify and, hence, the Department should use best information available.

FAG–FRG contends that petitioner has failed to present any cogent basis for substituting best information available for U.S. reported credit costs.

DOC Position. We verified that in situations involving multiple payments, if all payments had been received by the date of verification, the reported credit amounts reflect actual credit experience. For those portions where payment had not been received as of the date of verification, credit expenses were calculated using customer-specific data on the average number of days accounts were outstanding. We consider this methodology to be a reasonable representation of credit experience and have used it in these final determinations.

Verification confirmed that the manner in which shipment date was determined on merchandise shipped by an outside shipping service was reasonable. Therefore, we have used the verified credit costs on these shipments for purposes of the final determinations.

Comment 14. Petitioner contends that the weighted-average payment term calculated for the sales examined at verification should be applied to all home market sales for Minebea Japan and all third country sales for NMB/Pelmec Singapore in calculating credit expenses, rather than the payment terms reported in the responses which were based on Minebea Japan's average age of accounts receivable.

Minebea Japan and NMB/Pelmec Singapore maintain that the calculation of home market credit expenses based upon the weighted-average of accounts receivable is the only way of estimating the number of days an account is outstanding in instances where the company maintains an open accounts system. With respect to the apparent discrepancy between the average number of days reported in the responses and the average as calculated by the Department at verification, respondents maintain that the Department's calculation fails to take into account the period for which promissory notes are outstanding on these sales, which is a necessary element in calculating the average number of days that credit is extended. In support of its argument, NMB/Pelmec Singapore cites *Nylon Impression Fabric from Japan,* a case in which the Department recognized the period for which promissory notes are outstanding as a legitimate part of credit claims. Furthermore, Minebea Japan and NMB/Pelmec Singapore maintain that the Department's weighted-average calculation is based on an inadequate sample.

DOC Position. We verified the actual number of days payment was outstanding on selected sales in order to ascertain whether the average age of accounts receivable methodology used to calculate Minebea Japan's home market credit expense and NMB/Pelmec Singapore's third country expense was a reasonable estimation of actual experience. Because the reported number of credit days fell within the range of the actual days outstanding for the sample sales verified, we have accepted respondents' average age of accounts receivable methodology and used the figures reported in the responses for purposes of the final determinations.

Comment 15. Petitioner contends that the new home market interest rate calculation presented by Minebea Japan and NMB/Pelmec Singapore at verification should not be used by the Department because these new interest rates were not included in the original questionnaire responses and were not provided in a timely manner. To calculate Minebea Japan's home market

credit expense, petitioner suggests that the Department use the average borrowing rate reported in the response, which was based on the average outstanding loan balance for long- and short-term bank loans and long-term bonds.

DOC Position. During verification, we discovered that the calculation of the home market interest rate for Minebea Japan and NMB/Pelmec Singapore included long-term loans. We requested that respondents revise the interest rate based solely on short-term financing. Because this interest rate was verified, we have recalculated home market credit expense for Minebea Japan and third country credit expense incurred on NMB/Pelmec Singapore's sales to Japan and inventory carrying costs accordingly. However, we did not allow for compensating balances in the interest rate calculation because Minebea Japan did not document or otherwise sufficiently demonstrate that deposits in Japanese banks were a requirement for its commercial loans.

Comment 16. Petitioner contends that the credit period on NMB/Pelmec Thai's related party transactions was incorrectly reported. Therefore, if the Department uses such sales in its analysis, the home market credit adjustment should be based on the actual number of days from shipment to payment. Further, petitioner contends that the Department should reject the interest rate used in the calculation of NMB/Pelmec Thai's home market credit expense because it included both long-term loans and export packing credit loans. Instead, the Department should use the corrected interest rate which was verified.

Petitioner also asserts that NMB/Pelmec Thai's method of calculating U.S. credit expenses on an average credit period may understate the actual credit costs incurred on U.S. sales. Therefore, the Department should insist on an identification of the actual credit period on a transaction-by-transaction basis, or double the average period as best information available.

NMB/Pelmec Thai contends that it correctly reported, and the Department verified, the average credit period for related party sales. NMB/Pelmec Thai asserts that the Department should use the reported credit period based on the average age of accounts receivable methodology, rather than the calculation provided in the verification report because (1) the Department's calculation was based on a few selected transactions while respondent's calculation was based on the whole universe of sales, and (2) the calculation provided in the verification report omitted the price term which is a necessary element in calculating the average number of days that credit is extended.

DOC Position. Because we have determined that the Thai home market was not viable, we have based foreign market value on constructed value, as best information available. Therefore, we need not address petitioner's arguments regarding related home market sales and the home market short-term interest rate.

With respect to petitioner's comment on U.S. credit expenses, we verified the actual number of days payment was outstanding on selected sales in order to ascertain whether the average age of accounts receivable methodology used by NMB/Pelmec Thai was a reasonable estimation of actual experience. Because the reported number of credit days fell within the range of the actual days outstanding for the sample sales verified, we have accepted respondent's average age of accounts receivable methodology and used the figures reported in the response for purposes of the final determinations.

Comment 17. Petitioner argues that INA-France's home market credit expenses should be recalculated on the basis of days credit was extended and the short-term average interest rate actually paid. Petitioner asserts that this should be done because of the following problems with respondent's methodology: (1) INA-France had the ability to calculate credit expense on a transaction-by-transaction basis, (2) the data INA-France used was for the calendar year 1987 and, thus, cannot be directly related to sales made during the POI, and (3) the total cost of short-term borrowing includes commissions paid to banks for short-term credit. Petitioner stated that if the 1987 data was used for the interest rate, it should be net of commissions.

DOC Position. We agree with petitioner that INA-France had the ability to calculate home market credit expense on a transaction-by-transaction basis. Therefore, the Department recalculated credit for each transaction using the average short-term interest rate net of commissions and the actual number of days credit was outstanding for the transaction. While we requested and prefer that expenses covering the entire POI be included in the credit calculation, we have accepted the INA-France data as best information available.

Comment 18. Petitioner argues that the Department should use the U.S. credit expense reported by INA-France in its November 8, 1988 submission, as opposed to the rate INA-France originally reported. Petitioner points out that the original calculation was based on total interest expense divided by total assets. Petitioner states that this reduces the interest expense by including equity, as well as revenues, in the denominator. The second methodology was based on INA-France's average percentage interest expense. Petitioner argues that the second method represents a more accurate measure of actual interest expense on U.S. sales.

DOC Position. We agree and are using INA-France's revised U.S. credit expense allocation rate in these final determinations.

Comment 19. Petitioner argues that the Department should make no adjustment to INA-FRG's foreign market value for credit expense for the following reasons: (1) INA-FRG failed to provide actual interest expense incurred on a transaction-by-transaction basis, although the company's records of shipment and payment allowed it to do so, (2) INA-FRG's allocation was based on an unverified estimate of domestic sales, and (3) INA-FRG's interest expense was based in part on sales and expenses associated with products not under investigation.

DOC Position. We found at verification that INA-FRG had the ability to calculate credit expense on a transaction-by-transaction basis. Therefore, the Department recalculated credit for each transaction using the verified average short-term interest rate and the actual number of days credit was outstanding for the transaction. The domestic sales value used in the allocation was verified and a minor correction was made. We also noted at verification that respondent does not classify its expenses according to the class or kind criteria delineated by the Department.

Comment 20. Petitioner argues that the Department established at verification that GMN's home market credit expenses were not reported or calculated correctly. Accordingly, the Department should not make any adjustment to foreign market value for new credit expense information which was received at verification.

GMN asserts that the Department should use GMN's home market calculation of average credit days submitted on November 8, 1988. GMN argues that its home market credit cost calculation is appropriate since its methodology for computing credit costs and the data relied upon to establish the average number of days credit was extended was verified. Respondent contends that the Department cannot

use an average credit period that was based on a review at verification of the pre-selected home market sales and a few randomly selected sales.

DOC Position. The Department has rejected GMN's original calculation since it discovered at verification that GMN's calculation included data related to sales of merchandise not under investigation. The inclusion of sales not under investigation distorted the actual average credit period on the products under investigation. We found at verification that the average credit period on GMN ball bearing sales in the home market was consistently much less than GMN had originally reported. Therefore, for purposes of these final determinations, the Department has used an average credit period based upon its own extensive review of sales at verification.

Comment 21. GMN contends that if the Department considers only short-term loans for purposes of determining a home market interest rate, then the Department must add bank charges to short-term credit expenses.

DOC Position. The Department has used a revised interest rate based on the short-term borrowing of GMN net of bank charges. The interest rate GMN originally reported was based on the total bank debt of GMN, including both long- and short-term borrowing and related bank charges. Because the verified U.S. interest rate is void of bank charges, we have used a home market interest rate net of bank charges for home market credit and inventory carrying cost, to insure consistency between the home market and the U.S. interest rates.

Comment 22. Petitioner contends that SNR does not track home market credit days. Therefore, the Department should use the standard credit days offered to home market customers as best information available.

DOC Position. To calculate credit expense for these final determinations, we have used SNR's average number of credit days for OEMs and distributors as reported and verified.

Comment 23. Petitioner asserts that interest earned on a bank account is not the proper interest rate to use in calculating home market credit expense for SKF-Sweden. Petitioner further asserts that the Department was unable to verify the number of credit days outstanding in the home market. Therefore, petitioner argues, the Department should not allow an adjustment to FMV for credit costs and should assume that U.S. credit costs are equal to home market credit costs. In the event that the Department does allow a credit cost adjustment to FMV, petitioner argues that the interest rate used should be the average short-term interest debt rate of the other companies under investigation and that the credit cost amount must be reduced by the amount of income received in the form of late payment interest charges.

SKF-Sweden argues that the interest earned on its bank account is the proper interest rate to measure SKF-Sweden's credit expense. Since SKF-Sweden had no short-term debt during the POI, the opportunity cost of its payment terms should be measured by the interest it could have earned from the receivables which were outstanding. SKF-Sweden also argues that petitioner's suggestion to use the average short-term rate of other companies under investigation is not appropriate because SKF-Sweden is the only company in Sweden under investigation.

Furthermore, SKF-Sweden contends that using an average number of credit days to calculate credit expenses in the situation where actual payment days were not available does not distort or increase SKF-Sweden's credit costs and that the Department should use the verified figure in the calculation of credit expenses. SKF-Sweden submits that its credit expense data are reliable and have been verified and thus, are more accurate than petitioner's assumption that U.S. credit costs are equal.

DOC Position. We verified that SKF-Sweden incurred no short-term debt during the POI. We also verified the short-term interest rate SKF-Sweden earned on its bank account. We have determined that this interest rate is the best evidence of SKF-Sweden's short-term borrowing costs during the POI. At verification, SKF-Sweden claimed that it had allocated interest revenue from late payment by customers to all home market sales because it was not possible to trace such revenue to specific sales. We have added the reported interest revenue to the home market net price. We have also accepted the use of an average number of credit days as a reasonable approximation of credit days outstanding for those sales where actual payment had not yet been received.

Comment 24. SKF-UK argues that the interest rate established at the cost verification should be used for purposes of calculating home market credit.

DOC Position. We agree with SKF-UK. The interest rate verified during the cost verification is the best evidence of SKF-UK's short-term borrowing cost.

Comment 25. Petitioner contends that to calculate U.S. credit days for the SKF companies for sales with payment outstanding, the Department should use either the longest payment term on those sales where payment is unsettled or the period between date of sale and the date the last computer tapes were received by the Department.

SKF-USA submits that its credit expense adjustment was based on actual lending experience for those transactions in which payment was received subsequent to the first SKF-USA submission to the Department. For sales with payment unsettled, SKF-USA states that it has used the average credit days outstanding.

DOC Position. The Department is using the verified average number of credit days for all AFBs during the POI for purposes of these final determinations. We have accepted the use of an average number of credit days as a reasonable approximation of credit days outstanding for those sales where actual payment had not yet been received.

Comment 26. Petitioner states that the Department should use the longest payment terms for any U.S. customer as the best information available to calculate U.S. credit expenses for NTN, since OEMs and other large purchasers in the United States frequently exceed the terms of credit granted to them. The ESP verification report stated that NTN was preparing data on customer-specific credit, but such data was not yet provided by February 16, 1989 and, in any event, would be untimely if submitted after verification. NTN states that customer-specific credit data was submitted at verification and was also included on the computer tapes and printouts filed with the Department on February 15, 1989.

DOC Position. The information used to determine U.S. credit expense for these final determinations was verified and was provided for the record on February 15, 1989. Where NTN reported actual payment dates, we have imputed credit based on the period from shipment to payment. Where it was not provided, we have used customer-specific information on the average number of days accounts were outstanding as provided by NTN and verified by the Department.

Comment 27. Petitioner contends that NSK's home market interest rates should not be used to calculate U.S. credit costs. Petitioner states that the U.S. short-term interest rate must be used for the calculation of these U.S. expenses. Petitioner contends, however, that the U.S. interest rate should not be offset or calculated based on interest income derived from monetary investments, as NSK originally advocated.

NSK contends that the Department should use the verified home market

short-term borrowing rate to calculate NSK's U.S. credit expenses during the four months of the POI in which no U.S. borrowing occurred.

DOC Position. We agree with petitioner. We have calculated the U.S. interest expense for credit costs using an average of the actual U.S. short-term borrowing rates reported by NSK for the POI, even though NSK did not borrow in each month of the POI. We have determined that this interest rate is the most representative of the U.S. subsidiary's cost of extending credit during the POI.

Comment 28. Petitioner contends that NTN and NSK did not provide any documentation of a requirement to maintain compensating balances with their banks in Japan as a condition of borrowing. Therefore, the Department should disregard compensating balances in the calculation of home market credit costs in these final determinations.

NTN states that the Department should use the interest rate submitted in its September 6, 1988 response, which includes a cost for compensating deposits in calculating NTN's credit expenses. NTN states that the interest rate calculation, prepared in the same manner, was accepted by the Department in the final determination of *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan* (52 FR 30700, August 17, 1987).

DOC Position. NSK dropped its claim for an adjustment on compensating balances following the preliminary determinations. We agree with petitioner that NTN was unable to document or otherwise sufficiently demonstrate that deposits in its Japanese bank accounts were a requirement for its commercial loans. Consequently, to calculate NTN's home market credit expenses, we used the nominal interest rate consistently charged by NTN's banks, as verified.

Section 13: Discounts and Rebates

Comment 1. Petitioner makes numerous arguments regarding certain revisions made by respondents to their responses subsequent to verification. Specifically, with respect to revisions to U.S. price, petitioner contends that the Department should: (1) In the absence of conclusive evidence, assume that previously unreported cash discounts and rebates were granted on all sales by Nachi; (2) deduct an unreported rebate from all U.S. sales by SNR; (3) deduct early payment discounts from U.S. sales which FAG–FRG failed to report; and (4) deduct from U.S. sales price, rebates and quantity discounts which FAG-Italy failed to report. For home market rebates unreported prior to verification, petitioner urges the Department to reject revised SNR responses because the revisions were submitted after verification and are therefore untimely.

Petitioner also makes the following specific allegations with respect to revisions of rebate and discount adjustments claimed by the respondent companies.

Petitioner claims that the Department should reject home market rebates and discounts claimed by NSK because NSK failed to demonstrate that these expenses were directly related to sales, and that NSK's revised allocation methodology which allocates discounts and rebates on a customer-specific basis was submitted subsequent to verification and, therefore, is untimely. In addition, petitioner contends that the Department should reject for the purpose of the final determinations those rebates and discounts claimed under programs which NSK failed to adequately or accurately describe in pre-verification responses.

Petitioner contends that ICSA's claimed "year-end" rebates in the home market should be disallowed because: (1) The 1987 rebates are not reflective of the rebates incurred during the period of investigation; (2) the allocation methodology failed to tie the rebates claimed to specific sales; and (3) the rebates are based, in part, on products outside the scope of the investigation. Similarly, INA–FRG grants rebates at the end of the year based on the amount of purchases a customer makes during the calendar year. Petitioner argues that the Department's precedent requires that the respondent (1) demonstrate that accrued but unpaid rebates were actually paid in prior years, and (2) substantiate the level of those rebates.

Petitioner claims that SKF-Sweden's allocation methodology resulted in an erroneous calculation of the amount of discounts and rebates claimed on U.S. sales and therefore, the Department should apply the highest discount granted to a customer to all U.S. sales to that customer. SKF-Sweden claims that petitioner misunderstands the manner in which such rebates and discounts were applied to U.S. sales.

For home market discounts claimed by FAG–FRG, petitioner contends that respondent failed to substantiate that the following were related to sales under investigation: (1) Early payment discounts, (2) discounts related to invoice and pricing errors, (3) compensatory discount credits, and (4) other special discounts. Petitioner also alleges that FAG–FRG implemented a flawed allocation methodology. Petitioner claims the Department should either disallow the discounts claimed or treat the discounts as an offset to U.S. indirect selling expenses. Respondent maintains that basic discounts were reported on a sales-specific basis and that other discounts were reported on a customer-specific basis.

Petitioner requests that the Department disallow any adjustment to foreign market value for cash discounts claimed by GMN because the original information submitted was not sufficiently verifiable in that their method of reporting was seriously flawed.

Petitioner contends that FAG-Italy improperly allocated home market rebates over sales not under investigation. As such, the Department should not treat the claimed rebate amounts as direct expenses. FAG-Italy argues that the allocation methodology was reasonable and non-distortive, as verified by the Department.

DOC Position. The Department allows revisions to responses after the preliminary determination and during verification so long as the revisions are minor and do not constitute "new responses," *See, Certain Internal-Combustion, Industrial Forklift Trucks from Japan,* 53 FR 12552 (April 15, 1988). Substantial revisions submitted after the preliminary determination are not accepted because insufficient time exists at that point to analyze and verify the data.

Where the Department discovered minor errors during verification on certain rebates and discounts claimed, we verified the correct information and requested the company to submit a revised response. For information which we were unable to verify, the Department disallowed the claimed rebate or discount adjustments. With respect to revisions submitted on U.S. sales, outlined in the first paragraph of comment one for rebates and discounts, the Department will allow the adjustments to U.S. price for Nachi, SNR, FAG–FRG, and FAG-Italy for the following reasons.

During verification, Nachi substantiated which customers received the cash discounts and rebates, the amount of the discount or rebate given, and that these discounts and rebates were claimed on a sales-specific basis. Therefore, the Department decided to accept this minor adjustment submitted by Nachi. Petitioner was mistaken in his assertion that SNR's home market rebate information was untimely. SNR submitted the customer-specific rebate information prior to verification and the Department had sufficient time to analyze and verify the data submitted. The Department also determined that

the one U.S. rebate which SNR failed to report constitutes a minor revision. Therefore, we applied the rebate percentage against the transactions of this customer for the POI, which is consistent with SNR's allocation methodology. For FAG-Italy and FAG-FRG, the Department will accept the minor revisions and deduct quantity discounts, rebates, and early payment discounts from U.S. sales.

With respect to NSK, the Department has accepted only those home market discounts and rebates claimed that NSK accurately and adequately reported in both the narrative and sales listing portions of the response, and that were paid to unrelated customers. All rebates and discounts claimed under inaccurately or inadequately described programs have been rejected. For those rebates and discounts accepted, the Department has determined that NSK's methodology is reasonable in that the discounts and rebates claimed were allocated on a customer-specific basis. Although the revised allocations were not presented until verification, because of the relatively minor nature of the revision, we have accepted the revised customer-specific allocations.

ICSA grants home market rebates at the end of the year, based on the amount of the customer's annual purchases. To report these rebates, ICSA allocated the claimed rebate percentages on a customer-specific basis. During verification, the Department found the allocation method employed was reasonable, and consistently applied. As such, the Department will accept the revised figures for the purpose of the final determinations.

INA-FRG also grants "year end" rebates. During verification, INA-FRG documented that their home market year end rebates were granted as a standard business practice, and were granted on a customer-specific basis. The Department has found it reasonable that INA-FRG estimate their rebates based on 1987 rebates for that portion of 1988 covered by the POI. We, therefore, will adjust foreign market value for INA-FRG's home market rebates claimed.

Regarding the allocation methodology employed by SKF-Sweden, during verification, the Department found that SKF-Sweden's method of reporting U.S. cash discounts and rebates was customer-specific and properly applied to U.S. sales. Therefore, the Department will accept the claimed amounts for the purpose of the final determinations.

For FAG-FRG, the Department determined that the discounts were reported on the same basis as they were granted, and that the allocation method utilized was consistently applied and reasonable. All discounts were either granted on a sales-specific or customer-specific basis. Therefore, the Department will deduct the claimed amounts from the appropriate sales for the purpose of the final determinations.

During verification, the Department found that for certain home market sales transactions, GMN had erroneously reported discounts which had not been paid and failed to report other discounts which had been granted. Therefore, for the purpose of the final determination, the Department has disallowed an adjustment to foreign market value for the unpaid discounts discovered during verification and has allowed an adjustment for all other transactions where a cash discount was claimed.

The Department accepts FAG-Italy's allocation methodology for the purpose of the final determinations. FAG-Italy allocated all rebates on sales eligible for rebates over all sales which received rebates. The Department determined during verification that the allocation method employed was reasonable, consistent, and accurately reflects rebates incurred on a per sale basis.

Comment 2. Petitioner contends that the Department should disallow FAG-FRG's home market quantity discounts because FAG-FRG failed to demonstrate that: (1) Quantity discounts were granted to at least 20% of such or similar merchandise sold in the home market; or (2) the discounts are warranted on the basis of savings which are specifically attributable to the production of the different quantities involved.

Respondent argues that petitioner misunderstands § 353.14 of the Department's regulations in that if neither criteria are met, the Department will include the discounted home market sales in calculating the weighted average price. Respondent asserts that failure to meet the criteria does not enable the Department to deny the claimed discounts.

DOC Position. The Department agrees with respondent. The 20% requirement applies where the respondent requests a general adjustment for differences in quantity. The 20% rule is not a prerequisite for deducting discounts actually given on sales. Therefore, the Department will allow the claimed discounts and include the discounted sales in calculating the weighted-average of home market prices.

Comment 3. Rose Bearing Company, Ltd. argues that under section 773(a)(4)(A) of the Act, the Department should allow an adjustment for a quantity discount on a military sale because verification demonstrated that the discount claimed was a valid quantity discount.

DOC Position. Because the U.S. sale in question was a military sale that entered the United States under schedule 8 of the TSUSA, the sale is not liable for antidumping duties, and the sale has been excluded from the database for the purpose of determining the dumping margins. Therefore, this issue is moot.

Comment 4. Petitioner contends that the Department must determine whether NSK's post-sale home market rebates were customary and in the ordinary course of trade or, instead, were made solely to avoid potential antidumping duty liability. Petitioner also claims that the Department should disregard rebates paid on sales to related parties.

DOC Position. The Department found no evidence during verification that the post-sale adjustments were granted to avoid antidumping duty liability. NSK's response and documentation provided at verification support a conclusion that the adjustments claimed were customary and in the ordinary course of trade. Therefore, the Department will allow these rebates for the purpose of the final determinations. Because the Department will not consider NSK sales to related parties in the final determination, the Department need not address the issue of rebates on related sales.

Section 14: Selling Expenses

Comment 1. Petitioner contends that RHP's claim for home market advertising expenses should not be allowed under 19 CFR 353.15(a) since the Department reported that it saw no indication that these expenses were directed toward the customers of RHP's customer. Petitioner also argues that U.S. advertising expenses claimed by RHP should be treated as a direct selling expense. Furthermore, petitioner argues that RHP may have double counted its home market advertising expense and may be attempting to obtain adjustments for the same expense twice.

RHP argues that the Department should treat advertising costs in both markets as indirect selling expenses in the final determination since RHP reported the same types of advertising expenses for both the US and home markets. Respondent further argues that there is no support in the record for Torrington's speculative assertion that "RHP may be attempting to obtain home market adjustments for the same expense(s) twice."

DOC Position. RHP's home market and U.S. advertising claims are for indirect selling expenses. The

Department established at verification that the advertising expenses incurred by RHP were for advertisements not directed at the customer of RHP's customer. We have therefore treated RHP's advertising expenses incurred in the U.S. and home markets as indirect selling expenses for purposes of the final determinations. The Department verified RHP's indirect selling expenses, including advertising, and determined that RHP has not claimed adjustments for the same expense twice.

Comment 2. Petitioner contends that SKF-Italy has not justified its claim that all U.S. advertising expenses are indirect selling expenses. In particular, SKF-Italy has not submitted samples of actual advertisements.

SKF-Italy argues that it has provided a detailed description of all of its U.S. indirect selling expenses, including advertising, and these amounts were verified.

DOC Position. SKF-Italy claimed all U.S. advertising expenses as indirect selling expenses. We verified SKF-Italy's U.S. indirect selling expenses and found no discrepancies. The purpose of verification is to assess the overall accuracy of the response. This does not imply that the Department is required to review each and every charge and adjustment. Because we were able to verify that SKF-Italy's U.S. indirect selling expense claim is accurate, we are accepting their claim of advertising as an indirect selling expense.

Comment 3. Petitioner argues that the Department should not deduct advertising expenses for the printing and publication of catalogues in the home market as a direct selling expense because SKF-France has not established, and the Department has not verified, that these expenses were incurred by SKF-France on behalf of its customer for sales to the end-user of the merchandise.

SKF-France argues that the claimed adjustment for advertising expenses was based on actual expenses incurred during the period of investigation which were directly related to the products under investigation.

DOC Position. The purpose of verification is to assess the overall accuracy of the response. This does not imply that the Department is required to review each and every charge and adjustment at verification. Because we were able to verify that the response submitted by SKF-France was generally accurate, we have accepted this adjustment as verified and have treated it as a direct selling expense for purposes of the final determination. However, for sales which are made to OEMs, we are treating such expenses as indirect selling expenses because respondent's catalogues do not promote the merchandise sold by the OEM.

Comment 4. Petitioner states that the Department should deny Nachi's claimed adjustment for expenses relating to the distribution of promotional samples in the home market because such samples were not a condition of sale, attributable to the resale of merchandise by the purchaser, nor does any other evidence exist that a direct relationship exists between the samples and sales under consideration.

DOC Position. We consider the expense incurred in the distribution of samples to be an appropriate sales promotion expense and we have made this adjustment. Providing samples to potential customers is a legitimate form of advertising. For expenses incurred in advertising or sales promotion to be considered a direct selling expense, there must be an assumption by the seller of a purchaser's advertising costs (see 19 CFR 353.15(b)). We find that to be the case in Nachi's claimed sales promotion expense.

It is inherently very difficult to tie any form of advertising to a specific sale, and the Department has never made that a requirement before accepting a claimed advertising expense as an appropriate direct selling expense. Advertising need only be proven to be directed toward the customer's customers. Therefore, expenses incurred in providing samples to dealers and distributors in the home market have been allowed as direct selling expenses. We have treated the expenses for samples to OEMs in the home market as indirect selling expenses since the OEM does not sell or advertise the subject merchandise.

Comment 5. Petitioner states that the Department should deny Nachi's home market advertising expenses which allegedly relate to sales to OEMs because Nachi failed to demonstrate that expenses for advertisements in newspapers, trade journals and on billboards were directed to the OEM's customer.

DOC Position. In the preliminary determinations, as well as in these final determinations, we have disallowed advertising expenses on OEM sales that have been claimed as direct expenses. Instead, we have treated such expenses as indirect selling expenses. For advertising to be treated as a direct expense, it must be assumed on behalf of a respondent's customer; that is, in the instant case, it must be shown to be directed toward Nachi's customer's customer. Such advertising was not undertaken or demonstrated to have been undertaken by Nachi on behalf of its OEM customers.

Comment 6. Petitioner contends that the Department should deduct from U.S price any expenses incurred with respect to U.S. sales of ICSA merchandise, whether incurred in Italy, France, or the United States. In addition, petitioner argues that a discrepancy in the U.S. advertising expense calculation identified at verification in the United States should be corrected in the final determinations.

DOC Position. We have properly deducted all verified indirect selling expenses incurred on sales to the United States. We have revised the amount incurred for advertising based on verified information.

Comment 7. Petitioner contends that ICSA's home market advertising expenses should be disallowed because it has not been established by respondent whether these expenses were incurred on the behalf of second-level customers or original purchasers. In addition, petitioner argues that these expenses do not merit consideration as an indirect selling expense because it is ambiguous as to what portion of these expenses are attributable to home market or export sales.

ICSA contends that the home market advertising and sales efforts of SNRI, SNR's Italian sales subsidiary, are directed at the ultimate consumer of bearings. ICSA argues that its advertising expenses should be classified as direct selling expenses.

DOC Position. ICSA presented no convincing evidence that the reported home market advertising expenses were incurred on behalf its customer. In addition, we found that advertising cost centers used to calculate advertising expenses contained items indirectly related to advertising efforts. Therefore, we are treating these home market advertising expenses as an indirect selling expense.

Comment 8. Petitioner contends that there should be a corresponding deduction from SNR's exporter's sales price for any advertising deductions made in the home market. Petitioner asserts that it is likely that respondent has not reported certain home market advertising expenses incurred for U.S. sales.

DOC Position. We have used the data which was reported and verified. We verified the basis of claimed advertising expense adjustments and saw no evidence of unreported advertising expenses.

Comment 9. Petitioner contends that the Department should deduct from U.S. price any advertising expenses incurred

in either France or the United States with respect to U.S. sales of SNR merchandise.

DOC Position. We saw no such evidence of unreported advertising expenses in either market. We have used verified information for these final determinations.

Comment 10. Petitioner contends that the Department should disallow SNR's home market advertising expenses as direct selling expenses for the following reasons: (1) SNR's claim and demonstration that certain expenses are related to distributors does not automatically make these expenses direct; (2) the Department could not verify whether these efforts were directed at end-users or distributors; (3) SNR has admitted that OEM advertising was in reality public relation efforts to keep OEM customers informed on the financial health and the quality control procedures of SNR; (4) reported home market advertising expenses are in petitioner's estimation fixed expenses such as salaries and fees for SNR employees working on advertising and promotion; and (5) SNR used 1987 expenses as well as products outside the scope of the investigation in its home market allocation methodology.

SNR contends that 40 percent of its home market advertising and sales promotion expenses were directed at the ultimate consumer of bearings. SNR argues that these advertising expenses for invitations to trade shows, annual reports, quality brochures and leaflets, angular contact bearing brochures, and press advertisements should be treated as direct selling expenses.

DOC Position. SNR presented no convincing evidence that the reported advertising expenses were incurred on behalf of or directed at the customer of its customer. We found that the claimed OEM advertising efforts were for public relation efforts designed to educate SNR's OEM customers. Also, quality brochures were used by SNR's quality control department to inform its customers, not its customer's customers, on this department's activities. The advertising examples which SNR submitted were institutional in nature. Therefore, we have treated these home market advertising expenses as an indirect selling expense.

Comment 11. Petitioner contends that FAG–FRG divided its claimed U.S. advertising expenses into direct and indirect portions based on management's experience which is unsupported by the record. Accordingly, these claimed expenses should be treated as direct selling expenses.

FAG–FRG contends that it calculated advertising expenses based on management's best estimate as to how to subdivide advertising expenses into direct and indirect segments since the company did not maintain records that would have been of assistance to it in this endeavor. FAG-Germany recognizes that this approach was less than precise but it was the most reasonable under the circumstances.

DOC Position. At verification, we determined that these expenses were institutional in nature and not related specifically to the subject merchandise. Therefore, for the final determinations, we have treated these expenses as an indirect selling expense.

Comment 12. Petitioner argues that those home market advertising expenses claimed by FAG–FRG either were incurred outside the period of investigation, not directly or indirectly related to sales of the subject merchandise during the period of investigation, and were not properly allocated. Accordingly, the Department should disallow the claimed expenses as an adjustment to foreign market value. However, should the Department choose to treat such expenses as part of the home market offset, only those expenses which did verify should be included. In the alternative, none of the expenses should be included as part of the offset.

FAG–FRG contends that its claim for a direct selling expense adjustment to foreign market value for advertising expenses incurred in the home market should be allowed in the final determination. In support, FAG–FRG claims that the reported expenses were directed toward the home market, employed a nondistortive allocation methodology to separate expenses among bearing and non-bearing products, and justifiably used annual data to capture the costs of applicable activities over the entire year.

DOC Position. Verification of FAG–FRG's claimed advertising expenses indicated that they were of an institutional nature and not related specifically to the subject merchandise. Therefore, we have treated these claimed expenses as indirect selling expenses in the final determinations.

Comment 13. Petitioner claims that FAG-Italy provided no support for its segregation of U.S. advertising expenses into direct and indirect expenses. Consequently, all U.S. advertising expenses should be treated as direct selling expenses for purposes of the final determination.

FAG-Italy argues that it made a reasonable allocation of U.S. advertising expenditures between those directed at its customer's customers and those focused on its own customers. Accordingly, the claimed expenses should be used in the final determination.

DOC Position. At verification, we determined that these FAG-Italy's expenses were institutional in nature and not related specifically to the subject merchandise. Therefore, for the final determinations, we have treated these expenses as an indirect selling expense.

Comment 14. Petitioner asserts that FAG-Italy has failed to establish that home market advertising expenses are incurred on advertising and sales promotion directed at the second-level customer or end-user of the product other than the original purchaser. Therefore, the Department should reject this claim as a direct selling expense in the home market.

FAG-Italy asserts that its claim for a direct selling expense adjustment to foreign market value for advertising expenses should be allowed in the final determination since it demonstrated that these expenses were directed to its customers' customers. Further, FAG-Italy asserts that verification supports that the claimed expenses were properly claimed and incurred as direct selling expenses.

DOC Position. Verification of FAG-Italy's claimed advertising expenses indicated that they were of an institutional nature and not related specifically to the subject merchandise. Therefore, we have treated these claimed expenses as indirect selling expenses in the final determinations.

Comment 15. Petitioner contends that the cost of sample bearings claimed as a direct selling expense by FAG-Italy should be disallowed not only because they were shipped in 1987, but also because they lack any direct relationship to the products under investigation.

FAG-Italy argues that the Department's verification report misrepresented FAG's claim for the cost of sample bearings as a direct selling expense by stating that these expenses represented "the cost of *shipping* sample bearings * * * " (emphasis added). Rather, the claimed expenses represent the costs of the free sample bearings themselves. Accordingly, which the Department should treat this cost as a direct selling expense in its final determination.

DOC Position. We have deducted as a direct selling expense the cost to FAG-Italy of providing samples to distributors. The cost of samples provided to OEMs has been treated as an indirect selling expense because the requirements of 19 CFR 353.15(b) have not been met. The shipping cost of these

sample bearings was not claimed as part of the expense FAG-Italy reported.

Comment 16. Petitioner argues that the Department should allow no direct adjustment to FMV for home market advertising expenses because INA-FRG has failed to demonstrate that such expenses are incurred on advertising directed at the second-level customer or end-user of the product. Petitioner states also that it appears that INA's home market expenses may include expenses attributable to export sales. Petitioner contends that the Department should allow no indirect adjustment as well. Petitioner points out that INA had based advertising expense in part upon an unsubstantiated attribution of expenses incurred by INA's technical literature cost center. In addition, total advertising expenses, including expenses incurred with respect to products not under investigation, were allocated over INA's total domestic sales, which, petitioner argues, the Department was unable to verify.

INA-FRG argues that advertising expenses should be treated as direct expenses. INA-FRG states that its allocation methodology is reasonable and cites *Color Picture Tubes from Japan*, 52 FR 44171 (1987). INA-FRG claims that its advertising expenses constitute a direct selling expense because the expenses were incurred for advertising directed at its customer's customers. Respondent states that the Department verified this and refers to the Verification Report at pages 11-12.

DOC Position. We have treated these advertising expenses as indirect selling expenses. At verification, INA-FRG was unable to demonstrate that its claimed expenses were incurred on behalf of its customers. We also verified that the allocation of these expenses was reasonable.

Comment 17. Petitioner argues that INA-France's U.S. advertising expenses should be deducted as a direct expense because catalogs and price lists may be provided to respondent's customer to use in reselling the merchandise. Petitioner cites *The Timken Company v. United States*, 673 F. Supp. at 510-514.

DOC Position. INA-USA included the costs incurred for advertising in the United States in its calculation of indirect selling expenses. We found no evidence that INA-USA incurred expenses on advertising directed at the customer's customer.

Comment 18. Petitioner argues that the Department should allow no direct adjustment to foreign market value for INA-France advertising expenses because respondent was unable to demonstrate that its advertising was directed at the second-level customer or end-user of the product. Also, these expenses should not be allowed as an indirect selling expense because respondent provided no evidence that they were incurred only for home market sales, as opposed to export or U.S. sales.

DOC Position. We are treating these advertising expenses as indirect expenses. INA was unable to demonstrate that its claimed advertising expenses were incurred on behalf of its customers. At verification, we found that INA allocated its advertising expenses over total sales (domestic and export) for 1987. Because INA's reported expenses were incurred on all sales, we added the advertising expense allocation rate in the home market to indirect selling expenses in the U.S. market. INA included the advertising expenses it incurred in the U.S. market in indirect selling expenses.

Comment 19. Petitioner states that NTN should be denied an adjustment for home market advertising expenses because NTN has failed to demonstrate that such expenses were assumed on behalf of NTN's customer.

DOC Position. NTN did not claim home market advertising expenses as direct selling expenses. We are treating them as indirect selling expenses.

Comment 20. Because NSK's U.S. catalog, submitted as part of its response, indicates that it was "printed in Japan," petitioner contends that NSK's Japanese advertising expenses should be allocated over U.S. as well as home market sales. The appropriate amount could then be deducted from exporter's sales price. Petitioner makes the same comment for the identical expenses for NTN and Nachi.

DOC Position. NSK, NTN and Nachi all reported the cost of printing English language catalogs in their claimed indirect selling expenses for U.S. sales. Properly, such expenses, if incurred on behalf of U.S. distributors, should have been reported as direct selling expenses. However, inasmuch as § 353.23(a) of the Department's regulations allows the Department to disregard insignificant adjustments, and we have verified that those expenses are insignificant, we have treated them as indirect selling expenses for purposes of the final determinations.

Comment 21. Petitioner maintains that NMB/Pelmec Singapore improperly claimed U.S. advertising expenses as indirect selling expenses. Because NMB/Pelmec has not provided sufficient information demonstrating that these expenses constitute indirect selling expenses, the Department should deduct all advertising costs as direct selling expenses from the U.S. price.

DOC Position. We saw no evidence that the advertising expenses claimed on U.S. sales were incurred on behalf of NMB/Pelmec Singapore's customers. We have, therefore, treated these expenses as indirect selling expenses.

Comment 22. Petitioner contends that NMB/Pelmec Thai's advertising expenses in the United States consisted of multi-product catalogs, trade journals, trade shows, and on-site displays and photographs. Such advertising expenses are not shown either to be incurred on behalf of NMB/Pelmec-Thailand's U.S. customers or to be institutional in nature. Therefore, petitioner maintains that there is insufficient data upon which to determine that such costs are indirectly related to the sales under consideration. As such, petitioner contends that these expenses should be presumed to be direct selling expenses.

DOC Position. We saw no evidence that the advertising expenses claimed on U.S. sales were incurred on behalf of NMB/Pelmec-Thailand's customers. Therefore, we have treated these expenses as indirect selling expenses.

Comment 23. Petitioner contends that Minebea Japan was unable to demonstrate at verification that the reported home market advertising expenses were the result of advertising incurred on behalf of its customers. Therefore, the Department should disallow any adjustment for home market advertising expenses in the final determination.

DOC Position. Minebea Japan was unable to demonstrate at verification that the advertising expenses claimed on home market sales were incurred on behalf of its customers. Therefore, we have treated these expenses as indirect selling expenses.

Comment 24. Petitioner contends that the Department verified Minebea Japan's advertising expenses in the United States, which consisted of multi-product catalogs, trade journals, trade shows, and on-site displays and photographs. Such advertising expenses have not been shown either to be incurred on behalf of Minebea's U.S. customers or to be institutional in nature. Therefore, petitioner maintains that there is insufficient data upon which to determine that such costs are indirectly related to the sales under consideration. As such, petitioner contends that these expenses should be presumed to be direct selling expenses.

DOC Position. We saw no evidence that the advertising expenses claimed on U.S. sales were incurred on behalf of Minebea Japan's customers. Therefore, we have treated these expenses as indirect selling expenses.

Comment 25. Petitioner argues that we should not allow any deductions for advertising expenses because Rose's advertising is aimed at OEM customers of the company and is not attributable to a later sale of the merchandise by a purchaser as required under the Department's regulations.

Rose agrees that the advertising expenses are aimed at OEM customers but notes that it does not make sense to aim its advertising at its customer's customers in that bearings are often only a very minor part of the final product produced by the OEM. Rose argues that the proper rule to apply in this situation is that if a company can show that its advertising expenses were incurred in promoting business with its customers, these expenses should be allowed.

DOC Position. Rose's advertising expenses are for advertising that is directed to its OEM customers and not to its customer's customers. Therefore, these expenses are indirect selling expenses. Since we are making comparisons to purchase price sales and consider these advertising expenses to be indirect expenses, we have not made any adjustments to home market prices to reflect these expenses.

Comment 26. Petitioner asserts that the Department should not include any expense for GMN's home market commissions in home market indirect selling expenses since the Department learned at verification that the commissions GMN reported paying to its Bielefeld office were never actually paid.

DOC Position. We have not included any expense for related party commissions in home market indirect selling expenses since we discovered at verification that GMN did not pay commissions to related parties on sales made through its Bielefeld office. We have included in home market indirect selling expenses those expenses incurred by GMN in the operation of its Bielefeld sales office. These expenses were added to the offset for those home market sales made through the Bielefeld sales office.

Comment 27. Petitioner claims that FAG-Italy's verification established that the costs of the commissions alleged to have been paid during the period of investigation are based on 1987 costs and on the ability of the commissionaire to meet certain sales goals and objectives. Thus, there is no fixed relationship between the 1987 data and the commissions paid during the second half of the period of investigation. The Department should not permit this adjustment for the final determination.

FAG-Italy asserts that annual 1987 data are an appropriate basis upon which to establish the level of commissions applicable to sales in 1988 as commissions are granted by virtue of the attainment of specified annual sales targets.

DOC Position. Verification confirmed that FAG-Italy's claimed expenses for commissions in the home market are based on achievement of annual sales targets. Therefore, annual data is an appropriate and reasonable basis upon which to claim commissions. We have allowed FAG-Italy's claimed commission costs in the final determination.

Comment 28. Petitioner argues that one of NSK's claimed commission expenses in the home market is actually a claim for inland freight and warehousing expenses in the guise of price adjustments. In this case NSK pays a distributor for transportation and inventory services in connection with sales to a home market customer.

Petitioner contends that the transportation portion of the expense could be an allowable adjustment to foreign market value, but not as a rebate, while the inventory service portion is actually an impermissible claim for pre-sale warehousing expenses.

DOC Position. We have accepted NSK's claim for treating this as a home market direct expense as the verification showed that this expense is treated and paid as a commission, based on a percentage of the selling price. We verified that the distributor does not actually incur movement and warehousing expenses on behalf of NSK, since the commission percentage is fixed by negotiation and is not affected by the actual expenses the distributor incurs.

Comment 29. Petitioner alleges that RHP's allocation methodology with respect to credit notes is inappropriate. Petitioner argues that because the home market sales listing was limited on the basis of the Department's 33 percent test, the Department should reject the claimed adjustment since credit notes were not tied to specific sales, and were allocated across all sales. Petitioner believes that because credit notes may affect only part numbers that have been excluded from the home market sales listing, credit notes should not reduce all home market prices through an across-the-board allocation.

RHP asserts that its methodology with respect to credit notes issued on home market sales was developed with the knowledge and assistance of the Department as a reasonable means of allocating credit note costs to home market transactions and since it has also been thoroughy verified. it should be used in the final determination. Respondent contends that although credit notes relate to specific sales, RHP could not have completed this laborious task within the tight time constraints since RHP would have had to review each note manually. Respondent claims that petitioner's assertion that the "reasonableness" of the allocation methodology is somehow affected by the Department's 33 percent test is unfounded since RHP's home market sales listing covers thousands of units which constitute a significant portion of the company's total U.K. sales during the six-month review period. Respondent submits that in similar situations, as in *Portable Electric Typewriters from Japan,* 53 FR 40,927, 40,930 (1988), the Department has accepted reasonable allocation methodologies developed by respondents.

DOC Position. The Department has made an adjustment to home market price for credit notes issued by RHP on home market sales during the period under investigation. The Department reviewed and verified RHP's claimed adjustment for credit notes at verification. The Department has the discretion to determine if a specific adjustment has been appropriately reported by the respondent. In this situation, we determined that given the substantial quantity of credit notes which were issued on sales during the review period, and the degree of difficulty and the enormous amount of time that would have been involved in tying these credit notes to specific sales, RHP's allocation of this expense is appropriate and reasonable and has been accepted for purposes of our final determination. Furthermore, there was no indication at verification that credit notes may have been limited to those part numbers which have not been reported to the Department because of the reporting requirements in this investigation, nor has petitioner provided any basis on which it makes this assertion.

Comment 30. Petitioner contends that the timing of the identification of U.S. credit notes, and the significant revision of the computer tapes this requires, justify the rejection of RHP's U.S. data as unreliable and warrant that the less than fair value margin for RHP be based upon the highest margin for any U.K. respondent. Petitioner requests that, at a minimum, a deduction be made in the calculation of ESP for U.S. credit notes.

DOC Position. The Department rejects the characterization of RHP's U.S. data

as unreliable and finds, with the exception of minor adjustments, that RHP's U.S. data was accurate. Therefore, the Department has determined that despite the late timing of the identification of U.S. credit notes, the Department will use the verified data in its less than fair value analysis of RHP. The Department will, therefore, make an adjustment to U.S. price for credit notes issued on U.S. sales by RHP.

Comment 31. Various respondents state that the Department incorrectly deducted direct selling expenses from exporter's sales price (ESP), instead of making an adjustment to foreign market value. NTN, NSK, and RHP cite *Timken Co.* v. *United States,* 673 F. Supp. 495, 511 (CIT 1987) in support of their statement. RHP also cites *SCM Corp.* v. *Silver Reed America, Inc.,* 753 F.2d 1033, 1036–38 (Fed. Cir. 1985).

Petitioner asserts that the Department should continue to subtract direct selling expenses from ESP since to treat these expenses as a circumstance of sale and, therefore, add them to the home market price would increase the base value upon which the percentage margin would be calculated and reduce the margin percentage. Petitioner contends that because the *ad valorem* percentage is thereby reduced, the amount of duty collected will be less than that warranted by the actual amount of dumping that occurred in the period of investigation.

DOC Position. Deducting these expenses from the U.S. selling price is consistent with section 772(e) of the Tariff Act which requires the Department to reduce ESP for "expenses generally incurred by or for the account of the exporter * * * in selling identical or substantially identical merchandise * * *". Furthermore, Timken has been remanded to the Department and is not yet final. The Department will continue to deduct direct selling expenses from both the U.S. and home market prices in ESP situations, pending a final determination of this issue in the courts.

Comment 32. Petitioner requests that the Department not accept the sales values used by RHP as denominators, which have been adjusted for rebates, in the allocation of expenses incurred by RHP. Petitioner argues that since after-sale rebates are an adjustment for circumstances of sale, the value of home market sales for purposes of calculating the per unit amount of various adjustments should not be net of rebates.

RHP contends that it is completely proper for it to allocate home market selling expenses on the basis of sales value net of rebates and discounts. Respondent states that it is appropriate for the Department to treat rebates as a price adjustment rather than as a circumstance of sale adjustment since rebates reduce the net prices which customers pay.

DOC Position. The Department has accepted the sales values used by RHP as denominators in the allocation of selling expenses incurred by RHP. Rebates are treated by the Department as an adjustment to price and not as a circumstance of sale adjustment. Therefore, the appropriate sales value to use as a denominator is a denominator net of rebates since that value reflects the revenue the company intends to realize from the sale of its merchandise. A denominator net of rebates is an accurate representation of the prices at which the company sold its merchandise.

Comment 33. Petitioner contends that there is insufficient data on the record to establish that the alleged RHP indirect selling expenses were in fact related to sales of the merchandise in the home market. Petitioner requests that the Department make no adjustment for these expenses. Petitioner requests that at a minimum, to the extent that an adjustment is made, a portion of the expenses including expenses of the international sales divisions be deducted from U.S. price.

DOC Position. The Department thoroughly verified those amounts claimed by RHP as indirect selling expenses and established that RHP had properly reported and allocated these expenses to both the U.S. and home markets.

Comment 34. Petitioner contends that no adjustment for RHP's indirect selling expenses should be made to foreign market value unless all expenses related to export sales are separately identified, allocated, and deducted from exporter's sales price. Furthermore, petitioner argues that U.S. indirect selling expenses were improperly commingled with other export selling expenses and allocated over all export sales. Petitioner therefore submits that, for purposes of the final determinations, the calculation of U.S. indirect selling expenses should be corrected by allocating those expenses related only to the U.S. market over U.S. sales.

DOC Position. The Department thoroughly verified those amounts claimed by RHP as indirect selling expenses and established that RHP had properly reported and allocated these expenses to both the U.S. and home markets. RHP reported as part of its U.S. indirect selling expenses indirect selling expenses which were incurred in the home market on behalf of all sales. RHP also reported indirect selling expenses which related specifically to export sales. These expenses have been separately identified and allocated over RHP export sales. For its ESP sales, RHP reported that it had also incurred indirect selling expenses in the United States on behalf of its U.S. sales. These sales have been properly identified and allocated over RHP's U.S. sales. Therefore, RHP's U.S. indirect selling expenses were not improperly commingled with other export selling expenses.

Comment 35. Petitioner alleges that the Department should allow no adjustment to foreign market value for indirect selling expenses since GMN has not shown that all of the components of indirect selling expense are in fact related to sales. Petitioner submits that some of the various components of indirect selling expenses appear to be characterizable as general and administrative rather than selling expenses.

DOC Position. At verification, we reviewed the indirect selling expense categories reported by GMN. These categories include technical services, advertising, Sales Department, Invoice Department, the Bielefeld sales office, and administration expenses. We discovered at verification that with respect to each of these categories, with the exception of administration, the expenses which GMN reported were all incurred by cost centers with selling functions. These cost centers contained expenses incurred directly by the selling function (*e.g.,* salaries, gifts, supplies, or advertising), plus other expenses such as housekeeping or debit interest which were allocated to sales-related departments. Therefore, with the exception of administration expenses, we have allowed these expenses as indirect selling expenses.

The administrative expenses which GMN reported as an indirect selling expense were expenses incurred by GMN and then allocated to a general administrative cost center for each of its production facilities, plus to cost centers for the data processing office and the Office of Standards. The expenses which were allocated to these cost centers included wages and salaries, communications, office-related expenses and supplies. We have determined for purposes of our final determination that the administration expenses reported by GMN are not indirect selling expenses since they have not been incurred by departments with a selling function and have no relation to sales which are made by GMN.

Comment 36. Petitioner contends that as SKF-Sweden did not provide an itemized description of its U.S. indirect selling expenses for part of the period of investigation as per Department's requests and that these costs should be deducted from U.S. price as direct selling expenses for the purposes of the final determination.

SKF-Sweden contends that U.S. indirect selling expenses were properly calculated and that SKF–USA provided a detailed description of its indirect selling expenses, including advertising expenses in accordance with the Department's request for information. Therefore, SKF-Sweden argues that indirect selling expenses have been verified.

DOC Position. SKF–USA provided an itemized description of its indirect selling expenses. All expenses included in indirect selling expenses were examined at verification and found to be related to sales. We have, therefore, made an adjustment for these expenses.

Comment 37. Petitioner argues that, for SKF–UK, the Department should not allow any deduction from home market price for indirect selling expenses. Petitioner contends that SKF–UK failed to link the claimed indirect selling expenses to home market sales.

DOC Position. While we have allowed an adjustment for certain SKF–UK home market indirect selling expenses, the adjustment was made for only those expenses that were both explicitly identified as selling expenses and sufficiently linked to home market sales.

Comment 38. Petitioner argues that the Department should not allow SKF-Sweden's claim for an adjustment to FMV for indirect selling expenses. Petitioner claims that the verification team was only able to trace totals in the computer tape listings but did not have worksheets which showed a detailed breakdown of indirect selling expenses. Petitioner contends that SKF-Sweden has not submitted revised worksheets showing the line item allocation of these expenses, whether they are even selling expenses, their relation to SKF-Sweden's home market sales, and the method used to allocate them.

SKF-Sweden argues that the petitioner erroneously implies that it failed to provide the verification team with worksheets supporting its indirect selling expenses. SKF-Sweden asserts that such worksheets were provided prior to verification, supplemented at verification, and then revised and submitted for the record following verification.

DOC Position. We are allowing this adjustment. The percentage amount of indirect selling expenses on the computer tape sales listing matched the percent supported by the verification exhibits. The verification team did trace all line items back to accounting records.

Comment 39. Petitioner contends that as SKF-France provided no itemized breakdown of Clamart's home market indirect selling expenses, the Department should disallow these expenses for purposes of the final determination as it is far too late in this investigation to provide new and supplemental information.

SKF-France claims that its indirect selling expenses were presented to the Department and verified.

DOC Position. SKF-France did provide a worksheet showing the itemized breakdown of Clamart's indirect selling expenses in its submission to the Department dated November 10, 1988. These expenses were verified. However, we have adjusted the indirect selling expenses reported for Clamart's home market sales to exclude the expenses incurred by the related distributor, because the related distributor's sales were not included in the home market database.

Comment 40. Petitioner submits the Department was unable to verify SKF-France (ADR)'s home market indirect selling expenses because the worksheets presented at verification did not match the list of expenses provided prior to verification. Therefore, petitioner argues that ADR's home market selling expenses were not verified and cannot be used for the purposes of the final determination.

SKF-France contends that ADR's indirect selling expenses provided to the Department were derived from ADR's standard chart of accounts. SKF-France claims that a calculation and allocation methodology were submitted prior to verification, contrary to the Department's statements in its verification report. SKF-France claims that its indirect selling expenses, including product liability expenses, were deemed verified.

DOC Position. Although the Department was able to tie total indirect selling expenses to ADR's financial statements, ADR was unable to document its proposed allocation methodology. However, after examining other sales data submitted by ADR, and after considering alternative sources to use as best information available, the Department has decided to use ADR's reported figures for indirect selling expenses incurred in France on both U.S. and home market sales as the best information available for purposes of the final determination.

Comment 41. Petitioner contends that the Department should refuse to accept Nachi's revisions to indirect selling expenses because such revisions constitute substantial changes which were not completely verified. Petitioner alleges that because a portion of the allocation method was unverifiable (*i.e.* historical cost allocation data was not available), and therefore unreliable, the Department should refuse to accept the revised tape. Petitioner states that if the Department accepts the revised figures for indirect selling expenses, the Department should ensure that indirect selling expenses are not improperly allocated to sales to trading companies, and that expenses attributable to tapered roller bearings are excluded from the subject sales.

DOC Position. In preparation for verification, Nachi officials discovered that they had underreported the indirect selling expenses attributable to ESP sales. They corrected the error before the beginning of verification and the Department was able to verify the revised indirect selling expenses. We have, therefore, used the revised, and verified, expenses in this final determination. We also determined that the allocation of the expenses to the subject merchandise was reasonable. Furthermore, these expenses were not allocated to purchase price sales made to Japanese trading companies, nor were the expenses allocated over sales of tapered roller bearings.

Comment 42. With respect to ICSA's home market indirect selling expenses incurred by SNRI in Italy, petitioner contends that the Department did not verify whether the items included were related to Italian sales or to export sales. In addition, petitioner argues that many of the items may have been double counted or may not be related to the sales of products.

DOC Position. We have accepted the claimed indirect selling expenses in our final determinations. At verification, we saw no evidence that such expenses were incurred on export sales, that expenses were double counted, or that they were not related to sales of the products under investigation.

Comment 43. Petitioner contends that SNR has claimed salaries for home market advertising, technical services, and quality control as both indirect and direct selling expenses. Petitioner claims that the Department should limit any deduction for indirect selling expenses to ensure that there is no double counting.

DOC Position. We verified that there were no instances of double counting.

Comment 44. Petitioner asserts the following regarding SNR's U.S. indirect selling expenses: (1) Indirect selling expenses incurred in France are understated by the exclusion of related items such as professional services, office expenses, travel and entertainment, employee benefits, rent, etc.; (2) percentages for indirect selling expenses should be applied to the U.S. gross unit price instead of the entry value of the subject merchandise; and (3) warehouse maintenance expenses should be based on value rather than weight.

DOC Position. We intend to use the data reported and verified. We saw nothing at verification indicating that respondent understated indirect selling expenses incurred in France. SNR's indirect selling expense factors were applied to U.S. gross price and warehouse maintenance expenses were allocated on the basis of weight. Weight is more closely correlated with size than is value and size is what determines warehouse space requirements and maintenance costs.

Comment 45. Petitioner asserts that FAG–FRG provided neither a meaningful, detailed breakdown by function or category nor worksheets showing allocation methodology of indirect selling expenses prior to verification. Further verification demonstrated that certain expenses were either incorrectly included in or improperly allocated to this pool of expenses. Accordingly, FAG–FRG's claim for indirect selling expenses should be disallowed as a deduction from foreign market value in the final determination.

FAG–FRG states that they established at verification the accuracy of the underlying data and the reasonableness of the methodology employed in the reporting of indirect selling expenses.

DOC Position. At verification, we examined the indirect selling expenses claimed by FAG–FRG by function and category according to its cost center classification codes. Verification confirmed that FAG–FRG employed a reasonable allocation methodology. Hence, we will allow FAG–FRG's claimed expenses in our final determination.

Comment 46. Petitioner argues that having failed to produce itemized, substantiated data for home market indirect selling expenses incurred during the period of investigation, FAG-Italy has failed to prove it is entitled to this adjustment for purposes of the final determination.

FAG-Italy contends that its alleged failure to provide an itemized breakdown of claimed home market indirect selling expenses which were disallowed for the preliminary determination was remedied at verification. FAG-Italy argues further that the use of costs based on calendar year 1987 reflects all normal year-end adjustments and accruals. Moreover, these costs are linked to the products under investigation as FAG-Italy is engaged in the business of producing and selling bearings. Accordingly, the Department should now allow these expenses for the final determination.

DOC Position. We agree with FAG-Italy. At verification, we examined indirect selling expenses claimed by FAG Italy according to its cost center classification codes. Verification confirmed that FAG-Italy employed a reasonable allocation methodology. Hence, we have allowed FAG-Italy's claimed expenses in our final determination.

Comment 47. Petitioner argues that the Department should allow no adjustment to FMV for indirect selling expenses because at verification, much of the information provided by INA–FRG was found to be unsupported. For instance, petitioner points out the INA was unable to divide the costs of the General Sales Department between domestic and export sales. INA–FRG believed that most of the expenses were incurred for domestic sales, so it allocated all of the Department's costs to domestic sales. The same was done for expenses attributable to the salary of the president of the sales division. Petitioner asserts that INA–FRG was unable to substantiate its allocation of the costs of the Logistics Department to indirect home market selling expenses. In addition, petitioner argues that the Social Cost Center does not perform a sales function at all and that its expenses are actually general expenses or those pertaining to administration.

Respondent argues that the Department should utilize the claimed home market selling expenses for purposes of the final determination. Respondent states that it provided a specific breakdown of these expenses and that the Department found no discrepancies with it at verification. Respondent cites *Portable Electric Typewriters from Japan,* 48 FR 40,761, 40,766, (September 9, 1983), and *Television Receiving Sets, Monochrome and Color from Japan,* 46 FR 30163, 30166, (June 5, 1987).

DOC Position. We have disallowed INA–FRG's claim for the social cost center expense because we found that the expenses were of an administrative nature and, therefore, not selling expenses. We have disallowed a portion of the cost of the logistics department because respondent was unable to substantiate the allocation. Also, we have added to INA–FRG's claimed indirect selling expenses the cost of the regional sales engineers, which we denied as part of technical service expenses.

Comment 48. Petitioner argues that the Department should treat INA–FRG's non-U.S. selling expenses as direct and deduct them from U.S. price. Petitioner cites *Silver Reed America Inc.* v. *United States,* 603 F. Supp. 1393 (1988) as precedent for allowing expenses incurred in the home market to be treated as direct selling expenses. Petitioner also cites *The Timken Company* v. *United States,* 673 F. Supp. 495 513–14 (1989) as precedent for treating these as direct expenses when adjusting U.S. price.

INA–FRG argues that non-U.S. indirect selling expenses should not be deducted from U.S. price or, alternatively, should be considered indirect selling expenses. Respondent objects to the inclusion of these expenses on the grounds that there is no statutory basis for deducting them because these are general expenses of the parent company incurred in the FRG. Respondent cites *Forklift Trucks from Japan* (53 FR 12552, 12563) as a case where the Department concluded that the general expenses of a parent incurred outside the United States do not constitute indirect selling expenses.

DOC Position. We treated selling expenses incurred outside of the United States for U.S. sales as indirect expenses. INA–FRG has an export team which handles the export markets in the Western Hemisphere. The costs of this export team can be tied to sales made to the United States. Therefore, we are deducting these expenses from U.S. price.

Comment 49. Petitioner argues that the Department should not allow INA-France's claimed adjustment for home market indirect selling expenses because they cannot be tied to the product or the period under investigation. Petitioner explains that INA-France calculated its allocation rate by dividing total indirect costs by total 1987 turnover. Total costs included costs for all sales, domestic and export.

INA-France argues that the Department should accept those indirect selling expense adjustments which were rejected for purposes of the preliminary determination, as the Department has since verified them.

DOC Position. We did not allow this adjustment for the preliminary determination because respondent had not provided an adequate breakdown of

the claimed expenses. However, prior to verification, INA-France did submit a breakdown. We reviewed the supporting documentation at verification and found no discrepancies. Therefore, we are accepting INA-France's 1987-based allocation for indirect selling expenses as best information available.

Comment 50. Petitioner states that it appears that expenses associated with NTN's sales in the United States, including technical services, advertising, and export administration expenses, may have been incurred in Japan for the benefit of NTN's related U.S. importer, in which case these amounts must be deducted from exporter's sales price under 19 U.S.C. 1677(e)(2). At a minimum, petitioner argues that the amount of headquarters general and administrative expenses allocated to U.S. sales must be deducted from exporter's sales price. Petitioner also argues that the expenses of the "International Trade Headquarters" in Japan should be allocated to U.S. sales in proportion with the ratio of U.S. sales to total export sales.

DOC Position. NTN provided, and we have deducted, indirect selling expenses incurred in Japan attributable to U.S. sales. These include expenses for "International Trade Headquarters" personnel and other associated indirect selling expenses.

Comment 51. Petitioner states that, given NTN's control over the information necessary for the response and NTN's failure to remedy prior insufficient responses, the Department should presume that U.S. selling expenses are direct unless proven otherwise, citing *Timken* v. *United States,* 673 F. Supp. 495 (1987). Further, to the extent that technical services and other services are stated in the sales contract, such expenses are directly related to U.S. sales and are not eligible for inclusion in the exporter's sales price offset cap.

NTN states that it has answered every question posed by the Department in its questionnaires or at verification regarding the nature of its selling expenses. It further states that there is no basis on which the Department may now say that there are insufficient facts on which to determine which expenses are direct and which are indirect.

DOC Position. We verified NTN's selling expenses and have treated them as direct or indirect selling expenses based on the information on the record. We also verified that the technical service expenses reported for ESP sales were solely payroll expenses. Therefore, we have treated these expenses as an indirect selling expense.

Comment 52. Petitioner states that NSK's U.S. indirect selling expenses which were not verified, should be classified as direct selling expenses.

DOC Position. We verified NSK's reported expenses and found that they are properly classified as indirect selling expenses.

Comment 53. Petitioner contends that NMB/Pelmec-Singapore's U.S. selling expenses have been misallocated, understated and improperly classified as indirect selling expenses. This has understated exporter's sales price or inflated the offset amount. Petitioner maintains that in the absence of evidence to the contrary, all U.S. selling expenses should be viewed as directly related selling expenses. Furthermore, petitioner contends that it is inappropriate for the Department to utilize the new information regarding U.S. indirect selling expenses obtained during verification for purposes of the final determination, as it should have been included in the questionnaire response. In addition, petitioner maintains that indirect selling expenses incurred in Japan on U.S. sales are understated. In particular, petitioner contends that the personnel-related expenses incurred by Keiaisha, the Minebea-related company which handles all documentation for Minebea's imports and exports, were improperly excluded from the reported U.S. indirect selling expenses incurred in Japan. Petitioner also contends that Minebea likely markets bearings from any of its worldwide plants and assists in sales force training and other selling activities. Such expenses are likely to be included in third country indirect selling expenses; therefore, an allocable share of total indirect selling expenses incurred in Japan, regardless of the alleged market to which such expenses relate, should be deducted from U.S. price.

DOC Position. In response to petitioner's argument that no new information should be used, the Department maintains that the data from NMB/Pelmec-Singapore's original response has been used because the Department verified that NMB/Pelmec-Singapore's expense allocation methodology was reasonable. Regarding petitioner's comment that the personnel-related expenses incurred by Keiaisha should be deducted from U.S. price, the Department maintains that the total amount of these expenses was so small as to have an insignificant effect on U.S. price (see, 19 CFR 353.23(a)).

Comment 54. Petitioner argues that NMB/Pelmec-Singapore has not sufficiently demonstrated that the claimed third country indirect selling expenses have been incurred and that the reported selling expenses have been correctly apportioned to the merchandise under investigation. Furthermore, petitioner argues that respondent has not demonstrated that the indirect selling expenses have not been double-counted under other types of expenses. According to petitioner, an adjustment pursuant to 19 CFR 353.15(c) should not be made to the extent that expenses cannot be attributed to sales in Japan. Expenses which cannot be identified with a particular market should be deducted from all sales worldwide on a *pro rata* basis. The amount deducted should be limited to actual selling expenses.

NMB/Pelmec-Singapore maintains that indirect selling expenses incurred in Japan by the Karuizawa Division are properly allocable to third country sales of ball bearings. Furthermore, respondent states that it did not improperly claim certain expenses as indirect selling expenses, nor did it double-count selling expenses or report selling expenses specifically tied to Japan-made bearings as indirect selling expenses on Singapore-made bearings.

DOC Position. We verified that the claimed indirect selling expenses were allocated properly. Certain indirect selling expenses are recorded in the accounts of the Karuizawa Division and are attributable to sales of ball bearings (domestic and imported). However, it was not possible to tie the specific indirect selling expenses to the bearings produced in each market. We verified that NMB/Pelmec-Singapore's indirect selling expenses incurred on third country sales of ball bearings could not be identified according to the specific country of origin of the ball bearing, but that its allocation methodology was reasonable in the absence of actual expense figures. Indirect selling expenses consisted of expenses directly attributable to sales of ball bearings and shared product line expenses (*i.e.,* allocable to all products). Furthermore, we verified that expenses which had been claimed as direct selling expenses were not double-counted, as they were deducted from the indirect selling expenses calculation that was reported and verified.

Comment 55. Petitioner contends that the Department verified that Minebea Thailand (a related OEM) sells products for NMB/Pelmec and Minebea Thailand, but did not verify whether Minebea Thailand incurred selling expenses with respect to export sales to the United States, Singapore, Japan, or elsewhere. Petitioner further contends that the indirect selling expenses claimed by

NMB/Pelmec Thai were calculated on the basis of home market sales only, but that NMB/Pelmec did not demonstrate that these selling expenses were related only to home market sales and unrelated to export sales. Accordingly, petitioner contends that either no deduction should be made for these expenses, or the indirect selling expenses should be allocated over total sales and a *pro rata* portion deducted from the U.S. price.

NMB/Pelmec Thai contends that the Department reviewed Minebea Thai's export-related selling expenses and determined that the response fairly reflected the company's actual experience. Therefore, petitioner's contention that the home market indirect selling expense claim is somehow tainted by the failure to verify Minebea Thailand's export-related expenses is unsupported by the facts.

DOC Position. Because we have determined that the Thai home market was not viable, we have based foreign market value on constructed value, as best information available. Therefore, the issue of home market selling expenses need not be addressed. With respect to NMB/Pelmec Thai's U.S. sales, we deducted the indirect selling expenses incurred by both Minebea Thailand and NMB/Pelmec Thai.

Comment 56. Petitioner contends that the SKF-USA "other expenses" were erroneously added to, instead of deducted from, U.S. price by the Department in its preliminary determinations. Petitioner contends that such expenses should be deducted from the U.S. price in absence of a full explanation from SKF-USA.

DOC Position. Expenses which SKF-USA claimed as "other expenses" are, in fact, corrections for data entry errors. In the preliminary determinations, we added these expenses to U.S. price since their purpose was to correct both understatements (when the value was positive) and overstatements (when the value was negative) to the reported prices. Therefore, we have treated these "expenses" in the same manner for purposes of these final determinations.

Comment 57. Petitioner alleges that given that RHP's product liability insurance policy applies anywhere in the world, the policy costs must be allocated over worldwide sales rather than the home market sales denominator used by RHP. Petitioner states that it is irrelevant that the expense was incurred in the United Kingdom and requests that the Department disallow this adjustment.

RHP contends that, contrary to the assertion of the petitioner, the expense for product liability insurance was allocated over total RHP sales.

DOC Position. RHP has reported, and the Department has verified, an expense for a product liability insurance policy which applies to all sales made by RHP worldwide. This expense was properly allocated by RHP on the basis of worldwide sales. Contrary to petitioner's allegation, the product liability expense allocated by RHP on the basis of home market sales was for actual product liability expenses incurred on home market sales by RHP during the review period. The Department has used RHP's expense factors for purposes of the final determinations.

Comment 58. Petitioner asserts that product liability expenses are a fixed overhead expense rather than a selling expense, and that SKF-France failed to demonstrate that the premiums paid during the period of investigation related to coverage for products sold during this period. Petitioner claims that for these reasons, this adjustment to FMV should be disallowed in the final determination. In addition, petitioner states that the Department did not verify this claim.

SKF-France claims that its indirect selling expenses, including product liability expenses, were deemed verified.

DOC Position. It is Department practice to treat product liability premiums as indirect selling expenses. *See Final Determination of Sales at Less than Fair Value: Internal-Combustion, Industrial Forklift Trucks from Japan* (53 FR 12552, April 15, 1988). Furthermore, the purpose of verification is to assess the overall accuracy of the response. This does not imply that the Department is required to review each and every charge and adjustment at verification. Because we were able to verify that the response submitted by SKF-France was generally accurate, we have accepted this adjustment as verified and have treated it as an indirect selling expense for purposes of the final determination.

Comment 59. Petitioner contends that ICSA's home market product liability insurance premiums, inadvertently included in indirect selling expenses, should be disallowed because they are a fixed expense rather than a selling expense. In support, petitioner cites *Tubes for Tires, other than Bicycle Tires, from the Republic of Korea* (49 FR 26780 (June 29, 1984)). Alternatively, if the Department does not disallow product liability premiums, petitioner argues that the Department should deduct the amount of product liability premiums which were improperly included in the inland insurance amount.

DOC Position. We intend to allow product liability insurance premiums as part of home market indirect selling expenses. We will also reduce inland insurance by the amount of product liability premiums inadvertently included therein.

Comment 60. Petitioner argues that FAG-FRG's product liability expenses should be disallowed because they are actually fixed overhead expenses, not selling expenses. In addition, it allocated these expenses only to home market sales, when they are at best related to worldwide sales. Therefore, if it does not deny this adjustment, the Department should at least deduct it, in equal amounts, from home market and export sales.

FAG-FRG contends that the product liability factors are based on policies in force during the period of investigation and are applicable to bearing sales in the home market. Accordingly, the Department should accept FAG-FRG's claim for product liability insurance premiums as direct home market selling expenses for the purposes of the final determination.

DOC Position. It is Department practice to treat product liability premiums as indirect selling expenses. *See Final Determination of Sales at Less than Fair Value: Internal-Combustion, Industrial Forklift Trucks from Japan* (53 FR 12552, April 15, 1988). Furthermore, verification established that product liability factors employed by FAG-FRG were based on policies in force during the period of investigation and were applicable to bearing sales in the home market. Therefore, we have treated these claimed expenses as indirect selling expenses for purposes of the final determination.

Comment 61. Petitioner argues that the Department should allow no adjustment for product liability expenses incurred by INA-France because it included premiums which cannot be tied to the sales under review. Petitioner also points out that respondent's expenses were based on 1987 experience. Petitioner contends that expenses related to the payment of insurance premiums are in the nature of fixed overhead expenses and should not be deducted from FMV. Petitioner argues that respondent never explained whether its insurance contract was exclusively related to home market sales.

DOC Position. It is Department practice to treat product liability premiums as indirect selling expenses. *See Final Determination of Sales at Less than Fair Value: Internal-Combustion, Industrial Forklift Trucks from Japan* (53

FR 12552, April 15, 1988). We have, therefore, treated these expenses as an indirect selling expense. Furthermore, we disagree with petitioner that product liability premiums cannot be tied to the sales under investigation since INA-France pays product liability premiums on a sales value basis. We reviewed the insurance policy and found no discrepancies in the information INA-France had reported as its premium. The product liability expense INA-France reported was not an allocated expense but a fixed premium percentage which INA-France incurs on a per sale basis in the home market.

Comment 62. Petitioner contends that the Department should deduct an allocable portion of New Hampshire Ball Bearings' product liability expenses from NMB/Pelmec Thai's U.S. price.

DOC Position. At verification, we found that the product liability expenses reported in the response by NMB/Pelmec-Thai, and incurred by NHBB, covered a full year rather than the six-month period under investigation. We have, therefore, recalculated the per unit product liability expense incurred by NHBB and deducted the appropriate amount from the U.S. price.

Comment 63. Petitioner contends that the Department should deduct product liability expenses from the U.S. price reported by Minebea Japan. Minebea Japan maintains that product liability expenses were accurately reported in the response.

DOC Position. At verification, we discovered an error in respondent's calculation of the per unit product liability expense, because the premium amount reported covered the full year rather than the six-month review period. We have recalculated the per unit product liability expense and deducted the correct amount from the U.S. price.

Comment 64. Petitioner contends that SNR's reported home market quality control expenses cannot be directly related to any sales because they are primarily salaries. Petitioner further argues that the allocation of these expenses is based on 1987 expenses and on products outside the scope of the investigation.

SNR contends that home market quality control and inspection expenses for OEM sales should be treated as direct selling expenses since there is continued interaction between the quality control department and OEM customers and since the department randomly inspects bearings sold to OEMs.

DOC Position. We found that home market quality control and inspection measures provided to OEM customers were of a routine nature and would have been incurred whether or not a particular sale had been made. In addition, these reported expenses were primarily for salaries. For these reasons, we are treating quality control and inspection expenses as an indirect selling expense.

Comment 65. Petitioner argues that the Department should allow no adjustment to FMV for quality control expense because, although INA-FRG admitted that such expenses are incurred on specific sales, these sales have not been identified. In addition, INA-FRG allocated these expenses over total domestic sales, which, according to petitioner, the Department was unable to verify.

INA-FRG argues that quality control expense should be treated as direct expenses and deducted from FMV. Respondent explains that it has agreed with certain customers to conduct self-certification programs which require detailed monitoring and recording, in addition to the standard quality control operations which are part of the production process.

DOC Position. We are treating these expenses as indirect expenses. INA-FRG claimed it incurred these costs through agreements with certain customers to provide post-production quality control. However, INA-FRG allocated these costs to all sales, not just to those customers who receive this extra quality control.

Comment 66. Petitioner argues that despite RHP's statement that Precision Division's technical expenses do not include R&D costs incurred by RHP's Bearings Research Center (BRC), Appendix 8 to its October 20, 1988 submission shows that there are charges from the BRC for the Sales Engineering and Automotive groups. Petitioner also argues that the deduction for technical service expenses for Automotive Engineering should not be allowed since it may not be applicable to the bearings under consideration. Furthermore, petitioner states that since these services are identified within a separate cost center, divorced from the sales function, they should not be treated as an offset to home market sales because they are not selling expenses incurred with respect to bearing sales.

RHP contends that, contrary to the assertion of the petitioner, RHP does not maintain records that would enable it to tie the expenditures for technical services to individual sales. Respondent argues that all technical service expenses incurred by the technical service staff in the UK for such activities as applications advice, new product concepts, after-sale service, and general research were properly allocated over worldwide sales and the same *ad valorem* percentage was applied to home market, purchase price, and ESP transactions.

DOC Position. The Department has included in the technical service adjustment those expenses which were incurred by the sales engineering and automotive engineering cost centers, since the Department verified that each of these departments has a sales-related function with respect to all sales made by RHP. As these departments have no production function, we have adjusted for all expenses RHP has claimed for these cost centers. The expenses incurred by the Bearing Research Center, which have not been cross charged to a cost center with a sales function, were not reported or claimed by RHP as part of its technical service expense. RHP reported, and the Department verified, that the Industrial Division's sales engineering and automotive engineering departments incurred the Bearing Research Center charges during the period under investigation.

The Department also verified the Precision Division Bearing Research Center charges during the review period. These charges however, relate to products which were not sold in the United States during the review period and not reported in the home market sales listing. Therefore, these expenses were not included in the technical services expense allocation.

Comment 67. Petitioner contends that SKF-Sweden has failed to substantiate the costs related to technical services in the home market and these costs should, therefore, not be treated as indirect selling expenses. Petitioner states, at a minimum, these costs should be allocated to all SKF-Sweden sales and a share deducted from U.S. price as well as home market price. Petitioner also contends that new data provided at verification for third country technical services was unverifiable and, therefore, no deduction should be permitted.

SKF-Sweden contends that the comments made by petitioner are based on information provided during the SKF-FRG verification and are unrelated to technical services expenses for SKF-Sweden's third country sales adjustments. SKF states that petitioner's arguments are, therefore, inappropriate. Further, SKF-Sweden asserts that it properly included its technical services as indirect selling expenses, which was proven at the SKF-Sweden sales verification.

DOC Position. SKF-Sweden claimed no adjustment for either direct or indirect technical service expenses in

the home market. At verification, we found no evidence that SKF-Sweden incurs any technical service expenses. Therefore, petitioner's argument has no basis.

Comment 68. Petitioner contends that SKF-Italy's original response included only direct expenses for technical services incurred for U.S. sales, such as travel. Absent evidence that all technical service expenses incurred for U.S. sales are indirect expenses, the Department should treat them as directly related to these sales. Petitioner alao asserts that SKF-Sweden and SKF-Italy probably incur some technical service expenses with respect to U.S. sales. A prorated share of such expenses, whether or not included in home market adjustments, should be deducted from U.S. price. If the Department does not have sufficient information to do this, it should base the deduction on the experience of another respondent.

SKF-Italy claims that it does not incur direct expenses for technical services on U.S. sales and contends that the Department has verified that technical service expenses are properly treated as indirect selling expenses.

DOC Position. The purpose of verification is to assess the overall accuracy of the response. This does not imply that the Department is required to review each and every charge and adjustment at verification. Because we were able to verify that the response submitted by SKF–USA was generally accurate, we have accepted this adjustment as verified and have treated it as an indirect selling expense for purposes of the final determination.

Comment 69. Petitioner contends that all U.S. technical service expenses should be treated as direct expenses because SKF-Sweden failed to demonstrate otherwise and should be deducted from U.S. price for the purposes of the final determinations.

DOC Position. The purpose of verification is to assess the overall accuracy of the response. This does not imply that the Department is required to review each and every charge and adjustment at verification. Because we were able to verify that the response submitted by SKF–USA was generally accurate, we have accepted this adjustment as verified and have treated the claimed expense as an indirect selling expense for purposes of the final determination.

Comment 70. Petitioner submits that SKF-France never provided any information showing that the technical services provided were called for as part of the purchase agreement or were other than good will or sales efforts. Therefore, the Department should continue to treat such expenses as indirect selling expenses.

SKF-France claims that it demonstrated that technical services were direct in nature. SKF-France asserts that technical services expenses include those services which help a customer identify purchases for a particular product or ensure that equipment is properly installed and operating. SKF-France contends that travel expenses for engineers travelling to the project site is an example of an allowable technical service expense.

DOC Position. At verification we found that the home market technical services reported by SKF-France were directly related to SKF-France's home market sales and that the technical service expenses claimed were separate from good will and sales efforts. Therefore, we have treated them as a direct selling expense.

Comment 71. Petitioner contends that because the Department failed to examine Nachi's testing expenses in the U.S. market, the Department must assume that the expense was incurred on all sales. The Department should, therefore, treat expenses relating to testing as direct expenses and deduct the appropriate amount from all U.S. sales.

DOC Position. We disagree with the petitioner. We did examine Nachi's technical service expenses on U.S. sales. (*See,* sales verification report of Nachi-Fujikoshi Corporation dated December 19, 1988 and the ESP verification report of Nachi America dated February 14, 1989.) We have treated the testing expenses incurred on selected U.S. sales as direct selling expenses. We also verified that no other direct technical service expenses were incurred on U.S. sales.

Comment 72. Petitioner states that the Department should deny Nachi's claimed adjustment for technical service expenses which are personnel-related and are not directly related to home market sales. They further state that non-personnel related technical service expenses such as testing expenses are not incurred pursuant to a contract and are intended merely to bolster Nachi's reputation. Therefore, they should be characterized as an indirect selling expense.

DOC Position. Nachi was able to tie specific testing expenses to specific sales made to specific customers. These services were provided at the request of the customer because it wanted to test the products' applicability to functions other than the specific purpose for which it was purchased, or because the customer suspected that there was something wrong with the bearing. Included in the claimed testing expenses were tooling expenses and personnel expenses. We have segregated that portion of the claimed expenses which pertain to personnel expenses, and have treated that portion as an indirect selling expense. Personnel expenses are treated as indirect selling expenses because they are non-variable; that is, they are incurred by a company regardless of whether or not a specific sale had been made. However, we considered the tooling expenses incurred in the testing of specific bearings to be an appropriate technical service claim and have treated that portion of Nachi's claim as a direct selling expense.

Comment 73. Petitioner contends that the Department failed to verify whether there is more than one SNR–US employee providing technical services. Since technical services expenses in France are greater than their claimed counterparts in the United States, petitioner argues that the Department should assume that a portion of these home market technical services expenses are allocable to U.S. sales of ICSA/SNR merchandise.

DOC Position. We verified U.S. technical services expenses and found no basis upon which to allocate home market expenses to U.S. sales. We also segregated technical service expenses by travel, salary, and related fringe benefits. We treated travel expenses as a direct selling expense, and salary and fringe benefits as an indirect selling expense.

Comment 74. Petitioner contends that ICSA's home market technical services expenses should be disallowed because they are based on salaries and are not representative of the period of investigation. In addition, petitioner argues that these expenses do not merit consideration as an indirect selling expense because ICSA did not indicate as to what portions of the two engineers' time is attributable to home market or export sales.

ICSA contends that technical service expenses should be treated as direct selling expenses because these expenses were incurred on specific bearing sales. In addition, citing *Rhone Poulenc S.A.* v. *United States,* 6 ITRD 1001 (CIT 1984) and *Smith Corona Group v. United States,* 713 F. 2d 1568, 1580 (Fed. Cir. 1983), ICSA argues that each technical service expense claimed need not be attributed to a particular sale in order to qualify as a direct selling expense.

DOC Position. We found that technical services provided to customers were of a routine nature and would have

been incurred whether or not a particular sale had been made. In addition, these expenses were primarily for salaries and not tied to sales. For these reasons, we are treating technical service expenses as an indirect selling expense. As discussed elsewhere, we have accepted use of 1987 data as best information available.

Comment 75. Citing the Department's questionnaire and *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished from Japan, 52 FR 30704,* petitioner argues that SNR has failed to directly relate home market technical service expenses to the subject merchandise and that the Department should therefore continue to treat as indirect selling expenses all technical services in the home market. In particular, petitioner argues that the reported technical service expenses cannot be directly related to any sales because they are primarily salaries which are fixed expenses, and because there is no contract. Moreover, petitioner contends that research and development costs do not qualify as technical service expenses. Finally, petitioner argues that SNR's allocation methodology uses 1987 expenses and products outside the scope of the investigation and that certain cost centers included in calculating home market technical service expenses did not verify.

SNR contends that technical service expenses should be treated as direct selling expenses because these expenses were incurred on specific bearing sales. In addition, citing *Rhone Poulenc S.A.* v. *United States,* 6 ITRD 1001 (CIT 1984) and *Smith Corona Group* v. *United States,* 713 F. 2d 1568, 1580 (Fed. Cir. 1983), SNR argues that each technical services expense claimed need not be attributed to a particular sale in order to qualify as a direct selling expense.

DOC Position. SNR's reported technical service expenses were primarily for salaries, but included the cost of manufacturing prototypes on behalf of potential customers. Because we no have evidence that these expenses were conditioned on sale, we have treated these expenses as an indirect selling expense. As discussed elsewhere, we have accepted use of 1987 data as best information available. We have also determined that SNR's technical service expenses were allocated in the only manner its company books and records would allow. We have, therefore, determined that SNR's allocation methodology was reasonable.

Comment 76. Petitioner argues that FAG–FRG did not demonstrate that its technical service expenses were directly related to the sales under investigation, as opposed to non-comparison sales or sales outside the period of investigation. In addition, petitioner contends that the Department did not verify that post-sale technical assistance expenses were anything more than "goodwill" gestures. For this reason, the Department should not consider any of FAG–FRG's technical service expenses a direct selling expense. Instead, they should be treated as part of the home market offset to U.S. indirect selling expenses.

FAG–FRG contends that its claim for technical services was based on variable pre- and post-sale expenses which were tied to the products under investigation. Furthermore, FAG–FRG rejects petitioner's argument that the provision of the claimed expenses be part of a purchase agreement or were other than good will or promotional efforts. Accordingly, the Department should grant this adjustment in the final determination.

DOC Position. At verification, we determined that FAG–FRG's claimed technical service expenses were of a routine nature that would have been incurred regardless of whether any particular sale had been made. Accordingly, we have treated all of FAG–FRG's claimed technical services expenses as indirect selling expenses for purposes of the final determinations.

Comment 77. Petitioner asserts that verification of FAG-Italy established that some of the expenses claimed for technical services included consultant fees, automobile rentals, association dues, and travel expenses for pre- or post-sale assistance. Since there is no evidence that technical services are provided as a result of a sales agreement and not merely for goodwill or maintenance of customer loyalties, the Department should not allow this claim for purposes of its final determination.

FAG-Italy argues that its claimed technical service expenses relate to variable expenses incurred in the home market on behalf of products and sales under investigation. This fact alone is sufficient to allow the amount of the claimed adjustment. The technical service need not be provided pursuant to a purchase agreement.

DOC Position. At verification, we determined that FAG-Italy's claimed technical service expenses were of a routine nature that would have been incurred regardless of whether any particular sale had been made. Accordingly, we have treated all of FAG-Italy's claimed technical services expenses as indirect selling expenses for purposes of the final determinations.

Comment 78. Petitioner argues that the Department should allow no adjustment to FMV for technical services, either as a direct or an indirect expense because INA–FRG has not demonstrated how pre-sale services can be directly linked to specific sales during the POI. Moreover, petitioner contends that INA–FRG has not shown that its customers were entitled to technical services as part of the terms of sale. Also, a portion of the expense itself was based on what petitioner claims is an unsubstantiated estimate of time spent by the sales engineers on technical services. In addition, petitioner states that total technical service expenses included expenses incurred for products not under investigation. Finally, total technical service expenses were allocated over INA–FRG's total domestic sales which petitioner argues, the Department was unable to verify.

INA–FRG argues that technical service expenses should be treated as direct expenses. Respondent claims that its technical service expenses are out-of-pocket expenses directly tied to the specific sales in question. INA–FRG claims that those technical service expenses incurred by the sales engineers that it did not claim as direct technical service expenses are the type of expenses the Department usually treats as indirect expenses. INA–FRG further argues that these expenses are direct expenses in that the sale of products hinges on INA–FRG's ability to provide technical services to a customer.

DOC Position. We are treating the expenses incurred for technical services as indirect expenses. The vast majority of the technical service expenses incurred by INA–FRG were salaries. These costs were allocated across all sales, even though respondent claimed they could be tied to specific ones. Also, we are disallowing the cost for the regional sales engineers (RSE's). INA–FRG was unable to substantiate its allocation of the RSE's costs to technical services. INA–FRG stated at verification that this was simply an estimate of the amount of time the RSE's spend performing technical services.

Comment 79. Petitioner argues that, with respect to INA-France, technical services should be deducted, including technical expenses incurred by the parent on behalf of the U.S. subsidiary. Petitioner contends that, according to the verification report, technical service expenses incurred in the home market are equally applicable to U.S. sales.

DOC Position. We agree. Total technical service expenses claimed on U.S. sales by INA-France equaled the percentage claimed on home market

sales. These expenses were allocated by INA-France over all sales. These expenses have been treated as an indirect selling expense in each market.

Comment 80. Petitioner argues that the Department should allow no adjustment for INA-France's technical service expenses in the home market citing *Tapered Roller Bearings from Japan* (52 FR at 30,709), as an instance of when the Department did not permit an adjustment for technical services. The verification team could find no indication that ESP sales did not also benefit from these technical services. Petitioner asserts that the reported expenses are not even indirectly related to sales of the subject merchandise made during the period of investigation because INA-France used expenses for all of 1987 in order to determine the per unit technical service expenses. Moreover, petitioner argues that INA-France's inclusion of costs incurred by sales engineers is unwarranted since the sales engineers do not perform technical services. Finally, petitioner states that the verification team found no evidence of contractual obligations to provide technical assistance.

DOC Position. Contrary to petitioner's allegation, the Department has verified that INA-France did not include the costs incurred by the sales engineers in the allocation of technical service expenses. However, INA-France did include the costs incurred by its studies-application and testing station departments as a direct technical service expense. Since these costs could not be related to individual sales, and since the Department could not verify that INA-France had contracted to provide technical assistance, we are treating technical service expenses as an indirect selling expense for purposes of the final determinations. As discussed elsewhere, we have accepted use of 1987 data as best information available.

Comment 81. Petitioner states that NTN has failed to demonstrate a direct relationship between technical services in the home market and sales during the period of investigation. Petitioner further states that if the Department grants an adjustment for technical services, employee salaries should be excluded.

DOC Position. NTN did not claim technical services as a direct expense in the home market. We are treating these expenses as indirect selling expenses in our final determinations.

Comment 82. Petitioner states that the Department should deny in full an adjustment for warehousing expenses in those instances where Nachi cannot document that the expenses were incurred as a condition of sale and, that although a tacit agreement existed between Nachi and the OEM that Nachi was to make "just in time delivery", no actual contract existed.

Nachi states that in order to insure that delivery is made promptly to certain important customers, they have arranged to store bearings in warehouses located near these customers. When the customer requests shipment of the bearings, the warehousing company delivers them to the customer. Nachi also states that the warehousing expense is included in the sales price charged to the customer and that the customers are specified in the contract negotiated between Nachi and the warehousing company.

DOC Position. For these home market sales, Nachi states that the date of shipment from the warehouse to the customer is the date of sale. Nachi argues that warehousing expenses which are directly related to and incurred solely on behalf of a certain customer, whether or not incurred before or after the sale, should be allowed as an adjustment and cites *Atlantic Steel Co.* v. *United States.* Nachi has incorrectly cited that case. In *Atlantic Steel,* the court ruled that the Department properly made a deduction for *post-sale* warehousing expenses in the home market. Since Nachi has claimed that the date of shipment is the date of sale, the warehousing in question can only be of a pre-sale nature. Therefore, we are treating it as an indirect selling expense. At verification we found that this expense included freight to customer, storage, and packing, but these expenses are not broken out in the contract between Nachi and the warehouse company. Since the expense cannot be broken out, we are treating the whole expense as an indirect selling expense for the reason specified above.

Comment 83. Petitioner states that NTN's home market warehousing expenses do not constitute a permissible adjustment because the date of sale is the date of shipment in the home market. Therefore, an adjustment should be granted for such expenses only if the expenses were incurred pursuant to specific contractual terms.

DOC Position. Using NTN's definition of its date of sale, these expenses are thus pre-sale warehousing and have been treated as an indirect selling expense.

Comment 84. Petitioner claims that because SKF-USA refused to disclose its warranty experience for the past five years, the Department should use best information available for adjusting U.S. price for the SKF companies. Petitioner proposes that the highest warranty expense incurred by any other respondent should be used as the best information available.

SKF-France contends that U.S. warranty expenses incurred during the period of investigation were submitted to the Department and are deemed verified.

DOC Response. In response to our request for warranty experience by class or kind of the subject merchandise for the previous five years, SKF-USA informed us that such information would be misleading because SKF-USA's product classifications and corporate organization have changed drastically over this time period. At verification, documentation of SKF-USA's product classification and corporate organization confirmed this explanation. Furthermore, because we were able to verify that the response submitted by SKF-USA was generally accurate, we have accepted this adjustment as verified and have treated it as a direct selling expense for purposes of the final determination.

Comment 85. Petitioner contends that the Department should apply the highest warranty expense of any respondent against Nachi's U.S. sales as the best information available because Nachi failed to provide data on warranty expenses in their original questionnaire response and subsequent responses to deficiency letters. Furthermore, petitioner argues that use of the best information available is warranted because the Department did not examine any warranty data during verification.

DOC Position. The Department did verify Nachi's warranty expenses with respect to U.S. sales (see, the sales verification report of Nachi-Fujikoshi Corp. dated December 19, 1988, p. 19-20). The warranty claims which were paid on ESP sales were paid on non-comparison merchandise, and thus are not reflected on the revised ESP sales tape. There were warranty expenses paid on matched purchase price sales, and those expenses have been used in this final determination. Because the expenses were paid on sales of only one product, we instructed Nachi not to submit a revised purchase price sales tape, since it is easier, and less expensive, for the Department to input manually the revised warranty expenses.

Comment 86. Petitioner contends that the Department should use the warranty figure originally reported by FAG-FRG and not its revised figure.

FAG-FRG contends that petitioner's analysis of FAG-USA's warranty expenses is flawed due to petitioner's failure to include sales of products

produced by FAG–USA and resales of merchandise purchased by FAG–USA from others. Accordingly, the Department should reject petitioner's analysis and accept the warranty factor verified by the Department in its final determination.

DOC Position. At verification, FAG–FRG informed the Department's verification team that in order to account for discrepancies in its previous questionnaire responses, it had revised the factor used to allocate U.S. warranty expenses. Because the revised allocation factor did not represent a significant change in methodology and had a minimal effect on the allocation factor, it was verified, and used for our final determinations.

Comment 87. Petitioner submits that FAG–FRG failed to submit evidence that its home market warranty costs represented repair costs under warranty as opposed to costs related to service calls or repairs under separate, non-warranty service contracts. Furthermore, petitioner recommends that since FAG–FRG incurred no home market warranty expenses for aerospace bearings, this factor should only be applied to bearings which have no aerospace applications. Therefore, petitioner proposes that the Department should either reject FAG–FRG's claim entirely or at a minimum use the home market warranty expenses factor which was corrected to exclude aerospace bearings.

FAG–FRG asserts that since the credibility and accuracy of its claimed warranty expenses were confirmed at verification, the Department should grant this adjustment to foreign market value.

DOC Position. We have verified that FAG–FRG's claimed warranty expenses did not include expenses incurred as a result of separate service contracts. We have also verified that no warranty expenses were incurred on aerospace bearings. Therefore, for our final determinations, we have used the revised allocation factor which excludes sales of aerospace bearings.

Comment 88. Petitioner claims that FAG-Italy's claimed warranty expenses on home market sales should be considered indirect selling expenses for the purposes of the final determination since such expenses could not be broken down into fixed and variable portions nor among the different classes or kinds of merchandise.

FAG-Italy asserts that its warranty expenses relate only to variable home market expenses which bear a direct relationship to sales under investigation. Moreover, FAG-Italy points out that its use of 1987 calendar year data does not diminish its relevance to sales under investigation.

DOC Position. At verification, we determined that FAG-Italy's home market claimed warranty expenses were based on variable costs only. Although FAG Italy's warranty records were not kept on a class or kind basis, it used a reasonable allocation methodology to allocate home market warranty costs to the products under investigation. FAG-Italy allocated warranty expenses in the only manner its company books and records would allow. In the final determination, we have treated these claimed expenses as a direct selling expense.

Comment 89. Petitioner submits that because the historical warranty expense figure is a more accurate estimate of FAG USA's warranty expenses during the period of investigation, it should be used for purposes of the final determination with respect to FAG-Italy.

FAG-Italy maintains that its U.S. warranty expenses are entirely consistent with historical experience and should be used for the purposes of the final determination.

DOC Position. We agree with FAG-Italy that its U.S. warranty expenses are consistent with historical experience. We have used this expense for purposes of these final determinations.

Comment 90. Petitioner argues that the Department should allow no adjustment to FMV for warranty expenses as INA–FRG did not differentiate between fixed and variable warranty expense. Petitioner points out that INA–FRG calculated warranty expenses in part by estimating the percentage of the cost of three cost centers allocable to warranties, and that INA did not provide any documentation to substantiate this estimate. In addition, warranty expense included products not subject to the investigation.

INA–FRG argues that the Department should treat warranty expenses as direct expenses and deduct them from FMV. INA–FRG asserts that these expenses are direct because they consist of credit notes and direct payments to customers for problems with the quality of purchased merchandise. Respondent cites *Certain Internal Combustion Industrial Forklift Trucks from Japan,* (53 FR 12552, 12562, April 15, 1988). Respondent claims these expenses are direct, even though the expenses were allocated across all sales.

DOC Position. We disallowed a portion of INA–FRG's reported home market warranty expenses (related to receiving and quality control, the chemical and material laboratory, and the precision measuring department) because INA–FRG was unable to explain the allocation of these expenses. We treated the remainder of INA–FRG's reported warranty expense as an indirect selling expense. These expenses included credit notes for direct payments to customers, but also included the salaries of the personnel who cover customer complaints.

Comment 91. Petitioner argues that we should treat the U.S. warranty expenses for NMB/Pelmec Singapore, NMB/Pelmec Thailand, and Minebea Japan as direct selling expenses. Petitioner states that these respondents have failed to demonstrate that the warranty expenses are indirect in nature.

DOC Position. We verified that all the warranty expenses claimed on U.S. sales consisted only of salaries and related fringe benefits. Therefore, consistent with our normal practice, we have treated them as indirect selling expenses as they are incurred whether or not a sale is made.

Section 15: Difference in Merchandise

Comment 1. Petitioner contends that the Department should disallow Minebea Japan's difference in merchandise adjustments claimed for identical models.

Minebea Japan maintains that adjustments for differences in physical characteristics should be allowed for identical merchandise because the Department verified the differences in fabrication costs for these models.

DOC Position. No adjustment has been made to account for alleged differences in fabrication costs associated with sales of identical merchandise because we verified that, based on weighted average production costs, there were no cost differences. We make adjustments for differences in merchandise only when there are physical differences in the merchandise. *See,* 19 CFR 353.16. Therefore, only for those instances where we have compared similar products, have we made adjustments for the differences in physical characteristics, based on verified cost information.

Comment 2. Petitioner argues that the Department should merge SKF–UK's home market "comparison" and "non-comparison" sales files to compare with the U.S. sales file for purposes of the LTFV calculations. Petitioner bases its argument on the fact that SKF–UK identified identical and non-identical products by using part numbers, instead of the five matching criteria outlined by the Department. Petitioner contends that this invalidates the product matching used by SKF–UK because the part numbers include much more information than just the five matching criteria.

SKF-UK argues that the model matches it reported are correct because all of the Department's matching criteria were included.

DOC Position. We agree with SKF-UK. On the basis of verification, we are satisfied that the model matches reported by SKF-UK are for products that are identical in all physical characteristics. The matching criteria referred to by petitioner were contained in our instructions to respondents for selecting *similar* merchandise. Given that all comparisons for SKF-UK are *identical,* these criteria do not apply.

Comment 3. Petitioner maintains that NMB/Pelmec Singapore failed to match equivalent ISO and ABEC precision ratings and to report precision ratings for a large number of third country sales transactions. As a result, the Department was unable to determine with certainty that all possible identical matches were reported. Therefore, petitioner maintains that the Department should resort to the use of best information available.

DOC Position. At verification, NMB/Pelmec Singapore explained that it did not consider products with different precision rating standards to be identical because the tolerance standards of the ABEC and ISO classification systems are not exactly identical. Based on information obtained through our own research, we have learned that the ABEC dimensional tolerances for ball bearings were to be changed to correspond to the ISO standards as of October 28, 1987. We also learned that, even prior to October 1987, the differences between the ABEC and ISO standards were minor. However, we have no information on the record to determine whether NMB/Pelmec Singapore has reset its production machinery so as to eliminate any differences, however minor, between the ABEC and ISO standards. Therefore, as best information available, we have accepted NMB/Pelmec Singapore's contention that the ABEC and ISO ratings are not exactly identical.

Comment 4. Petitioner contends that for the spherical plain bearings reported, Minebea Japan used incorrect product comparison criteria in selecting the most similar bearings. Because Minebea Japan used the width of the ball rather than the width of the race, petitioner contends that the Department should reject Minebea Japan's response and use best information available for the final determination.

Minebea Japan maintains that it correctly measured the width of the bearing in determining model matches. Given that the questionnaire gave no guidelines on how width should be measured, Minebea Japan argues that it reasonably assumed the maximum width of the assembled merchandise to be the appropriate measurement. Furthermore, it maintains that the use of ball width or race width would not lead to fundamentally different results.

DOC Position. We agree with Minebea Japan. The questionnaire issued in this investigation did not specify whether the width of the ball or the width of the race should be reported for spherical plain bearings. We examined Minebea Japan's product catalog and found that both ball width and race width are included in the product description for spherical plain bearings. In addition, because respondent was consistent in its approach by reporting the width of the ball for both home market and U.S. sales, we have no reason to believe that the use of ball width as a product matching criteria would fundamentally alter the results. Furthermore, petitioner provided no information to demonstrate that the reporting of race width is a more appropriate measurement than ball width, nor has it demonstrated that the use of ball width as a matching criteria leads to distortive results.

Comment 5. NMB/Pelmec Singapore maintains that foreign market value should be based on the submitted data, which is complete and verified. Any mistakes made in the original model matching methodology were minor and were corrected at verification. The impact of any error in model matching is negligible and can be corrected on the database examined at verification if the Department chooses to do so.

DOC Position. The Department has based its calculation of foreign market value on verified third country data. Prior to verification, on November 4, 1988, NMB/Pelmec Singapore submitted a revised computer tape that corrected errors on the original third country database submitted. The November 4th tape had a minor error in the concordance. Therefore, on November 21, 1988, NMB/Pelmec Singapore submitted another revised computer tape, the second to be submitted after the preliminary determination. The November 21st tape was submitted prior to verification but too late to be used on verification. However, by comparing the two tapes, the Department was able to determine that the November 21st tape represents the verified data and was submitted in time to be analyzed and used for purposes of the final determination.

Comment 6. Petitioner maintains that, with respect to spherical plain bearings, in order to determine which bearings were identical, Minebea Japan relied on the part numbers of the bearings. Because the bearing part numbers are different depending on whether the bearing is designated by inch or metric measurement, bearings that were identical except for a fractional difference in the outer and inner diameter (due to the metric versus inch measurement) were not reported as identical merchandise. Petitioner contends that by doing this, Minebea Japan did not provide a reliable database of comparison sales. That is, if a given bearing is identical, it is automatically reported and becomes part of the comparison database used to determine the ultimate dumping margin. If, however, the bearing is similar, it is used as a comparison sale only if it is in a bearing group that makes up the top 33 percent of U.S. sales by volume. Therefore, petitioner contends that because Minebea Japan did not provide a reliable database of identical sales, the Department should use best information available, which it contends should be the rate found for Minebea Japan in the preliminary determination for plain bearings.

Minebea Japan maintains that metric-size and inch-size bearings are not identical according to the Department's criteria. Since Minebea Japan sold no metric-size spherical plain bearings in the home market that were identical to inch-size bearings sold in the United States, no such matches were reported.

DOC Position. We agree with Minebea Japan. In accordance with our revised reporting requirements issued on August 8, 1988, Minebea Japan reported home market sales of products identical to U.S. products only if such products were identical in all respects. Because the bearings sold in the home market are designated by metric measurement while bearings sold to the United States are designated by inch measurement, Minebea Japan converted the measurements and only considered products to be identical if the measurements were the same when carrying out the calculation to four decimal places. Furthermore, during verification, we examined all sales of merchandise reported as similar to U.S. products and found that all of the similar products had different physical characteristics other than metric vs. inch measurement. Therefore, we verified that all identical matches were accurately reported.

Comment 7. Petitioner asserts that NSK's sales listing is flawed in numerous respects and must therefore either be corrected or be rejected. To identify identical comparisons, NSK

used its 20-digit product codes, which may have created improper matches due to the fact that identifiers for such physical aspects as grease or clearance, which are not included in the five product-matching criteria established by the Department, may be included in these codes. NSK also used as comparison characteristics those part numbers that include customer-specific prefixes and double asterisk suffixes. The prefixes are etched or "impressed" into the bearing, while the double asterisk indicates that the clearance or precision rating is *not* impressed into the bearing. Petitioner also cites a specific example of NSK's failure to compare identical merchandise, which was found at ESP verification.

NSK claims that it properly reported its identical U.S. and home market products, contending that those bearings which differ in terms of etching are not identical. Such bearings are not physically identical and the cost of producing an etched bearing is higher due to the additional step in the production process. It also contends that it appropriately did not treat bearings with different clearances as "identical", since bearings with different clearances are not interchangeable, have different end uses, and are clearly not identical.

DOC Position. In accordance with our revised reporting requirements issued on August 8, 1988, NSK reported home market sales of products identical to U.S. products only if such products were identical in all respects, including with respect to clearance and grease. Petitioner is correct, however, in its contention that the etching of customer-specific prefixes and clearance ratings, or the lack thereof, is immaterial to the identification of identical merchandise comparisons. NSK was unable to demonstrate that differences in etching were anything other than cosmetic. These bearings are otherwise physically identical and interchangeable with each other. We have applied a rate based on best information available for these products which NSK excluded from comparisons because of these differences in etching. We also agree with petitioner with respect to bearings found at ESP verification to be erroneously excluded from comparison because of a part number matching error. A BIA rate has been applied to that quantity of bearings. *See,* Final Determinations: AFBs from Japan, and the Best Information Available section of this Appendix B for a description of the BIA rate.

Comment 8. Petitioner contends that NTN incorrectly selected identical bearings by including in its selection criteria other than those specified in the preliminary determinations. These "extra" criteria included codes in the bearing part numbers for type of grease, clearance (the distance between the rollers and the top of the outer race), and contact angle.

Petitioner states that there is generally no cost difference between most types of grease, so grease should not have been used in the selection of identical bearings. Similarly, different clearances and contact angles should not have been used in selecting identical bearings. Petitioner further states that codes for clearance, grease, and contact angle may have been omitted from the part numbers which were used for matching and therefore the entire computer program matching "identicals" is flawed. Petitioner argues that the Department should correct NTN's product comparisons or reject the response.

NTN claims that its use of bearing part numbers to identify identical merchandise correctly identified bearings that were the same in all respects. NTN further states that it followed the Department's criteria in selecting similar merchandise.

In addition, FAG–FRG maintains that the Department is allowing Japanese respondents to match identical merchandise *without* taking into account the clearance and grease, whereas the Department is requiring that FAG–FRG include these two factors in identifying identical merchandise. FAG–FRG claims that this apparent inconsistency in the Department's matching guidelines puts it at a disadvantage vis-a-vis the respondents in the Japanese investigations.

DOC Position. With regard to NTN, we verified that merchandise reported as identical in both markets was identical in every respect. Furthermore, the petitioner has confused the Department's criteria for identical merchandise comparisons with those for "most similar" comparisons. The matching criteria set forth in the questionnaire set parameters for selecting similar merchandise and were not meant to constitute all of the physical characteristics required to determine whether any two bearings are identical.

With respect to FAG–FRG's comment, the Department has been consistent in its guidelines regarding identical matches. The respondents in the Japanese investigations *did* consider clearance and grease, as manifested in bearing part numbers, in identifying identical merchandise.

Comment 9. NTN states that, because of the Department's instructions as to model matches, all bearings in the same family were considered to be similar. As such, many bearings were identified as "most similar", even though in some instances the costs were quite different, while in others the cost of the home market bearing was the same as that of the U.S. product. NTN states that the most similar bearing, and that which should be used in comparison to the U.S. bearing, is that which has the same cost as the U.S. bearing.

Petitioner states that 19 U.S.C. 1677(16) makes no provision for the consideration of cost in matching such or similar products. It further states that, even if the costs are identical, this fact does not eliminate the possible need for an adjustment where there are physical differences between the two products that necessitate such an adjustment on the basis of the cost differences attributable to those physical differences. Thus, although the total costs may be similar, the cost associated with specific physical differences must be the basis for an adjustment.

DOC Position. We agree that even if costs are identical, this does not necessarily eliminate the possible need for an adjustment where there are physical differences between the two products. *See,* 19 CFR 353.16. Therefore, to calculate foreign market value, we used a weighted-average of all products that were considered to be "most similar" using the criteria in our questionnaire for selecting similar product comparisons.

Section 16: Issues Related to Cost of Production Investigation

This section addresses the comments pertaining to the cost of production (COP) and constructed value (CV) for the products of the following companies for which a sales-below-cost investigation was initiated by the Department. We have not included comments related to those products of SKF–FRG, SKF-Sweden and SKF-Italy where the Department used "best information available" because the cost of production (COP) and constructed value (CV) data were not used for the Department's final determination. The companies and products are:

FAG–FRG	Ball, Cylindrical, Spherical, and Needle Bearings
FAG-Italy	Ball and Spherical Bearings
GMN–FRG	Ball Bearings
INA–FRG	Cylindrical Bearings
NMB/Pelmec Singapore.	Ball Bearings

NMB/Pelmec Thai	Ball Bearings
Nachi Japan	Ball and Spherical Bearings
NSK Japan	Ball, Cylindrical and Spherical Bearings
NTN Japan	Ball, Cylindrical, Spherical and Needle Bearings
RHP-U.K.	Ball Bearings
SKF-France	Ball Bearings
SKF-Italy	Cylindrical and Needle Bearings
SKF-U.K.	Ball and Spherical Bearings
Tehnoimportexport Romania.	Ball and Spherical Bearings

The Department relied on the respondents' submissions, adjusted when appropriate (see each country notice for specific analysis), for the final determinations except in cases where "best information available" was used.

For the CV, in accordance with the Department's policy as set forth in the *Final Determination of Sales at Less Than Fair Value: All-Terrain Vehicles from Japan,* imputed credit and inventory carrying costs were included as selling expenses. The portion of interest expense reflected in the companies' books for these activities was deducted in order to avoid double counting. In all cases, the actual general expenses of the company exceeded the 10 percent statutory minimum requirement so that no adjustment to general expenses was required.

This section of the Appendix is organized into two subsections. Subsection (a) deals with general comments relating to all companies, a "Europe" section which includes comments that pertain to two or more European companies, and an "Asia" section which includes comments that pertain to two or more Asian companies. Subsection (b), which addresses company-specific comments, is arranged alphabetically first by country, then by company name.

(a) General Comments

Comment 1. Petitioner claims that, for determining the COP and CV, one of the major issues to be decided in these cases is whether the transfer prices for components obtained from related companies are "prices which fairly reflect the value in the market under consideration." Petitioner argues that the transfer prices should be used for the COP and CV and must be: (1) Equal to arm's-length prices; and (2) above the COP. For each specific company, based on the facts related to that company, petitioner advocates different resolutions.

For FAG–FRG and FAG-Italy, petitioner contends that "best information available" should be used for transfer prices because the prices submitted by FAG did not meet the above criteria and were arbitrary.

FAG–FRG claims that the amount of parts it received from a related company during the POI was so small that any adjustment would have a *de minimis* impact on the cost of the final product.

FAG-Italy argues that its methodology, using the actual costs for the components from related companies for the COP calculations, is consistent with the Department's methodology, and that actual costs should also be used for CV calculations. FAG also asserts that its transfer prices for components are not arbitrarily determined and that they conform to Organization for Economic Cooperation and Development (OECD) guidelines. Furthermore, FAG emphasizes that actual market prices may be below the COP because market forces could cause prices to be depressed for significant periods of time.

For NMB/Pelmec Singapore and NMB/Pelmec Thai, petitioner states that for components received from Minebea Japan, the costs should be used since the transfer prices were below costs. Petitioner argues, however, that "best information available" should be used for other transfer prices which could not be determined to be arm's-length transactions.

NMB/Pelmec Singapore and NMB/Pelmec Thai argue that the transfer prices should be used because the quantity for those components received from related companies where the transfer prices were below their actual costs is so small that any adjustment would have a *de minimis* effect.

For Nachi, petitioner claims that the methodology used for COP and CV calculations by the respondent, *i.e.,* the actual costs for the components transferred between related companies, was incorrect because it did not provide transfer information. Additionally, petitioner states there is no evidence that these were actual costs or that the related companies were consolidated by Nachi in the ordinary course of business.

Nachi argues that neither the law nor the Department's regulations address the issues of consolidating related suppliers for calculating COP. However, they state that the longstanding practice in this regard is clear; the Department uses the costs of components from related companies. Although they point out that the degree of ownership necessary for the Department to consolidate the transactions may have varied, the Department indicated as early as 1984 that it could not be bound by section 773(e)(2) for this decision in its COP cases.

Nachi stresses that the Department cannot ignore its own longstanding policy established in *Lightweight Polyester Filament Fabric from Japan,* 49 FR 472 (1984), (that actual costs are used when ownership is 20 percent or more) and, if the Department does vary from such a practice, then it must follow the requirements of the questionnaire, *i.e.,* 50 percent direct and/or indirect ownership. To support the use of the actual cost, Nachi also contends that since these companies operate as a single entity, the use of actual costs for components which are transferred is economically rational.

For NTN and NSK, petitioner notes that, for the transfer prices from related contractors/suppliers used for the COP and for the CV calculations, one of NTN's related subcontractors transferred parts at prices which were less than the full COP and charged NTN lower prices than were charged to unrelated companies.

Petitioner asserts that, to the extent that both NTN and NSK failed to document the reasonableness of the transfer prices paid, the Department should utilize "best information available" to determine the value of specific components.

NTN and NSK advocate the use of the transfer prices included in their submission. NTN notes that parts were transferred at prices less than the costs of the related contractor for only four of nineteen parts examined at verification. The majority of the parts reviewed were transferred to NTN above the costs of the related company. NTN also notes that lower prices charged to NTN by the related subcontractor than charged to an unrelated firm for similar processing occurred only once in the numerous transactions with various subcontractors examined during verification. Both NTN and NSK maintain that the related contractors examined by the Department at verification operated at reasonable profits and that substantially all of their business was with their respective related companies. Accordingly, the Department should accept the transfer prices paid to these related suppliers/subcontractors as a fair approximation of market value.

For SKF-France, Italy and U.K., petitioner advocates using the full cost of components transferred within the SKF Group companies if the transfer prices are below the costs. However, petitioner also alleges that to rely solely

on the actual COP instead of transfer prices may not account for the profit which may be earned on arm's-length sales.

SKF claims that the responses for COP and CV calculations include the actual COP for components obtained from related companies and that these costs were verified. Therefore, the response for SKF-France, Italy, and U.K. should be used for the final determinations.

DOC Position. The Department followed its policy of using actual costs instead of transfer prices of components received from related companies for the COP calculations when there was more than a 50 percent direct and/or indirect ownership between the companies. This 50 percent test was outlined in the questionnaire and is consistent with "generally accepted accounting principles" regarding the degree of ownership required to consolidate transactions between related companies. When this degree of ownership exists, the transactions of these companies are consolidated and the costs of the products sold to third parties are recorded at the actual costs without intercompany profit/loss that might be included in the transfer prices used between the companies.

For CV, pursuant to section 773(e)(2) of the Act, the Department uses transfer prices between related companies unless such prices do not "fairly reflect the value in the market under consideration". Here we have reason to believe that transfer prices do not reflect market prices. In this industry, the market for bearing components is virtually nonexistent. The lack of independent component suppliers indicates that the component market does not yield a reasonable return. The Department had no evidence of profitable market sales of components nor any reason to believe that under the current circumstances the market prices for components would have been above the cost of production.

Additionally, the Department was unable to test transfer prices to market prices because the industry was characterized by: (a) Nationally and multinationally integrated producers; (b) one or few producers in each country; and (c) thousands of different products of varying size, grade and specifications requiring exacting components.

Consequently, the market for bearing components was virtually nonexistent and credible, market prices could not be obtained. Prices for identical components from unrelated companies in the appropriate market existed in only very rare instances. Additionally, the Department encountered little, if any, sourcing of components from independent component suppliers. Therefore, lacking arm's-length prices for components to compare to transfer prices, for CV purposes, the Department generally used the cost of the components as representative of the value reflected in the market under consideration.

For SKF-France, Italy and U.K., FAG-Italy and Nachi, the Department used the full cost of the components transferred between related companies for the COP and for the CV calculations.

For FAG–FRG, transfer prices were used for the COP and the CV calculations because the quantity of components purchased from related suppliers was so small that an adjustment to these prices to actual costs would have had a *de minimis* effect on costs.

For NMB/Pelmec Singapore and NMB/Pelmec Thai, transfer prices were used for the COP and the CV calculations because: (1) The parent company purchased balls from unrelated suppliers and the transfer prices of the balls received from the parent company equalled costs, *i.e.*, the price paid by the parent plus handling costs; and (2) the quantity of inner and outer rims supplied by related companies that were used for production was so small that an adjustment would have had a *de minimis* impact on costs.

For NTN and NSK, transfer prices were used as "best information available" for both the COP and CV calculations because: (1) The companies represented that they could not provide costs for each component and for the processing work performed by related companies; (2) substantially all of the sales of the related subcontractors were to their related company; (3) transfer prices that were charged permitted these related subcontractors to recover their cost in aggregate; and (4) the adjustment of the transfer prices of those components which were below cost to their actual cost would have a *de minimis* effect on the costs.

Comment 2. Petitioner maintains that interest expense should not be offset by interest income unless the Department has determined that the income is from "compensating balances" or investments from working capital. Any offset should be from interest income earned from the operations of the company as opposed to investment activities of the company.

SKF-France, Italy and U.K. argue that they only offset interest expense by short-term interest income earned through investing cash generated from operations. This interest was derived from short-term interest bearing instruments, commercial paper and government notes.

NMB/Pelmec Singapore and NMB/Pelmec Thai claim that their responses were verified and only interest from operations was included, *e.g.*, bank deposits.

Nachi argues that all items of non-operating income are directly related to the business operations and, in any case, the amount is negligible.

NTN and NSK maintain that they properly offset their reported interest expenses with interest income.

DOC Position. For FAG–FRG and FAG-Italy, the Department used the interest expense of the FAG consolidated entity and deducted the interest income from operations, *e.g.*, income from bank deposits. The 1987 FAG consolidated interest expense was used in the COP and CV calculations in the first quarter of 1988 as "best information available".

For NTN and NSK, much of the interest income was derived from investment activity as opposed to bearing manufacturing operations. For example, NTN's interest included income from convertible debentures and national bonds, profits on securities and negotiable instruments options. Similarly, NSK's interest income included profits on securities and negotiable instruments options, and other interest income which was not short-term. Since the Department determined that this interest income was not part of the income derived from bearing manufacturing operations, it disallowed these items as interest income to offset interest expense.

For Nachi, the Department used the interest expense of the most recent fiscal year of the consolidated entity. However, no offset was made because the company did not provide information regarding consolidated interest income from operations nor was any detail provided in the consolidated financial statements.

For SKF-France, Italy, and U.K., the Department used the interest expense from SKF's consolidated financial statements, and deducted the portion of interest income related to current financial assets. For SKF-France, Italy and U.K., the 1987 SKF consolidated interest expense was also used in the COP and CV calculations in the first quarter of 1988 as "best information available".

For NMB/Pelmec Singapore and NMB/Pelmec Thai, the Department verified that they had offset only interest income related to operations against interest expenses.

Comment 3. Petitioner argues that the Department should base interest expense on the costs incurred by the "consolidated corporate entity" for SKF-France, SKF-Italy, SKF–U.K., NMB/Pelmec Singapore, NMB/Pelmec Thai and for Nachi.

SKF argues that interest expense should be based on the interest incurred by each particular subsidiary, because SKF operates in many countries which have unique economic and market conditions. Including the experience of these other markets would seriously distort the information reported by any one country.

NMB/Pelmec Singapore and NMB/Pelmec Thai contend that this change was made during verification and the result was insignificant.

DOC Position. The Department recognizes the fungible nature of the corporation's capital structure, *i.e.*, both debt and equity. Recognizing the global nature of these operations, we used the interest expense of the consolidated company. For the SKF companies, this adjustment resulted in a slight decrease in the interest expense for SKF-France and U.K., while SKF-Italy remained approximately the same. For Nachi, the Department relied on the interest expense in the consolidated financial statements. However, because the company did not provide specific consolidated information regarding interest income, no adjustment was made. For NMB/Pelmec Singapore and NMB/Pelmec Thai there were slight increases.

Comment 4. Petitioner contends that for SKF-France, Italy and the U.K., the Department must determine whether or not the price for steel obtained from a related company reflects arm's-length transaction prices and whether it was above the COP. Further, petitioner argues these issues could not be verified through cross comparison and, therefore, the Department should use "best information available" to value the steel inputs purchased from this related party.

SKF-France, Italy and the U.K. state that prices charged by the related steel producer are arm's-length prices and, accordingly, should be relied upon for the COP and CV calculations.

DOC Position. For purposes of calculating COP, the Department did not request information on the related supplier's cost of producing steel because SKF did not own more than 50 percent of the related supplier. (*See DOC Position* in *General Comment 1.*)

With respect to CV, we have accepted the transfer prices for this steel. As a result of the virtually unlimited variations possible in grade, size, diameter, purchase volume, certification requirement and surface treatment, there were no completely *identical* sales of steel to unrelated purchasers in the same market. Therefore, the Department was forced to test the prices charged by the related supplier against the prices that the supplier charged for similar products. We also compared prices paid by SKF-France, Italy and U.K. to the related supplier with prices paid by these SKF companies to unrelated suppliers or to bids received from unrelated suppliers.

For SKF-Italy, the Department compared orders for similar steel products sourced from related and unrelated suppliers. For SKF-France, we compared two instances of identical products purchased from a related and unrelated supplier. For SKF–U.K., we compared purchasing department schedules of price quotes obtained from both related and unrelated suppliers. In each instance, the price variations appeared to be supported by the circumstances of the sale.

Based on these comparisons, the Department concluded that the transfer prices of steel products obtained from the related company were within a reasonable range of the prices charged by unrelated suppliers for the most comparable products and, therefore, fairly reflected the value in the market under consideration. Accordingly, the Department relied on the transfer prices of the steel.

Comment 5. Petitioner argues that, with respect to SKF-France, Italy and U.K., R&D expenditures of a product specific nature must be allocated to the particular product or part. Failure to indicate product specific R&D warrants the use of "best information available" or treatment of all R&D expenses as overhead.

SKF-France, Italy and U.K. state that the R&D efforts of the research center cannot be applied to a particular product because they are, in fact, general in nature.

DOC Position. The Department determined that R&D activities undertaken at the SKF-Netherlands facility were primarily of a general nature. Specific projects conducted at this facility were charged directly to the appropriate related company and, therefore, were included by these companies in their costs. As the nature of these activities of the research facility appear to be of a more general nature, the costs were considered to be G&A expenses.

Comment 6. Petitioner argues that the Department should reject the depreciation expense reported by SKF-France, Italy and U.K. because the companies purchased equipment manufactured by other SKF companies.

DOC Position. The Department accepted SKF-France, Italy, and U.K. depreciation expense for equipment obtained from a related company because we verified that equipment produced within the SKF-Group was transferred within the Group above the full cost, including the G&A expenses of the producing company.

Comment 7. Petitioner contends that the responses of SKF-France, Italy and U.K., and FAG–FRG and Italy were inadequate because the submissions were not adequately supported. Therefore, the Department should use "best information available."

DOC Response. The Department used information provided by the respondents for the final determination because we concluded that the methodology used for the responses adequately captured and allocated all costs attributable to the products. Also, we found during verification that the information used was sufficiently supported. The Department reviewed the issues raised by the petitioner, the methodology used by the respondents, and the major items related to the production costs during verification. The methodology of the submission, the procedures and its findings are described in the cost verification report, public versions of which are on file in Room B–099 of the Commerce Building.

Comment 8. Petitioner argues that depreciation expenses recorded in the cost accounting records of SKF-France, Italy and U.K. should not be changed from a "reacquisition value" basis to a historical cost basis.

SKF-France, Italy, and U.K. argue that they use depreciation based upon historical cost for financial statement purposes, in accordance with the accounting principles of each country.

DOC Position. The Department agrees that it is appropriate to change the depreciation recorded in the cost accounting records from a "reacquisition value" basis to a historical cost basis. U.S. GAAP and the GAAP of the relevant countries require that depreciation be calculated on a historical cost basis, not on a replacement value basis. The reacquisition value of assets for depreciation expense was used by these companies only for the internal cost system. The consolidated financial statements were based on historical costs.

Comment 9. Petitioner argues that interest expense reported by NTN and NSK did not include interest expense

paid on bonds by NTN and amortization of bond issue expense by NSK.

NSK maintains that this was an "extraordinary" expense associated with the issuance of a Eurodollar bond offering, pertaining to NSK's worldwide operations. As such, NSK believes this expense must be allocated based on the cost of sales for all NSK companies.

DOC Position. For calculating interest expense, the Department allocates the total interest expense to the total operations of the consolidated corporation based on cost of sales. Accordingly, the Department included the interest expense on bonds incurred by NTN and the amortization of bond issue expense incurred by NSK in the respective total interest expense calculated for each company for both COP and CV calculations.

Comment 10. Petitioner alleges that general expenses submitted by NTN, NSK, and Nachi omitted losses incurred on the disposal of fixed assets and write-downs/write-offs of inventories. The petitioner notes that the portion of these expenses attributable to the POI should be included in the COP.

NTN, NSK, and Nachi maintain that fixed asset disposals and write-downs/write-offs of inventory are considered non-operating in nature by the accounting methodology of the country under investigation and should not be included in the reported COP. However, NSK requests that, if the Department includes expenses incurred in the disposal of fixed assets and write-down/write-offs of inventory in the COP, it also include the income amounts generated by such disposals.

DOC Position. The Department views losses on the sale or disposal of fixed assets and write-downs/write-offs of inventory as a normal cost of producing the products which should be reflected in the product's COP. These expenses incurred by NTN, NSK and Nachi were allocated to the product as part of a general expense over the total cost of sales. The Department considers any income or credits generated by these transactions as an offset against the expense to arrive at the actual cost incurred by the company.

Comment 11. Petitioner argues that the Department should include depreciation on NTN's and NSK's idle machinery in the COP.

NTN and NSK note that the accounting methodology in Japan allows a company to stop depreciation on idle assets. Accordingly, the Department should not include depreciation expense on idle machinery in the COP of the subject merchandise, as it was not an expense in the respondents' normal cost accounting systems.

DOC Position. The Department includes in the fully absorbed factory overhead the depreciation of equipment not in use or temporarily idle. While Japan's accounting methodology does provide that depreciation for idle equipment may be stopped, the Department does not accept this accounting method, reasoning that idle fixed assets are a cost to the company and should be absorbed in the COP. Accordingly, depreciation expense for the respondents' idle machinery was included in the cost of manufacturing.

(b) Company-Specific Comments

France

Comment 1. Petitioner contends that restructuring expenses incurred by Les Applications du Roulement (ADR), an SKF company in France, should be allocated to the products under investigation for purposes of the final determination.

SKF-France argues that these are "extraordinary costs" which happened to occur during the POI and that they should be excluded from the COP and CV calculations, or amortized over an appropriate period. Further, should these extraordinary costs be included in the COP and CV calculations, the Department should not disregard sales below the COP in determining FMV.

DOC Position. The Department agrees with petitioner. The unaudited financial statements of ADR term the restructuring costs "unusual expenses". In France, material events which may not be considered extraordinary items by either French or U.S. GAAP require special disclosure. However, U.S. as well as French GAAP dictate that an event must be both unusual in nature and not expected to recur in the foreseeable future to be considered extraordinary. During verification, the respondent did not provide detail which would establish that this restructuring meets the criteria to be considered an extraordinary item. Therefore, the restructuring expenses were treated as a period cost consistent with U.S. GAAP. As best information available, the restructuring expenses were allocated on the basis of cost of goods sold of ADR's parent company, SFI–SKF, for the fiscal year 1987. Because we treated restructuring expenses as ordinary costs, they were included in our COP calculation.

Comment 2. Petitioner argues that the understatement of corporate G&A expense should be corrected for purposes of the final determination and that the consolidated percentage of G&A should be used rather than the country-specific amount due to the global nature of SKF.

SKF-France claims that the misstatement of the corporate expenses was corrected at verification and, in any event, was *de minimis.* Further, country-specific G&A is appropriate for the COP/CV calculations because the consolidated G&A percentage includes some expenses which are classified at the subsidiary level as overhead costs.

DOC Position. The Department agrees with petitioner that the understatement of corporate expenses should be corrected for the final determination, and such correction has been made. However, we agree with SKF-France that its country-specific G&A, including its appropriate share of corporate G&A, should be used for the COP and CV calculations.

Comment 3. Petitioner argues that R&D expenditures of the SKF Netherlands facility must be allocated to all related companies which benefit from its R&D activities, including ADR.

SKF-France states that the R&D efforts of the research center are properly allocated to those companies which benefit from it, specifically the company shareholders who develop new products. New developments of the research facility would first be instituted by the shareholders and, therefore, they bear all costs.

DOC Position. The Department accepted SKF's method of allocating the SKF Netherlands research center costs. SKF has represented that any improvements to the production process would be available, at first, only to the research center shareholders. Allocating the center's costs to each of the shareholders assigns a portion of these costs to ball bearing production in France, through SKF Clamart. R&D specific to miniature bearing products was carried out at ADR and appropriately included in ADR's costs.

The Federal Republic of Germany

Comment 4. The petitioner argues that GMN's employee benefits should be allocated on the basis of direct labor costs and should not be included in fabrication overhead.

GMN argues that an adjustment is not necessary because employee benefits are included in fabrication overhead, which is allocated on the basis of direct labor.

DOC Position. We agree with GMN. The Department examined the fabrication overhead and determined that employee benefit costs were included in these costs. Since fabrication overhead is allocated based

on direct labor, an adjustment is not necessary.

Comment 5. GMN argues that its first quarter 1988 costs should not be used to compute average production costs for comparison to sales prices because accruals, based on estimated amounts, were included in those costs. GMN suggests that, if the Department decides to use the first quarter 1988 costs, these costs should be weight-averaged with the actual cost data from fiscal year 1987.

DOC Position. The Department used the first quarter 1988 COP data. All accounting data is based on some estimates in determining costs, and in this case, there were no indications that the estimates used for the first quarter 1988 were inaccurate. The Department did not average the two quarters but compared the fourth quarter 1987 and the first quarter 1988 costs to the sales made during the respective quarters.

Comment 6. Petitioner argues that GMN's interest income and debt interest to shareholders should not be deducted from the total interest expense. The source of interest income is not known. Therefore, it should not be allowed as an offset.

GMN argues that interest income is interest received from customers for accounts receivable and therefore, should be offset against interest expense. With respect to interest paid on a loan from a primary shareholder, that interest resembles a pre-profit distribution and should not be included as an interest expense.

DOC Position. The Department determined that a portion of interest income pertains to interest GMN received from customers for accounts receivable, and has allowed this portion as an offset to total interest expense. The loan to GMN from a shareholder does not differ from other debt. Therefore, the interest paid on that loan was treated as an interest expense.

Comment 7. Petitioner argues that GMN reported only costs to produce a single ball for each bearing in their submission, rather than costs for all the balls contained in the bearing.

GMN argues that all costs for the balls contained in each bearing were reported.

DOC Position. The Department verified that the costs of all balls required for each type of bearing were reported in the respondent's submission.

Comment 8. Petitioner contends that FAG–FRG data should be rejected in favor of best information available because the total cost system was inadequately supported, cost data were not submitted in an appropriate format, and the Department cannot ensure whether transfers of raw materials, part, or components from related parties were made at arm's-length prices.

FAG–FRG contends that best information available should not be used. The company states that the methodology used for its submission did not rely on the total cost system and that documents and calculations used for its submission were fully tested and verified. Also, the company argues that virtually all parts used in FAG–FRG bearings are either manufactured by FAG in its own factories from basic materials or purchased from unrelated suppliers, except for specialized balls which accounted for only a minuscule proportion of FAG's consumption of balls.

DOC Position. The Department did not use "best information available" for the final determinations because it concluded that the methodology used for the response adequately captured and allocated all costs to the products under investigation. Also, we found during verification that the information used was sufficiently supported. Finally, we confirmed that the amount of parts from a related company was insignificant and there would be no impact on costs.

Comment 9. Petitioner contends that FAG–FRG's COP response should be rejected because FAG did not provide a reconciliation between two cost systems during verification. Therefore, the Department cannot ensure that costs reported in one system are consistent with costs recorded in the other system and internal inconsistencies between these systems may be reflected in the cost submission.

FAG–FRG contends that it fully explained and reconciled the two systems, contrary to petitioner's allegation. A new system was only used to provide the relative breakdown of cost elements of each sampled bearing. A consistent set of current standard costs was used for the calculation of production cost variances. The cost submission was the result of these calculations, and not those involving the standard costs of bearings from the new cost system.

DOC Position. The Department did not use "best information available" because FAG–FRG was able to reconcile the two cost systems. We verified that FAG–FRG's information could be relied upon for the final determinations.

Comment 10. Petitioner contends that because FAG–FRG relied on an incorrect figure in its submission, the Department should revise the cost of goods sold for the rolling bearings division to determine if home market sales were made below the COP.

FAG–FRG contends that the cost of goods sold for the division was slightly understated due to an arithmetic error and the total effect of this adjustment was insignificant.

DOC Position. For the final determination, the Department revised the submitted cost of goods sold of the rolling bearings division based on verified information.

Comment 11. Petitioner contends that all consulting fees incurred by FAG–FRG for 1987 should be considered costs during the POI instead of the amortized amount for 1987 which was reflected in the G&A. They claim this type of expense can be incurred or expected during normal business operations and, therefore, is not an extraordinary cost.

FAG–FRG contends that such consulting studies rarely occur within manufacturing companies such as FAG–FRG. It amortized these expenses over the fifteen-year period of its expected benefits and properly included the amortized amount in G&A expenses. Therefore, its approach for the treatment of such a large and infrequent expense is correct and proper.

DOC Position. We agree with petitioner. Although the company claimed such expenses were of an infrequent nature and should be amortized, it did not support that this treatment would have been in accordance with German GAAP. Accordingly, the Department did not amortize the expense and included the consulting fee in the G&A expenses.

Comment 12. Petitioner contends that the FAG–FRG claim for a credit to the 1987 costs should not be allowed. The credit is from a year-end adjustment to the maintenance reserve account which was established and funded in 1986. Petitioner argues that FAG provided no documentary evidence demonstrating that any expenses for funding a reserve were part of the 1987 costs.

DOC Position. The Department did not allow this credit to 1987 costs resulting from the year-end adjustment. Since the expense of this provision was recognized in 1986, the credit should not be made to the 1987 costs.

Comment 13. Petitioner contends that various issues were raised in its prehearing brief regarding the derivation and allocation of depreciation expenses, R&D expenses, subcontracting costs, the general unreliability and inconsistency of the reported costs, and FAG–FRG's failure to provide the COP data in the required format. Given that such issues were not addressed at verification, the Department should consider large portions of FAG's response as unverified and should use "best

information available" for purposes of making the final determination.

FAG–FRG contends that no costs were excluded or misclassified in its submission regarding the issues raised by the petitioner and these issues were verified and resolved.

DOC Position. The Department reviewed the issues raised by the petitioner, the methodology used by the respondent, and the major items related to the production costs during verification. The Department described the methodology of the submission, the procedures, and its findings in the cost verification report. We concluded that the verified information could be relied upon for the final determination.

Comment 14. FAG–FRG contends that consistent with its recent decision (See *Certain All-Terrain Vehicles from Japan,* 54 FR 4864 (1989)), the Department should not include imputed credit or inventory carrying costs in COP.

DOC Position. We agree and have followed the practice adopted in the above-cited case.

Comment 15. Petitioner argues that the INA–FRG response was not verified and the Department should use best information otherwise available. For example, standard costs were not reconciled to actual costs, although differences between standard and actual costs were noted for every cost element tested. Additionally, certain costs may not have been included, such as general expenses, waste, and inventory write-downs.

INA–FRG argues that "the determination of whether INA's COP submission was adequately verified should be based on whether the COP calculations were reasonably based on actual costs, not whether INA was able to tie each and every element of its standard costs into the company's financial statements".

INA–FRG has stated that it utilized its cost system for the response and, like other respondents, has also stated on the record that it does not compute variances. Therefore, it concludes that the Department must decide if the response was reasonably based on actual costs. INA–FRG states that through the Department's testing of material prices and labor rates, it should conclude that standard costs were reasonably based on actual experience.

DOC Position. The Department did not consider the INA–FRG's COP response to be verified. In response to the Department's request for actual costs, INA–FRG stated that "the cost of manufacturing per product is based on costs of the processes employed in the manufacture of the particular products and includes any costs attributable to a certain process". The company also explained that its response was "based on our cost accounting system," adjusted for imputed interest and replacement depreciation which were items not included in the financial system.

During the course of the verification, it became evident that the cost of manufacturing was not based on the costs of the processes employed in the manufacturing of the particular product, nor was it based on the cost system adjusted for the items not included in the financial system.

INA's submitted COP for the POI was based on product standard costs which were neither part of the cost accounting system nor the financial accounting system. Additionally, INA was not able to supply any documentation for the standard costs used in the submission. Therefore, no underlying support was provided for the costs of all of the numerous products in the response. The company did provide an index which it claimed to have used to adjust 1987 standards to 1988. However, the basis for the 1987 standards was not furnished.

Prior to discovery that the product standards were not a part of the cost system, the Department tested certain items in an attempt to reconcile the standard costs to actual costs. When the price of materials, the labor rate and other items were compared to invoices and payroll records, etc., differences were noted in all cases. Also, INA did not provide any means to tie the product standards to the cost system, or to the actual costs recorded in the financial system. Therefore, the quantity of these inputs (material, labor, etc.) could not be verified.

Additionally, numerous other discrepancies were noted. An important discrepancy was discovered between the detailed product cost totals provided for the nine products to be used as a sample for verification and that part of the submission, listing the COP for all products, which the Department relies upon to determine whether home market sales are at prices below the COP.

Although INA–FRG stated in its response that variances were not developed in the normal course of business (*e.g.,* FAG–FRG, and GMN), this was not the reason why INA's methodology could not be accepted. The other respondents, unlike INA, had used product standard costs which tied to the cost system and had developed verifiable variances to adjust standard to actual costs for the submissions.

The Department could not accept INA–FRG's "reasonably close to actual" standards. To do so would result in inaccuracies which would yield inequitable results to not only the petitioner but to other respondents.

Because of the methodology used by the company for its response, the inability of the company to reconcile the submission to actual costs of the product, and the lack of documentary support for the data, the Department has rejected the INA–FRG's cost data and has used "best information available" for cylindrical bearings produced and exported in the FRG by INA.

Italy

Comment 16. Petitioner alleges that since FAG-Italy cannot obtain the cost for spherical roller bearings from its joint venture company, the price charged by FAG to an unrelated company for the spherical roller bearings should be used as "best information available".

FAG-Italy states that the only appropriate basis for determining the COP of spherical roller bearings obtained from its joint venture is the transfer price because of the unique terms of the agreement and because FAG has no management control or access to the joint venture costs. Additionally, it argues that the small loss incurred in that year by the joint venture should not be added to the transfer price because, in accordance with GAAP, this loss is not included as a manufacturing cost on the financial statements.

DOC Position. The Department agrees with FAG-Italy in part. Transfer prices were used for the COP/CV calculations because FAG-Italy could not obtain the actual costs to produce the spherical roller bearings from its joint venture. However, we have increased the transfer price between the joint venture and FAG-Italy to reflect the loss incurred during the POI because the transfer prices in aggregate were below the cost to produce the bearings and the loss of the joint venture must be absorbed by the participants of the joint venture.

Comment 17. Petitioner contends that the Department should not accept the information FAG-Italy provided during verification correcting the COP of components because it constitutes a new submission.

FAG-Italy states that the information provided at verification was not a new submission because it related to the parts of a bearing, not the total COP, and that a correction of a calculation error does not constitute a new submission.

DOC Position. FAG-Italy identified the calculation error on a timely basis and provided the appropriate adjustments. Correction of one error in the submission does not constitute a new response. The Department was able to verify the actual cost of the parts at the parent company and that the same cost was properly included in FAG-Italy's cost submission for ball bearings.

Comment 18. Petitioner claims that FAG-Italy's COP should be corrected: (1) For a material usage variance which was calculated as a difference between the amounts recorded in the internal accounting system and its financial statements; (2) for the depreciation expense that would have been recorded to account for the difference between the market value and the price paid to its parent for certain equipment; (3) to include G&A of the parent company in FRG for Umbra-made products with the CV calculation; (4) for consulting fees incurred during the period of investigation that should be expensed and not amortized over fifteen years, since the respondent could not adequately substantiate that these fees were an extraordinary item.

FAG-Italy claims that: (1) The total amount of the difference in material usage between the internal accounting systems and its financial statements was included in the cost of manufacturing for the submission; (2) the increase in depreciation is not relevant because only a small percentage of equipment is purchased from the parent and that the transfer price represents cost; (3) G&A expenses of the parent were not added to cost of components obtained from the parent because the transfer price included an allocation of the G&A; and (4) that consulting studies rarely occur within manufacturing companies such as FAG-Italy. Therefore, its approach for the treatment of such a large and infrequent expense is correct and proper.

DOC Position. The Department agrees with FAG-Italy on point (1) and with petitioner on points (2), (3), and (4). Although the material purchase price variance was classified as variable overhead instead of as a material cost, the Department has determined that no adjustment is necessary because the variance is included in cost of manufacturing and the amount in question is *de minimis.* Depreciation expense was adjusted to reflect the amount of depreciation expense the respondent would have recorded had it purchased the equipment from its parent at an arm's length price. G&A expenses of the parent were included in the CV calculations of ball bearings manufactured in Umbra because the actual costs of the components were used. G&A expenses were adjusted to include FAG-Italy's portion of all consulting fees incurred by the parent company, since these expenses could not be substantiated as extraordinary and amortized as the company suggested.

Comment 19. Petitioner contends that FAG-Italy's response should be rejected because costs were reconfigured for the purposes of the submission.

FAG-Italy contends that its costs were not modified and, in fact, were derived directly from company books and records kept in the normal course of business. During 1987, the Umbra plant had one cost center area. During 1988, the same plant was divided into three cost center areas. FAG-Italy states that in order to calculate product costs for the submission, it made a three-area division of costs on a pro forma basis for 1987.

DOC Position. We agree with FAG-Italy. The Department verified that the division of the 1987 cost into three cost center areas was consistent with FAG-Italy's records.

Comment 20. SKF-Italy states that costs incurred during the period of investigation for cylindrical roller bearings were not "ordinary". It claims that the single cylindrical roller bearing sold during the period of investigation was a prototype and, thus, incurred significant labor and overhead expenses over a small lot size. Therefore, these "start-up costs" should be capitalized and amortized over an appropriate period of time or volume of production.

Petitioner claims that the Department could verify neither the actual nor the standard costs of the product in periods subsequent to the POI and, thus, could not determine if costs incurred during the period of investigation were "ordinary". Petitioner argues that the actual costs submitted and verified at the company should be used.

DOC Position. The Department agrees that the actual costs submitted and verified at the company should be used to determine the CV of the cylindrical roller bearing. We were not able to verify the standard costs for cylindrical roller bearings in periods subsequent to the POI, because exhibits to support such information were submitted after the verification was completed. In addition, standard costs only reflect management's estimate of the product's cost and do not reflect the *actual* cost of the product. Thus, the Department could not determine if the costs incurred by the respondent during the POI were ordinary costs or not. Therefore, we have used the verified cost during the POI to compute CV.

Comment 21. Petitioner argues for SKF-Italy that valve tappets are a type of needle roller bearing specifically within the scope of the investigation and, thus, costs associated with this product should be included in the reported cost data.

SKF-Italy argues that its valve tappets bear none of the characteristics of a bearing and, thus, costs related to its manufacture are properly excluded from the investigation.

DOC Position. We have determined that the "valve tappets" in question do not contain rolling elements and are not like spherical plain bearings. They are not physically similiar to the products under investigation. Therefore, we agree with SKF-Italy and have not included any costs related to its "valve tappets" in our calculations.

Comment 22. SKF-Italy argues that an adjustment made to the financial statements to allocate variances between "cost of sales" and "inventory" should also be included in indices used to calculate actual unit costs.

DOC Position. We disagree. The financial statement adjustment converts inventory from standard cost to actual cost. SKF-Italy provided the actual fabrication costs for production during the period. Whether this production has been sold or remains in inventory has no impact on the COP. Therefore, this adjustment cannot be applied to the COP.

Japan

Comment 23. Petitioner contends that Nachi's depreciation costs may have been inaccurately reflected in the submission because of the accelerated depreciation methods used by Nachi and the values and methods used for depreciating the equipment made by its machine tool division.

DOC Position. The Department verified Nachi's depreciation reported in its response. The depreciation method was in accordance with Japanese Generally Accepted Accounting Principles and Japanese Tax Law. At verification, the Department found no evidence that the company had used an unusually fast accelerated method of depreciation or an economic useful life for the assets which did not fairly reflect the value of those assets. Additionally, the Department verified that equipment made by Nachi's machine tool division was recorded on its books at the division's cost to manufacture the equipment.

Comment 24. Petitioner argues that Nachi's C&A expenses were

inaccurately reflected in the submission because the related subcontractor's G&A costs were not included in its COP submission.

DOC Position. The Department verified the components and the allocation of expenses within the G&A expense to the various bearings. The Department found no inaccuracies within Nachi's submission. Additionally, the Department verified that the related subcontractor's G&A expenses were properly included in Nachi's reported G&A expenses.

Comment 25. Petitioner argues that since Nachi did not submit reliable CV information, the Department should use the FMV data as "best information available" for CV purposes.

Nachi argues that there is no basis for the use of CV. It also argues that if CV were to be used, the Department should use Nachi's submitted costs as a basis for the CV.

DOC Position. In submitting transfer prices for CV purposes, Nachi adjusted for intercompany profit/loss. As a result, Nachi's CV was less than COP for bearings which were fabricated by related subcontractors operating at a loss. The Department did not consider transfer prices below cost as reflecting the fair market value for the processes performed by the related subcontractors. Therefore, as best information available, the Department based CV on the actual costs of components from related subcontractors.

Comment 26. Petitioner alleges that NSK's cost data submitted after verification should be rejected. Petitioner maintains that the Department should reject those portions of the response which are materially deficient or which were not fully supported at verification.

DOC Position. NSK's original computer tape had provided cost information for only one quarter of the POI. The revised tape, received *prior* to verification, provided average cost information for both quarters of the POI. On this revised tape, cost data was not provided for some products. Where NSK's cost information for a product was not provided on the revised tape, the Department used "best information available".

Comment 27. Petitioner alleges that the costs of the NSK Environmental Control Department should be allocated to the merchandise under investigation and included in the total COP.

DOC Position. The Environmental Control Department is part of NSK's headquarters operations and, as such, its costs are included in the G&A expenses which have been verified and are a part of the products' COP.

Comment 28. Petitioner contends that the manner in which NTN has reported its production costs shifts its costs away from certain parts that are identical to those sold for export to the United States, thereby skewing the calculation of less than fair value margins.

NTN denies petitioner's allegation of "skewed" cost data, and claims that its actual costs as reported are based on its regularly kept accounting records.

DOC Position. The Department verified NTN's response and did not find any skewing of the submitted cost data. NTN's submitted cost data is derived directly from NTN's own cost accounting records.

Comment 29. Petitioner alleges that non-bearing R&D expenses incurred by NTN, *i.e.*, at the R&D Plant, should be added to the production costs for purposes of the final determination.

DOC Position. Our review of this Research Facility indicated that the R&D conducted there was of a product-specific nature for products not subject to this investigation. Accordingly, we did not allocate this R&D to either the COP or the CV of the products under investigation for purposes of the final determination.

Romania

Comment 30. Petitioner argues that the Department should not offset the COP by the revenues from scrap sales because the cost of removing nonrecoverable scrap offsets the revenue generated from the sale of scrap.

Tehnoimportexport (TIE) argues that an adjustment should be made for the value of scrap and the amount should be the difference between the gross and net weight.

DOC Position. Since costs to remove scrap are normally a part of overhead, the Department deducted a value for scrap sales from material costs when information was provided to support the amount of scrap sold. The Department disallowed a deduction for nonrecoverable scrap from material costs.

Comment 31. Petitioner argues that the Department should not rely on the factors of production information submitted by TIE due to the lack of support and inaccuracy of material portions of the response.

DOC Position. The Department used the submitted factors of production adjusted for any differences noted during verification. However, when the factors could not be supported, the Department used "best information available".

Comment 32. Petitioner and TIE argue that the factory overhead rate used in the preliminary determination, which was based on TIE's cost, should not be used since it was based on the input costs which were determined in a "state-controlled" economy. Both parties suggest that the rate be based on the experience of a manufacturer of a similar product in a surrogate country.

DOC Position. The Department agrees. The Department utilized a factory overhead rate from Portugal, the surrogate country selected for the final determination.

Comment 33. Petitioner argues that the quantities submitted by the Romanian factories for energy and utilities are inconsistent and unverified and, therefore, should not be used.

TIE argues that their submission methodology inaccurately states the utility cost for all bearing types. Respondent suggests that utility costs be calculated as a percentage of total raw materials and labor.

DOC Position. The Department agrees with petitioner that the submitted information could not be verified. However, energy and utility costs were included in the overhead provided by the surrogate country. As such, we did not need to calculate separate factors for utility costs.

Comment 34. Petitioner contends that the Department erroneously relied on data submitted by TIE for the valuation of cold-rolled coil as the input into steel balls. Petitioner argues that such balls are manufactured from bearing quality (52100) steel bar, wire or wire rod, not cold-rolled sheet in coil. Therefore, the Department should use the value of steel bar wire or wire rod in the valuation of balls.

DOC Position. We agree with petitioner and have used the surrogate value for 52100 steel bar to value balls contained in TIE's ball bearing.

Singapore

Comment 35. Petitioner argues that it would be inappropriate for the Department to rely on NMB/Pelmec Singapore's development of a standard cost system for purposes of the investigation. A standard cost system must rely on historical costs, analysis and the calculation of cost variances. If a developed standard cost system uses only production data, various costs may be understated.

DOC Position. We disagree. NMB/Pelmec Singapore does not maintain a standard cost accounting system in the ordinary course of business. For purposes of the investigation, the respondent developed standard costs for

each product only as a means of allocating actual costs to the individual products. These standards were based on engineering standards which were used by NMB/Pelmec Singapore in its operations. The Department concluded that the response adequately captured and allocated all of the actual costs to the products, and that the information as verified could be relied upon for the final determination.

Comment 36. Petitioner argues that NMB/Pelmec Singapore's assumption of "full capacity operation" during the POI results in lower standard costs and understates the CV.

DOC Position. We disagree. The costs resulting from less than "full capacity operations" would be reflected in the actual costs. The actual costs were used for the submission but were allocated proportionately based on standards. All actual costs were accounted for in the cost of the products since the standard costs were adjusted to actual costs.

Comment 37. Petitioner states that process times reported by the two Singaporean companies for the same components show discrepancies. Petitioner further states that the set-up time or downtime costs were not included in process time, thereby understating these costs.

NMB/Pelmec Singapore argues that although set-up time and downtime were not included in respondent's cycle times, the total costs incurred during set-up and downtime were included in total actual costs. Therefore, these costs were allocated to each product in the same ratio as that product's cycle time to total cycle time of all products.

DOC Position. We agree with respondent. The Department determined that NMB/Pelmec Singapore's allocation of fabrication costs included all actual costs incurred during the POI by reconciling the product costs back to the costs included in the financial statements. The Department concluded that the costs for downtime were included in total costs and that the respondent's methodology adequately captured and allocated fabrication costs to the products.

Comment 38. Petitioner contends that NMB/Pelmec Singapore understated raw material costs below world market levels.

NMB/Pelmec Singapore argues that end-of-period inventory values were used as a method of only allocating raw material costs incurred during the POI. It also contends that, for purposes of valuing inventory, actual material costs were calculated by a weighted-average method.

DOC Position. We disagree with petitioner. The Department's verification of raw material costs included an examination of actual invoices. Total material costs were adequately reflected in the cost submission except for the minor discrepancies noted in the verification report. Except in cases in which an adjustment would have had no effect on costs, the Department adjusted NMB/Pelmec Singapore's submitted raw material costs to reconcile such discrepancies.

Comment 39. Petitioner contends that NMB/Pelmec Singapore has segregated all costs associated with scrap and waste, along with the revenue earned from the sale of scrap, and treated such costs as an extraordinary item. Because scrap and waste are production costs and should be included in the cost of manufacturing, the Department should utilize the scrap rate as submitted by petitioner.

NMB/Pelmec Singapore argues that all material costs, including scrap, were included in production costs. Any revenue received from the sale of scrap is included in other income.

DOC Position. We agree with respondent. The Department examined NMB/Pelmec Singapore's calculations and determined that scrap had been included in raw material costs. NMB/Pelmec Singapore also included the revenue received from scrap sales in other income. The Department traced the details of particular scrap sales to original invoices and determined that the respondent's methodology of accounting for scrap was acceptable.

Comment 40. Petitioner argues that G&A expenses of NMB/Pelmec Singapore's parent company should be included in the cost of the subsidiary.

NMB/Pelmec Singapore contends that it partially allocated the G&A expenses from the parent company to the subsidiaries.

DOC Position. The Department agrees with petitioner. Accordingly, we adjusted the respondent's costs by fully allocating the G&A expenses of the parent company to the subsidiaries for purposes of the final determination.

Thailand

Comment 41. Petitioner argues that best information available should be used for NMB/Pelmec Thai's material costs because: 1) quantity differences were not recognized, and 2) the lowest price of steel during the POI, that of March 1987, was used for the response.

NMB/Pelmec Thai contends that raw material costs incurred at the end of the period were used only to allocate costs. For purposes of valuing inventory, material costs were based on the weighted-average method.

DOC Position. The Department agrees with NMB/Pelmec Thai's methodology of allocating raw material costs to the individual products. The respondent utilized standards in order to allocate quantity to the individual bearings and raw material costs which were based on a weighted-average inventory, not on March 1987 prices. The standards were reconciled to the actual costs incurred during the POI and variances were applied. The Department determined through standard verification procedures that the submitted cost information could be relied upon for the final determination.

Comment 42. Petitioner contends that no offset to material costs for scrap revenue should be permitted for NMB/Pelmec Thai because the detailed information (*e.g.*, volume of scrap sold, scrap recovery) was not provided.

NMB/Pelmec Thai argues that its methodology includes the amount of scrap in the raw material cost for each bearing. Any revenue received from the sale of scrap is included in other income.

DOC Position. We agree with respondent. The Department examined NMB/Pelmec Thai's calculations and determined that scrap had been included in raw material costs. NMB/Pelmec Thai included the revenue received from scrap sales in other income. The Department traced the details of particular scrap sales to original invoices and determined that the respondent's methodology of accounting for scrap was acceptable for the final determination.

Comment 43. Petitioner contends that NMB/Pelmec Thai's labor costs may not be accurate for the following reasons: (1) The company made an unjustified adjustment to reconcile labor costs incurred during the POI to those costs which would have been incurred for the products sold during the POI; and (2) costs allocated on the basis of cycle time may not have included downtime.

NMB/Pelmec Thai states that the fabrication costs were based on total actual expenses. Cycle time was used only to allocate these costs. Therefore, the downtime costs were included in total actual fabrication expense. Downtime costs were allocated to all bearings in the same proportion as the relative amount of cycle time.

DOC Position. We agree with respondent. The Department determined that NMB/Pelmec Thai's allocation of fabrication costs included all actual costs incurred during the POI by reconciling the product costs back to the costs included in the financial statements. The Department concluded

that the costs for downtime were included in total costs and that the respondent's methodology adequately captured and allocated fabrication costs to the products.

Comment 44. Petitioner contends that NMB/Pelmec Thai's depreciation expense is distorted because the respondent's method utilizes a twenty-year useful life while the parent company depreciates the same type of equipment over a ten-year useful life.

NMB/Pelmec Thai claims that the depreciation method utilized is the prevailing method in Thailand, is accepted by government tax authorities and thereby conforms with the Department's requirements.

DOC Position. The Department agrees with petitioner. The depreciation method should be adjusted to reflect the economic useful life of the assets. The Department adjusted depreciation to reflect the amount of expense based on a ten-year life, which was the useful life of the asset used by its parent.

Comment 45. Petitioner contends that NMB/Pelmec Thai understated overhead for the following reasons: (1) Energy costs may not have included all types of energy and the energy costs of departments indirectly related to operations; (2) tooling costs were not specifically identified with each part; (3) the percentage failure rate at the grinding department was not provided; and (4) R&D was not included in the specific products.

NMB/Pelmec Thai contends that all fabrication costs have been adequately supported and verified. It also states that R&D performed by their parent company is unrelated to the products manufactured in Thailand and that only minor engineering costs, which have been included in the cost of manufacturing, apply to these products.

DOC Position. We agree with respondent. The Department reconciled the product fabrication costs to the companies' financial statements for the POI and adequately included the energy costs, tooling costs, and the costs of the grinding department by allocating total actual fabrication costs incurred during the POI. The Department verified that R&D performed by the parent company was unrelated to the products manufactured in Thailand and was not included in the CV calculations.

Comment 46. Petitioner contends that the Department should use the actual profit, which would be higher than the statutory 8 percent if the actual profit were based only on sales transactions to unrelated companies.

DOC Position. Because the Thai home market was not viable, we do not have data representative of home market profit. If not for the late stage of the investigation, we would have requested, analyzed, and verified third country sales data and used that information to calculate foreign market value. Furthermore, since third country sales data would otherwise have been used, we have calculated profit based on the third country sales data that is available. In the absence of complete information on third country sales, as best information available, we have used data pertaining to the NMB/Pelmec Thai's sales to Singapore (which were reported as domestic sales) to calculate profit.

United Kingdom

Comment 47. Petitioner claims that RHP erroneously reported interest expense by: (1) Not including actual interest expense related to manufacturing in the first quarter of 1988; and (2) offsetting the interest expense with interest income unrelated to operations.

RHP claims that the amount of interest expense reported in its submission was correct because interest on debt incurred during the purchase of the company by the parent holding company should not be included. Also, they claim that the interest income deducted from the expense was related to operations.

DOC Position. The parent company's debt was incurred to acquire the productive assets of RHP and will be repaid by the income generated on those assets. Therefore, this interest expense was considered to be part of the COP. The sources of interest income were reviewed during verification and it was concluded that all income was related to operations. Net interest expense incurred during the POI, as a percentage of cost of sales, was used.

Comment 48. Petitioner contends that RHP's submission contains many discrepancies and, therefore, requires the Department to use the highest possible costs.

RHP claims that cost differences in the submission are adverse to RHP and thus believes the submitted costs to be a valid basis for the sales below cost test.

DOC Position. The Department examined differences in the cost calculation resulting from the use of different allocation methodologies for various parts of the submission. Since, in all cases, those cost differences reflected higher costs for RHP (*i.e.*, they were adverse to RHP) these amounts were accepted by the Department.

Comment 49. Petitioner claims that RHP made errors in reporting its corporate G&A for the submission.

RHP claims that the reported G&A expenses in fact overstated actual costs.

DOC Position. The Department verified the G&A expenses submitted by RHP and we have used them for purposes of the final determination.

Comment 50. Petitioner claims that the verification report reveals that SKF-U.K.'s cost system is unreliable based on certain fluctuations noted in SKF-U.K.'s quarterly costs. Therefore, the Department should reject the submitted cost data in favor of the "best information available".

SKF-U.K. disagrees, stating that the cost system is fully reliable and that the submitted quarterly costs should be accepted.

DOC Position. The Department used a weighted-average of SKF-U.K.'s verified 1987 quarterly costs as "best information available" for the 1987 costs (10/1-12/31/87). SKF-U.K. had submitted quarterly costs for the fiscal year 1987 and the first quarter of 1988, which were verified. A measurement period shorter than the annual cycle requires the use of estimates and accruals to allocate cost among periods, (*i.e.*, the quarters), and the Department noted fluctuations which could not be explained by specific business conditions among these periods in 1987. Therefore, the Department concluded that the weighted average of the costs would more adequately reflect the production costs for the products.

Comment 51. Petitioner states that the SKF-U.K. verification report suggests that components and possibly all material costs are presented at standard in the normal cost accounting system.

DOC Position. The Department verified that SKF-U.K. reported actual costs, not standard costs, of components and material for the COP and CV calculations.

Section 17: Romania

Comment 1. Petitioner contends that the Department found several instances where quantity and price were subject to change, yet the date of sale reported by TIE remained the same. Petitioner further contends that, as a result of using an incorrect date of sale, the U.S. sales listing is potentially incomplete. Therefore, TIE's U.S. sales data should not be used for purposes of these final determinations.

TIE claims that it has reported all sales made during the POI. It contends that the small quantity of shipments made to a single company after its Most Favored Nation (MFN) status was revoked were made pursuant to a new contract between the parties and, therefore, took place after the POI. TIE

contends that it has properly reported U.S. sales during the POI and that this information should be used in these final determinations.

DOC Position. At verification, we found that when Romania's MFN status was revoked, shipments pursuant to the original POI contracts ceased. We did discover that a limited number of shipments of AFBs to the United States did resume later. As the verification report states, after reviewing documentation for all of the shipments made after the revocation of MFN, we determined that most of the prices were different than those specified in the contracts executed during the POI. Thus, we have determined that these shipments were not made pursuant to contracts valid during the POI and, therefore, have not included them in our analysis in these final determinations.

Comment 2. Petitioner alleges that verification established that TIE's U.S. sales are incomplete and unreliable. Petitioner asserts that due to the large number of discrepancies reported for TIE's volume and value of sales, the Department should reject TIE's data base entirely and rely on petitioner's U.S. price data. Petitioner states that in the event that the Department does not reject TIE's data entirely, the data's completeness is substantially in doubt. As the Court noted in *Timken* 630 F. Supp. at 1338, the lack of a complete data base is a fundamental defect, undercutting the ability of the Department to rely upon those data as substantial evidence. Under these circumstances, petitioner feels that it is appropriate to utilize only the highest margins calculated for any U.S. sales as the best information regarding TIE's LTFV margin.

DOC Position. We disagree. Based on verification, we are satisfied that TIE has reported all U.S. sales made during the POI.

Comment 3. Petitioner claims that TIE did not establish any nexus between AFBs shipped to the United States and the factors of production data provided. Petitioner contends that the data should be rejected as unverified.

TIE requests that the Department accept its cross reference list. TIE contends that with the supporting affidavits filed by its customers, the Department has an adequate basis for matching sales with factors of production information.

DOC Position. Based on documentation reviewed, and conversations held with company officials at verification, we have determined that the factors information provided by the Romanian bearing factories corresponds to the product identifiers reported by TIE in its sales listings. Therefore, we have used the cross reference list for purposes of these final determinations.

Comment 4. Petitioner asserts that by basing net weights on bearing family averages contained in incomplete and "old" catalogues, TIE reported inaccurate weights. Petitioner states that there is no indication in the verification report of TIE's attempting, even at that late time, to submit accurate net weights. Therefore, petitioner contends that these net weight discrepancies alone require rejection of TIE's response.

DOC Position. We disagree. At verification, we tested the weights of several different AFBs at the Brasov and Birlad factories, both by weighing them and by comparing the weights to the information contained in the factories' production records. At verification, we found one significant discrepancy between a product's actual and reported weight. However, in reviewing other manufacturers' product catalogues, we found that this weight was consistently overstated. Therefore, we determined that such an overstatement was indicative of industry practice and not an indication that the submission was flawed. Thus, we are satisfied that the net weights reported generally reflect the actual weights of the AFBs and have accepted them for purposes of these determinations.

Comment 5. Petitioner contends that TIE did not respond in a timely or adequate manner to the Department's questionnaire and various deficiency letters. Petitioner states that the responses provided by TIE were deficient, filed after significant delays beyond scheduled deadlines and beyond extended deadlines granted by the Department, and contained incomplete and inaccurate information. Petitioner states that as a result of TIE's tardiness, the Department's ability to analyze the response, request additional data, and receive comments and analysis from petitioner prior to the preliminary determinations and verification was impaired. Petitioner argues that in the absence of an adequate or complete response from TIE, the Department has no obligation to develop other information. Due to these circumstances, petitioner contends that in compliance with 19 U.S.C. 1677e(c), the Department should reject TIE's data and rely on best information otherwise available, which may include the information submitted in support of the petition in reaching its final determinations.

TIE states that it has submitted its responses in a timely fashion and that they were both complete and reliable. Accordingly, TIE argues that the Department should base its final determinations upon information it has submitted.

DOC Position. We disagree with petitioner. Given the complex nature of these investigations, it was necessary for the Department to extend certain deadlines and allow respondent to supplement responses. TIE has complied with the Department's request for information within the specified deadlines and to the extent that the information has been verified, it has been used for these final determinations.

Section 18: Miscellaneous

A. Database Problems

Comment 1. Nachi contends that the Department should use Nachi's revised tape to determine U.S. price because the errors corrected were minor and the Department found no discrepancy between the revised data and company documents during verification.

Petitioner states that the Department should only use the revised sales listing if the errors in the original tape resulted from a lack of complete information available at the time of response preparation. In addition, information revised at verification but not verified, should be omitted to the extent it decreases FMV or increases U.S. price. Petitioner also argues that the number of changes clearly demonstrates that Nachi's responses were neither accurate nor complete and that post-verification submissions are unfair to the domestic interested parties as well as unreliable. For the above reasons, petitioner urges the Department to reject such data which tends to decrease FMV or increase U.S. price.

DOC Position. For the final determinations we have used Nachi's revised sales tape which was submitted to the Department on January 23, 1989. That sales tape corrected errors which were discovered by Nachi in its preparation for verification. All of the changes and corrections from the original tape used by the Department in the preliminary determinations have been verified. We have determined that the changes made by Nachi, and verified by the Department, were minor corrections and revisions to their original response. Thus, we have accepted these corrections and have taken them into account in the final determinations. It is the Department's practice to accept and verify minor changes at verification. We find no merit in petitioner's contention that post-verification submissions in this

case are unfair to domestic interested parties. The minor changes at verification were noted in the verification report. The corrected sales tape and response were also submitted to the Department and to petitioner's counsel four weeks before the public hearing held for these investigations, and five weeks before the final written briefs were requested on these investigations. At no point in this investigation was petitioner denied the opportunity to comment on the revisions made to the original response.

Comment 2. Petitioner contends that NTN's submission of an "entirely new computer tape" on February 15, 1989, was so late as to negate petitioner's right to comment on factual submissions by opposing parties. The post-verification changes in the sales listing are too late to be verified and should not be permitted. As an example, petitioner cites merchandise processing and harbor maintenance fees which were verified as a percentage of CIF prices but which NTN later claimed were based on FOB prices. Petitioner argues that, at the least, these items must be rejected. The new data should be used only if deductions from U.S. price are corrected, increased, or restated for specific transactions. Changes to home market price should be rejected because they cannot be verified.

NTN states that the Department should use the revised computer tapes that were submitted on February 15, 1989, in making the final determinations. NTN states that all the data submitted on these tapes has been verified by the Department.

DOC Position. We agree with NTN. The tapes submitted by NTN on February 15, 1989, were in response to specific instructions from the Department to correct errors found subsequent to the preliminary determinations, or to use information and methodologies specifically requested by the Department. No major changes to the sales data base were permitted. The information presented on this tape, which we used for these final determinations, was verified. Any additional information that NTN chose to include on the sales tape that was not requested was disregarded by the Department. Petitioner is incorrect with regard to merchandise processing and harbor maintenance fees, which were verified as NTN has claimed, but were incorrectly stated at one point in the verification report.

Comment 3. NMB/Pelmec Singapore maintains that the record in this case does not support or justify using best information available in the final determination. NMB/Pelmec Singapore argues that it submitted third country information pursuant to the Department's request in a timely fashion and any deficiencies in the data submitted were minor and unintentional. However, it requests that the Department base its final determination on home market sales data. The home market and third country sales data provided by NMB/Pelmec Singapore establish the viability of the home market. Alternatively, the Department should use constructed value data as the best proxy of the home market data.

DOC Position. For the reasons outlined in detail in the Market Viability section of this Appendix, we determined that the Singapore home market was not viable and that third country sales serve as the appropriate basis for foreign market value. Therefore, we have used NMB/Pelmec Singapore's verified third country sales data for purposes of this determination.

Comment 4. Petitioner notes that Rose provided sales information from two databases—one showing sales of products manufactured by Rose and another showing all sales by Rose, including products made by related companies. Petitioner argues that any adjustments to home market sales must be based on the latter figure, thus allocating expenses over total home market sales.

DOC Position. For any home market expense allocated over sales, Rose has allocated these expenses, as petitioner suggests it should, over total home market sales, including sales of products made by related companies. We have accepted this allocation methodology for purposes of these determinations.

Comment 5. At verification the Department found that INA-FRG had misclassified certain products. Petitioner argues that the Department should ask INA-FRG to clarify whether it examined all models that it reported to ensure that they were properly classified. If INA-FRG did not do this, petitioner contends that the Department should reject INA's response and use best information otherwise available.

DOC Position. We disagree. As noted in the verification report, prior to the verification in the FRG, the Department requested that INA-FRG review its sales to ensure that they had been classified correctly. At verification, INA-FRG informed us that it had found two bearings that it had reported as cylindrical roller bearings which were actually ball bearings. We reviewed the technical drawings for these bearings to confirm this. We then reviewed the technical drawings for 32 additional bearings which we selected at random. We found no discrepancies other than these two minor ones identified by INA officials.

Comment 6. Petitioner contends that NMB/Pelmec Thai incorrectly reported some sales as ESP transactions when, in fact, they were purchase price transactions.

NMB/Pelmec Thai contends that it originally reported all U.S. sales as ESP transactions because the vast majority were warehoused in the United States. Respondent contends that since its indirect selling expenses on U.S. sales exceed those on home market sales, NMB/Pelmec Thai has no objections to treating such sales as purchase price sales for the final determination.

DOC Position. As a result of verification, the Department determined that certain sales which were shipped directly to an unrelated U.S. customer from Thailand were purchase price transactions. Therefore, we have treated these sales as such for purposes of the final determination.

Comment 7. Petitioner submits that SKF-France incorrectly included sales to trading companies as home market sales. These sales should not be included in the home market database, because SKF-France is aware that these products will be exported.

DOC Position. We agree, and have deleted these sales from the home market sales listing since SKF-France knew at the time of the sale to the trading companies that the bearings were destined for export markets.

Comment 8. Petitioner asserts that the statute does not permit the Department to determine whether SKF-Sweden's home market is viable by relying on sales of merchandise produced in a country other than the country of exportation. Furthermore, even assuming that imported bearings could be added to Swedish-produced bearings as a basis for FMV, this approach would not be appropriate without first ensuring that the imported bearings were themselves not dumped and sold below the cost of production.

DOC Position. The only class or kind of merchandise in Sweden for which we are examining home market sales is cylindrical roller bearings. As discussed in the Department's verification report of December 23, 1988, no support production was provided for sales of cylindrical roller bearings in the home market during the POI. Therefore, the concerns raised by petitioner are not relevant to this investigation.

Comment 9. Petitioner claims that the Department should make clear that spherical roller bearings shipped by SKF-Italy to the United States are subject to any antidumping duty order

on that product and assign the highest estimated duty rate for any respondent. Although the verification report states that SKF-Italy produces this product, SKF-Italy reported that it had no sales of spherical roller bearings to the United States during the period of investigation. As in the prior cases of the *Final Determinations of Sales at Less than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Hungary and Romania,* 52 FR 17428, 52 FR 17433 (May 8, 1987), the Department should have extended the period of investigation to capture earlier sales.

SKF-Italy claims that it had no exports of spherical roller bearings to the United States during the POI and that the Department verified this fact. Unlike the cases cited by petitioner, the Department did not decide to extend the period of investigation for SKF-Italy's spherical roller bearings. Therefore, the appropriate margin, if anything, must be zero.

DOC Position. The Department is satisfied that SKF-Italy did not export spherical roller bearings to the United States during the period of investigation. If it begins to ship this product in the future, any entries will be subject to the "All Other" rate for spherical roller bearings from Italy.

The Department did not extend the period of investigation for SKF-Italy's spherical roller bearings because, unlike the cases cited by petitioner where there was a single respondent, we have the necessary information in this investigation to calculate an "All Other" rate for this product.

Comment 10. Rose contends that the Department failed to examine at least 60 percent of the dollar volume of plain bearing exports to the United States, as required by § 353.38(a) of the Department's regulations. Therefore, the Department should terminate the investigation of plain bearings from the United Kingdom because Rose's exports were less than one percent of the total dollar volume of plain bearing exports to the United States during the period of investigation. As such, Rose's exports do not provide a fair representation of U.K. sales of plain bearings to the United States.

DOC Position. Based on the information available to us at the time the questionnaire was issued, we believed that Rose was a major exporter of spherical plain bearings from the United Kingdom to the United States. To date we have not seen any conclusive evidence to indicate that this is not true, especially in light of our determination to exclude journal bearings (plain bushings) from the scope of these investigations. See the scope discussion in this Appendix. Furthermore, we note that § 353.38(a) states that we will *normally* look at 60 percent coverage; it does not require this coverage.

Comment 11. Petitioner contends that the Department should correct SNR's denominator for allocating selling expenses by using the higher of the two reported total U.S. sales amounts for purposes of the final determinations.

DOC Position. We disagree. It was found at verification that the higher figure reported by SNR was inclusive of some Canadian sales, as well as sales made in the month preceding the period of investigation. Based on the results of verification, we have used the U.S. sales figure that was initially reported.

B. Hedging/Exchange Rates

Comment 12. FAG–FRG and FAG-Italy argue that the Department should grant a circumstance of sale adjustment to reflect the difference between FAG's actual return on its U.S. sales and the theoretical return that results from using the Federal Reserve exchange rate on the date of sale. Since FAG conducted forward hedging operations to fix its Deutsche mark and lira return for each of its U.S. sales during the period of investigation, the Federal Reserve rate does not accurately reflect the appropriate conversion of foreign market values into U.S. dollars.

Petitioner argues that the Department should not make this circumstance of sale adjustment. The regulations are very clear that the Department is to rely on the Federal Reserve quarterly rates unless there is a five percent daily variance or when the dumping margins are the result solely of exchange rate fluctuations. In addition, the statute makes no provision under circumstance of sale adjustments for the type of adjustment that FAG wants to claim. To allow a circumstance of sale adjustment to reflect hedging would be the equivalent of allowing the respondent to set its own exchange rate, thus rendering the law and regulations concerning exchange rates meaningless.

Petitioner notes that the Department has held that expenses related to hedging are not sales related, as in the *Final Determination of Sales at Less than Fair Value: Brass Sheet and Strip from Italy,* 52 FR 816 (January 9, 1987). In these investigations FAG has not demonstrated that the expenses it is claiming are directly related to sales. Even if FAG were to have no U.S. sales, it would still have to supply the dollars needed for its forward contract. Therefore, profits from hedging are independent of U.S. sales. In fact, FAG recorded income from currency conversion under "Other Income" in its 1987 Annual Report.

DOC Position. This adjustment is not related to fluctuating exchange rates, contrary to petitioner's argument. In the very specific factual pattern presented in this case, we found that it was appropriate to make a circumstance of sale adjustment to reflect hedging profits or losses accurately, where these profits or losses were properly documented and verified. Therefore, we have allowed the adjustment for hedging for FAG's 1987 sales but not for its 1988 sales.

To demonstrate that hedging has affected the actual exchange rate that it has received for its sales, a respondent must show the Department the actual exchange contracts that it entered into and demonstrate that these contracts are tied directly to the sales that took place during the period of investigation. In addition, the respondent must then accurately report the exchange rate that it received on these sales and include this information in its listing of individual sales and adjustments.

In these investigations FAG reported that it used the forward market to ensure a certain exchange rate for each of its U.S. sales. At verification, it provided examples of its forward contracts and demonstrated that it had exchanged dollars received from its sales in the United States at the rates in those contracts. The rates FAG realized on its sales differed substantially from the Federal Reserve rates.

When we examined FAG's listings of U.S. sales and the adjustment it gave to reflect the actual exchange rates it received on these sales, we found that it based these adjustments for 1987 on the average of the actual exchange rates it received through its forward contracts in 1987. However, for 1988 FAG based these adjustments on its "budgeted" rate for 1988, *i.e.,* a rate representing the average exchange rate that the company had forecast it would receive for sales in that year. Therefore, the claimed 1988 adjustment was not based on the company's actual foreign exchange earnings in that year. *See* the *Final Determination of Sales at Less than Fair Value: Certain Forged Steel Crankshafts from the United Kingdom,* 52 FR 32951 (September 1, 1987). In Crankshafts, as in the 1988 U.S. sales in the instant case, the respondent did not provide enough evidence to support its assertion that its pricing is directly linked to, or based on, the actual exchange rate it received.

In order to make an adjustment of this sort, the Department must rely on the actual rates that a company receives. Forecasted rates, especially those that provide only one rate for an entire year,

remain only estimates of what a company expects to receive in its foreign exchange dealings. This information is too speculative to be used in our calculations. Therefore, the Department has not allowed FAG's claim for a circumstance of sale adjustment to reflect its hedging operations in 1988. Although the Department would prefer a more precise measure of the actual rate a company realized, *e.g.*, a rate based on a monthly average or one tied directly to the forward contracts for each U.S. sale, it verified the accuracy of FAG's 1987 data and allowed a hedging adjustment based on the average actual exchange rate it realized on sales in that year.

As petitioner notes, the antidumping regulations clearly state that the Department is to rely on the Federal Reserve rates to convert foreign currencies to U.S. dollars (19 CFR 353.56(a)). We agree and have used the Federal Reserve rates for our calculations for FAG. However, because FAG clearly demonstrated for its 1987 sales that, through the use of forward markets, it received more money for its U.S. sales than our calculations would normally indicate, it is appropriate for the Department to take this action into account. Forward markets are clearly a tool that businesses can use to insure the actual return they receive on their sales. Where the use of these markets can be tied directly to sales, it does not make sense to ignore them.

We note that the investigation of Italian brass sheet and strip dealt with hedging expenses related to the purchase of imported raw materials used to make the product under investigation. Those expenses were clearly not direct selling expenses. However, the hedging operations examined in these investigations are tied directly to FAG's U.S. sales. Finally, in regard to petitioner's allegation that FAG would have had to supply dollars for its forward contracts even if it did not have any U.S. sales, we note that if FAG had no U.S. sales it is unlikely to have entered into any such forward contracts.

Comment 13. INA–FRG argues that the Department should apply the 90-day lag rule for the second half of the period of investigation to avoid the effects of an over 16 percent increase in the value of the Deutsche mark against the U.S. dollar. INA–FRG argues that the Department should utilize the quarterly rate for the fourth quarter of 1987 for the entire period of investigation for purposes of converting Deutsche marks to U.S. dollars. INA–FRG states that in *Melamine Chemical v. United States*, 732 F.2d 924 (Fed. Cir. 1984), the Court of Appeals for the Federal Circuit held that it was within the intent of Congress and within the Department's authority to apply the 90-day lag rule to avoid artificial margins created by temporary fluctuations in currency exchange rates.

Petitioner asserts that the Deutsche mark was not volatile during the period of investigation. Petitioner explains that the mark never rose more than 15 percent during the period of investigation and that the rise was gradual. Also, the exchange rate for the fourth quarter of 1987 was essentially the same as those for the preceding three quarters (DM 1.847/$ versus 1.91, 1.82 and 1.847, respectively). Petitioner argues that INA–FRG was unable to satisfy the two conditions for invoking the 90-day lag rule: (1) The exchange rates are subject to temporary fluctuations, and (2) that the respondent show that it took actions within a reasonable amount of time to adjust its prices for changes in exchange rates.

DOC Position. We agree with petitioner. Section 353.56(b) states that manufacturers, exporters and importers will be expected to act within a reasonable period of time to take into account price differences resulting from sustained changes in prevailing exchange rates. Because INA–FRG did not demonstrate that it had adjusted its prices to respond to exchange rate changes within a reasonable period of time, we denied its request.

C. Level of Trade

Comment 14. NTN states that it sells bearings to two distinct classes of customers, OEMs and distributors. As such, when the Department makes comparisons between the different levels of trade, an adjustment should be made, pursuant to 19 CFR 353.19. NTN states that a level of trade adjustment was accepted in the final determination of *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan* (52 FR 30700, August 17, 1987). NTN states that the difference in selling expenses between OEMs and distributors is quantified in its section B questionnaire response. Petitioner contends that NTN bears the burden of demonstrating an entitlement to a level of trade adjustment. It states that NTN did make a request for this adjustment but that NTN did not provide substantive data which would have demonstrated any actual difference in the selling expenses that are incurred at the OEM level and at the distributor level in either market.

DOC Position. Where there are comparable sales in both markets at the same level of trade, we have made comparisons at the same level of trade. Where there are no comparable sales at the same level of trade, we have made comparisons without adjusting prices to account for any level of trade differences. In this respect, we agree with petitioner. At no point did NTN supply the Department with a quantifiable adjustment to be verified. NTN has alluded to information supplied with the questionnaire response that can be used to make the adjustment. However, it is not the responsibility of the Department to determine and quantify an adjustment when the respondent has not even attempted to prove that an adjustment is warranted.

Comment 15. NSK claims that sales made to distributors who sell to original equipment manufacturers (OEMs) should be treated as being at the same level of trade as direct sales to OEMs. Petitioner contends that NSK failed to provide evidence that it incurs the same selling expenses in selling directly to OEMs and to OEMs through distributors. For this reason it contends that the Department should reject NSK's claim.

DOC Position. We disagree with NSK. The statute requires the Department to make comparisons based on sales to the first unrelated customer. The distributor in these cases is the first unrelated customer and who the customer's customer may be is not relevant to our analysis. Furthermore, NSK has not demonstrated that the selling expenses incurred in these distributor sales are comparable to those for direct OEM sales.

Comment 16. Petitioner claims that according to the Department's verification report, SNR has classified sales to small OEMs as sales to distributors. As a result, sales to OEMs in one market could be compared to distributor sales in the other market, significantly affecting the analysis. Moreover, this misclassification can affect the allocation of certain selling expenses. Unless comparisons are made at the proper level of trade and expenses have been allocated correctly, petitioner claims that the Department should use best information available.

DOC Position. In its response, SNR stated that sales to small OEMs in the home market were treated as distributor sales because the small OEMs, like distributors, purchase in small quantities. Moreover, SNR claimed that small OEM and distributor sales are handled by another sales department. Thus, the selling expenses incurred for small OEM sales are the same as those for distributor sales.

The Department has reviewed SNR's home market sales listing and has concluded that sales labelled as distributor sales are generally low in volume relative to sales labelled as OEM sales. Therefore, in terms of quantities sold, sales to small OEMs were comparable to distributor sales, as SNR claims, and we have accepted its classification of these sales. Moreover, given that we are treating these sales to small OEMs as distributor sales, we have also accepted SNR's allocation of selling expenses between distributor and OEM sales as reasonable.

D. Military Sales/Government Procurement Sales

Comment 17. Rose, FAG–FRG, and FAG-Italy argue that the Department verified that certain of their U.S. sales were intended for U.S. military use and were imported under Schedule 8 of the *Tariff Schedules of the United States Annotated (TSUSA).* These sales should be excluded from our calculations and should be accorded duty-free treatment. FAG-Italy further contends that its sales of spherical roller bearings which it initially reported as U.S. Government procurement sales were in fact not U.S. Government transactions, and, therefore, they should be included in the Department's calculations for purposes of these final determinations.

Petitioner argues that the Department should use best information available to calculate the company-specific rate for FAG-Italy's spherical roller bearings, because these sales have a "substantial non-military" use. As such, these sales should not be exempt from antidumping duties. It also argues that bearings shipped to the U.S. Government for military purposes from FAG–FRG should also be included in that company's U.S. sales listing.

DOC Position. With regard to Rose Bearings, FAG–FRG, and certain sales of FAG-Italy, the Department verified that these sales were indeed military sales and entered the United States under Schedule 8 of the *TSUSA* and were made prior to the enactment of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act). As such, they will not be subject to any antidumping duties. *See,* e.g., *Titanium Sponge from Japan,* 49 FR 38687 (1984). Therefore, these schedule 8 sales have been excluded from our calculations. However, the 1988 Act changed the law with respect to Schedule 8 importations. Section 1335 of the 1988 Act provides that merchandise imported under Schedule 8 will be subject to duties unless it meets certain specific exceptions. Hence, Schedule 8 sales of bearings to the U.S. Government after the date of the preliminary determination may be subject to duties. We will only be able to determine whether these sales meet the Section 1335 exceptions in the context of an administrative review, if any. Therefore, we will instruct Customs to suspend liquidation of Schedule 8 bearings at a zero rate.

Verification also revealed, however, that FAG-Italy's sales of spherical roller bearings were not U.S. Government procurement sales made pursuant to Schedule 8 and, hence, they are subject to antidumping duties. Accordingly, we used these sales to calculate company-specific United States price.

E. Obsolete Sales/Sample Sales

Comment 18. Petitioner argues that certain sales of obsolete or discontinued bearings reported by FAG-Italy and FAG–FRG should be included in the Department's calculations for the final determinations since such bearings, albeit obsolete or discontinued, can be dumped.

DOC Position. FAG–USA made no attempt at verification to support their claim that certain bearings reported as obsolete were in fact obsolete bearings and, therefore, should not be included in the Department's calculations. Furthermore, we were able to find identical matches in the home market for these bearings. We have no information on the record to support excluding these bearings from our analysis. Therefore, we have included these sales of such bearings in our final calculations.

Comment 19. SKF-France contends that of the six U.S. products mistakenly identified as obsolete, only one has an identical match in the home market. In addition, it explains that, because this one product represents a small quantity of sales in the United States, it has not been included on SKF-France's U.S. sales listing.

DOC Position. During the verification of SKF–USA, we found that all six products had in fact been sold in the United States during the period of investigation. However, because the quantity of these unreported U.S. sales is so small relative to the overall U.S. sales listing, we have not adjusted SKF-France's margin to reflect these unreported sales.

Comment 20. Petitioner contends that FAG–FRG failed to include sample and replacement bearings in its U.S. sales listings. Accordingly, all free samples or promotional giveaways and replacement bearings claimed by FAG–FRG should be included in its U.S. sales listing. Furthermore, the samples or giveaways should be included at a zero price.

FAG–FRG asserts that the Department excluded sales of sample and replacement bearings for purposes of the preliminary determinations.

DOC Position. We agree with FAG–FRG. As in our preliminary determinations, we have excluded from our final calculations samples and replacement bearings, as these products comprise an inconsequential number of bearings sold in the United States.

F. Ordinary Course of Trade and Usual Commercial Quantities

Comment 21. NTN states that the Department should use only those sales made in the ordinary course of trade and in usual commercial quantities when determining foreign market value. Petitioner argues that NTN's home market sales listing is incomplete because sales termed "trial" sales, "cancellations" of previous sales, or sales of "very small quantities" were not included in the listing of comparison sales. The Department should not permit exclusion of these sales from the comparison listing.

DOC Position. We verified that the excluded sales constituted cancellations, customer credit adjustments, and trial or sample sales, the latter being outside the ordinary course of trade. As such, we agree with the respondent that such transactions are properly excluded from the comparison data base.

Comment 22. INA–FRG argues that the Department should exclude from its calculations certain home market sales which it alleges were not made in the ordinary course of trade or usual commercial quantities. The sales in question are sales of inch-size bearings, which INA–FRG contends should be excluded because inch-size bearings do not appear in catalogs and price lists in the home market and no discounts are offered on sales of them. INA–FRG cites the decision in *Monsanto Co.* v. *United States,* Slip Op. 88–137 (C.I.T. Oct 14, 1988), and the *Final Determination of Sales at Less than Fair Value: Porcelain-on-Steel Cooking Ware from Mexico,* 51 FR 36435 (October 10, 1986), to support its position.

Finally, INA–FRG contends that sales of inch-size bearings in the home market are not in the usual commercial quantities, citing two examples of sales which involved very small quantities. INA–FRG also states that the principal reason these sales should be excluded is because the Department concluded at the preliminary determinations that they were at a different level of trade and because these sales comprised less than two percent of the total volume of sales.

Petitioner argues that INA-FRG's argument is unsupported. Petitioner contends that INA-FRG has not shown that sales of such bearings in its home market are not regular, *i.e.*, that there are no customers who regularly purchase such bearings, even if only in small quantities. Petitioner cites the *Final Determination of Sales at Less than Fair Value: Brass Sheet and Strip from Japan*, 53 FR 23298 (June 21, 1988), where the Department did not exclude from foreign market value small quantity sales where such sales were to the sellers usual commercial customers and where such customers were at the same level of trade as the U.S. purchasers of the product. Further, petitioner contends that the fact that these bearings are not listed in INA-FRG's catalogue, or that discounts are not provided on such sales, does not establish that they are not in the ordinary course of trade. Petitioner states that its experience has been that practically all bearing producers make some products that they do not carry in a particular catalogue, but that are consistently offered for sale and are sold to customers. Petitioner asserts that the Department should reject INA-FRG's argument and base foreign market value on all sales of identical merchandise in INA-FRG's home market.

DOC Position. We agree with petitioner. The Department's treatment of INA-FRG's inch-sized bearings is consistent with the treatment accorded to a number of respondents in these investigations who reported sales of inch-sized bearings. In its arguments INA-FRG was not able to distinguish its sales of such products from those of other companies that have not claimed that inch-sized bearings are outside the ordinary course of trade. The inch versus metric issue was raised in earlier bearings cases, as in the *Final Determination of Sales at Less than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan*, 52 FR 30700 (August 17, 1987). In that case the Department determined that inch-sized bearings were within the ordinary course of trade and made comparisons to the identical or most similar product within the such or similar category, regardless of the quantity sold. Relative to our position regarding the correlation between total quantities sold in the respective markets, see the comment on INA-FRG in the "Viability" section of this Appendix. For these reasons, and because INA-FRG was not persuasive in distinguishing its inch-size bearing sales from those of other companies, we have included these products in our comparisons for purposes of the final determinations.

Comment 23. Petitioner contends that while FAG-FRG requests different treatment for sales of bearings with very small quantities of identical merchandise in the home market when compared to those of very large quantities in the U.S. market, FAG-FRG does not request similar consideration be given where very small quantities of U.S. sales are being compared to large quantities of home market sales. Petitioner states that given the likelihood of such a reverse situation, the only fair way for the Department to make the proposed adjustment would be to apply the same standard to both markets. However, petitioner argues that for purposes of the final determinations, sales of the contested merchandise should be used in making fair value comparisons and that the Department should continue to base its analysis on sales made at the same level of trade.

FAG-FRG contends that with as little as 33 percent of total U.S. sales being used for a determination of sales at less than fair value and a lack of similar merchandise alternatives when the identical threshold is met, it is essential to avoid price comparisons based on sales of very small quantities of identical merchandise in the home market to those of very large quantities in the U.S. market. They argue that 19 U.S.C. 1677b(a)(1) (A) and (B) require the Department to base foreign market value on sales volumes that provide an adequate basis for price comparisons. FAG-FRG submits that where sales of such bearings in the home market are limited so as not to provide an adequate basis for comparison to sales in the United States, the Department should either base its fair value comparison on constructed value or simply exclude those bearings from its product comparisons.

DOC Position. Under § 353.14 of our regulations, we will normally compare sales of comparable quantities. Thus, if there are large and small quantity sales in the home market and only large quantity sales in the United States, we will not include the small quantity home market sales in the calculation of foreign market value. In the instances referred to by FAG-FRG, we have no such large quantity sales in the home market. Moreover, FAG-FRG has not argued that its small quantity home market sales are out of the ordinary course of trade or not in the usual commercial quantities. Therefore, we have used these sales in our final determinations.

G. Rescissions

Comment 24. Petitioner contends that, even assuming five classes or kinds of merchandise exist, the Department erred in rescinding the investigations of cylindrical roller bearings, needle roller bearings, spherical roller bearings, and spherical plain bearings from Singapore and Thailand. It contends that the information it provided on ball bearings qualifies as reasonably available information and was sufficient to initiate an investigation of these other bearing types. Petitioner further argues that the Department's rescissions increase the potential for respondent multinational corporations to shift products and markets so as to circumvent the Department's antidumping orders.

Petitioner contends that the Department's rescissions of the cylindrical roller, needle roller, and plain bearings from Romania investigations were unlawful.

DOC Position. On July 13, 1988, the Department determined that the subject merchandise constitutes five separate classes or kinds of merchandise (*see* the discussion in the "Class or Kind of Merchandise" section of this Appendix). In light of that decision, the Department reexamined the sufficiency of petitioner's LTFV allegations for each class or kind of merchandise for each country cited in the petition.

With respect to Singapore and Thailand, the only pricing data that petitioner provided for foreign market value was for ball bearings and petitioner did not provide *any* U.S. price data with respect to cylindrical roller bearings, needle roller bearings, spherical roller bearings, and spherical plain bearings. For Romania, the only allegations and supporting data provided by petitioner was with respect to ball and spherical roller bearings. By letters dated July 11 and August 22, 1988, the Department informed petitioner that the petition lacked support for the LTFV allegations with respect to certain classes or kinds of merchandise. The Department gave petitioner an opportunity to provide additional information in support of its LTFV allegations. However, upon petitioner's failure to provide the requested documentation, the Department rescinded those investigations where such supporting data was not provided since the Department had no evidence that those classes or kinds of merchandise were being sold at less than fair value and could not continue such investigations based on petitioner's speculation that the alleged LTFV sales

of one class or kind provides a sufficient basis to believe or suspect that sales of other classes or kinds of merchandise are being made at LTFV. *See, Partial Rescission of Initiation of Antidumping Investigations and Dismissal of Petitions; Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from Romania, Singapore, and Thailand* (53 FR 39327, 39328, October 6, 1988).

Given the above, the Department finds no reason to alter its earlier rescission decisions since petitioner has failed to provide adequate allegations and supporting evidence reasonably available to it to warrant the continued investigations of that merchandise.

With respect to petitioner's concern regarding the potential for a multinational corporation to shift products and markets in order to circumvent an antidumping order, see the discussion in the Class or Kind of Merchandise section of this Appendix.

H. Related vs. Unrelated Sales

Comment 25. NSK contends that it is not responsible for sales made by two related companies, as it does not have a controlling interest in either. Consequently, the Department should treat NSK as separate from these other manufacturers for purposes of the final determinations.

Petitioner states that two subsidiaries of NSK sold NSK-manufactured bearings in the United States and home market during the period of investigation and argues that the Department should use the prices at which the related parties resell the merchandise to establish foreign market value, under § 353.22 of the Department's regulations. Petitioner further contends that it is Departmental practice to require the consolidation of related manufacturing companies in the filing of responses and that the Department has even treated related but separate manufacturing companies in different countries as one respondent, as in the *Preliminary Determination of Sales at Less than Fair Value: Ball Bearings and Parts Thereof from Singapore,* 53 FR 45339 (November 9, 1988).

DOC Position. We have not collapsed the two related firms with NSK for the purpose of requiring a consolidated response in these investigations. It is the Department's general practice *not* to collapse related parties except in certain relatively unusual situations, where the type and degree of relationship is so significant that we find there is a strong possibility of price manipulation. *See Final Determination of Sales at Less than Fair Value: Brass Sheet and Strip from France,* 52 FR 812, 814 (January 9, 1987); *Final Determination of Sales at Less than Fair Value: Certain Granite Products from Spain,* 53 FR 24335, 24337 (June 28, 1988); *Final Determination of Sales at Less than Fair Value: Certain Granite Products from Italy,* 53 FR 27187, 27189 (July 19, 1988). The Department has refused to collapse firms in situations where the facts suggest that such a possibility does not exist. *See Hot Rolled Carbon Steel Plate and Sheet from Brazil,* 49 FR 3102 (January 25, 1984).

In this case, NSK's shares of ownership in the related firms are substantially lower than those in the cases where we have collapsed related parties. The firms do not share marketing information or production decisions, nor is there an intertwined management structure such as was present in other cases. For these reasons, we find that there does not appear to be a substantial danger of price manipulation as a result of the relationship of NSK with the two related firms.

In the *Preliminary Determination of Sales at Less than Fair Value: Ball Bearings and Parts Thereof from Singapore,* 53 FR 45339 (November 9, 1988), we consolidated two manufacturing companies, both of which are located in Singapore, because they are sister companies, wholly owned by the same parent company. Thus, the pricing decisions at both companies are controlled by the same entity.

Comment 26. NMB/Pelmec Thai argues that where sales of such or similar merchandise to unrelated parties do not exist, the Department should properly consider other evidence, such as NMB/Pelmec Thai's recovery of all costs on its sales to related parties, as indicated in its response, to determine whether related party sales were at arm's length. Further, citing the *Final Determination of Sales at Less than Fair Value: Paint Filters and Strainers from Brazil,* 52 FR 19181 (May 21, 1987), respondent contends that the Department has based its determination of the arm's-length nature of prices on costs and profitability.

Petitioner contends that NMB/Pelmec Thai provided no evidence showing the arm's length nature of the sales to related parties. With respect to NMB/Pelmec Thai's argument that the sales to related parties were at prices sufficient to cover all costs, petitioner argues that above cost sales are not necessarily arm's length sales.

Petitioner also argues that the *Paint Filters* case is not applicable to the facts in this investigation because the issue in that case was whether prices paid to related suppliers were at arm's length. The Department found that prices were based on the profitability of the supplier. However, petitioner maintains that the supplier performed work only for the company under investigation so that its profitability was determined solely by the related party sales. Petitioner further asserts that NMB/Pelmec Thai does not sell only to related parties; therefore, respondent's argument that the sales to related parties were at prices sufficient to cover costs is not relevant.

DOC Position. We agree with petitioner. The only way the respondent could have demonstrated that these sales are at arm's length is by comparing the prices to related parties to sales of the same merchandise to unrelated parties. NMB/Pelmec was not able to do so, because no such sales to unrelated parties existed. The Department does not examine recovery costs to determine whether or not prices are at arm's length under 19 CFR 353.22(b). However, because we have determined that the Thai home market is not viable, we have not used the home market sales as the basis for foreign market value. Therefore, this issue is moot.

Comment 27. Petitioner argues that home market sales of INA-France's subsidiary should not be considered because the Department did not verify these sales. INA-France contends that the Department in its preliminary determinations erroneously disregarded the home market sales of its wholly-owned subsidiary, Societe Mechanique du Nord d'Alsace (Noral). INA-France argues that the Department should accept the data regarding these sales and use the data for the final determinations.

DOC Position. This issue is moot, as the sales in question were of linear motion bearings, which have been excluded from the scope of these investigations. This is discussed in greater detail in the Scope Issues section of this Appendix.

Comment 28. Nachi, NSK, and NTN contend that in calculating foreign market value for purposes of the final determinations, the Department should include their sales to related parties. Each of the respondents state that sales to related distributors are comparable to sales to unrelated distributors; thus, they have satisfied the requirements of 19 CFR 353.22(b). NTN further contends that 19 CFR 353.22(b) does not require that all prices to related parties be greater or equal to prices charged to unrelated parties, but only requires that they be "comparable". Petitioner argues that the Department should disregard those respondents' related party sales because they have not demonstrated

that prices charged to related parties were equivalent to arm's length prices under 19 U.S.C. 1677b(e)(2).

DOC Position. In accordance with 19 CFR 353.22(b), the Department does not use prices to related parties unless it is shown that such prices are "comparable" to prices to unrelated parties. Under § 353.22(b), the respondent must demonstrate to the satisfaction of the Department that the prices of such or similar merchandise between related and unrelated parties are comparable. The burden of proof is on the respondent to show that the prices are comparable since that is the party making the claim.

For the Department to consider using related party sales, a respondent must provide a detailed analysis of the prices charged to related parties and those to unrelated parties on identical products. If based on this evidence, it appears that the prices may be comparable, we will do our own analysis on all of respondent's sales. We will generally compare net prices charged to related and unrelated parties. These prices are net of discounts, rebates, commissions, and credit expenses. We then compare those net prices on a product-by-product basis to determine whether sales to related parties are made at prices comparable to unrelated party sales. Depending on the circumstances of the investigation, other expenses may also be deducted from the prices before we make our price comparisons. For example, if a company pays inland freight only on certain sales, we will deduct inland freight from the sale to calculate a net price.

If a respondent has not provided sale- or customer-specific payment periods for the calculation of credit expenses, or if the respondent has allocated commissions, rebates, or discounts rather than reporting them on a sale-specific basis, no analysis on price comparability can be done. For NSK, we found this to be the case. Therefore, we have not used NSK's related party sales in the final determinations since no analysis could be done to demonstrate that such sales were comparable to sales to unrelated parties. Furthermore, the information on the record in these investigations shows that distributors related to NSK benefit from more favorable credit terms and are offered certain rebate and discount programs not available to unrelated customers.

Nachi and NTN both provided an analysis to the Department on the prices charged to related and unrelated parties on a product-specific basis. Nachi provided the analysis on October 24, 1988, and NTN provided its analysis during verification. After review of these submissions, we determined that our own analysis was warranted since it appeared that prices between related and unrelated parties for both Nachi and NTN may be comparable.

Our analysis of the prices charged on related and unrelated party sales did not demonstrate to our satisfaction that prices on all sales are comparable. We agree with NTN that § 353.22(b) does not require that all related party sales be greater or equal to the prices charged to unrelated parties. However, our analysis shows that for many products there are significant price differentials on an identical product sold to related and unrelated parties. In such instances, the significantly lower price charged to a related party could not be demonstrated to be the result of factors other than relationship, such as differences in quantity purchased. We note, once again, that the burden is on the respondent to demonstrate to the satisfaction of the Department that such prices are comparable. Therefore, we are not using related party sales in our calculation of foreign market value in these determinations for either Nachi or NTN.

Comment 29. Petitioner states that the Department should exclude all sales made by Nachi to Toyota from the home market database because Toyota owns 6.05 percent of Nachi and thus constitutes a related party. Furthermore, petitioner states that there is nothing on the record to demonstrate that sales to Toyota are made at prices equivalent to those charged to unrelated parties.

DOC Position. We disagree. Sales to Toyota are made through an unrelated trading company. Therefore, we consider such sales to be unrelated sales.

Comment 30. Several Japanese manufacturers of automobiles, such as Toyota and Nissan, argue that antifriction bearings which they export to their U.S. subsidiaries for incorporation into automobiles or automobile parts before being sold to the first unrelated party should be excluded from the suspension of liquidation. Citing *Roller Chain, Other Than Bicycle, from Japan; Final Results of Administrative Review of Antidumping Finding,* 48 FR 51801 (November 14, 1983), they have requested that we exclude such imports at the investigation stage, rather than require bonds or cash deposits which ultimately would be refunded in an administrative review of any eventual order.

DOC Position. In *Roller Chain,* a Japanese motorcycle manufacturer (Honda) purchased roller chain in Japan for subsequent exportation to its U.S. subsidiary, Honda of America. Since Honda, and not the Japanese roller chain manufacturer, was determined to be the exporter, the Department looked first to Honda's sales to establish a U.S. price. However, because Honda of America was incorporating the imported roller chain into motorcycles, the first sale to an unrelated party in the United States was of a finished motorcycle. In such situations, where further manufacture is performed by a related party in the United States, the Department's normal practice would be to calculate the ESP price by backing out the additional cost of the finished product, leaving only that which is representative of the product under investigation (*see* 19 CFR 353.10(e)(3)). In *Roller Chain,* however, the Department concluded that it was appropriate to follow this practice only when the quantity or value of the imported product was more than an "insignificant" amount of the finished product. Since this was determined not to be the case with respect to roller chain and motorcycles, no final assessment was made on the transactions between Honda and its U.S. subsidiary.

The Department acknowledges that the principle underlying our decision in *Roller Chain* would logically apply with equal force to bearings incorporated into automobiles. Indeed, the Japanese automobile manufacturers have stated that the value of bearings is less than one percent of the cost of a finished automobile. While it is not clear what percentage of a particular automobile part or subassembly would be attributable to the value of bearings, it is possible that that percentage would also be considered "insignificant."

In light of the above, the Department has given careful consideration to the feasibility of exempting those bearings being imported by related parties for incorporation into automobiles from any suspension of liquidation requirements. However, in evaluating possible options, we have found several important distinctions between the facts and circumstances of the *Roller Chain* decision and those which we face in the antifriction bearings investigations.

First, in *Roller Chain,* there was no initial question akin to the one we face here of whether the imports should be somehow exempted from the suspension of liquidation. Second, all of the imports at issue were exported by Honda exclusively to its U.S. subsidiary, which incorporated the roller chain into motorcycles in a Foreign-Trade Zone (FTZ). Thus, the circumstances of *Roller Chain*—a single exporter, a single

importer, and entries being made into an FTZ—were such that surveillance on the part of the U.S. Customs Service and the Department was administratively feasible.

By contrast, in the instant investigations, the facts and circumstances are much more complex and less predictable. The Japanese automobile manufacturers export bearings to their U.S. subsidiaries for two purposes: (1) To incorporate the bearings into automobiles and (2) to resell the bearings to unrelated parties in the after-market for replacement purposes. However, Toyota *et al.*, have not convincingly explained how either the Department or U.S. Customs could successfully differentiate the ultimate end-use of each of the imported bearings as they enter the United States. Compared to *Roller Chain*, the number of exporters and importers in these investigations is far more numerous, some importations would be into FTZs while some would not, and there conceivably would be an indefinite variety of downstream products into which imported bearings would be incorporated by related parties. Under such varied circumstances, it would be virtually impossible for either the Department or U.S. Customs to establish an effective method of ensuring that the "correct" bearing imports were being exempted from the suspension of liquidation requirements. The Department's past experience with end-use certification procedures has shown that effective monitoring is difficult enough when the circumstances are far less complicated than exist here.

Therefore, given the Department's overarching mandate to ensure the proper enforcement of the antidumping duty law, we have concluded that there is no practicable way of meeting the Japanese automobile manufacturers' request without jeopardizing the integrity of any antidumping duty orders. We therefore are denying their request for exemption from suspension of liquidation requirements. In accordance with the statutory scheme, the manufacturers will have the opportunity to obtain refunds of cash deposits, as appropriate, during any subsequent administrative review under section 751 of the Act.

I. Separate ESP/PP Rates

Comment 31. NTN states that the Department should issue separate deposit rates for exporter's sales price and purchase price sales. NTN cites *Correction to Final Results of Administrative Review: Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada*, 43 FR 7600 (March 5, 1986), in support of its statement.

Petitioner states that in the *Final Determination of Sales at Less than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan*, 52 FR 30700 (August 17, 1987), the Department set only one deposit rate, even though NTN had requested separate rates in that case as well. Petitioner further states that NTN has supplied no sufficient rationale justifying a departure from the long standing practice of establishing only one deposit rate.

DOC Position. It is the Department's general practice not to issue separate rates for ESP and PP sales. The relatively small quantities involved in this case do not warrant a departure from our general practice, nor has NTN provided any other rationale for such a departure.

J. VAT

Comment 32. SNR and ICSA contend that there should be a circumstance of sale adjustment for the VAT included in all home market prices. SNR argues that *Zenith v. United States*, 633 F. Supp. 1382 (CIT 1986) requires the Department to calculate and add to the U.S. and home market prices the "hypothetical" value added tax (VAT) that would have been paid if the product had been sold in the home market. If the home market VAT exceeds the VAT amount added to the U.S. price, SNR argues that the Department should deduct from the reported home market prices the difference between the home market VAT and the VAT added to the U.S. price.

Petitioner contends that the Department's SNR verification report does not mention VAT, and inasmuch as SNR's submission constitutes new information, SNR should not be allowed to submit this new sales data.

DOC Position. We have made an addition to SNR's and ICSA's U.S. price for the verified VAT in the home market under section 772(d)(1)(c) of the Act. We calculated the addition to U.S. price by first deducting all U.S. selling expenses and movement charges from the U.S. gross unit price and then adding to this packed-for-export price the hypothetical tax that would have been paid had that product been subject to the tax. We then made a circumstance of sale adjustment to the foreign market value to eliminate the absolute difference between the amount of tax in the two markets.

With regard to petitioner's statement that SNR's submission constitutes new information, we have used the originally reported home market prices, which were verified to be net of the VAT. Petitioner's concern is, therefore, unfounded.

K. Voluntary Respondent

Comment 33. Cooper contends that the Department unjustifiably rejected its request to calculate a margin specifically for Cooper. Cooper acknowledges that its voluntary questionnaire response exceeded the stated Department deadline by almost two weeks. However, Cooper argues that the Department had sufficient time to analyze the response in view of the fact that the response was received more than seven weeks before the preliminary determination and more than six months before the final determination. Cooper submits that basic fairness requires the Department to use its data since its situation is unique and is not applicable to companies that chose not to respond.

Cooper also contends that the Department exceeded its discretion in not designating Cooper as a mandatory respondent and in not following the 60 percent rule set forth in 19 CFR 353.38(a). On November 2, 1988, Cooper noted that, based on RHP's nonconfidential questionnaire response, the value of Cooper's shipments of cylindrical roller bearings from the United Kingdom during the review period was several times larger than RHP's. Cooper argues that case complexity and administrative convenience cannot justify denying the party that accounts for a greater percentage of the value of sales the right to have its data reviewed while there is still ample time for analysis.

Cooper contends that it is unfair to use RHP's data in applying a rate to Cooper because: (1) RHP's data is not representative of Cooper's data; (2) including Cooper's data would improve the accuracy of the Department's analysis of sales of cylindrical roller bearings from the U.K.; (3) Cooper accounts for the vast majority of shipments of cylindrical roller bearings from the U.K.; and (4) Cooper's product is sold under market conditions different from those of RHP. In addition, Cooper contends that it is the Department's responsibility, not Cooper's, to identify the proper respondents in a proceeding. The Department had the confidential questionnaire responses by September 19, 1988 and could have conducted an analysis to confirm the appropriate mandatory respondents.

Petitioner contends that the Department has properly determined not to develop a separate dumping margin for imports manufactured by Cooper. In addition, petitioner maintains that

Cooper must be included with those companies whose imports are covered by the "All Other" rates calculated by the Department in this investigation.

DOC Position. The Department has not calculated a separate margin for imports of cylindrical roller bearings manufactured by Cooper, and the "All Other" rate will continue to apply. Cooper submitted a voluntary response after the deadline set by the Department for submission. Our instructions to all voluntary respondents clearly stated that "[a]lthough the Department is not obligated to consider voluntary responses, we will review responses that are submitted in a *timely manner*" (emphasis added). To accept Cooper's untimely response would be unfair to those parties which considered but decided not to file a voluntary response based on our instructions that the final deadline would not be extended any further.

Regarding the issue of identifying and investigating the proper respondent(s) exporting cylindrical roller bearings from the U.K., 19 CFR 353.38(a) states that the Department "normally" will examine at least 60 percent of the dollar volume of exports to the United States. In this instance and as we do in every investigation, the Department selected the mandatory respondents to receive our original questionnaires based on information contained in the petition, other data submitted subsequently by petitioner, information solicited from our embassies in the affected countries, and information available elsewhere in the Department. We selected additional mandatory respondents where (1) we determined early in these investigations that it was appropriate to increase our percentage of export coverage (*e.g.*, ICSA for spherical roller bearings from Italy) or (2) our division of the subject merchandise into five classes or kinds left us without *any* respondent for a particular class or kind (*e.g.*, Rose for spherical plain bearings from the U.K.). Neither of these situations was present here.

Cooper's argument that it, and not RHP, was the appropriate mandatory respondent was made late in the investigation—after our preliminary determination. If, during the initial phases of the investigation, Cooper had provided the Department with information showing that it was a large producer and exporter of cylindrical roller bearings, we could have considered taking that data into account in identifying the proper mandatory respondents.

The Department must decide which companies are to respond to its questionnaire at a very early stage of the proceeding. The information on the record in the initial phases of this investigation did not indicate that Cooper's sales of cylindrical roller bearings were of such a magnitude as to warrant its inclusion as a mandatory respondent.

L. Adjustment to Ad Rate for CVD Rate

Comment 34. NMB/Pelmec Thai contends that any countervailing duties imposed on the subject merchandise to account for an export subsidy should be added to the U.S. price.

Petitioner contends that, if NMB/Pelmec Thai's sales shipped through Singapore are included as home market sales, the Department should not reduce the antidumping duty margin to the full extent of the countervailing duty margin as these sales benefit from the same subsidies as the sales to the United States. Citing *Certain Electrical Conductor Aluminum Redraw Rod from Venezuela (Redraw Rod)* (53 FR 24755, June 30, 1988), petitioner maintains that the Department does not adjust the U.S. price to account for export subsidies found in a companion countervailing duty investigation when third country sales which receive the export subsidies are used as the basis of foreign market value.

DOC Position. Section 772(d)(1)(D) of the Act provides that "[t]he purchase price and exporter's sales price shall be adjusted by being * * * increased by * * * the amount of any countervailing duty *imposed* on the [subject] merchandise * * * to offset an export subsidy * * *" (19 U.S.C. 1677a(d)) (emphasis added). The Department has interpreted this language to mean that it will make an upward adjustment to U.S. price only if the U.S. Customs Service has actually assessed countervailing duties on the U.S. sales examined in an administrative review of an antidumping investigation. (*See, e.g., Pipe and Tube from Turkey; Final Results of Antidumping Administrative Review* (53 FR 39632, October 11, 1988.)) However, if such U.S. sales are subject to the collection of estimated countervailing duties, we have consistently refused to make an upward adjustment to U.S. price. The Court of International Trade has endorsed the Department's interpretation. (*See, Serampore Industries Pvt., Ltd. v. United States*, 11 CIT _____, 675 F. Supp. 1354 (1987).) Therefore, an upward adjustment to U.S. price is not warranted at this time and will be warranted only in the context of an administrative review.

It is the Department's consistent practice to deduct the amount of the export subsidy from the dumping deposit or bonding requirement when there is a final countervailing duty order in effect on the imported merchandise. Since we relied on CV for our fair value comparisons, rather than the sales shipped through Singapore, we have reduced the bonding rate by the rate attributable to the export subsidies found in the concurrent countervailing duty determination.

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[A-427-801]

Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as AFBs or the subject merchandise) from France are being, or are likely to be, sold in the United States at less than fair value.

We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from France as described in the "Continuation of Suspension of Liquidation" section of this notice. We have also ordered the U.S. Customs Service to begin to suspend liquidation on needle roller bearings produced by INA and spherical plain bearings from SKF, since our preliminary determinations were negative. The ITC will determine, within 45 days (75 days for products on which we issued a negative preliminary determination) of the publication of this notice, whether these imports materially injure, or threaten material injury to, U.S. industries.

EFFECTIVE DATE: May 3, 1989

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Carole Showers, or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 377-3965, 377-3217, or 377-2239, respectively.

SUPPLEMENTARY INFORMATION:

Final Determinations

We determine that AFBs from France are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average dumping margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our notice of preliminary determinations (53 FR 45328, November 9, 1988), the following events have occurred. All respondents and petitioner requested that the final determinations in all of the antidumping duty investigations be postponed until not later than 135 days after the date of publication of the preliminary determinations, pursuant to section 735(a)(2) of the Act. On December 2, 1988, we issued a notice postponing our final determinations until not later than March 24, 1989 (53 FR 49581, December 8, 1988). That notice also announced the scheduling of the public hearing in these investigations.

Verification of the questionnaire responses was conducted in France and the United States during November 1988 and January 1989.

A public hearing was held on February 15, 1989. Petitioner, respondents, and other interested parties have filed pre- and post-hearing briefs.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), and all merchandise entered or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The Department is providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the products covered by these investigations.

These determinations cover ball bearings, mounted or unmounted, and parts thereof (ball bearings); spherical roller bearings; mounted or unmounted, and parts thereof (spherical roller bearings); cylindrical roller bearings, mounted or unmounted, and parts thereof (cylindrical roller bearings); needle roller bearings, mounted or unmounted, and parts thereof (needle roller bearings); and spherical plain bearings, mounted or unmounted, and parts thereof (spherical plain bearings). For a complete description of these products, see Appendix A to the "Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany" (hereinafter referred to as Appendix A) which is published in this issue of the **Federal Register.**

Class or Kind of Merchandise

Subsequent to the initiation of these investigations, the Department determined that the products under investigation constituted five separate classes or kinds of merchandise. After consideration of all comments, arguments, and information submitted by the parties, we find no reason to alter that decision. For a full discussion of our position on class or kind of merchandise, see Appendix B which is referred to below.

Standing

We determine that petitioner has standing with respect to each of the five classes or kinds of merchandise described in Appendix A. For a full discussion of standing see Appendix B, which is referred to below.

General Issues

Appendix B to the "Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany" (hereinafter referred to as Appendix B) contains detailed discussions of all issues timely raised by parties to the proceeding in each of the concurrent antidumping duty investigations involving AFBs from nine countries. The first part of that Appendix addresses all general issues raised during these investigations and our treatment of these topics. The general issues discussed therein are listed below.

1. Class or Kind of Merchandise
2. Standing
3. Products Covered
4. Basis for Cost of Production Investigations
5. Market Viability
6. Alternative Reporting Requirements
7. Critical Circumstances
8. Administrative Protective Order Issues

Following the discussion of general issues, all remaining comments are addressed.

Period of Investigation

The period of investigation (POI) is October 1, 1987 through March 31, 1988.

Fair Value Comparisons

To determine whether sales of certain AFBs from France to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

In accordance with section 776(c) of the Act, we have determined that use of the best information available is appropriate for spherical plain bearings from SKF. *See*, Best Information Available section of Appendix B.

United States Price

Since all sales to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

The calculation of United States price for each class or kind of merchandise for each respondent is detailed below.

I. Ball Bearings

A. *INA Roulements S.A. (INA):* INA reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See*, Alternative Reporting Requirements section of Appendix B.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP based on packed, f.o.b. U.S. warehouse prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for foreign inland freight and insurance, brokerage and handling (which included marine insurance, ocean freight, U.S. inland freight and insurance, and containerization), and U.S. duty in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for warranty expenses, credit, repacking in the United States, and indirect selling expenses (including advertising, technical service expenses, inventory carrying costs, warehousing, product liability premiums, other miscellaneous indirect selling expenses incurred in the U.S. and home markets) pursuant to sections 772(e) (1) and (2) of the Act. We added the amount of value-added taxes which would have been collected if the merchandise had not been exported.

Based on verified information, we modified various claimed deductions as described in the appropriate comment sections in Appendix B.

B. *SKF Compagnie d'Applications Mecaniques S.A. (SKF):* As a result of dropping (1) related party transactions and (2) sales to trading companies of exported merchandise from the home market data base, less than 33 percent by volume of SKF's U.S. sales had identical matches in the home market. (*See,* Alternative Reporting Requirements section of Appendix B.) Lacking these comparisons, we have applied best information available for those sales to achieve the 33 percent threshold. We have used SKF's calculated margin as best information available since this rate was higher than the rate calculated for this class or kind of merchandise for any other respondent in France.

We calculated ESP based on the packed, f.o.b. or delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, inland freight, marine insurance, ocean freight, and U.S. duty, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for cash discounts and rebates. We made further deductions from ESP, where appropriate, for credit, repacking in the United States, technical service expenses, warranty expenses, and indirect selling expenses (including product liability premiums, inventory carrying costs, and other miscellaneous indirect selling expenses incurred in the U.S. and home markets) pursuant to sections 772(e) (1) and (2) of the Act. We added "other expenses" (*i.e.,* price corrections). We also added the amount of value-added taxes which would have been collected if the merchandise had not been exported.

SKF notified the Department that approximately three percent of its reported U.S. sales of ball bearings were produced in a country other than France. SKF claims that although it is impossible to separate sales of this merchandise from those that it produced in France, United States prices of multiple-sourced products are comparable. For reasons outlined in the Best Information Available section of Appendix B, we have included all reported sales in our calculation of United States price.

SKF also notified us that all reported sales of a certain type of bearing which is not normally produced by SKF in France were actually produced in Spain. We deleted all sales of this product from our calculations.

C. *Societe Nouvelle de Roulements (SNR):* SNR reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* Alternative Reporting Requirements Section of Appendix B.) Therefore, we have used all U.S. sales with identical home market matches in our ESP comparison.

We calculated ESP based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, foreign inland freight, foreign inland insurance, marine insurance, ocean freight, U.S. duty, and U.S. inland freight, in accordance with section 772(d)(2) of the Act. We also made deductions for discounts and rebates. We made further deductions for credit and indirect selling expenses (including inventory carrying costs, commissions, technical service expenses, advertising, and other miscellaneous indirect selling expenses incurred in the U.S. and home markets) pursuant to sections 772(e) (1) and (2) of the Act. We added the amount of value-added taxes which would have been collected if the merchandise had not been exported.

Based on verified information, we recalculated inventory carrying costs to account for both time in European inventory and in transit.

II. Spherical Roller Bearings

SKF: SKF reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP for spherical roller bearings based on the packed, f.o.b. or delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

III. Cylindrical Roller Bearings

A. *INA:* INA reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP for cylindrical roller bearings based on packed, f.o.b. U.S. warehouse prices to unrelated customers. The adjustments were identical to those described above for ball bearings.

B. *SNR:* SNR reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP based on packed, f.o.b. prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

IV. Needle Roller Bearings

INA: INA reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP for needle roller bearings based on packed, f.o.b. U.S. warehouse prices to unrelated customers. The adjustments were identical to those described above for ball bearings.

V. Spherical Plain Bearings

SKF: SKF did not report any U.S. sales of spherical plain bearings or of any other products under investigation during the POI. However, at verification we determined that SKF did have U.S. sales of spherical plain bearings during the POI. Therefore, we have used best information available for purposes of the final determination. (*See,* Best Information Available section of Appendix B.)

Foreign Market Value

In accordance with section 773(a)(1)(2) of the Act, we calculated foreign market value based on home market sales or constructed value (CV). The calculation of foreign market value for each class or kind of merchandise for each respondent is detailed below.

I. Ball Bearings

A. *INA:* We calculated foreign market value based on delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight and home market packing. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we deducted credit expenses from home market price. We also deducted indirect selling expenses (including inventory carrying costs, product liability premiums, product liability payments, technical services, advertising, and other miscellaneous indirect selling expenses) in accordance with 19 CFR 353.15(c).

As U.S. packing expenses, INA reported only repacking which occurred

at the U.S. warehouse and did not include the costs incurred for packing performed in the home market for shipment to the United States. Therefore, as best information available for U.S. packing, we used home market packing and added this to the home market price, in accordance with section 773(a)(1) of the Act. We made an upward adjustment to tax-exclusive home market prices for the value added tax we computed for United States price.

Based on verified information, we modified various claimed deductions as described in the appropriate comment sections in Appendix B.

B. *SKF*: Petitioner alleged that SKF's home market sales of ball bearings were made at prices below the cost of production (COP). Based on the petitioner's allegation, we gathered and verified data on SKF's production costs. We calculated the COP on the basis of SKF's cost of materials, labor, other fabrication costs, and general and administrative expenses. The COP data submitted by SKF was relied upon, except in the following instances where the costs were not appropriately quantified or valued. These were:

(1) ADR's cost of manufacturing in the fourth quarter of 1987 was changed to correct the reversal of prior years' accruals which did not pertain to manufacturing products under investigation.

(2) Cost of balls purchased from related companies for use at Clamart's St. Cyr factory was adjusted to correct a clerical error.

(3) Restructuring expenses associated with the production of precision bearings were allocated over the cost of goods sold by ADR's parent company, SFI-SKF.

(4) General expenses for the first quarter of 1988 were adjusted to reflect Clamart's share of actual research and development expenditures incurred by a related company.

(5) General expenses were adjusted to correct a clerical error and to include a portion of the corporate headquarter (Sweden) expenses which had not been allocated to the subsidiaries.

(6) Interest expense was adjusted to reflect the net financial expenses related to operations of the SKF consolidated corporation.

(7) SKF's general expenses in each quarter of 1987 were adjusted to reflect the annualized percentage for the fiscal year.

(8) For products which were sold by SKF but not produced during the POI, we compared sales price to verified cost information for the most recent quarter of production.

(9) Clamart's cost of manufacturing for the fourth quarter of 1987 was adjusted to include the effect of certain fiscal year-end adjustments related to bearing production.

We calculated the foreign market value based on CV, where appropriate, in accordance with Section 773(e) of the Act. CV was calculated on the basis of SKF's material fabrication costs plus general expenses and profit. Since SKF's general expenses exceeded the statutory minimum of 10 percent of fabrication costs, we used SKF's general expenses. Since profit was less than the statutory minimum of eight percent, we used the statutory minimum for profit. Imputed credit and inventory carrying costs were included in selling expenses. Therefore, interest expense reflected in the company books was reduced for a portion of the expense related to these costs in order to avoid double counting. All of the changes noted under the COP were also made to those cost elements in the CV. We added U.S. packing. We deducted all direct selling expenses and indirect selling expenses up to the amount of the ESP offset.

Where we found that sufficient sales were above cost to permit the use of these sales as the basis for determining foreign market value, we calculated foreign market value based on packed, c.i.f. prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight, home market packing, and discounts and rebates. We made an addition for freight revenue and packing revenue. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions included in our analysis involved ESP, we made further deductions from home market price, where appropriate, for credit, advertising, technical services and warranty expenses. We also deducted indirect selling expenses (including inventory carrying costs, inland freight [from factory to warehouse], product liability premiums, and other miscellaneous indirect selling expenses incurred in the home market) in accordance with 19 CFR 353.15(c). We made an upward adjustment to tax-exclusive home market prices for the value added tax we computed for United States price. We recalculated SKF's claimed miscellaneous indirect selling expenses as described in the Selling Expenses section of Appendix B.

C. *SNR*: We calculated foreign market value based on delivered and ex-works packed prices to unrelated customers. We made deductions from the home market price, where appropriate, for packing, rebates, inland freight, and insurance. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price, where appropriate, for credit. We also made an adjustment in accordance with 19 CFR 353.15(c) to home market prices for indirect selling expenses (including technical services, advertising, quality control, product liability premiums, inventory carrying costs, and inland freight related to regional warehouses, and other miscellaneous indirect selling expenses). We made an upward adjustment to tax-exclusive home market prices for the value added tax we computed for United States price.

Based on verified information, we modified various claimed deductions as described in the appropriate comment section in Appendix B.

II. Spherical Roller Bearings

SKF: We calculated foreign market value for spherical roller bearings based on f.o.b. prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

III. Cylindrical Roller Bearings

A. *INA*: We calculated foreign market value for cylindrical roller bearings based on delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

B. *SNR*: We calculated foreign market value for cylindrical roller bearings based on packed, ex-works prices to unrelated customers. The adjustments were identical to those described above for ball bearings.

IV. Needle Roller Bearings

INA: We calculated foreign market value for needle roller bearings based on delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

V. Spherical Plain Bearings

SKF: SKF did not report any U.S. sales of spherical plain bearings or of any other products under investigation during the POI. However, at verification we determined that SKF did have U.S. sales of spherical plain bearings during the POI. Therefore, we have used best information available for purposes of the final determination. (*See*, Best Information Available section of Appendix B.)

Currency Conversion

We used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

We verified the information used in making our final determinations in accordance with section 776(b) of the Act. We used standard verification procedures including examination of relevant accounting records and original source documents of the respondents. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Interested Party Comments

As noted above, all comments raised by parties to the proceedings in the antidumping duty investigations on AFBs from nine countries are discussed in Appendix B.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from France, as defined in the "Scope of Investigations" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Our preliminary determinations with regard to needle roller bearings from INA were negative. Therefore, the suspension of liquidation on needle roller bearings from INA is effective on the date of publication of this notice.

The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from France exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Weighted-average margin percentage
Ball bearings:	
INA	66.18
SKF	66.42
SNR	56.50
All others	65.13
Spherical roller bearings:	
SKF	8.89
All others	8.89
Cylindrical roller bearings:	
INA	11.03
SNR	18.37
All others	17.31
Needle roller bearings:	
INA	0.65
All others	0.65
Spherical plain bearings:	
SKF	39.00
All others	39.00

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. 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 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 with respect to any of the products under investigations, the applicable proceeding[s] will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury does exist, the Department will issue antidumping duty orders directing Customs officials to assess antidumping duty on AFBs from France entered or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

These determinations are published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Michael J. Coursey,

Acting Assistant Secretary for Import Administration.

March 24, 1989.

[FR Doc. 89-8058 Filed 5-2-89; 8:45 am]

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[A-475-801]

Final Determinations of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Spherical Plain and Tapered Roller Bearings) and Parts Thereof From Italy; and Final Determination of Sales at Not Less Than Fair Value; Spherical Plain Bearings and Parts Thereof, From Italy

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that antifriction bearings (other than spherical plain and tapered roller bearings) and parts thereof (hereinafter referred to as AFBs or the subject merchandise) from Italy are being, or are likely to be, sold in the United States at less than fair value. We also determine that spherical plain bearings, and parts thereof, from Italy are not being, nor are likely to be, sold in the United States at less than fair value. We also determine that critical circumstances exist with respect to imports of certain classes or kinds of AFBs from Italy.

We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Italy as described in the "Continuation of Suspension of Liquidation" section of this notice. We have also ordered the U.S. Customs Service to begin to suspend liquidation on spherical roller bearings produced by FAG, which was not ordered at the time of the preliminary determinations. The ITC will determine, within 45 days of the publication of this notice, whether these imports materially injure, or threaten material injury to, U.S. industries.

EFFECTIVE DATE: May 3, 1989.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Carole Showers or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377-3965, 377-3217 or 377-2239, respectively.

SUPPLEMENTARY INFORMATION:

Final Determinations

We determine that AFBs from Italy are being, or are likely to be, sold in the

United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average dumping margins are shown in the "Suspension of Liquidation" section of this notice. We also determine that critical circumstances exist with respect to imports of certain classes or kinds of AFBs from Italy, as outlined in the Critical Circumstances section of this notice.

We also determine that spherical plain bearings, and parts thereof, from Italy are not being, nor are likely to be, sold in the United States at less than fair value. The Department has determined that there are no producers or exporters of spherical plain bearings in Italy.

Case History

Since our notice of preliminary determinations (53 FR 45361, November 9, 1988), the following events have occurred. All respondents and the petitioner requested that the final determinations in all of the antidumping duty investigations be postponed until not later than 135 days after the date of publication of the preliminary determinations, pursuant to section 735(a)(2) of the Act. On December 2, 1988, we issued a notice postponing our final determinations until not later than March 24, 1989 (53 FR 49581, December 8, 1988). That notice also announced the scheduling of the public hearing in these investigations.

Verification of the questionnaire responses was conducted in Italy and the United States during November 1988 and January 1989. A public hearing was held on February 16, 1989. Petitioner, respondents, and other interested parties have filed pre- and post-hearing briefs.

In our preliminary determinations, we indicated that we were unable to identify any producers or exporters of spherical plain bearings from Italy. At verification, we found no evidence that spherical plain bearings were being manufactured or exported by any of the companies under investigation or any other company located in Italy. Therefore, we are issuing a negative determination for this class or kind of AFBs from Italy.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), and all merchandise entered or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The Department is providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the products covered by these investigations.

These determinations cover ball bearings, mounted or unmounted, and parts thereof (ball bearings); spherical roller bearings; mounted or unmounted, and parts thereof (spherical roller bearings); cylindrical roller bearings, mounted or unmounted, and parts thereof (cylindrical roller bearings); needle roller bearings, mounted or unmounted, and parts thereof (needle roller bearings); and spherical plain bearings, mounted or unmounted, and parts thereof (including rod end bearings) (spherical plain bearings). For a complete description of these products, see Appendix A to the "Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany" (hereinafter referred to as Appendix A) which is published in this issue of the **Federal Register.**

Class or Kind of Merchandise

Subsequent to the initiation of these investigations, the Department determined that the products under investigation constituted five separate classes or kinds of merchandise. After consideration of all comments, arguments, and information submitted by the parties, we find no reason to alter that decision. For a full discussion of our position on class or kind of merchandise, see Appendix B which is referred to below.

Standing

We determine that petitioner has standing with respect to each of the five classes or kinds of merchandise described Appendix A. For a full discussion of standing see Appendix B which is referred to below.

General Issues

Appendix B to the "Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany" (hereinafter referred to as Appendix B) contains detailed discussions of all issues timely raised by parties to the proceeding in each of the concurrent antidumping duty investigations involving AFBs from nine countries. The first part of that Appendix addresses all general issues raised during these investigations and our treatment of these topics. The general issues discussed therein are listed below.

1. Class or Kind of Merchandise
2. Standing
3. Products Covered
4. Basis for Cost of Production Investigations
5. Market Viability
6. Alternative Reporting Requirements
7. Critical Circumstances
8. Administrative Protective Order Issues

Following the discussion of general issues, all remaining comments are addressed.

Period of Investigation

The period of investigation (POI) is October 1, 1987 through March 31, 1988.

Fair Value Comparisons

To determine whether sales of certain AFBs from Italy to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified in the United States Price and Foreign Market Value sections of this notice.

For reasons discussed in the Best Information Available section of Appendix B, we have determined, in accordance with section 776(c) of the Act, that the use of best information available is appropriate for SKF for ball bearings.

United States Price

For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act.

In those cases where sales were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we also used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the most appropriate determinant of United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being

introduced into the inventory of a related selling agent;

2. This was the customary commercial channel for sales of this merchandise between the parties involved; and

3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the transactions or the functions themselves.

Where the sale to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

The calculation of United States price for each class or kind of merchandise for each respondent is detailed below.

I. Ball Bearings

A. *FAG:* FAG reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* Alternative Reporting Requirements Section of Appendix B.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of FAG's U.S. sales were ESP transactions. We calculated ESP based on packed, f.o.b. or delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for containerization, foreign inland and ocean freight, import brokerage, import duties, marine and foreign inland insurance, U.S. inland freight, and U.S. inland insurance, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions where appropriate, for credit, repacking in the United States, third party payments, warranty expenses, commissions, and indirect selling expenses (including product liability premiums, inventory carrying costs, advertising, technical services, and other miscellaneous indirect selling expenses incurred in the home market and in the United States) pursuant to sections 772(e) (1) and (2) of the Act.

We have excluded from our calculation of United States price sales of bearings by FAG to the U.S. government for military/defense procurement. (*See,* Government Procurement section of Appendix B.)

We have included sales of allegedly obsolete or discontinued AFBs in our calculations. (*See,* Miscellaneous section in Appendix B.)

B. *SKF: See,* Best Information Available section of Appendix B.

II. Spherical Roller Bearings

A. *FAG:* FAG reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* Alternative Reporting Requirements section of Appendix B.) Therefore, we have used all U.S. sales with identical home market matches in our purchase price comparison.

All of FAG's sales used in our analysis were purchase price transactions. We calculated purchase price based on delivered prices to unrelated customers in the United States, in accordance with section 772(b) of the Act. We made no deductions from purchase price because the merchandise was sold on an ex-factory basis. We added the amount of value-added taxes which would have been collected if the merchandise had not been exported.

B. *ICSA:* ICSA reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* Alternative Reporting Requirements section of Appendix B.) Therefore, we have used all U.S. sales with identical home market matches in our ESP comparison.

All of ICSA sales used in our analysis were ESP transactions. We calculated ESP based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, foreign inland freight, foreign inland insurance, marine insurance, ocean freight, U.S. duty, and U.S. inland freight, in accordance with section 772(d)(2) of the Act. We also made deductions for discounts and rebates. We made further deductions for commissions, credit, and technical services. Pursuant to sections 772(e) (1) and (2) of the Act, we also deducted indirect selling expenses (including advertising, inventory carrying costs, indirect non-U.S. selling expenses, technical services expenses for personnel, and other miscellaneous indirect selling expenses). Based on verified information, we recalculated inventory carrying costs to account for time in European inventory and time in transit. We added the amount of value-added taxes which would have been collected if the merchandise had not been exported.

III. Cylindrical Roller Bearings

A. *SKF:* SKF reported that no products sold in the United States were identical to products sold in the home market. Therefore, pursuant to the Alternative Reporting Requirements described in Appendix B, we limited our analysis to sales of those products accounting for the top 33 percent, by volume, of products sold to the United States.

All of SKF's sales were purchase price transactions. We calculated purchase price based on packed, ex-factory prices to unrelated customers in the United States. We added duty drawback in accordance with section 772(d)(1)(B) of the Act.

IV. Needle Roller Bearings

A. *SKF:* SKF reported that no products sold in the United States were identical to products sold in the home market. Therefore, pursuant to the Alternative Reporting Requirements described in Appendix B, we limited our analysis to sales of those products accounting for the top 33 percent, by volume, of products sold to the United States.

All of SKF's sales were ESP transactions. We calculated ESP for needle roller bearings based on packed, f.o.b. or delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, duty, inland freight, marine insurance, and ocean freight, in accordance with section 772(d)(2) of the Act. We also made deductions for discounts and rebates. We added duty drawback, in accordance with section 772(d)(1)(B) of the Act. We also made deductions, where appropriate, for credit, repacking expenses in the United States, technical service expenses, warranty expenses, and indirect selling expenses (including product liability premiums, inventory carrying costs, and other miscellaneous indirect selling expenses) pursuant to sections 772(e)(1) and (2) of the Act. We added "other expenses" (*i.e.,* price corrections).

Foreign Market Value

In accordance with Section 773(a) of the Act, we calculated foreign market value based on home market prices and constructed value (CV). The calculation of foreign market value for each class or kind of merchandise for each respondent is detailed below.

I. Ball Bearings

A. *FAG:* Petitioner alleged that FAG s home market sales of ball bearings were

made at prices below the cost of production (COP). Based on the petitioner's allegation, we gathered and verified data on FAG's production costs. We calculated the COP on the basis of FAG's cost of materials, labor, other fabrication costs, and general and administrative expenses. The COP data submitted by FAG was relied upon, except in the following instances where the costs were not appropriately quantified or valued. These were:

(1) Depreciation expense recorded for machinery manufactured by the parent was increased to reflect the fair market value of the machinery purchased from the parent company because the transfer price was lower than the fair market value. (Only applies to ball bearings)

(2) Amortization of corporate organization costs, omitted by FAG-Italy, was included in G&A expenses. (Applies to both ball and spherical roller bearings)

(3) The actual cost of parts transferred from the parent to FAG Italy was adjusted to correct computer programming errors and an error made in calculating cost of goods sold by the parent company. (Only applies to ball bearings)

(4) Financial expenses were adjusted to reflect the net interest expense related to operations of the consolidated FAG Group. (Applies to both ball and spherical roller bearings)

(5) The transfer prices of spherical roller bearings purchased by FAG-Italy from its joint venture were adjusted to reflect the loss experienced by the joint venture. (Only applies to spherical roller bearings)

(6) The write-off of ball bearing inventory, included in general and administrative expenses, was reclassified to the cost of manufacturing because in this case, we could identify this write-off directly with the products under investigation. (Only applies to ball bearings)

In accordance with section 773(a)(2) of the Act, we used CV as the basis for foreign market value because there were insufficient sales above the COP. CV was calculated on the basis of FAG's materials and fabrication costs, plus general expenses and profit. Since FAG's general expenses exceeded the statutory minimum of ten percent of materials and fabrication costs, we used FAG's general expenses. Since profit was less than the statutory minimum of eight percent, we used the statutory minimum for profit. Imputed credit and inventory carrying costs were included in selling expenses. Therefore, interest expense reflected in the company books was reduced for a portion of the expense related to these costs in order to avoid double counting. The actual cost of producing parts transferred from the parent company's plant to the Umbra plant was used instead of the transfer price reported in the submission. All of the changes made to the COP were also made to those cost elements in the CV. We added U.S. packing. We deducted all direct selling expenses and indirect selling expenses, up to the amount of the ESP offset.

We also made an adjustment to foreign market value for revenue earned on hedging operations to account for differences between FAG's actual exchange rate return and the Federal Reserve rate employed by the Department. (*See*, Miscellaneous section in Appendix B.)

B. *SKF*: *See*, Best Information Available section in Appendix B.

II. Spherical Roller Bearings

A. *FAG*: Petitioner alleged that FAG's home market sales of spherical roller bearings were made at prices below the COP. Based on the petitioner's allegation, we gathered and verified data on FAG's production costs. We calculated the COP for spherical roller bearings in the same way that we did for ball bearings.

We calculated the foreign market value based on CV, where appropriate, in accordance with section 773(e) of the Act. We calculated the CV for spherical roller bearings in the same way that we did for ball bearings.

Where we found that sufficient sales were above cost to permit the use of these sales as the basis for determining foreign market value, we calculated foreign market value based on packed, c&f or c.i.f. prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight, inland insurance, home market packing, and discounts and rebates. We made an addition for interest revenue. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved purchase price sales, we made circumstance of sale adjustments, where appropriate, for credit and warranty expenses in accordance with 19 CFR 353.15.

We made an adjustment for differences in circumstances of sale for value-added tax paid on home market sales which was not included in the price reported.

B. *ICSA*: We calculated foreign market value based on ESP delivered prices to unrelated customers. We added interest revenue to each transaction. We made deductions from the home market price, where appropriate, for packing, rebates, inland freight, and insurance. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions involved ESP, we made further deductions from home market price where appropriate for credit and commissions. In accordance with 19 CFR 353.15(c), we also deducted indirect selling expenses (including technical services, advertising, inventory carrying costs, and other miscellaneous indirect selling expenses).

We made an upward adjustment to tax-exclusive home market prices for the value-added tax we computed to the United States price.

Based on verified information, we modified the following expenses: inland freight, and insurance. (*See*, Selling Expenses section of Appendix B.)

III. Cylindrical Roller Bearings

A. *SKF*: SKF's home market is viable for cylindrical roller bearings based on class or kind. However, because there were neither identical nor similar products to serve as the basis for FMV, we based FMV on CV. (As stated earlier, since the class or kind was viable, we did not use third country sales for FMV.) For the CV the Department relied on the information submitted by the respondent except for the following changes: (1) Interest expense was adjusted to reflect the net financial expenses related to operations of the SKF consolidated corporation, (2) general expenses for first quarter 1988 were adjusted to reflect SKF-Italy's share of actual research and development expenses incurred by a related company, (3) general expenses were adjusted to correct an error in allocation and to include a portion of the headquarter expenses which had not been allocated to the subsidiaries, (4) general expenses were adjusted to eliminate the deduction for duty drawbacks received since these are added to the U.S. price, (5) we used weight-averaged U.S. selling expenses because there were no home market selling expenses available. We added U.S. packing and, because all sales to the United States were purchase price, we made a circumstance of sale adjustment for differences in credit between the two markets.

IV. Needle Roller Bearings

A. *SKF*: SKF's home market is viable for needle roller bearings based on class or kind. However, there were neither identical nor similar products to serve as the basis for FMV. Consequently, we

based FMV on CV. (As stated earlier, since the class or kind was viable, we did not use third country sales for FMV.) We used the same methodology described above for SKF's sales of cylindrical roller bearings. Because all sales to the United States were ESP, we made deductions for credit, inventory carrying costs, indirect selling expenses, and product liability premiums.

Currency Conversion

For comparisons involving purchase price transactions, we made currency conversions in accordance with 19 CFR 353.56(a)(1). For comparisons involving ESP transactions, we used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

On August 1, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from Italy. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

We generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we requested specific data on shipments of the subject merchandise as the most appropriate basis for our determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation.

We have asked all respondents in each of the AFB investigations to supply monthly volume shipment data from January 1986 through the present in order for the Department to base the critical circumstances determinations on company-specific data. We were unable to verify the shipment data provided by SKF. (*See,* Critical Circumstances section of Appendix B.) Therefore, as best information available, we are assuming that imports of ball bearings, cylindrical and needle roller bearings from SKF have been massive over a relatively short period of time. Based on our analysis of the monthly shipment data submitted by other Italian respondents, and the best information available for SKF, we have found that imports of the following classes or kinds of merchandise from the companies listed below have been massive over a relatively short period of time.

1. Ball Bearings—SKF
2. Spherical Roller Bearings—FAG, ICSA
3. Cylindrical Roller Bearings—SKF
4. Needle Roller Bearings—SKF

Therefore, we find that the requirements of section 735(a)(3)(B) are met for the above companies and classes or kinds of merchandise.

We examined recent antidumping duty cases and found that there are currently no findings of dumping in the United States or elsewhere of the subject merchandise by Italian manufacturers, producers, and exporters of the subject merchandise. However, it is our standard practice to impute knowledge of dumping under section 735(a)(3)(A) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient. *See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987). However, in cases where the foreign manufacturer sells in the United States through a related company, we consider that lower margins may be sufficient. *See, e.g., Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan* (53 FR 12552, April 15, 1988). Since SKF and FAG sell in the United States through related companies, and their margins are sufficiently high, we find that the requirements of section 735(a)(3)(A) are met for these companies with respect to the classes or kinds listed below.

Therefore, the following chart sets forth our company-specific determinations with respect to the existence of critical circumstances for each company and each class or kind of merchandise from Italy.

	Critical circumstances
Ball bearings:	
FAG	No.
SKF	Yes.
All others	No.
Spherical Roller Bearings:	
FAG	No.
ICSA	No.
All others	No.
Cylindrical roller bearings:	
SKF	Yes.
All others	No.
Needle roller bearings:	
SKF	Yes.
All others	No.
Spherical plain bearings:	
SKF	No.
All others	No.

Verification

Except where noted, we verified the information used in making our final determinations in accordance with section 776(b) of the Act. We used standard verification procedures including examination of relevant accounting records and original source documents of the respondents. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Interested Party Comments

As noted above, all comments raised by parties to the proceedings in the antidumping duty investigations on AFBs from nine countries are discussed in Appendix B.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Italy, as defined in the "Scope of Investigations" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. In those situations where we have found affirmative critical circumstances in both our preliminary determinations and final determinations, the retroactive suspension of liquidation ordered in our preliminary determinations will remain in effect. In those situations where we have found

affirmative critical circumstances only in these final determinations, we are instructing the U.S. Customs Service to suspend liquidation of such entries that are entered or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of the notice of the preliminary determinations in these investigations in the **Federal Register.** Finally, in those situations where our final critical circumstances determinations are negative, the retroactive suspension of liquidation ordered at the time of the preliminary determinations is terminated. All cash deposits or bonds placed on entries made by these companies of such merchandise prior to November 9, 1988 shall be refunded. (*See*, Critical Circumstances section of this notice.) The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Italy exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Weighted-average margin percentage
Ball bearings:	
FAG	68.29
SKF	155.99
All others	155.57
Spherical roller bearings:	
FAG	18.51
ICSA	5.09
All others	8.76
Cylindrical roller bearings:	
SKF	212.45
All others	212.45
Needle roller bearings:	
SKF	73.97
All others	73.97
Spherical plain bearings:	
All manufacturers/producers/exporters	[1]

[1] Negative.

For merchandise entering under Schedule 8 military procurement provisions, the bonding rate is zero.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. 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 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 with respect to any of the products under investigations, the applicable proceedings will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue antidumping duty orders directing Customs officials to assess antidumping duty on AFBs from Italy entered or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

These determinations are published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

March 24, 1989.

[FR Doc. 89-8059 Filed 5-2-89; 8:45 am]

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[A-588-804]

Final Determinations of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that antifriction bearings (other than tapered roller bearings) and parts thereof (hereinafter referred to as AFBs or the subject merchandise) from Japan are being, or are likely to be, sold in the United States at less than fair value. We also determine that critical circumstances exist with respect to imports of certain classes or kinds of AFBs from Japan.

We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Japan as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports materially injure, or threaten material injury to, U.S. industries.

EFFECTIVE DATE: May 3, 1989.

FOR FURTHER INFORMATION CONTACT: Eleanor Shea or Rick Herring, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377-0184 or 377-0167, respectively.

SUPPLEMENTARY INFORMATION:

Final Determinations

We determine that AFBs from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average dumping margins are shown in the "Continuation of Suspension of Liquidation" section of this notice. We also determine that critical circumstances exist with respect to imports of certain classes or kinds of AFBs from Japan, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since our notice of preliminary determinations (53 FR 45343, November 9, 1988), the following events have occurred. All respondents and the petitioner requested that the final determinations in all of the antidumping duty investigations be postponed until not later than 135 days after the date of publication of the preliminary determinations, pursuant to section 735(a)(2)(A) of the Act. On December 2, 1988, we issued a notice postponing our final determinations until not later than March 24, 1989 (53 FR 49581, December 8, 1988). That notice also announced the scheduling of the public hearing in these investigations.

Verification of the questionnaire responses was conducted in Japan and the United States during November and December 1988 and January 1989.

A public hearing was held on February 21, 1989. Petitioner, respondents, and other interested parties filed pre- and post-hearing briefs.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), and all merchandise

entered or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The Department is providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the products covered by these investigations.

These determinations cover ball bearings, mounted or unmounted, and parts thereof (ball bearings); spherical roller bearings, mounted or unmounted, and parts thereof (spherical roller bearings); cylindrical roller bearings, mounted or unmounted, and parts thereof (cylindrical roller bearings); needle roller bearings, mounted or unmounted, and parts thereof (needle roller bearings); and spherical plain bearings, mounted or unmounted, and parts thereof (including rod end bearings) (spherical plain bearings). For a complete description of these products, see Appendix A to the "Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany" (hereinafter referred to as Appendix A), which is published in this issue of the **Federal Register**.

Class or Kind of Merchandise

Subsequent to the initiation of these investigations, the Department determined that the products under investigation constitute five separate classes or kinds of merchandise. After consideration of all comments, arguments, and information submitted by the parties, we find no reason to alter that decision. For a full discussion of our position on class or kind of merchandise, see Appendix B which is cited below.

Standing

We determine that petitioner has standing with respect to each of the five classes or kinds of merchandise described in Appendix A. For a full discussion of standing see Appendix B, which is cited below.

General Issues

Appendix B to the "Final Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany" (hereinafter referred to as Appendix B) contains detailed discussions of all issues raised in a timely manner by the parties to the proceeding in each of the concurrent antidumping duty investigations involving AFBs from nine countries. The first part of Appendix B addresses all general issues raised during these investigations and our treatment of these topics. The general issues discussed therein are listed below.

1. Class or Kind of Merchandise
2. Standing
3. Products Covered
4. Basis for Cost of Production Investigations
5. Market Viability
6. Alternative Reporting Requirements
7. Critical Circumstances
8. Administrative Protective Order Issues

Following the discussion of general issues, all remaining comments are addressed.

Periods of Investigation

The periods of investigation (POI) are October 1, 1987, through March 31, 1988.

Fair Value Comparisons

To determine whether sales of certain AFBs from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

For the reasons cited below and in the Best Information Available section of Appendix B, in accordance with section 776(c) of the Act, we have determined that use of the best information available is appropriate for Koyo Seiko Co., Ltd. (Koyo), with respect to all of its sales of the subject merchandise, and for Minebea Co., Ltd. (Minebea), with respect to all of its sales of ball bearings. This statutory provision requires the Department to use the best information available "whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation."

Because Minebea failed to report the correct quantities of its spherical plain bearing sales, we have used the best information available to compensate for these unreported sales (*See*, Best Information Available section of Appendix B).

For NSK, where the respondent did not report certain ball bearings in conformity with our requirements (*See*, Best Information Available and Difference in Merchandise sections of Appendix B), and did not report on its revised computer tapes cost of production data for certain AFBs, we have used best information available, based on the criteria discussed below and in the Best Information Available section of Appendix B.

United States Price

For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act.

In those cases where sales were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we also used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the most appropriate determinant of United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated U.S. buyer, without being introduced into the inventory of a related selling agent;
2. This was the customary commercial channel for sales of this merchandise between the parties involved; and
3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the transactions or the functions themselves.

Where the sale to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

The calculation of United States price for each class or kind of merchandise for each respondent is detailed below.

I. Ball Bearings

A. *Koyo Seiko Co., Ltd., (Koyo) See*, Best Information Available section of Appendix B.

B. *Minebea Co., Ltd. (Minebea): See*, Best Information Available section of Appendix B.

C. *Nachi-Fujikoshi Corp. (Nachi):* Nachi reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home

market (*See*, Alternative Reporting Requirements section of Appendix B). Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated purchase price and ESP based on the packed, f.o.b., c.i.f., and delivered prices to unrelated customers in the United States. We made deductions from purchase price and ESP, where appropriate, for foreign inland freight (which included inland insurance), export brokerage (which included containerization), ocean freight, air freight, marine and air insurance, import brokerage, U.S. duty, and U.S. inland freight (which included inland insurance), in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for rebates and discounts. We made further deductions from ESP, where appropriate, for credit expenses, advertising, inspection fees, commissions, and indirect selling expenses (including inventory carrying costs, pre-sale warehousing, product liability premiums, and all general indirect selling expenses), pursuant to sections 772(e) (1) and (2) of the Act.

We modified the adjustment for total indirect selling expenses allocated over U.S. sales. During verification, Nachi identified that the original amount reported for indirect selling expenses was understated due to an error. Nachi officials provided the Department with a revised calculation which we verified and have accepted for the final determinations.

Nachi claimed that it incurred direct advertising expenses on its sales to original equipment manufacturers (OEMs). We are treating these expenses as indirect selling expenses because we verified that this advertising was not directed at the customers of these OEMs.

During verification, Nachi provided a list of purchase price sales for which the prices changed after the POI. Based on this information, we deleted these sales from the purchase price sales database for purposes of the final determinations, since the price change resulted in a new date of sale.

D. *Nippon Seiko K.K. (NSK):* NSK reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market (*See*, Alternative Reporting Requirements section of Appendix B). However, NSK performs further manufacturing in the United States with respect to certain ball bearing sales. For purposes of these final determinations, we have not included further manufactured merchandise in our calculation of United States price. For a full discussion of this issue, see the Alternative Reporting Requirements section of Appendix B. Accordingly, we used non-further manufactured U.S. sales with identical home market matches in our price-to-price comparisons.

As noted above under the Fair Value Comparisons section, NSK did not report the cost of production data for certain matched home market sales of ball bearings. In addition, for certain U.S. sales, NSK made comparisons to identical home market products which were sold only to related parties in the home market, despite instructions to NSK to report the first unrelated sale. When these home market sales and the further manufactured U.S. sales were dropped from comparisons, less than 33 percent of U.S. ball bearing sales were compared to identical merchandise in the home market. Therefore, to reach the 33 percent threshold, we did the following. First, we calculated the margins for those non-further manufactured U.S. sales that had identical home market comparisons. Second, we found the quantity of non-further manufactured U.S. sales that had no home market comparisons. To that quantity, we assigned the higher of NSK's calculated margin or the highest margin calculated for another respondent. Then, we summed these two quantities and compared this total to the quantity needed to reach the 33 percent threshold. We calculated the difference and assigned to it NSK's calculated margin.

In addition, as discussed above in the Fair Value Comparisons section, NSK did not report certain other ball bearings in conformity with our requirements (*See*, Best Information Available and Difference in Merchandise sections of Appendix B). For these ball bearings, we have applied best information available by weighting the quantity of these sales using the higher of NSK's calculated margin or the highest margin calculated for another respondent.

We calculated ESP based on the packed, delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for foreign inland freight (which included inland insurance), export brokerage (which included containerization), ocean freight, marine insurance, U.S. brokerage, U.S. duty, and U.S. inland freight (which included U.S. inland insurance), and harbor and merchandise processing fees, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions, where appropriate, for credit expenses, inspection fees, repacking in the United States, and indirect selling expenses (including inventory carrying costs, product liability premiums, and all general indirect selling expenses), pursuant to sections 772(e) (1) and (2) of the Act. The Department recalculated the reported credit expenses and the inventory carrying costs. (*See*, Credit and Inventory Carrying Costs section of Appendix B).

Because NSK reported an insignificant percentage of purchase price sales as identical merchandise, when compared to total U.S. sales, we did not calculate margins based on these reported transactions.

E. *NTN Toyo Bearing Co., Ltd. (NTN):* In order to meet the minimum reporting requirement of 33 percent (*See*, Alternative Reporting Requirements section of Appendix B), NTN had to report both identical and similar home market matches which we used in our price-to-price comparisons. However, NTN performs further manufacturing in the United States with respect to certain ball bearing sales. For purposes of these final determinations, we have not included further manufactured merchandise in our calculation of United States price. For a full discussion of this issue, see the Alternative Reporting Requirements section of Appendix B. Accordingly, we have used those non-further manufactured U.S. sales with identical and similar home market matches in our price-to-price comparisons.

We calculated ESP based on the packed, f.o.b., and delivered price to unrelated customers in the United States. We made deductions from ESP, where appropriate, for foreign inland freight (which included inland insurance), brokerage and handling (which included containerization), ocean freight, marine insurance, U.S. duty, harbor fees and merchandise processing fees, and U.S. inland freight (which included U.S. inland insurance), in accordance with section 772(d)(2) of the Act. We made further deductions from ESP, where appropriate, for credit expenses (*See*, Credit and Inventory Carrying Costs section of Appendix B), inspection fees, repacking in the United States, commissions, and indirect selling expenses (including product liability premiums, inventory carrying costs, technical service expenses, inventory insurance, advertising, and all general indirect selling expenses) pursuant to sections 772(e) (1) and (2) of the Act.

Because the quantity of the subject merchandise sold as purchase price sales constituted a minimal percentage of NTN's total sales to the United States,

we are disregarding these sales for purposes of these determinations.

II. Spherical Roller Bearings

A. *Koyo: See,* Best Information Available section of Appendix B.

B. *Nachi:* Nachi reported that by volume more than 33 percent of its U.S. sales were identical to products sold in the home market. Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated purchase price and ESP based on the packed, f.o.b., c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

C. *NSK:* In order to meet the minimum reporting requirement of 33 percent, NSK reported identical home market matches. As noted above under the Fair Value Comparisons section, NSK did not report the cost of production data for certain home market sales of spherical roller bearings. In addition, for certain U.S. sales, NSK made comparisons to identical home market products which were sold only to related parties in the home market, despite instructions to NSK to report the first unrelated sale. When these home market sales were dropped from our comparisons, less than 33 percent of U.S. spherical roller bearing sales were compared to identical merchandise in the home market. Therefore, to reach the 33 percent threshold, we used, as best information available, the higher of NSK's calculated margin or the highest margin calculated for another company. We weighted this best information available rate with NSK's calculated rate to find the estimated dumping margin.

We calculated ESP based on the packed, delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

D. *NTN:* NTN reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons. We calculated ESP based on the packed, f.o.b. and delivered price to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

III. Cylindrical Roller Bearings

A. *Koyo: See,* Best Information Available section of Appendix B.

B. *Nachi:* Nachi reported that by volume more than 33 percent of its U.S. sales were identical to products sold in the home market. Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP based on the packed, f.o.b., c.i.f., and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings, except that there were no purchase price sales of cylindrical roller bearings.

C. *NSK:* NSK reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. Therefore, we have used these sales in our price-to-price comparisons.

We calculated ESP based on the packed, delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

D. *NTN:* NTN reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. Therefore, we have used these sales in our price-to-price comparisons.

We calculated ESP based on the packed, f.o.b. and delivered price to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

Because the quantity of the subject merchandise sold as purchase price sales constituted a minimal percentage of NTN's total sales to the United States, we are disregarding these sales for purposes of these determinations.

IV. Needle Roller Bearings

A. *Koyo: See,* Best Information Available section of Appendix B.

B. *NTN:* In order to meet the minimum reporting requirement of 33 percent, NTN had to report both identical and similar home market matches which we used in our price-to-price comparisons.

We calculated ESP based on the packed, f.o.b., and delivered price to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings. Because the quantity of the subject merchandise sold as purchase price sales constituted a minimal percentage of NTN's total sales to the United States, we are disregarding these sales for purposes of these determinations.

V. Spherical Plain Bearings

A. *Minebea:* In order to meet the minimum reporting requirement of 33 percent (*See,* Alternative Reporting Requirements section of Appendix B), Minebea had to report both identical and similar home market matches which we used in our price-to-price comparisons. We calculated ESP based on the packed, f.o.b., U.S. shipping point prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for freight forwarding expenses, marine insurance, U.S. duty, U.S. inland freight, and U.S. brokerage and handling expenses, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts. We made further deductions from ESP, where appropriate, for U.S. credit expenses, technical service expenses, and indirect selling expenses (including advertising, warranty expenses, product liability expenses, inventory carrying costs, and all general indirect selling expenses), pursuant to sections 772(e) (1) and (2) of the Act.

Minebea calculated the product liability expense based on the yearly expense. We recalculated this expense based on the period of investigation. For inventory carrying costs, Minebea did not report the period between production and transit in their calculation. We have included this period using information obtained at verification for purposes of this adjustment.

Since Minebea did not report U.S. sales made during the POI of certain types of spherical plain bearings which are included in the scope of these investigations (*See,* Appendix A and Products Covered section of Appendix B), we have used best information available for these unreported U.S. sales. To calculate the estimated weighted-average margin listed in the "Continuation of Suspension of Liquidation" section of this notice, we weighted the quantity of unreported sales using the margin found for NTN's spherical plain bearings with the margin calculated for Minebea's reported sales. NTN's margin was used because it was the highest calculated rate for spherical plain bearings (*See,* Best Information Available section of Appendix B).

B. *NTN:* For spherical plain bearings, NTN reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. Therefore, we have used all U.S. sales with home market identical matches in our price-to-price comparisons.

We calculated ESP based on the packed, f.o.b. and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales or constructed value, where appropriate. The calculation of foreign market value for each class or kind of merchandise for each respondent is detailed below.

I. Ball Bearings

A. *Koyo: See,* Best Information Available section of Appendix B.

B. *Minebea: See,* Best Information Available section of Appendix B.

C. *Nachi:* Petitioner alleged that Nachi's home market sales of ball bearings were made at prices below the cost of production (COP). Based on the petitioner's allegation, we gathered and verified data on Nachi's production costs for ball bearings. We calculated the COP on the basis of Nachi's cost of materials, labor, other fabrication costs, and general, selling, and administrative expenses. The COP data submitted by Nachi was relied upon, except in those instances when the costs were not appropriately quantified or valued. Those instances were: (1) Interest expense was adjusted to reflect the interest expense related to the current operations of the Nachi consolidated entity; and (2) general expenses were increased to include inventory write-offs which were incurred by the Nachi factory.

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market prices where there were sufficient home market sales at or above the COP. We used constructed value (CV) as the basis for foreign market value when there were insufficient sales at or above the COP.

We calculated the foreign market value based on CV, where appropriate, in accordance with section 773(e) of the Act. The CV included the materials, fabrication, general expenses, profit, and packing. In all cases: (1) Actual general expenses were used, since these exceeded the statutory minimum requirement of 10 percent of materials and fabrication; (2) the statutory 8 percent minimum profit was applied; (3) imputed credit and inventory carrying costs were included in selling expenses; therefore, interest expense reflected on the company books was reduced for a portion of the expense related to these activities in order to avoid double counting; and (4) all the changes noted under the COP were also made to those cost elements in CV. We added U.S. packing. We deducted from CV all direct and indirect selling expenses up to the amount of the ESP offset.

For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for rebates, inland freight, and home market packing. However, we disallowed the claimed freight expense on returns of merchandise. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

For comparisons involving purchase price sales, we made adjustments to the home market price, where appropriate, for differences in credit expenses (including a bank transfer fee), inspection fees, technical services, warranty expenses, yen clause adjustments, and advertising, pursuant to 19 CFR 353.15. For comparisons involving ESP transactions, we made deductions from the home market price, where appropriate, for home market credit expenses, technical services (expenses incurred in testing bearings), and advertising, and we made an adjustment to the home market price for indirect selling expenses (including pre-sale warehousing, inventory carrying costs, pre-sale delivery expenses to warehouse, and all general indirect selling expenses), in accordance with 19 CFR 353.15(c). Since all home market products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

Nachi made a claim that it incurred direct advertising expenses on its sales to original equipment manufacturers (OEMs). We are treating these expenses as indirect selling expenses because we verified that this advertising was not directed at the customers of these OEMs.

Nachi claimed personnel expenses incurred when rendering technical services as a direct selling expense. Employee salaries are nonvariable expenses and, as such, are not allowable as direct selling expenses. Therefore, we have treated these personnel expenses as indirect selling expenses.

Nachi made a claim for warehousing expenses. We are treating these expenses as indirect selling expenses since they were incurred before the date of sale reported by Nachi in its responses. (*See,* Selling Expenses section of Appendix B).

For an explanation of the yen clause adjustment, *see* the Date of Sale section of Appendix B.

D. *NSK:* Petitioner alleged that NSK's home market sales of ball bearings were made at prices below COP. Based on the petitioner's allegation, we gathered and verified data on NSK's production costs for ball bearings. We calculated COP on the basis of NSK's cost of materials, labor, other fabrication costs, and general, selling, and administrative expenses. The COP data submitted by NSK was relied upon, except in those instances when the costs were not appropriately quantified or valued. These were: (1) The cost of manufacturing for each bearing was adjusted to reflect the depreciation expense on idle machinery; (2) certain non-operating income and expenses which were incurred by NSK were allocated to the subject bearings. These non-operating items included gains and losses on the disposal and sale of fixed assets, inventory disposals and write-downs, and raw materials adjustments; (3) interest expense was increased to reflect the amortization of bond issue expenses by NSK; and (4) interest income was adjusted to reflect only interest income accruing from short-term investments related to the current operations of NSK.

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market prices where there were sufficient home market sales at or above the COP. We used CV as the basis for foreign market value when there were insufficient sales at or above the COP.

We calculated the foreign market value based on CV, where appropriate, in accordance with section 773(e) of the Act. The CV included the materials, fabrication, general expenses, profit, and packing. In all cases: (1) Actual general expenses were used, since these exceeded the statutory minimum requirement of 10 percent of materials and fabrication; (2) the statutory 8 percent minimum profit was applied; (3) imputed credit and inventory carrying costs were included in selling expenses; therefore, interest expense reflected on the company books was reduced for a portion of the expense related to these activities in order to avoid double counting; and (4) all the changes noted under the COP were also made to those cost elements in CV. We added U.S. packing. We deducted from CV all direct and indirect selling expenses up to the amount of the ESP offset.

For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for home market packing. Since U.S. price is

based on ESP, we made further deductions from home market price, where appropriate, for home market credit expenses and commissions, and we made an adjustment to the home market price for indirect selling expenses (including pre-sale inland freight, inventory carrying costs, advertising, and all general indirect selling expenses), in accordance with 19 CFR 353.15(c). We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act. Since all home market products used in fair value comparisons are identical to the products sold in the United States, no adjustments for physical differences in merchandise were required.

NSK claimed rebates and discounts paid on home market sales as a direct selling expense. These adjustments were revised on a customer-specific and, in some instances, part-specific basis. Based on the results of verification, some of these claimed expenses have been accepted as direct expenses; others were disallowed. (*See*, Rebates and Discounts section of Appendix B.)

NSK's reported inland freight includes pre-sale transportation expenses. Because NSK did not provide information to break out the pre- and post-sale portions of the expense, we treated this entire expense as indirect. (*See*, Movement Charges section of Appendix B).

E. *NTN:* Petitioner alleged that NTN's home market sales of ball bearings were made at prices below COP. Based on the petitioner's allegation, we gathered and verified data on NTN's production costs for ball bearings. We calculated COP on the basis of NTN's cost of materials, labor, other fabrication costs, and general, selling, and administrative expenses. The COP data submitted by NTN was relied upon, except in those instances when the costs were not appropriately quantified or valued. These were: (1) The costs of manufacturing each bearing were adjusted to reflect the depreciation expense on idle machinery; (2) a loss on disposal of machinery incurred by NTN was allocated to the subject bearings; (3) interest expense was increased to reflect the interest expense paid by NTN on bonds; and (4) interest income was adjusted to reflect only interest income accruing from short-term investments related to the current operations of NTN.

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market prices where there were sufficient home market sales at or above the COP. We used CV as the basis for foreign market value when there were insufficient sales at or above the COP.

We calculated the foreign market value based on CV, where appropriate, in accordance with section 773(e) of the Act. The CV included the materials, fabrication, general expenses, profit, and packing. In all cases: (1) Actual general expenses were used, since these exceeded the statutory minimum requirement of 10 percent of materials and fabrication; (2) the statutory 8 percent minimum profit was applied; (3) imputed credit and inventory carrying costs were included in selling expenses; therefore, interest expense reflected on the company books was reduced for a portion of the expense related to these activities in order to avoid double counting; and (4) all the changes noted under the COP were also made to those cost elements in CV. We added U.S. packing. We deducted from CV all direct and indirect selling expenses up to the amount of the ESP offset.

For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for discounts, inland freight and insurance, and home market packing. Since U.S. price is based on ESP, we made further deductions from the home market price, where appropriate, for home market credit expenses and royalty expenses, and we made an adjustment to the home market price for indirect selling expenses (including advertising, inventory carrying costs, warehousing, product liability premiums, technical services, commissions, and all general indirect selling expenses), in accordance with 19 CFR 353.15(c). We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act. In accordance with 19 CFR 353.16, we made further adjustments to the home market price, where applicable, to account for differences in the physical characteristics of the merchandise.

For purposes of the final determination, we have treated a portion of the inland freight and insurance expense as an indirect expense, based on information provided for the record, to reflect pre-sale transportation expenses. This issue and our methodology are discussed in the Movement Charges section of Appendix B. We have also treated NTN's commissions as indirect expenses as these commissions were allocated over all home market sales.

NTN made a claim for warehousing expenses. We are treating these expenses as indirect selling expenses rather than as direct expenses since the warehousing expenses were incurred before the date of sale reported by NTN in its response. (*See*, Selling Expenses section of Appendix B).

II. Spherical Roller Bearings

A. *Koyo: See*, Best Information Available section of Appendix B.

B. *Nachi:* Petitioner alleged that Nachi's home market sales were made at prices below the COP. Based on petitioner's allegation, we gathered and verified data on Nachi's production costs. We calculated the COP as described above for ball bearings. We found that Nachi had sufficient home market sales above COP to use solely price-to-price comparisons.

For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

C. *NSK:* Petitioner alleged that NSK's home market sales were made at prices below the COP. Based on petitioner's allegation, we gathered and verified data on NSK's production costs. We calculated the COP as described above for ball bearings. We calculated foreign market value based on CV, where appropriate, as described above.

For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

D. *NTN:* Petitioner alleged that NTN's home market sales were made at prices below the COP. Based on petitioner's allegation, we gathered and verified data on NTN's production costs. We calculated the COP as described above for ball bearings. We calculated foreign market value based on CV, where appropriate, as described above.

For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings except that no adjustment was made for differences in the physical characteristics of the merchandise since we used only identical product comparisons.

III. Cylindrical Roller Bearings

A. *Koyo: See*, Best Information Available section of Appendix B.

B. *Nachi:* We calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings when foreign market value was compared to ESP. There were no comparisons to purchase price because there were no purchase price sales of cylindrical roller bearings.

C. *NSK:* Petitioner alleged that NSK's home market sales were made at prices below the COP. Based on petitioner's allegation, we gathered and verified data on NSK's production costs. We calculated the COP as described above for ball bearings. We calculated foreign market value based on CV, where appropriate, as described above.

For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

D. *NTN:* Petitioner alleged that NTN's home market sales were made at prices below the COP. Based on petitioner's allegation, we gathered and verified data on NTN's production costs. We calculated the COP as described above for ball bearings. We calculated foreign market value based on CV, where appropriate, as described above.

For those home market sales used in price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings except that no adjustment was made for differences in the physical characteristics of the merchandise since we used only identical product comparisons.

IV. Needle Roller Bearings

A. *Koyo: See,* Best Information Available section of Appendix B.

B. *NTN:* Petitioner alleged that NTN's home market sales were made at prices below the COP. Based on petitioner's allegation, we gathered and verified data on NTN's production costs. We calculated the COP as described above for ball bearings. We found that NTN had sufficient sales above its COP to use solely price-to-price comparisons.

For these price-to-price comparisons, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

V. Spherical Plain Bearings

A. *Minebea:* We calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions, where appropriate, for inland freight. We did not make an adjustment for home market and U.S. packing since, as best information available, we have considered packing expenses to be identical in both markets (*see,* Movement Charges section of Appendix B).

Since all U.S. transactions involved ESP, we deducted credit expenses from the home market price. We also made an adjustment to home market price for indirect selling expenses (including advertising, inventory carrying costs, and all general indirect selling expenses), in accordance with 19 CFR 353.15(c). In accordance with 19 CFR 353.16, we made further adjustments to the home market price, where applicable, to account for differences in the physical characteristics of the merchandise.

We have recalculated home market credit expenses and home market inventory carrying costs using the verified short-term interest rate and the number of days in inventory (*See,* Credit and Inventory Carrying Costs section of Appendix B). In addition, we have excluded from our calculations one transaction which consisted of samples because we considered it to be outside the ordinary course of trade.

B. *NTN:* We calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings except that no adjustment was made for differences in the physical characteristics of the merchandise since we used only identical product comparisons.

Currency Conversion

For comparisons involving purchase price transactions, we made currency conversions in accordance with 19 CFR 353.56(a)(1). For comparisons involving ESP transactions, we used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

On August 1, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from Japan. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we requested specific data on shipments of the subject merchandise as the most appropriate basis for our determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation.

We have asked all respondents in each of the AFB investigations to supply monthly volume shipment data from January 1986 through the present in order for the Department to base the critical circumstances determinations on company-specific data. We did not verify the shipment data provided by Koyo, and Minebea refused to provide such data on its ball bearing shipments (*See,* Critical Circumstances section of Appendix B). Minebea also failed to provide shipment data for all of its spherical plain bearings. Therefore, as best information available, we are assuming that imports of ball bearings, cylindrical roller bearings, spherical roller bearings, and needle roller bearings from Koyo have been massive over a relatively short period of time. We are also assuming as best information available that imports of ball bearings and spherical plain bearings from Minebea have been massive. Based on our analysis of the monthly shipment data submitted by respondents and the use of best information available as discussed

above, we have found that imports of the following classes or kinds of merchandise from the companies listed below have been massive over a relatively short period of time.

1. Ball Bearings—Koyo, Minebea
2. Spherical Roller Bearings—Koyo, Nachi, NTN, NSK
3. Cylindrical Roller Bearings—Koyo, NSK
4. Needle Roller Bearings—Koyo
5. Spherical Plain Bearings—Minebea, NTN

Therefore, we find that the requirements of section 735(a)(3)(B) are met for the above companies and classes or kinds of merchandise.

For the companies and classes of merchandise listed above, we then examined recent antidumping duty cases and found that there are currently no findings of dumping of the subject merchandise by Japanese manufacturers, producers, or exporters in the United States. We also reviewed the antidumping actions of other countries made available to us through the Antidumping Code Committee of the General Agreement on Tariffs and Trade. On July 19, 1984, as set forth in Council Regulation No. 2089/84, the European Economic Community (EEC) imposed antidumping duties on ball bearings with a greatest external diameter of not more than 30 millimeters from Japan. On June 24, 1985, as set forth in Council Regulation No. 1739/85, the EEC imposed antidumping duties on ball bearings with a greatest external diameter of more than 30 millimeters from Japan. On February 5, 1987, as set forth in Council Regulation No. 374/87, the EEC imposed antidumping duties on casted or pressed steel housings fitted with ball bearings from Japan. As this constitutes a history of dumping of ball bearings from Japan, we find that the requirements of section 733(e)(1)(A) are met with respect to ball bearings.

With respect to the remaining four classes or kinds of merchandise, it is our standard practice to impute knowledge of dumping under section 735(a)(3)(A) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient. (*See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987).) However, in cases where the foreign manufacturer sells in the United States through a related company, we consider that lower margins may be sufficient. (*See, e.g., Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan* (53 FR 12552, April 15, 1988).) Since Koyo, Minebea, and NSK sell in the United States through related companies, and their margins are sufficiently high, we find that the requirements of section 735(a)(3)(A) are met for these companies with respect to the classes or kinds listed below. Therefore, the following chart sets forth our company-specific determinations with respect to the existence of critical circumstances for each company and each class or kind of merchandise from Japan.

	Critical circumstances
Ball bearings:	
Koyo	yes.
Minebea	yes.
Nachi	no.
NSK	no.
NTN	no.
All others	no.
Spherical roller bearings:	
Koyo	yes.
Nachi	yes.
NSK	yes.
NTN	no.
All others	no.
Cylindrical roller bearings:	
Koyo	yes.
Nachi	no.
NSK	no.
NTN	no.
All others	no.
Needle roller bearings:	
Koyo	yes.
NTN	no.
All others	no.
Spherical plain bearings:	
Minebea	yes.
NTN	yes.
All others	yes.

Verification

Except where noted, we verified the information used in making our final determinations in accordance with section 776(b) of the Act. We used standard verification procedures including examination of relevant accounting records and original source documents of the respondents. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Interested Party Comments

As noted above, all comments raised by parties to the proceedings in the antidumping duty investigations on AFBs from nine countries are discussed in Appendix B.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Japan, as defined in Appendix A, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. In those situations where we have found affirmative critical circumstances in both our preliminary determinations and final determinations, the retroactive suspension of liquidation ordered in our preliminary determinations will remain in effect. In those situations where we have found affirmative critical circumstances only in these final determinations, we are instructing the U.S. Customs Service to suspend liquidation of such entries that are entered or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of the notice of the preliminary determinations in these investigations in the **Federal Register**. Finally, in those situations where our final critical circumstances determinations are negative, the retroactive suspension of liquidation ordered at the time of the preliminary determinations is terminated. All cash deposits or bonds placed on entries made by these companies of such merchandise prior to November 9, 1988, shall be refunded. (*See*, Critical Circumstances section of this notice.) The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Japan exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Weighted-average margin percentage
Ball bearings:	
Koyo	73.55
Minebea	106.61
Nachi	48.69
NSK	42.99
NTN	21.36
All others	45.83
Spherical roller bearings:	
Koyo	40.18
Nachi	22.76
NSK	22.15
NTN	5.81
All others	14.94

	Weighted-average margin percentage
Cylindrical roller bearings:	
Koyo	51.21
Nachi	4.00
NSK	12.28
NTN	9.30
All others	25.80
Needle roller bearings:	
Koyo	163.35
NTN	163.35
All others	163.35
Spherical plain bearings:	
Minebea	84.26
NTN	92.00
All others	84.33

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. 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 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 with respect to any of the products under investigations, the applicable proceeding[s] will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue antidumping duty orders directing Customs officials to assess antidumping duty on AFBs from Japan entered or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

These determinations are published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

Dated: March 24, 1989.

[FR Doc. 89-8060 Filed 5-2-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-485-801]

Final Determinations of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Romania

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that antifriction bearings (other than tapered roller bearings) and parts thereof (herein referred to as AFBs or the subject merchandise) from Romania are being, or are likely to be, sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to imports of AFBs from Romania.

We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Romania as described in the "Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports materially injure, or threaten material injury to, U.S. industries.

EFFECTIVE DATE: May 3, 1989.

FOR FURTHER INFORMATION CONTACT: Gary Taverman or Carole Showers, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 377-0161 or 377-3217, respectively.

SUPPLEMENTARY INFORMATION:

Final Determinations

We determine that AFBs from Romania are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We also determine that critical circumstances do not exist with respect to imports of AFBs from Romania, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since the notice of preliminary determinations (53 FR 45324, November 9, 1988), the following events have occurred. Respondent and the petitioner requested that the final determinations in all of the antidumping duty investigations be postponed until not later than 135 days after the date of publication of the preliminary determinations, pursuant to section 735(a)(2) of the Act. On December 2, 1988, we issued a notice postponing our final determinations until not later than March 24, 1989 (53 FR 49581, December 8, 1988). That notice also announced the scheduling of the public hearing in these investigations.

Verification of the questionnaire responses was conducted in Romania during December 1988. A public hearing was held on February 9, 1989. Petitioner and respondent have filed pre- and post-hearing briefs.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), and all merchandise entered or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The Department is providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the products covered by these investigations.

These determinations cover ball bearings, mounted or unmounted, and parts thereof (ball bearings); and spherical roller bearings, mounted or unmounted, and parts thereof (spherical roller bearings). For a complete description of these products, see Appendix A to the "Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany" (hereinafter referred to as Appendix A) which is published in this issue of the Federal Register.

Class or Kind of Merchandise

Subsequent to the initiation of these investigations, the Department determined that the products under investigation constituted five separate classes or kinds of merchandise. After consideration of all comments, arguments, and information submitted

by the parties, we find no reason to alter that decision. For a full discussion of our position on class or kind of merchandise, see Appendix B which is referred to below.

Standing

We determine that petitioner has standing with respect to each of the five classes or kinds of merchandise described in Appendix A. For a full discussion of standing see Appendix B which is referred to below.

General Issues

Appendix B to the "Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany" (hereinafter referred to as Appendix B) contains detailed discussions of all issues timely raised by parties to the proceeding in each of the concurrent antidumping duty investigations involving AFBs from nine countries. The first part of that Appendix addresses all general issues raised during these investigations and our treatment of these topics. The general issues discussed therein are listed below:

1. Class or Kind of Merchandise
2. Standing
3. Products Covered
4. Basis for Costs of Production
5. Market Viability
6. Alternative Requirements
7. Critical Circumstances
8. Administrative Protective Order Issues.

Following the discussion of general issues, all remaining comments are addressed.

Period of Investigation

The period of investigation (POI) is October 1, 1987 through March 31, 1988.

Fair Value Comparisons

To determine whether sales of certain AFBs from Romania to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Petitioner alleged that Romania is a state-controlled economy country and that sales of the subject merchandise in that country do not permit a determination of foreign market value under section 773(a) of the Act. Our analysis of issues relating to our determination that Romania is a state-controlled-economy country and our selection of surrogate countries are discussed in the notice of preliminary determinations.

United States Price

All sales from Tehnoimportexport (TIE) were made directly to unrelated parties prior to importation into the United States. Therefore, we based the United States price on purchase price in accordance with section 772(b) of the Act.

The calculations of United States price for ball bearings and spherical roller bearings are detailed below.

I. Ball Bearings

We calculated the purchase price for ball bearings based on the f.o.b. price to unrelated purchasers. We made deductions from purchase price, where appropriate, for foreign inland freight in accordance with section 772(d)(2) of the Act. Inland freight expenses were based on prices from Portugal, the surrogate country chosen for purposes of these final investigations (*see* Foreign Market Value section of this notice). This action is consistent with our practice that inland freight incurred in a state-controlled economy should be based on similar charges in a non-state-controlled economy. *See, Final Determination of Sales at Less Than Fair Value: Carbon Steel Wire Rod From Poland* (49 FR 29434, July 20, 1984) and *Final Determination of Sales at Less Than Fair Value Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Socialist Republic of Romania (TRBs),* (52 FR 17433, May 8, 1987). The distances from factory to port and the weight of an average container of AFBs used in this calculation were based on verified information from Romania.

II. Spherical Roller Bearings

We calculated the purchase price for spherical roller bearings based on the f.o.b. price to unrelated purchasers. The adjustment was identical to that described above for ball bearings.

Foreign Market Value

As a result of our determination that Romania has a state-controlled economy (*see* "Fair Value Comparison" section of this notice), section 773(c) of the Act requires us to use prices or the constructed value of "such or similar merchandise in a non-state-controlled economy country." (*See,* Notice of Preliminary Determinations.) The calculations of foreign market value for ball bearings and spherical roller bearings are detailed below.

I. Ball Bearings

We used the factors of production valued in a comparable economy, *i.e.,* Portugal, as the basis of foreign market value, as provided for in 19 CFR 353.8(c). We calculated constructed value based on the factors of production reported by the four factories in Romania producing the subject merchandise. The information submitted by the Brasov and Birlad factories was verified. The weighted average of the adjustments resulting from verification of those factories was applied to the data of the Ploiesti and Alexandria factories. We have made the following changes to the reported factors:

- Gross weight amounts were used to determine the material input, instead of net weights which were used in the response;
- Some steel input factors of the Birlad and Alexandria factories were adjusted to reflect the total number of components, *e.g.,* rollers and cages, required for each bearing;
- Gross weight input amounts of the Birlad factory for producing inner and outer rings, cages, and other components were corrected;
- Gross material costs of the Birlad factory were adjusted for scrap; no adjustment was permitted for Brasov; and
- Birlad and a portion of the Alexandria factories' labor factors were adjusted.

Although we stated in our preliminary determinations that Yugoslavia's level of economic development most closely approximates that of Romania's, we were unable to obtain adequate pricing data from Yugoslavia. Due to the lack of information from Yugoslavia, we have chosen Portugal as the surrogate country for purposes of valuing the factors of production in these final determinations. In our preliminary determinations, we noted that Portugal's level of economic development also closely approximates that of Romania and listed it as one of the five possible surrogate countries (*see,* Notice of Preliminary Determinations). Portugal was also chosen as the surrogate country in *TRBs.*

We have used the following information to value the factors of production:

- Steel used in the manufacture of steel cages was valued according to information supplied by the U.S. Embassy in Lisbon reflecting prices in Portugal;
- Steel used in the manufacture of the inner and outer rings, balls, and other components was valued according to information obtained from the *World Material Study—Europe,* as provided by Torrington and verified by the Department;
- Steel scrap was valued according to information supplied by a steel company operating in Portugal;

• Brass used in the manufacture of brass cages was valued according to information supplied by the U.S. Embassy in Lisbon reflecting prices in Portugal;

• Overhead was valued according to information provided by the U.S. Embassy in Lisbon at 22 percent of the cost of production (including depreciation, indirect materials, electricity, methane gas, grease, oil, and water), reflecting overhead of a company currently producing AFBs in Portugal; and

• Portuguese labor rates were based on information supplied by the Bureau of Labor Statistics/Division of Foreign Labor Statistics and adjusted for inflation by OECD Main Economic Indicators.

We used the statutory minimum of ten percent of the sum of material and production costs (COM) for general, selling and administrative expenses (GS&A), and the statutory minimum of eight percent of COM plus GS&A for profit.

We added U.S. packing to the constructed value, in accordance with section 773(e)(1)(c) of the Act. As the value for U.S. packing we used the packing cost of a European based AFB manufacturer currently under investigation, as a Portuguese packing figure was not available. We selected a European producer that is related to the Portuguese producer because we believe that these related producers have similar packing cost allocations.

II. Spherical Roller Bearings

We used the factors of production valued in a comparable economy, *i.e.*, Portugal, as the basis of foreign market value, as provided for in 19 CFR 353.8(c). The constructed value and adjustments were identical to those described above for ball bearings.

Currency Conversion

We made currency conversions in accordance with 19 CFR 353.56(a)(1). All currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

On August 1, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from Romania. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine:

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we requested specific data on shipments of the subject merchandise as the most appropriate basis for our determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation.

We have asked all respondents in each of the AFB investigations to supply monthly volume shipment data from January 1986 through the present in order for the Department to base the critical circumstances determinations on company-specific data. Based on our analysis of the monthly shipment data submitted by TIE, we have found that imports of the subject merchandise from TIE have not been massive over a relatively short period of time. Therefore, we find that the requirements of section 735(a)(3)(B) have not been met for TIE.

Verification

We verified the information used in making our final determinations in accordance with section 776(b) of the Act. We used standard verification procedures including examination of relevant accounting records and original source documents of the respondent. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Interested Party Comments

As noted above, all comments raised by parties to the proceedings in the antidumping duty investigations on AFBs from nine countries are discussed in Appendix B.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Romania, as defined in the "Scope of Investigations" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Romania exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Weighted-average margin percentage
Ball bearings:	
Tehnoimportexport	39.61
All others	39.61
Spherical roller bearings:	
Tehnoimportexport	64.81
All others	64.81

Because our final critical circumstances determinations are negative, the retroactive suspension of liquidation ordered at the time of the preliminary determinations is terminated. All cash deposits or bonds placed on entries made by TIE prior to October 27, 1988 shall be refunded.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. 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 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 with respect to any of the products under investigation, the applicable proceeding(s) will be terminated and all securities posted as a result of the suspension of liquidation

will be refunded or cancelled. However, if the ITC determines that material injury does exist, the Department will issue antidumping duty orders directing Customs officials to assess antidumping duty on AFBs from Romania entered or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

These determinations are published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

March 24, 1989.

[FR Doc. 89-8061 Filed 5-2-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-559-801]

Final Determination of Sales at Less Than Fair Value: Ball Bearings and Parts Thereof From Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that ball bearings and parts thereof (hereinafter referred to as ball bearings or the subject merchandise) from Singapore are being, or are likely to be, sold in the United States at less than fair value.

We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Singapore as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports materially injure, or threaten material injury to, a U.S. industry.

EFFECTIVE DATE: May 3, 1989.

FOR FURTHER INFORMATION CONTACT: Eleanor Shea or Nancy Saeed, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 377-0184 or 377-1777.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that ball bearings from Singapore are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average dumping margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since our notice of preliminary determination (53 FR 45339, November 9, 1988), the following events have occurred. Respondents and petitioner requested that the final determinations in all of the antidumping duty investigations of antifriction bearings (AFBs) be postponed until not later than 135 days after the date of publication of the preliminary determinations, pursuant to section 735(a)(2)(A) of the Act. On December 2, 1988, we issued a notice postponing our final determinations until not later than March 24, 1989 (53 FR 49581, December 8, 1988). That notice also announced the scheduling of the public hearing in these investigations.

Verification of the questionnaire responses of NMB Singapore, Ltd. and Pelmec Industries (Pte.), Ltd. (NMB/Pelmec Singapore) was conducted in Singapore and the United States during November and December 1988 and January 1989.

A public hearing was held on February 17, 1989. Petitioner and respondent filed pre-hearing briefs on February 15, 1989, and post-hearing briefs on February 28, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), and all merchandise entered or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The Department is providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the products covered by this investigation.

This determination covers ball bearings, mounted or unmounted, and parts thereof (ball bearings). For a complete description of these products, see Appendix A to the "Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the FRG" (hereinafter referred to as Appendix A), which is published in this issue of the **Federal Register.**

Class or Kind of Merchandise

Subsequent to the initiation of this investigation, the Department determined that the products under investigation constitute five separate classes or kinds of merchandise.

After consideration of all comments, arguments, and information submitted by the parties, we find no reason to alter that decision. For a full discussion of our position on class or kind of merchandise, see Appendix B which is referred to below.

Standing

We determine that petitioner has standing with respect to each of the five classes or kinds of merchandise described in Appendix A. For a full discussion of standing, see Appendix B which is referred to below.

General Issues

Appendix B to the "Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) from the Federal Republic of Germany" (hereinafter referred to as Appendix B) contains detailed discussions of all issues timely raised by parties to the proceeding in each of the concurrent antidumping duty investigations involving AFBs from nine countries. The first part of that Appendix addresses all general issues raised during these investigations and our treatment of these topics. The general issues discussed therein are listed below:

1. Class or Kind of Merchandise
2. Standing
3. Products Covered
4. Basis for Cost of Production Investigations
5. Market Viability
6. Alternative Reporting Requirements
7. Critical Circumstances
8. Administrative Protective Order Issues

Following the discussion of general issues, all remaining comments and are addressed.

Period of Investigation

The period of investigation (POI) is October 1, 1987 through March 31, 1988.

Fair Value Comparisons

To determine whether sales of ball bearings from Singapore to the United

States were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We verified that the sale to the first unrelated purchaser took place after importation into the United States. Therefore, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

In order to meet the minimum reporting requirement of 33 percent (*see*, the Alternative Reporting Requirements section of Appendix B), NMB/Pelmec Singapore had to report both identical and similar third country matches which we used in our price-to-price comparisons. We calculated ESP based on the packed, f.o.b. U.S. shipping point prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for freight forwarding expenses, marine insurance, U.S. duty, U.S. inland freight, and U.S. brokerage and handling expenses, in accordance with section 772(d) of the Act. We also made deductions, where appropriate, for discounts. We made further deductions, where appropriate, for U.S. credit expenses and indirect selling expenses including advertising, warranties, inventory carrying costs, product liability expenses, and all other general indirect selling expenses, pursuant to sections 772(e) (1) and (2) of the Act.

NMB/Pelmec Singapore calculated the product liability expense based on the yearly expense. We recalculated this expense for the period of investigation based on information obtained at verification.

NMB/Pelmec Singapore did not report the period between production and transit in its calculation of inventory carrying costs. Therefore, we included this period in our recalculation of this expense based on information obtained at verification. (*See*, comments on Inventory Carrying Costs in the Selling Expense section of Appendix B.)

Foreign Market Value

We based foreign market value on NMB/Pelmec Singapore's third country prices to Japan because we found the home market to be non-viable (*See*, Market Viability section of Appendix B). Petitioner alleged that NMB/Pelmec Singapore's sales to the third country (*i.e.*, Japan) were made at prices below the cost of production (COP). Based on petitioner's allegation, we gathered and verified data on NMB/Pelmec Singapore's production costs for ball bearings. We calculated the cost of production (COP) on the basis of NMB/Pelmec Singapore's cost of materials, labor, other fabrication costs and general, selling, and administrative expenses. The COP data submitted by NMB/Pelmec Singapore was relied upon, except in the following instances where the costs were not appropriately quantified or valued. These were: (1) The cost of manufacturing was increased to account for those bearings manufactured by the special processing method because the cost of coil material had been included in the submission instead of bar material which is used for such bearings; (2) interest expense was adjusted to reflect the net interest income related to current operations of the Minebea consolidated entity; and (3) general expenses were adjusted to include headquarter expenses which had not been fully allocated to the subsidiaries.

In accordance with section 773(a) of the Act, we calculated foreign market value based on third country sales because we determined that there were sufficient third country sales at or above the COP. (For a complete discussion of the methodology employed for the cost test, *see* Cost of Production section of Appendix B.) We calculated foreign market value based on packed, c.i.f. prices to unrelated customers in the third country. We made deductions from the third country price, where appropriate, for inland freight, inland insurance, ocean freight, brokerage and handling, and third country packing. We added U.S. packing to the third country price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions included in our analysis involved ESP, we made further deductions from home market price, where appropriate, for credit. We also deducted indirect selling expenses, including inventory carrying costs and indirect selling expenses incurred in Singapore and Japan, in accordance with 19 CFR 353.15(c). We made further adjustments, where applicable, to the third country price to account for physical differences in merchandise in accordance with 19 CFR 353.16.

We recalculated the freight forwarding expense based on verified information for Pelmec Singapore. We also recalculated the credit expense using the verified short-term interest rate. (*See*, comments on Credit in the Selling Expense section of Appendix B.)

NMB/Pelmec Singapore claimed advertising expenses as a direct selling expense. This claim was not adequately supported and, therefore, we have treated it as an indirect selling expense and included it in the general indirect selling expense amount. (*See*, comments on Advertising in the Selling Expense section of Appendix B.)

NMB/Pelmec Singapore did not account for the period between production and transit in its calculation of inventory carrying costs. Therefore, we have included this period in our recalculation of this expense based on information obtained at verification. (*See*, comments on Inventory Carrying Costs in the Selling Expense section of Appendix B.)

Currency Conversion

For comparisons involving ESP transactions, we used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

We verified the information used in making our final determination in accordance with section 776(b) of the Act. We used standard verification procedures including examination of relevant accounting records and original source documents of the respondent. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Interested Party Comments

As noted above, all comments raised by parties to the proceedings in the antidumping duty investigations on AFBs from nine countries are discussed in Appendix B.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Singapore, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Singapore exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Weighted-average margin percentage
Ball bearings:	
NMB/Pelmec Singapore	25.08
All others	25.08

Consistent with our obligations under Article VI.5 of the General Agreement on Tariffs and Trade, it is our practice to adjust antidumping duty deposit requirements in the amount of any estimated countervailing duties that have been collected to offset export subsidies, but only to the extent that the final margin of price discrimination is due to export subsidies. In this case, the foreign market value is based on sales to third countries, which, as export sales, benefit from the same export subsidies as the U.S. sales. Since both the sales to the third countries and the U.S. sales benefit from the same export subsidy programs, we determine that the dumping margin is not attributable to the export subsidies. Therefore, we will not subtract the level of export subsidies found in the concurrent countervailing duty determination from the final dumping margin.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating 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 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 with respect to the products under investigation, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, 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 ball bearings from Singapore that are entered or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

March 24, 1989.

[FR Doc. 89-8062 Filed 5-2-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-401-801]

Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Needle Roller Bearings, Spherical Plain Bearings, and Tapered Roller Bearings) and Parts Thereof From Sweden; and Final Determinations of Sales at Not Less Than Fair Value: Needle Roller Bearings and Spherical Plain Bearings, and Parts Thereof, From Sweden

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that antifriction bearings (other than needle roller bearings, spherical plain bearings, and tapered roller bearings) and parts thereof (hereinafter referred to as AFBs or the subject merchandise) from Sweden are being, or are likely to be, sold in the United States at less than fair value. We also determine that needle roller bearings and spherical plain bearings, and parts thereof, from Sweden are not being, nor are likely to be, sold in the United States at less than fair value. We determine that critical circumstances exist with respect to imports of certain classes or kinds of AFBs from Sweden.

We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Sweden as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports materially injure, or threaten material injury to, U.S. industries.

EFFECTIVE DATE: May 3, 1989.

FOR FURTHER INFORMATION CONTACT: Carole Showers, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 377-3217.

SUPPLEMENTARY INFORMATION:

Final Determinations

We determine that certain AFBs from Sweden are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average dumping margins are shown in the "Suspension of Liquidation" section of this notice. We also determine that critical circumstances exist with respect to imports of certain classes or kinds of AFBs from Sweden, as outlined in the "Critical Circumstances" section of this notice.

We also determine that needle roller bearings and spherical plain bearings, and parts thereof, from Sweden are not being, nor are likely to be, sold in the United States at less than fair value. The Department has determined that there are no producers or exporters of these two classes or kinds of bearings in Sweden.

Case History

Since our notice of preliminary determinations (53 FR 45319, November 9, 1988), the following events have occurred. All respondents and petitioners requested that the final determinations in all of the antidumping duty investigations be postponed until not later than 135 days after the date of publication of the preliminary determinations, pursuant to section 735(a) of the Act. On December 2, 1988, we issued a notice postponing our final determinations until not later than March 24, 1989 (53 FR 49581, December 8, 1988). That notice also announced the scheduling of the public hearing in these investigations.

Verification of the questionnaire responses was conducted in Sweden and the United States during November and December 1988 and January 1989. A public hearing was held on February 9, 1989. Petitioner, respondent, and interested parties have filed pre- and post-hearing briefs.

In our preliminary determinations, we indicated that we were unable to identify any producers or exporters of either needle roller bearings or spherical plain bearings in Sweden. At verification, we found no evidence that these two classes or kinds of bearings were being manufactured or exported by Aktiebolaget Svenska Kugellagerfabriken (SKF) or any other company located in Sweden. Therefore, we are issuing negative determinations

for these two classes or kinds of AFBs from Sweden.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), and all merchandise entered or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The Department is providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the products covered by these investigations.

These determinations cover ball bearings, mounted or unmounted, and parts thereof (ball bearings); spherical roller bearings; mounted or unmounted, and parts thereof (spherical roller bearings); cylindrical roller bearings, mounted or unmounted, and parts thereof (cylindrical roller bearings); needle roller bearings, mounted or unmounted, and parts thereof (needle roller bearings); and spherical plain bearings, mounted or unmounted, and parts thereof (including rod end bearings) (spherical plain bearings). For a complete description of these products, see Appendix A to the "Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany" (hereinafter referred to as Appendix A) which is published in this issue of the **Federal Register**.

Class or Kind of Merchandise

Subsequent to the initiation of these investigations, the Department determined that the products under investigation constituted five separate classes or kinds of merchandise. After consideration of all comments, arguments, and information submitted by the parties, we find no reason to alter that decision. For a full discussion of our position on class or kind of merchandise, see Appendix B which is referred to below.

Standing

We determine that petitioner has standing with respect to each of the five classes or kinds of merchandise described in Appendix A. For a full discussion of standing see Appendix B which is referred to below.

General Issues

Appendix B to the "Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany" (hereinafter referred to as Appendix B) contains detailed discussions of all issues timely raised by parties to the proceeding in each of the concurrent antidumping duty investigations involving AFBs from nine countries. The first part of that appendix addresses all general issues raised during these investigations and our treatment of these topics. The general issues discussed therein are listed below.

1. Class or Kind of Merchandise
2. Standing
3. Products Covered
4. Basis for Cost of Production Investigations
5. Critical Circumstances
6. Market Viability
7. Critical Circumstances
8. Administative Protective Order Issues

Following the discussion of general issues, all remaining comments are addressed.

Period of Investigation

The period of investigation (POI) is October 1, 1987 through March 31, 1988.

Fair Value Comparisons

To determine whether sales of certain AFBs from Sweden to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

In accordance with section 776(c) of the Act, we have determined that use of the best information available is appropriate for ball bearings and spherical roller bearings from Sweden. *See*, Best Information Available section of Appendix B.

United States Price

All sales to the first unrelated purchaser took place after importation into the United States; therefore, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

The calculation of United States price for each class or kind of merchandise is detailed below.

I. Ball Bearings

See, Best Information Available section of Appendix B.

II. Spherical Roller Bearings

See, Best Information Available section of Appendix B.

III. Cylindrical Roller Bearings

SKF reported that more than 33 percent by volume of its U.S. sales were identical to products in the home market. (*See*, Alternative Reporting Requirements section of Appendix B.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP based on packed, f.o.b. or delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, duty, U.S. inland freight, marine insurance, and ocean freight (including foreign inland freight), in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for cash discounts and rebates. We made further deductions from ESP, where appropriate, for credit, repacking in the United States, technical service expenses, warranty expenses, and indirect selling expenses (including product liability premiums, inventory carrying costs, and other miscellaneous indirect selling expenses) pursuant to sections 772(e) (1) and (2) of the Act. We added "other expenses" (*i.e.*, price corrections). We also added the amount of value added taxes which would have been collected if the merchandise had not been exported.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales or best information available. The calculation of foreign market value for each class or kind of merchandise is detailed below.

I. Ball Bearings

See, Best Information Available section of Appendix B.

II. Spherical Roller Bearings

See, Best Information Available section of Appendix B.

III. Cylindrical Roller Bearings

We calculated foreign market value based on packed, c.i.f. prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight (including inland insurance), home market packing, and rebates. We made an addition for interest revenue. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

Since all U.S. transactions included in our analysis involved ESP, we made further deductions from home market price, where appropriate, for credit expenses. We also deducted certain indirect selling expenses (including inventory carrying costs and miscellaneous indirect selling expenses), in accordance with 19 CFR 353.15(c).

We made an upward adjustment to the tax-exclusive home market prices for the value added tax we computed for United States price.

Currency Conversion

We used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

On August 1, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from Sweden. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

We generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we requested specific data on shipments of the subject merchandise as the most appropriate basis for our determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation.

We have asked all respondents in each of the AFB investigations to supply monthly volume shipment data from January 1986 through the present in order for the Department to base the critical circumstances determinations on company-specific data. We were unable to verify the shipment data provided by SKF (*see*, Critical Circumstances section of Appendix B). Therefore, as best information available, we are assuming that imports of ball bearings, spherical roller bearings, and cylindrical roller bearings from SKF have been massive over a relatively short period of time. Therefore, we find that the requirements of section 735(a)(3)(B) are met.

We examined recent antidumping duty cases and found that there are currently no findings of dumping in the United States or elsewhere of the subject merchandise by Swedish manufacturers, producers, and exporters of the subject merchandise. However, it is our standard practice to impute knowledge of dumping under section 735(a)(3)(A) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient. *See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987). However, in cases where the foreign manufacturer sells in the United States through a related company, we consider that lower margins may be sufficient. *See, e.g., Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan* (53 FR 12552, April 15, 1988). Since SKF sells in the United States through related companies, and their margins are sufficiently high with respect to ball bearings and spherical roller bearings, we find that the requirements of section 735(a)(3)(A) are met for these two classes or kinds of merchandise. Therefore, the following chart sets forth our company-specific determinations with respect to the existence of critical circumstances from Sweden.

	Critical circumstances
Ball bearings:	
SKF	Yes.
All others	No.
Spherical roller bearings:	
SKF	Yes.
All others	No.
Cylindrical roller bearings:	
SKF	No.
All others	No.
Needle roller bearings:	
SKF	No.
All others	No.
Spherical plain bearings:	
SKF	No.
All others	No.

Verification

We verified the information used in making our final determinations in accordance with section 776(b) of the Act. We used standard verification procedures including examination of relevant accounting records and original source documents of the respondents. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Interested Party Comments

As noted above, all comments raised by parties to the proceedings in the antidumping duty investigations on AFBs from nine countries are discussed in Appendix B.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Sweden, as defined in the "Scope of Investigations" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. As a result of our affirmative critical circumstances determinations with respect to ball bearings and spherical roller bearings, the retroactive suspension of liquidation ordered in our preliminary determinations will remain in effect. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Sweden exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Weighted-average margin percentage
Ball bearings:	
SKF	180.00
All others	180.00

	Weighted-average margin percentage
Spherical roller bearings:	
SKF	140.00
All others	140.00
Cylindrical roller bearings:	
SKF	13.69
All others	13.69
Needle roller bearings:	
SKF	[1]
All others	[1]
Spherical plain bearings:	
SKF	[1]
All others	[1]

[1] Negative.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. 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 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 with respect to any of the products under investigations, the applicable proceeding[s] will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue antidumping duty orders directing Customs officials to assess antidumping duty on AFBs from Sweden entered or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

These determinations are published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

March 24, 1989.

[FR Doc. 89-8063 Filed 5-2-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-549-801]

Final Determination of Sales at Less Than Fair Value: Ball Bearings and Parts Thereof From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that ball bearings and parts thereof (hereinafter referred to as ball bearings or the subject merchandise) from Thailand are being, or are likely to be, sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to imports of ball bearings from Thailand.

We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to continue to suspend liquidation on all entries of the subject merchandise from Thailand as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports materially injure, or threaten material injury to, a U.S. industry.

EFFECTIVE DATE: May 3, 1989.

FOR FURTHER INFORMATION CONTACT: Eleanor Shea or Nancy Saeed, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0184 or 377-1777.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that ball bearings from Thailand are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average dumping margins are shown in the "Continuation of Suspension of Liquidation" section of this notice. We also determine that critical circumstances do not exist with respect to imports of ball bearings from Thailand, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since our notice of preliminary determination (53 FR 45334, November 9, 1988), the following events have occurred. Respondents and petitioner requested that the final determinations in all of the antidumping duty investigations of antifriction bearings (AFBs) be postponed until not later than 135 days after the date of publication of the preliminary determinations, pursuant to section 735(a)(2)(A) of the Act. On December 2, 1988, we issued a notice postponing our final determinations until not later than March 24, 1989 (53 FR 49581, December 8, 1988). That notice also announced the scheduling of the public hearing in these investigations.

Verification of the questionnaire responses of NMB Thai, Ltd. and Pelmec Thai, Ltd. (NMB/Pelmec Thai) was conducted in Thailand and the United States during December 1988 and January 1989.

A public hearing was held on February 17, 1989. Petitioner and respondent filed pre-hearing briefs on February 15, 1989, and post-hearing briefs on February 28, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), and all merchandise entered or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The Department is providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the products covered by this investigation.

This determination covers ball bearings, mounted or unmounted, and parts thereof (ball bearings). For a complete description of these products, see Appendix A to the "Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the FRG" (hereinafter referred to as Appendix A), which is published in this issue of the **Federal Register.**

Class or Kind of Merchandise

Subsequent to the initiation of this investigation, the Department determined that the products under investigation constitute five separate classes or kinds of merchandise. After consideration of all comments,

arguments, and information submitted by the parties, we find no reason to alter that decision. For a full discussion of our position on class or kind of merchandise, see Appendix B which is referred to below.

Standing

We determine that petitioner has standing with respect to each of the five classes or kinds of merchandise described in Appendix A. For a full discussion of standing, see Appendix B which is referred to below.

General Issues

Appendix B to the "Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany" (hereinafter referred to as Appendix B) contains detailed discussions of all issues timely raised by parties to the proceeding in each of the concurrent antidumping duty investigations involving AFBs from nine countries. The first part of that Appendix addresses all general issues raised during these investigations and our treatment of these topics. The general issues discussed therein are listed below.

1. Class or Kind of Merchandise
2. Standing
3. Products Covered
4. Basis for Cost of Production Investigations
5. Market Viability
6. Alternative Reporting Requirements
7. Critical Circumstances
8. Administrative Protective Order Issues

Following the discussion of general issues, all remaining comments are addressed.

Period of Investigation

The period of investigation (POI) is October 1, 1987 through March 31, 1988.

Fair Value Comparisons

To determine whether sales of ball bearings from Thailand to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

For the reasons outlined in the "Foreign Market Value" section of this notice, in accordance with section 776(c) of the Act, we have determined that use of the best information available is appropriate for NMB/Pelmec Thai. For purposes of this investigation, we have relied on verified constructed value information as the best information available.

United States Price

For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act.

In those cases where sales were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we also used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the most appropriate determinant of United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of a related selling agent;
2. This was the customary commercial channel for sales of this merchandise between the parties involved; and
3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the transactions or the functions themselves.

Where the sale to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

In order to meet the minimum reporting requirement of 33 percent (*see*, Alternative Reporting Requirements section of Appendix B), NMB/Pelmec Thai had to report both identical and similar home market matches which we used in our fair value comparisons. We calculated ESP based on packed, c.i.f., and delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for freight forwarding expenses, marine insurance, U.S. duty, U.S. inland freight, and U.S. brokerage and handling expenses, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts. We made further deductions from ESP, where appropriate, for U.S. credit expenses and indirect selling expenses including advertising, warranty expenses, inventory carrying costs, product liability expenses, and all other general indirect selling expenses pursuant to section 772(e) (1) and (2) of the Act.

NMB/Pelmec Thai calculated the product liability expense based on the yearly expense. We recalculated this expense for the period of investigation based on information obtained at verification.

For inventory carrying costs, NMB/Pelmec Thai did not report the period between production and transit in its calculation. We therefore included this period in our recalculation of this expense based on information obtained at verification. (*See*, Credit and Inventory Carrying Costs section of Appendix B.)

Due to minor clerical errors found at verification, we recalculated freight forwarding and indirect selling expenses incurred in Thailand and in the United States.

During verification, we found that NMB/Pelmec Thai had purchase price sales which had been reported as ESP sales. Therefore, for purposes of this determination, we have treated those sales as purchase price. For purchase price transactions, we deducted from the gross unit price, where appropriate, freight forwarding expenses, marine insurance, U.S. duty, U.S. inland freight, and U.S. brokerage and handling expenses in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts.

Foreign Market Value

Based on information reported in the questionnaire response, we preliminarily determined that the Thai home market was viable. However, during verification we found that NMB/Pelmec Thai had misreported three types of sales in its home market database. These are: (1) Sales to Singapore which are re-imported into Thailand; (2) bonded warehouse-to-bonded warehouse sales; and (3) cancelled sales.

With respect to the sales to Singapore that were re-imported into Thailand, we found at verification that NMB/Pelmec Thai had knowledge that these sales were ultimately destined for delivery and consumption in Thailand. However, knowledge is only one factor that we considered in determining whether these sales are appropriately home market or third country sales. We also considered the other, unusual circumstances surrounding these transactions. For example, because these sales were

exempt from certain taxes and import duties associated with other home market sales, the prices of these sales were not typical home market prices. In addition, the goods are physically exported from Thailand, and the first sale to an unrelated party takes place in Singapore. Lastly, these sales earn export subsidies and are considered exports by the Government of Thailand for purposes of maintaining export statistics. All of these factors combined outweigh the importance of knowledge of the final destination in the determination of whether these sales are properly considered home market or third country sales. Therefore, we have determined that these sales are appropriately considered third country sales.

A large percentage of NMB/Pelmec Thai's home market sales of ball bearings are made from its own bonded warehouse to the bonded warehouse of a related original equipment manufacturer (OEM) in Thailand. Bonded warehouses in Thailand are by their very nature for exportation and, as such, bonded warehouse sales between related parties cannot be considered domestic sales. Our treatment of these sales in this investigation is not inconsistent with our treatment of these same sales in the concurrent countervailing duty investigation. In that case, we did not include such sales in our calculation of export subsidies because we could not determine with certainty that the merchandise involved in these transactions was, in fact, exported. (*See, DOC Position* to *Comment 4* in the *Final Affirmative Countervailing Duty Determination and Partial Countervailing Duty Order: Ball Bearings and Parts Thereof from Thailand* which is published in this issue of the **Federal Register**.)

With respect to certain other sales included in NMB/Pelmec Thai's home market database, we found at verification that these sales were cancelled and, therefore, should not have been reported.

Excluding the sales exported to Singapore and re-imported into Thailand, the bonded warehouse-to-bonded warehouse sales, and the cancelled sales from the total volume of NMB/Pelmec Thai's home market sales, we determine that the home market was not viable and, therefore, does not serve as the appropriate basis for foreign market value. (*See* also, Market Viability section of Appendix B.) In the absence of a viable home market, our preference is to base foreign market value on third country prices. However, because we did not determine until after verification that the Thai home market was non-viable, we did not obtain information on NMB/Pelmec's third country sales. Therefore, as best information available, we have relied on verified constructed value data to calculate foreign market value.

We calculated the foreign market value based on constructed value in accordance with section 773(e) of the Act. The constructed value included the materials, fabrication, general expenses, and profit. The constructed value submitted by NMB/Pelmec Thai was relied upon, except in the following instances where the costs were not appropriately quantified or valued. (1) The depreciation expense was increased to reflect the economic useful life of assets. (2) The interest expense was adjusted by reducing the interest income reported by the respondent for income which was not related to operations. (3) The G&A expenses were adjusted to reflect G&A expenses of corporate headquarter operations which had not been fully allocated to the subsidiary. (4) The actual general expenses were used since these exceeded the statutory minimum requirement of ten percent of materials and fabrication. (5) Imputed credit and inventory carrying costs were included in selling expenses; therefore, the interest expense reflected on the companies' books was reduced for a portion of the expense related to these activities in order to avoid double-counting.

Because the home market is not viable, we do not have data representative of home market profit to include in our constructed value calculations. However, had there been sufficient time left in the investigation to request, analyze, and verify data on sales to third countries, the Department would have established foreign market value on the basis of third country sales in light of the non-viability of the Thai market. Since third country sales data would otherwise have been used, the Department has determined it is appropriate to calculate profit based on the third country sales data which is available. Consequently, in the absence of complete information on third country sales, we have used, as best information available, data pertaining to the sales to Singapore as the basis for calculating profit.

For comparisons involving ESP transactions, we deducted all direct selling expenses from the constructed value. We made further deductions from the constructed value for indirect selling expenses up to the amount of the ESP cap. For comparisons involving purchase price transactions, we made an adjustment to constructed value pursuant to § 353.15 of the Commerce Regulations for differences in circumstances of sale between the two markets. This adjustment was made for differences in credit expenses. We added U.S. packing to the constructed value for both purchase price and ESP transactions.

Currency Conversion

For comparisons involving purchase price transactions, we made currency conversions in accordance with 19 CFR 353.56(a)(1). For comparisons involving ESP transactions, we used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

On August 1, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from Thailand. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we requested specific data on shipments of the subject merchandise as the most appropriate basis for our determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation.

We have asked all respondents in each of the AFB investigations to supply monthly volume shipment data from January 1986 through the present in order for the Department to base the critical circumstances determinations on company-specific data. Based on our analysis of the monthly shipment data submitted by NMB/Pelmec Thai, we have found that imports of ball bearings have not been massive over a relatively short period of time. Therefore, we find that the requirements of section 735(a)(3)(B) have not been met and that critical circumstances do not exist with respect to imports of ball bearings from NMB/Pelmec Thai.

Verification

We verified the information used in making our final determination in accordance with section 776(b) of the Act. We used standard verification procedures including examination of relevant accounting records and original source documents of the respondent. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Interested Party Comments

As noted above, all comments raised by parties to the proceedings in the antidumping duty investigations on AFBs from nine countries are discussed in Appendix B.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Thailand, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Normally, we would instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the foreign market of ball bearings from Thailand exceeds the U.S. price, which in this investigation is 20.40 percent for NMB/Pelmec Thai and all other manufacturers, producers, and exporters of ball bearings from Thailand. However, Article VI.5 of the General Agreement of Tariffs and Trade provides that "[n]o * * * product shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(l)(D) of the Act which prohibits assessing dumping duties on the portion of the margin attributable to an export subsidy, since there is no reason to require a cash deposit or bond for that amount. Therefore, the bonding rate in this investigation will be reduced by the rate attributable to the export subsidies found in the concurrent countervailing duty determination. Accordingly, for duty deposit purposes, the bonding rate is zero for NMB/Pelmec Thai and all other manufacturers, producers, and exporters of ball bearings from Thailand.

The cash deposit or bonding rate established in the preliminary determination shall remain in effect with respect to entries or withdrawals from warehouse made prior to the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating 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 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 with respect to the products under investigation, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

March 24, 1989.

[FR Doc. 89-8064 Filed 5-2-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-801]

Final Determinations of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Spherical Plain Bearings and Tapered Roller Bearings) and Parts Thereof From the United Kingdom; and Final Determination of Sales at Not Less Than Fair Value: Spherical Plain Bearings Parts Thereof From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that antifriction bearings (other than spherical plain or tapered roller bearings) and parts thereof (hereinafter referred to as AFBs or the subject merchandise) from the United Kingdom (UK) are being, or are likely to be, sold in the United States at less than fair value and that spherical plain bearings from the UK are not being, nor are likely to be, sold in the United States at less than fair value. We also determine that critical circumstances exist with respect to imports of certain classes or kinds of AFBs from the UK.

We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise, except spherical plain bearings, from the UK as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports materially injure, or threaten material injury to, U.S. industries.

EFFECTIVE DATE: May 3, 1989.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, or Carole Showers, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377-3965, or 377-3217, respectively.

SUPPLEMENTARY INFORMATION:

Final Determinations

We determine that AFBs from the UK are being, or are likely to be, sold in the United States at less than fair value and that spherical plain bearings from the UK are not being, nor are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19

U.S.C. 1673d(a)) (the Act). The estimated weighted-average dumping margins are shown in the "Suspension of Liquidation" section of this notice. We also determine that critical circumstances exist with respect to imports of certain classes or kinds of AFBs from the UK, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since our notice of preliminary determinations (53 FR 45312, November 9, 1988), the following events have occurred. All respondents and the petitioner requested that the final determinations in all of the antidumping duty investigations be postponed until not later than 135 days after the date of publication of the preliminary determinations, pursuant to section 735(a)(2)(A) of the Act. On December 2, 1988, we issued a notice postponing our final determinations until not later than March 24, 1989 (53 FR 49581, December 8, 1988). That notice also announced the scheduling of the public hearing in these investigations.

Verification of the questionnaire responses was conducted in the UK and the United States during November and December 1988 and January and February 1989.

A public hearing was held on February 14, 1989. Petitioner, respondents, and other interested parties have filed pre- and post-hearing briefs.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), and all merchandise entered or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The Department is providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the products covered by these investigations.

These determinations cover ball bearings, mounted or unmounted, and parts thereof (ball bearings); spherical roller bearings; mounted or unmounted, and parts thereof (spherical roller bearings); cylindrical roller bearings, mounted or unmounted, and parts thereof (cylindrical roller bearings); needle roller bearings, mounted or unmounted, and parts thereof (needle roller bearings); and spherical plain bearings, mounted or unmounted, and parts thereof (including rod end bearings) (spherical plain bearings). For a complete description of these products, see Appendix A to the "Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany" (hereinafter referred to as Appendix A) which is published in this issue of the **Federal Register**.

Class or Kind of Merchandise

Subsequent to the initiation of these investigations, the Department determined that the products under investigation constituted five separate classes or kinds of merchandise. After consideration of all comments, arguments, and information submitted by the parties, we find no reason to alter that decision. For a full discussion of our position on class or kind of merchandise, see Appendix B which is referred to below.

Standing

We determine that petitioner has standing with respect to each of the five classes or kinds of merchandise described in Appendix A. For a full discussion of standing see Appendix B which is referred to below.

General Issues

Appendix B to the "Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany" (hereinafter referred to as Appendix B) contains detailed discussions of all issues timely raised by parties to the proceeding in each of the concurrent antidumping duty investigations involving AFBs from nine countries. The first part of that Appendix addresses all general issues raised during these investigations and our treatment of these topics. The general issues discussed therein are listed below.

1. Class or Kind of Merchandise
2. Standing
3. Products Covered
4. Basis for Cost of Production Investigations
5. Market Viability
6. Alternative Reporting Requirements
7. Critical Circumstances
8. Administrative Protective Order Issues.

Following the discussion of general issues, all remaining comments are addressed.

Voluntary Respondent

(*See*, Miscellaneous section of Appendix B.)

Period of Investigation

The period of investigation (POI) is October 1, 1987 through March 31, 1988.

Fair Value Comparisons

To determine whether sales of certain AFBs from the UK to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

For the reasons cited below, in accordance with section 776(c) of the Act, we have determined that use of the best information available is appropriate for INA. This statutory provision requires the Department to use the best information available "whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation".

In accordance with section 776(c) of the Act, we have determined that use of the best information available is appropriate for INA. (*See*, Best Information Available section of Appendix B.)

United States Price

For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act.

In those cases where sales were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we also used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the most appropriate determinant of United States price based on the following elements:

1. the merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of a related selling agent;

2. this was the customary commercial channel for sales of this merchandise between the parties involved; and

3. the related selling agent located in the United States acted only as a

processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the transactions or the functions themselves.

Where the sale to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

The calculation of United States price for each class or kind of merchandise for each respondent is detailed below.

I. Ball Bearings

A. *RHP Bearings (RHP):* RHP reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* Alternative Reporting Requirements section of Appendix B.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated purchase price and ESP based on packed, f.o.b., and delivered prices to unrelated customers in the United States. We made deductions from purchase price and ESP, where appropriate, for brokerage and handling, foreign inland freight, transit insurance, ocean freight, U.S. duty, and U.S. inland freight in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions from ESP, where appropriate, for commissions, credit expenses, credit notes, and indirect selling expenses (including advertising, technical services, inventory carrying expenses, product liability premiums, and other miscellaneous indirect selling expenses incurred in the U.S. and home markets) pursuant to section 772(e) (1) and (2) of the Act. We added the amount of value added taxes which would have been collected if the merchandise had not been exported.

B. *SKF (U.K.) Limited (SKF):* SKF reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. (*See,* Alternative Reporting Requirements section of Appendix B.) Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of SKF's U.S. sales were ESP transactions. We calculated ESP based on packed, f.o.b. or delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for brokerage and handling, duty, inland freight, marine insurance, and ocean freight, which included foreign inland freight, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for cash discounts and rebates. We made further deductions from ESP, where appropriate, for credit, repacking expenses in the United States, technical service expenses, warranty expenses, and indirect selling expenses (including product liability, inventory carrying expenses, and other miscellaneous indirect selling expenses incurred in the U.S. and home markets) pursuant to sections 772(e) (1) and (2) of the Act. We added "other expenses" (*i.e.,* price corrections).

II. Spherical Roller Bearings

SKF: SKF reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

All of SKF's U.S. sales were ESP transactions. We calculated ESP for spherical roller bearings based on packed, c.i.f., and delivered prices to unrelated customers in the United States. We added the amount of value added taxes which would have been collected if the merchandise had not been exported. The adjustments were identical to those described above for ball bearings.

III. Cylindrical Roller Bearings

RHP: RHP reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. Therefore, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated ESP for cylindrical roller bearings based on packed, f.o.b. and delivered prices to unrelated customers in the United States. The adjustments were identical to those described above for ball bearings.

IV. Needle Roller Bearings

INA Bearing Co., Ltd. (INA): See, Best Information Available section of Appendix B.

V. Spherical Plain Bearings

Rose Bearings, Ltd. (Rose): Rose reported that more than 33 percent by volume of its U.S. sales were identical to products sold in the home market. Therefore, except as noted below, we have used all U.S. sales with identical home market matches in our price-to-price comparisons.

We calculated purchase price based on packed, f.o.b. factory prices, net of discounts, to unrelated customers in the United States. We added the amount of value added taxes which would have been collected if the merchandise had not been exported.

All of Rose's sales were purchase price transactions. We have excluded from our calculation of United States price sales of bearings by Rose Bearings to the U.S. government for military/defense procurement. These sales were made under Schedule 8 of the TSUSA and were made prior to enactment of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act). As such, they will not be subject to any antidumping duties. *See e.g., Final Affirmative Antidumping Duty Determination; Titanium Sponge from Japan,* (49 FR 38687, October 1, 1984). Therefore, these Schedule 8 bearings have not been included in our calculations.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales and constructed value. The calculation of foreign market value for each class or kind of merchandise for each respondent is detailed below.

I. Ball Bearings

A. *RHP:* Petitioner alleged that RHP's home market sales of ball bearings were made at prices below the cost of production (COP). Based on the petitioner's allegation, we gathered and verified data on RHP's production costs for ball bearings. We calculated the COP on the basis of RHP's cost of materials, labor, other fabrication costs and general and administrative expenses. The COP data submitted by RHP was relied upon, except in the following instances where the costs were not appropriately quantified or valued. These were:

(1) Interest expense was adjusted from a division specific interest rate to a total company interest rate, calculated based on the percentage of net interest expense to cost of sales.

(2) General and administrative (G&A) costs were adjusted from the division specific G&A percentage as submitted to a weighted-average G&A percentage.

We calculated the foreign market value based on CV, where appropriate, in accordance with section 773(e) of the Act. CV was calculated on the basis of

RHP's material fabrication costs plus general expenses and profit. Actual general expenses were used since these exceeded the statutory minimum requirement of ten percent of materials and fabrication. Actual average profit for ball bearings in the home market was used because this was higher than the statutory minimum of eight percent. Imputed credit and inventory carrying costs were included in selling expenses, therefore, interest expense reflected on the company books was reduced for a portion of the expense related to these activities in order to avoid double counting. All the changes noted under the COP were also made to those cost elements in CV. Where we compared constructed value with purchase price transactions, we added U.S. packing and adjusted for differences in circumstances of sale. For comparisons involving ESP transactions, we added U.S. packing and deducted all direct selling expenses and indirect selling expenses up to the amount of the ESP cap.

Where we found that sufficient sales were above cost to permit the use of these sales as the basis for determining foreign market value, we calculated foreign market value based on packed, c.i.f. prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight, transit insurance, home market packing, and rebates. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

For comparisons involving purchase price sales, we made adjustments to the home market price, where appropriate, for differences in credit expenses pursuant to 19 CFR 353.15. We made an adjustment for differences in circumstances of sale for value-added tax paid on home market sales which was not included in the price reported. For comparisons involving ESP transactions, we made further deductions from home market price, where appropriate, for credit expenses and credit notes. We also deducted indirect selling expenses (including advertising, inventory carrying expenses, product liability insurance premiums, product liability expenses, technical services and other miscellaneous indirect selling expenses) in accordance with 19 CFR 353.15(c). We made an upward adjustment to the tax-exclusive home market prices for the value-added tax we computed for United States price.

B. *SKF:* Petitioner alleged that SKF U.K.'s home market sales of ball bearings were made at prices below the COP. Based on the petitioner's allegation, we gathered and verified data on SKF's production costs for ball bearings. We calculated the COP on the basis of SKF's cost of materials, labor, other fabrication costs and general and administrative expenses. The COP data submitted by SKF U.K. was relied upon, except in the following instances where the costs were not appropriately quantified or valued. These were:

(1) Manufacturing costs for the fourth quarter of 1987 were adjusted to reflect the weighted-average result of 1987 because of unexplainable fluctuations in costs among the quarters,

(2) General expenses for the first quarter 1988 were adjusted to reflect SKF U.K.'s share of actual research and development (R&D) expenses incurred by a related company,

(3) Interest expense was adjusted to reflect the net financial expense related to operations of the SKF consolidated corporation,

(4) General expenses were adjusted to correct a clerical error and to include a portion of the headquarter expenses which had not been allocated to the subsidiaries.

In accordance with section 773(a) of the Act, we calculated foreign market value based on constructed value (CV) since there were insufficient sales at or above the COP. CV was calculated on the basis of SKF's material fabrication costs plus general expenses and profit. Actual general expenses were used since these exceeded the statutory minimum requirement of ten percent of materials and fabrication. The statutory eight percent minimum profit was applied. Imputed credit and inventory carrying costs were included in selling expenses, therefore, interest expense reflected on the company books was reduced for a portion of the expense related to these activities in order to avoid double counting. All the changes noted under the COP were also made to those cost elements in CV. We added U.S. packing. We deducted all direct selling expenses and indirect selling expenses, up to the amount of the ESP cap.

II. Spherical Roller Bearings

SKF: Petitioner alleged that SKF's home market sales of spherical roller bearings were made at prices below the COP. Based on the petitioner's allegation, we gathered and verified data on SKF's production costs for spherical roller bearings. We calculated the COP on the same basis described above for ball bearings. The COP data submitted by SKF was relied upon, except in those instances listed above in the Foreign Market Value section of this notice for SKF ball bearings.

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market prices since we found that all or sufficient sales were above cost to permit the use of these sales as the basis for determining foreign market value.

We calculated foreign market value based on delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight and rebates. We made no adjustment for packing.

Since all U.S. transactions involved ESP, we made further deductions from home market price, where appropriate, for credit. We also deducted indirect selling expenses (including inventory carrying costs and other miscellaneous indirect selling expenses) in accordance with 19 CFR 353.15(c). We made an upward adjustment to the tax-exclusive home market prices for the value-added tax we computed for United States price.

SKF claimed deductions for inland freight based on the average cost per kilogram times the shipping weight of each product. SKF calculated the average cost per kilogram by dividing the total freight cost for the POI by the total weight shipped during the POI. SKF calculated the shipping weight for each product by multiplying the product's unit weight times a factor derived from shipping documents. At verification, we found that this factor was not adequately supported by documentation. We recalculated inland freight based on the average cost per kilogram times the unit weight of each product.

SKF claimed deductions for rebates and based its claim on the average rebate paid to all eligible customers. We have recalculated rebates according to the specific rebate percentage paid to each customer.

SKF reported packing costs for home market and export sales based on material and labor costs. At verification, we found these costs to be unsubstantiated. Because packing charges are essentially equivalent between markets, we made no adjustment for packing. (*See,* Selling Expenses section of Appendix B.)

SKF claimed a credit adjustment based on an interest rate derived from the commercial base rate. We recalculated credit based on the interest rate established during verification of the COP data. (*See,* Credit section of Appendix B.)

SKF claimed an adjustment for inventory carrying cost based on the amount of time products spend in both the international and the domestic warehouse. We made an adjustment based on the amount of time products spend in the international warehouse. (*See,* Inventory Carrying Costs section of Appendix B.)

SKF claimed an adjustment for indirect selling expenses based on selling expenses and expenses allocated as selling expenses. We recalculated indirect selling expenses based on selling expenses only. (*See,* Selling Expenses section of Appendix B.)

III. Cylindrical Roller Bearings

RHP: We calculated foreign market value for cylindrical roller bearings based on packed, c.i.f. prices to unrelated customers in the home market. The adjustments were identical to those described above for ball bearings.

IV. Needle Roller Bearings

INA: See, Best Information Available section of Appendix B.

V. Spherical Plain Bearings

ROSE: We calculated foreign market value for spherical plain bearings based on the packed, f.o.b. destination prices, net of discounts, to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight, inland insurance, and home market packing. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act.

We made adjustments to home market price for differences in credit expenses pursuant to 19 CFR 353.15. We also adjusted for commissions on sales in the home market, where appropriate, using indirect selling expenses in the United States as an offset to those commissions pursuant to section 353.15(c) of our regulations. We made an adjustment for differences in circumstances of sale for value-added tax paid on home market sales which was not included in the price reported.

We did not allow deductions for product liability premiums and advertising expenses because an examination of these expenses showed they were indirect, rather than direct, selling expenses. (*See,* Selling Expenses section of Appendix B.)

Currency Conversion

For comparisons involving purchase price transactions, we made currency conversions in accordance with 19 CFR 353.56(a)(1). For comparisons involving ESP transactions, we used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

On August 1, 1988, petitioner alleged that "critical circumstances" exist with respect to imports of the subject merchandise from the UK. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

We generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories, we requested specific data on shipments of the subject merchandise as the most appropriate basis for our determinations of critical circumstances. Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provision of deterring specific companies that may try to increase imports massively prior to the suspension of liquidation.

We asked all respondents in each of the AFB investigations to supply monthly volume shipment data from January 1986 through the present in order for the Department to base the critical circumstances determinations on company-specific data. We were unable to verify the shipment data provided by INA and SKF. (*See,* Critical Circumstances section of Appendix B.) Therefore, as best information available, we are assuming that imports of needle roller bearings by INA and imports of ball and spherical roller bearings by SKF have been massive over a relatively short period of time. Based on our analysis of the monthly shipment data submitted by respondents, and the best information available for INA and SKF, we have found that imports of the following classes or kinds of merchandise from the companies listed below have been massive over a relatively short period of time.

1. Ball Bearings—SKF
2. Spherical Roller Bearings—SKF
3. Cylindrical Roller Bearings—RHP
4. Needle Roller Bearings—INA

Therefore, we find that the requirements of section 735(a)(3)(B) are met for the above companies and classes or kinds of merchandise.

We examined recent antidumping duty cases and found that there are currently no findings of dumping in the United States or elsewhere of the subject merchandise by UK manufacturers, producers, and exporters of the subject merchandise. However, it is our standard practice to impute knowledge of dumping under section 735(a)(3)(A) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient. *See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy* (52 FR 24198, June 29, 1987). However, in cases where the foreign manufacturer sells in the United States through a related company, we consider that lower margins may be sufficient. *See, e g., Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan* (53 FR 12552, April 15, 1988). Since INA, RHP, and SKF sell in the United States through related companies, and their margins are sufficiently high, we find that the requirements of section 735(a)(3)(A) are met for these companies with respect to the classes or kinds listed below. Therefore, the following chart sets forth our company-specific determinations with respect to the existence of critical circumstances for each company and each class or kind of merchandise from the UK.

	Critical Circumstances
Ball bearings:	
RHP	No
SKF	Yes.
All others	No.
Spherical roller bearings:	
SKF	No.
All others	No.
Cylindrical roller bearings:	
RHP	Yes.

	Critical Circumstances
All others	Yes.
Needle roller bearings:	
INA	Yes.
All others	No.
Spherical plain bearings:	
Rose	No.
All others	No.

Verification

Except where noted, we verified the information used in making our final determinations in accordance with section 776(b) of the Act. We used standard verification procedures including examination of relevant accounting records and original source documents of the respondents. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Interested Party Comments

As noted above, all comments raised by parties to the proceedings in the antidumping duty investigations on AFBs from nine countries are discussed in Appendix B.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise, except spherical plain bearings from the UK, as defined in the "Scope of Investigations" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. In those situations where we have found affirmative critical circumstances in both our preliminary determinations and final determinations, the retroactive suspension of liquidation ordered in our preliminary determinations will remain in effect. In those situations where have found affirmative critical circumstances only in these final determinations, we are instructing the U.S. Customs Service to suspend liquidation of such entries that are entered or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the date of publication of the notice of the preliminary determinations in these investigations in the **Federal Register**. Finally, in those situations where our final critical circumstances determinations are negative, the retroactive suspension of liquidation ordered at the time of the preliminary determinations is terminated. All cash deposits or bonds placed on entries made by these companies of such merchandise prior to October 27, 1988 shall be refunded. (*See*, Critical Circumstances section of this notice.) The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from the UK exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Weighted-average margin percentage
Ball bearings:	
RHP	44.12
SKF	61.14
All others	54.31
Spherical roller bearings:	
SKF	7.69
All others	7.69
Cylindrical roller bearings:	
RHP	43.44
All others	43.44
Needle roller bearings:	
INA	174.17
All others	174.17
Spherical plain bearings:	
Rose	0.00
All others	0.00

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. 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 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 with respect to any of the products under investigations, the applicable proceeding[s] will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue antidumping duty orders directing Customs officials to assess antidumping duty on AFBs from the UK entered or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

These determinations are published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

March 24, 1989.

[FR Doc. 89-8065 Filed 5-2-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-559-802]

Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers or exporters in Singapore of antifriction bearings (other than tapered roller bearings) and parts thereof ("bearings"), as described in Appendix A attached to *Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany (AFBs from the FRG)*, to be published concurrently with this notice. The estimated net bounty or grant is 2.34 percent *ad valorem* for all manufacturers, producers or exporters in Singapore of bearings.

At the time of our preliminary determinations, certain products included in the scope of these investigations were nondutiable. However, on January 1, 1989, Singapore lost its Generalized System of Preference status and the products are no longer duty-free. Consequently, the U.S. International Trade Commission (ITC) is no longer required to determine whether imports of these products materially injure, or threaten material injury to, U.S. industries (*see* section on *Injury Determination*, below).

We are directing the U.S. Customs Service to resume suspension of liquidation on all entries of bearings from Singapore that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require

a cash deposit on entries of these products in an amount equal to 2.34 percent *ad valorem*.

EFFECTIVE DATE: May 3, 1989.

FOR FURTHER INFORMATION CONTACT: Eleanor Shea or Kay Halpern, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-0184 or 377-0192.

SUPPLEMENTARY INFORMATION:

Final Determinations

Based on our investigations, we determine that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers or exporters in Singapore of bearings. For purposes of these investigations, the following programs are found to confer bounties or grants:

- Monetary Authority of Singapore Rediscount Facility
- Production for Export under Part VI of the Economic Expansion Incentives Act

We determine the estimated net bounty or grant to be 2.34 percent *ad valorem* for all manufacturers, producers or exporters in Singapore of each class or kind of antifriction bearing described in Appendix A attached to *AFBs from the FRG*.

Based on our July 13, 1988 decision that the subject merchandise constitutes five separate classes or kinds of merchandise, the exports of the respondent companies fall under only one class or kind of merchandise subject to these investigations, ball bearings. However, import statistics collected by the Department indicate that Singapore exports products under basket *Tariff Schedules of the United States Annotated* (TSUSA) categories that may include bearings in the other four classes or kinds. At verification the Government of Singapore (GOS) was unable to demonstrate that only ball bearings were exported to the United States during the review period. Our determinations therefore apply to all classes or kinds of merchandise listed in Appendix A attached to *AFBs from the FRG*.

Sundstrand Pacific (Pte.) Ltd. (Sundstrand), which was identified as a producer and exporter of at least one of the classes or kinds of the subject merchandise, has not responded to our questionnaires. As a result, we have insufficient information concerning the products it produces and exports, or the extent of its participation in the programs under investigation. However, at verification we did find indications that Sundstrand has participated in some of the programs under investigation. Therefore, as best information available (BIA), we are assigning to Sundstrand the highest net bounty or grant rate calculated in a previous countervailing duty proceeding for Singapore. The BIA rate for Sundstrand is 4.95 percent *ad valorem*, as set forth in *Final Results of Countervailing Duty Administrative Review: Certain Refrigeration Compressors from the Republic of Singapore* (53 FR 25647, July 8, 1988).

Because Sundstrand's rate and the respondents' rate are not significantly different, we weight averaged Sundstrand's rate with respondents' rate to calculate a country-wide rate. In order to arrive at the weights used, we calculated a Singapore dollar value for imports of ball bearings entering the United States in calendar year 1987, and subtracted from this figure the exports to the United States of the subject merchandise of the two producer/exporter respondents, NMB Singapore Ltd. (NMB) and Pelmec Industries (Pte) Ltd. (Pelmec), plus the net mark-up on exports to the United States of the subject merchandise of the trading company respondent, Minebea Co., Ltd. Singapore Branch (MSB), to yield a value for exports to the United States of the subject merchandise assigned to Sundstrand. For the three respondent companies, the weight used was the ratio of their exports of the subject merchandise to the United States over the total value for imports of ball bearings entering the United States. For Sundstrand, the weight used was the ratio of its assigned value of imports of the subject merchandise to the United States over the total value for imports of ball bearings entering the United States. We then multiplied the respondents' ratio by the calculated *ad valorem* rate found for the two programs determined to be bounties or grants, and multiplied Sundstrand's ratio by the 4.95 percent BIA rate. Summing the two results together, we calculated a weighted-average country-wide rate of 2.34 percent *ad valorem*. This applies not only to ball bearings but also as BIA to the other four classes or kinds.

Case History

Since the last **Federal Register** publication pertaining to these investigations *(Preliminary Affirmative Countervailing Duty Determinations: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Singapore*, 53 FR 34329, September 6, 1988 *(Preliminary Determinations))*, the following events have occurred. Respondents submitted a supplemental response to our second questionnaire on October 26, 1988. We conducted verification in Singapore from November 28 to December 8, 1988, of the questionnaire responses of the GOS, Pelmec, NMB, and MSB. Respondents submitted an amended response on February 21, 1989, clarifying information and correcting certain errors found during verification.

On August 31, 1988, the petitioner filed a request pursuant to section 705(a)(1) of the Act to postpone the final determinations to coincide with the final determinations in the concurrent antidumping investigations. The postponement notice was published in **Federal Register** on September 29, 1988 (53 FR 38049). We subsequently received requests from the petitioner and all respondents in the antidumping investigations pursuant to sections 735(a)(2) (A) and (B) of the Act to postpone the final determinations in the antidumping investigations until March 24, 1989. The postponement notice was published in the **Federal Register** on December 8, 1988 (53 FR 49581). Accordingly, the final determinations in these investigations were also postponed until March 24, 1989.

Pursuant to section 705(a)(1) of the Act and in keeping with Article 5, Paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), we terminated suspension of liquidation on all five classes or kinds of merchandise as of January 4, 1989, 120 days after the publication of the *Preliminary Determinations*.

Both petitioner and respondents requested a public hearing in these investigations. Pre-hearing briefs were filed by petitioner and respondents on February 3, 1989, and February 9, 1989, respectively. Both parties filed post-hearing briefs on February 21, 1989.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), and all merchandise entered or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The Department is providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item

number(s) and the appropriate HTS item number(s) with its product descriptions for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the products covered by these investigations.

The products covered by these investigations constitute five separate "classes or kinds" of bearings, as outlined in Appendix A attached to *AFBs from the FRG.*

Injury Determination

Since Singapore is not a "country under the Agreement" within the meaning of section 701(b) of the Act, section 303 of the Act applies to these investigations. However, Singapore is a signatory to the General Agreement on Tariffs and Trade, and, at the time of the initiation of these investigations, certain products included in the scope of these investigations (*i.e.,* those classified under TSUSA categories 681.1010, 681.1030, 681.3900, and 692.3295) were nondutiable. However, on January 1, 1989, Singapore lost its Generalized System of Preference status and the products listed above are no longer duty-free. Consequently, the ITC is no longer required to determine whether imports of products entering under these categories materially injure, or threaten material injury to, U.S. industries.

Analysis of Programs

For purposes of these final determinations, the period for which we are measuring bounties or grants ("the review period") is October 1, 1986, to September 30, 1987, which corresponds to the fiscal year of the respondent companies.

Based upon our analysis of the petition, the responses to our questionnaires, verification, and written comments filed by petitioner and respondents, we determine the following:

I. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers or exporters in Singapore of bearings under the following programs:

A. Monetary Authority of Singapore (MAS) Rediscount Facility

The primary objective of the MAS rediscounting scheme is to provide exporters of locally manufactured export products better access to short-term financing. Under the scheme, the MAS rediscounts pre-export and export bills of exchange. Commercial banks act as intermediaries between the exporters and the MAS. The bank first discounts the bill with the exporter at the MAS rediscount rate plus a maximum spread of 1.5 percent before subsequently rediscounting the bill with the MAS at the MAS rediscount rate.

All three respondent companies participated in this program during the review period. Because this program is available only to exporters, we determine that it is countervailable to the extent that MAS discounting is offered at preferential rates.

To determine whether financing under this program was made at preferential rates, we compared the interest rates charged on these loans to our short-term benchmark. As the benchmark for short-term loans, it is our practice to use the national average commercial interest rate or the most comparable, predominant form of short-term financing. In the case of Singapore, verification established that there was no predominant form of short-term financing during the review period. The commercial bill rate, which we used as the benchmark in making our preliminary determinations, applied to less than 10 percent of the total Singapore dollar-denominated short-term financing during the review period. We therefore used a weighted average of the overdraft, commercial bill, and short-term loan rates as the benchmark for purposes of our final determinations. The data used to calculate this weighted-average interest rate was verified at the MAS. Based on this comparison, the rates on MAS financing through its rediscounting facility are preferential and, therefore, confer bounties or grants on exports of bearings.

To calculate the benefit arising from this program, we followed our short-term loan methodology, which has been applied consistently in our past determinations and which is described in more detail in the *Subsidies Appendix* attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984); *see also, Alhambra Foundry v. United States,* 626 F. Supp. 402 (CIT, 1985).

We compared the amount of interest actually paid during the review period to the amount that would have been paid at the benchmark rate. Because we verified that individual discount transactions cannot be tied to exports of specific products to specific markets, we included all discount transactions made by the two producer/exporter respondents, NMB and Pelmec, on which interest was paid during the review period, and prorated the benefit due to discount transactions on which interest was paid by the trading company, MSB, by the ratio of its exports to the United States of the subject merchandise over its total exports. We allocated the result over NMB and Pelmec's total exports plus MSB's net mark-up on exports to the United States of the subject merchandise to arrive at an estimated net bounty or grant of 0.08 percent *ad valorem.*

B. Production for Export under Part VI of the Economic Expansion Incentives Act (EEIA)

Under Part VI of the EEIA, 90 percent of a qualifying company's incremental export profit above a predetermined export base is exempt from corporate income tax. The export base is calculated by taking the average of the export profit levels in the three years preceding the application. The export base profit and ten percent of any incremental export profit are taxed at the normal corporate tax rate of 33 percent. If there is no export profit above the export base, no exemption is permitted. The exemption cannot be carried forward or back.

An exporting company qualifies for the exemption if its export sales of a product are 100,000 Singapore dollars or more, and at least 20 percent of the value of its total sales of the product.

Because eligibility for this program is contingent upon export performance, we determine that it is countervailable. We verified that only NMB claimed an exemption under this program on its tax return filed during the review period. Because all products exported by NMB Singapore have been approved under this program, the company does not segregate exempted profits by product or market. We calculated the benefit under this program by obtaining the difference between what NMB paid in corporate income tax during the review period with the exemption and what it would have paid absent the exemption. We then allocated this amount over the total export sales of the two producer/exporter respondents, NMB and Pelmec, plus MSB's net mark-up on exports to the United States of the subject merchandise, to arrive at an estimated net bounty or grant of 2.02 percent *ad valorem.*

II. Programs Determined Not to Confer Bounties or Grants

We determine that bounties or grants are not being provided to manufacturers, producers or exporters in Singapore of bearings under the following programs:

A. The Pioneer Industries Program under Part II of the EEIA

Under Part II of the EEIA, profits that arise from projects approved as "Pioneer" activities are exempt from the corporate income tax of 33 percent. The Economic Development Board (EDB), which administers the program, approves applications only if they meet both of the following criteria: (1) The project introduces technology, know-how or skills that are substantially more advanced than that of the average level prevailing in the industry, and (2) there are no companies in Singapore performing a similar activity without being awarded pioneer status. Additionally, proposed projects must meet one or more of the following criteria: (3) the gross value-added per worker of the project is substantially higher than the relevant industry's gross value-added per worker, (4) the project supplies important parts and components to other industries, or (5) the project generates substantial economic benefits (as measured by the level of fixed asset investments).

NMB enjoyed pioneer status from 1973 through 1978, at which time all of its pioneer benefits expired. Pelmec was granted pioneer status for the period of July 15, 1980, through July 14, 1990. The GOS specified how Pelmec's application met the eligibility criteria for pioneer status. The GOS also provided industry breakdowns of approvals and rejections for each year from 1978 through 1982, a window period that spans the two years prior to Pelmec's approval in 1980 and the following two years. During this period, the EDB approved hundreds of applications covering a broad range of industries including food, beverages and tobacco, textiles, footwear and leather, wood and cork products, paper and paper products, chemicals, petroleum and petroleum products, rubber, plastics, pottery and dinnerware, basic metals, fabricated metal products, non-electrical machinery, electrical machinery, electronic products and components, transport equipment, precision, photographic, and optical equipment, and other manufacturing. During this same period, the EDB rejected only a minuscule number of applications.

At verification we found no evidence that this program is targeted toward specific industries or toward exporters. In addition, our examination of randomly selected case files at verification indicated that the criteria were applied consistently and objectively. Therefore, we determine that benefits under this program are not limited to a specific enterprise or industry, or group of enterprises or industries, and as such, are not countervailable.

B. Section 16 of the Income Tax Act (ITA)

The EDB administers section 16 of the ITA which provides an annual allowance of three percent plus an additional 25 percent for the depreciation of industrial buildings. In *Final Negative Countervailing Duty Determination: Carbon Steel Wire Rod from Singapore*, 53 FR 16304, May 6, 1988, (*Wire Rod*), issued approximately two weeks after the initiation of the present investigations, we determined that this program is not countervailable because these allowances are the standard depreciation allowances permitted in Singapore. Since that determination, we have received no new facts or information on changed circumstances with respect to this program. Therefore, we continue to consider this program not countervailable.

C. Section 19A of the ITA

Section 19A of the ITA allows a company to depreciate all capital expenditures, with the exception of automobiles and robotics, over a three-year period. In *Wire Rod*, we determined that this provision is not countervailable because it is available to all enterprises in Singapore. Since that determination, we have received no new facts or information on changed circumstances with respect to this program. Therefore, we continue to consider this program not countervailable.

III. Programs Determined Not To Be Used

We determine, based on verified information, that manufacturers, producers or exporters in Singapore of bearings did not apply for, claim or receive benefits during the review period for exports of bearings to the United States under the following programs, which were listed in the Notice of Initiation (53 FR 15084, April 27, 1988):

A. Tax Incentives under the EEIA

The EEIA offers tax incentives under the following provisions:

- Part IV: Expansion of Established Enterprises
- Part VII: International Trade Incentives
- Part VIII: Foreign Loans for Productive Equipment
- Part IX: Royalties, Fees and Development Contributions
- Part X: Research and Development Incentives
- Part XI: Warehousing and Servicing Incentives

B. Double Deduction of Export Promotion Expenses under the ITA

C. Research and Development (R&D) Incentives

D. Other EDB Programs

E. Research and Development Assistance Scheme (RDAS)

For a complete description of these programs, see the *Preliminary Determinations*

Comments

Comment 1: Petitioner claims that all classes or kinds of merchandise should be covered by the duty deposit rate, since the GOS could not prove that there were no exports of the four classes or kinds other than ball bearings.

Respondents argue that the investigations should be terminated with respect to these other four classes or kinds because ball bearings are the only product mentioned in the petition. Respondents contend that petitioner has not shown that there are exports to the United States of the subject merchandise other than ball bearings.

DOC Position: Prior to the preliminary determinations, we determined that the subject merchandise in these investigations would be divided into five classes or kinds. The three respondent companies export only ball bearings. Sundstrand, which was identified by the GOS as a producer and exporter of the subject merchandise, did not respond to our questionnaires. As a result, we do not know what class or kind of merchandise Sundstrand produces or exports. Sundstrand submitted a letter indicating that they export goods to the United States under TSUSA categories which could include all five classes or kinds of the subject merchandise. Furthermore, during verification, the GOS was unable to demonstrate that no other classes or kinds of merchandise other than ball bearings are exported to the United States. Therefore, these determinations apply to all five classes or kinds of merchandise subject to these investigations.

Comment 2: Petitioner argues that the Department should not use the three-month rate on commercial bills as the benchmark for this program because it is not the most prevalent form of short-term financing. In a previous case, *Final Negative Countervailing Duty Determinations: Certain Textile Mill Products and Apparel from Singapore*, 50 FR 9840, May 6, 1985 (*Textiles*), the

Department used the commercial bill rate as the benchmark. Petitioner argues that the situation in Singapore has changed significantly since that determination, and that the Department should therefore not use the commercial bill rate for the benchmark. Moreover, petitioner claims the commercial bill rate is itself preferential since there is no reserve requirement associated with it. Petitioner asserts that the Department should use a weighted average of the overdraft rate and the rate for short-term loans as the benchmark.

Respondents argue that the commercial bill rate is the appropriate benchmark because it is the most similar type of financing to that provided by the MAS Rediscount Facility, since both types of financing are used to finance trade. Respondents state that there is no reserve requirement on commercial bills because commercial bills are secured by accounts receivable. Furthermore, respondents claim that commercial bills actually represented a smaller percentage of short-term financing during *Textiles* than they do now.

DOC Position: We used a weighted average of the three types of short-term financing available exclusively in Singapore dollars, namely, overdrafts, short-term loans and commercial bills, because this weighted average best represents the market cost to an exporter of financing short-term cash needs. In our view, the commercial bill rate does not reflect this cost as it represents less than 10 percent of overdrafts, short-term loans and commercial bills during the review period. We disagree with petitioner, however, that commercial bills should not be included in the calculation of the national average short-term rate. Commercial bills are an alternative form of financing available to exporters and should thus be included in the weighted average. Trust receipts, a fourth type of short-term financing used to finance imports, were not included in our formula because we do not have adequate data on this type of financing, some of which may be given in foreign currency.

Comment 3: Respondents argue that the benchmark should be calculated for the review period rather than calculating one benchmark for calendar year 1986 and one for calendar year 1987.

DOC Position: We agree that the benchmark should be calculated for the review period for purposes of these investigations. However, we want to stress that calculating a benchmark for a review period that does not coincide with a calendar year may not be applicable to other investigations. First, in these investigations we have published data on a weekly and monthly basis which permitted us to calculate the benchmark over the review period. In situations where only annual data is available we would have to use a calendar-year benchmark. Secondly, exporters pay interest under the MAS scheme at the time the loan terms are set. (Interest is paid up-front instead of at the end of the loan's term.) Since we considered only those MAS loans for which interest was paid during the review period, and, thus, only those loans for which the financing terms were set during the review period, it was appropriate to calculate a benchmark based on commercial loan terms prevailing during the same period. In situations where interest is not paid at the time the loan terms are set, we would have to use a calendar-year benchmark because the dates when the terms of the loans were set would not coincide with the review period.

Comment 4: Respondents argue that verification showed that competition had narrowed the commission charged on commercial bills and that, as a result, it was inappropriate to use the 0.50 percent spread that was used in the preliminary determinations.

Petitioner argues that there is a range of possible spreads on commercial bills, from 0.125 percent to 0.50 percent, and that the Department should assume that the highest possible spread applies in the absence of more specific information.

DOC Position: We used the average spread on each type of financing in our benchmark calculation. We verified that this average is actually 0.25 percent for commercial bills, since the average commission charged is lower than the median of 0.125 percent and 0.50 percent, due to competition among banks.

Comment 5: Petitioner claims that we should use exports to the United States as the denominator for the MAS loan program as best information available, rather than all exports, because the respondents could not link the loans to specific export destinations. Petitioner argues that the Act calls for use of best information available whenever respondent is unwilling or unable to provide the information requested.

Respondents argue that the Department was correct to use total exports as the denominator in the preliminary determinations. They claim that they do not keep the records necessary to link the loans with specific export destinations. Moreover, respondents contend that verification showed that these loans were used to finance exports to destinations other than the United States.

DOC Position: We agree with respondents. At verification we found that it is not possible to link loans to specific export markets. One loan often finances trade of several products to several markets. If we could have segregated the loans by exports to the United States of the subject merchandise, this would have been our preference. Since this was not possible, we allocated total benefits over total exports for the two producer/exporter respondents. However, because the third respondent, MSB, is a trading company, we must calculate its benefits with respect to its net mark-up on exports to the United States of the subject merchandise. This is done (1) to avoid double-counting, as MSB's export sales value includes the price of NMB's sales exported through MSB, and (2) because MSB's export sales value also includes the price of non-respondents' sales exported through MSB. Accordingly, we prorated MSB's benefit by its exports to the United States of the subject merchandise over its total exports. We then allocated NMB's and Pelmec's total benefits plus MSB's prorated benefit over NMB's and Pelmec's total exports plus MSB's net mark-up on its exports to the United States of the subject merchandise.

Comment 6: Petitioner argues that the Pioneer Industries Program should be found countervailable because it provides specific benefits to specific industries. Petitioner argues that the Department should reverse its preliminary determinations on this program for three reasons. The first is that the specificity test which was applied is not consistent with the CIT decision in *Cabot Corp* v. *United States*, 12 CIT, 694 F. Supp. 949, 957 (1988). The second is that the criteria for the program are subjective and unpredictable. The third is that the GOS has considerable discretion in the implementation of this program.

Respondents maintain that the criteria used for this program are objective and non-limiting. They argue that the Department verified that the program provided benefits to different types of industries.

DOC Position: At verification we found no evidence that this program is targeted toward any specific industries or toward exporters. See section II. A., above.

Comment 7: Petitioner argues that the Department should find Investment Allowances under Part X of the EEIA to be countervailable. Petitioner claims that in *Textiles* the Department only

verified nominal availability and did not examine the actual implementation of the program. Petitioner alleges that two respondent companies applied for benefits under this program in 1988.

Respondents claim that petitioner has not provided any new information to warrant changing the preliminary determination that this program was not used.

DOC Position: Part VIA of the EEIA was found not countervailable in *Textiles*. In *Wire Rod*, Part VIA had been amended and changed to Part X. In that investigation, as in these investigations, Part X was determined to be not used. The issue of countervailability has consequently not been addressed. We have no reason to find this program countervailable since we have verified that it was not used. Moreover, petitioner is arguing that respondents filed for benefits outside the review period. We do not consider information from beyond the review period unless there has been a program-wide change.

Comment 8: Respondents claim that the Department should calculate the benefit for the Production for Export program based on what NMB would have paid in taxes absent this program, rather than on the nominal value of the tax exempt income. Respondents claim that if NMB had not used this program, the company would have used other deductions which were instead carried forward.

Petitioner argues that the Department should ignore the carryforwards because it should not consider the secondary effects of a tax program.

DOC Position: Since the tax exemption is based on an increase in exports over a base year and thus cannot be determined in advance, and a decision whether or not to use other deductions or carry them forward is at the taxpayer's discretion, any adjustment involving carryforwards would be speculative.

Comment 9: Petitioner asserts that the duty deposit rate should be a weighted average of all duty deposit rates, including the BIA rate applied to Sundstrand.

Respondents argue that the Department should issue a separate rate for Sundstrand. They contend that a weighted-average duty rate would unfairly penalize the companies which participated in the investigations.

DOC Position: Under the new countervailing duty regulations, we must issue one country-wide rate unless the separate rates are "significantly different" as defined in § 355.20(d) of the Department's regulations. *See* 53 FR 52353 (December 27, 1988) (to be codified at 19 CFR 355.20(d)). The BIA rate for Sundstrand (4.95 percent) and the country-wide rate for the three respondents (2.10 percent) are not "significantly different." To calculate a country-wide rate, we first calculated the Singapore dollar value of ball bearings imported into the United States by multiplying the U.S. dollar import value for the relevant TSUSA categories by the average exchange rate during the review period. We used imports for calendar year 1987 to approximate the review period because most review period exports would have entered the United States during this time. We then subtracted from this figure NMB's and Pelmec's exports to the United States of the subject merchandise and MSB's net mark-up on exports to the United States of the subject merchandise to yield a value for exports to the United States of the subject merchandise assigned to Sundstrand. To obtain the country-wide rate of 2.34 percent, we weight averaged the rate for respondents and the BIA rate for Sundstrand using each party's (respondents' and Sundstrand's) share of total imports of ball bearings to the United States.

Comment 10: Petitioner argues that we should calculate the benefit attributable to Sundstrand by adding the total benefit attributable to NMB and Pelmec and allocating this amount over Sundstrand's sales.

DOC Position: We believe that the method of weight averaging explained above in the section on *Final Determinations* and in the *DOC Position* on *Comment 9* most accurately incorporates the BIA rate for Sundstrand into a country-wide rate.

Comment 11: Respondents argue that the Department was not consistent with the denominators used in calculating the estimated net bounty or grant. For MSB, the denominator was the mark-up on exports of the subject merchandise to the United States, and for the other two companies, the denominator was total exports.

DOC Position: MSB is a trading company and not a producer/exporter, and thus warrants different treatment. It would be inappropriate to use MSB's total exports in the denominator for the two reasons discussed above in the *DOC Position* on *Comment 5*. We therefore used its net mark-up on exports to the United States of the subject merchandise and added this figure to NMB's and Pelmec's total exports to obtain our denominator. Accordingly, we prorated MSB's benefits by the ratio of its exports to the United States of the subject merchandise over its total exports.

Verification

Except where noted, we verified the information used in making our final determinations in accordance with section 776(b) of the Act. During verification, we followed standard verification procedures, including meeting with government and company officials, inspecting documents and ledgers, tracing information in the response to source documents, accounting ledgers, and financial statements, and collecting additional information that we deemed necessary for making our final determinations. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Suspension of Liquidation

We are directing the U.S. Customs Service to resume suspension of liquidation on all entries of all five classes or kinds of the subject merchandise from Singapore which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. In accordance with section 706(a) of the Act (19 U.S.C. 1671e), we are directing the U.S. Customs Service to require a cash deposit for each entry equal to 2.34 percent *ad valorem*.

These determinations and orders are published pursuant to section 705(d) and 706(a) of the Act (19 U.S.C. 1671d(d), 1671e(a)).

March 24, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-8067 Filed 5-2-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-549-802]

Final Affirmative Countervailing Duty Determination and Partial Countervailing Duty Order: Ball Bearings and Parts Thereof From Thailand; Final Negative Countervailing Duty Determinations: Antifriction Bearings (Other Than Ball or Tapered Roller Bearings) and Parts Thereof From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute bounties or grants

within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Thailand of ball bearings and parts thereof ("ball bearings") as described in Appendix A attached to *Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany (AFBs from the FRG)*, to be published concurrently with this notice. The estimated net bounty or grant is 21.54 percent *ad valorem* for all manufacturers, producers or exporters in Thailand of ball bearings. We have also found that critical circumstances do not exist with respect to exports of ball bearings from Thailand (see section on *Critical Circumstances*, below). We have notified the U.S. International Trade Commission (ITC) of our determinations where appropriate (see section on *Injury Determination*, below).

During verification we found that only ball bearings and parts thereof are exported from Thailand. We are therefore issuing negative determinations with respect to the remaining four classes or kinds of antifriction bearings and parts thereof ("other bearings") as described in Appendix A attached to *AFBs from the FRG*.

We are directing the U.S. Customs Service to resume suspension of liquidation on all dutiable entries of ball bearings from Thailand that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and to require a cash deposit on entries of these products in an amount equal to 21.54 percent *ad valorem*.

If the ITC injury determination with respect to the non-dutiable TSUSA categories under which ball bearings may enter the United States is affirmative, we will direct the U.S. Customs Service to resume suspension of liquidation on all non-dutiable entries of ball bearings from Thailand that are entered, or withdrawn from warehouse, for consumption on or after the date of our amended countervailing duty order.

EFFECTIVE DATE: May 3, 1989.

FOR FURTHER INFORMATION CONTACT: Kay Halpern or Eleanor Shea, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0192 or 377-0184.

SUPPLEMENTARY INFORMATION:

Final Determinations

Based on our investigations, we determine that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Thailand of ball bearings. For purposes of these investigations, the following programs are found to confer bounties or grants:

- Short-Term Loans Provided under the Export Packing Credits Program
- Tax Certificates for Exports
- Electricity Discounts for Exporters
- Tax and Duty Exemptions under the Investment Promotion Act

We determine the estimated net bounty or grant to be 21.54 percent *ad valorem* for all manufacturers, producers or exporters in Thailand of ball bearings.

Based on our July 13, 1988 decision that the subject merchandise constitutes five separate classes or kinds of merchandise, the exports of the respondent companies fall under only one class or kind of merchandise subject to these investigations. However, since import statistics collected by the Department indicated that Thailand had exported products under basket *Tariff Schedules of the United States Annotated* (TSUSA) categories that might include bearings in the four class or kind categories other than ball bearings and parts thereof, our preliminary determinations applied to all classes or kinds of merchandise listed in Appendix A attached to *AFBs from the FRG*. During verification we found that the only class or kind of merchandise exported from Thailand was ball bearings and parts thereof. Since there were no classes or kinds of merchandise other than ball bearings and parts thereof exported from Thailand, we are issuing negative determinations with respect to cylindrical roller bearings and parts thereof, needle roller bearings and parts thereof, spherical roller bearings and parts thereof, and spherical plain bearings and parts thereof.

Case History

Since the last **Federal Register** publication pertaining to these investigations [*Preliminary Affirmative Countervailing Duty Determinations: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Thailand (53 FR 34333, September 6, 1988)*] (*Preliminary Determinations*), the following events have occurred. On October 14, 1988, we sent a supplemental questionnaire to respondents and received a response on October 26, 1988. We conducted verification in Thailand from December 6-16, 1988, of the questionnaire responses of the Government of Thailand (GOT), NMB Thai Limited (NMB) and Pelmec Thai Limited (Pelmec). Respondents submitted amended responses clarifying information and correcting certain minor errors found at verification on February 14, 17, and 27, 1989.

On August 31, 1988, the petitioner filed a request pursuant to section 705(a)(1) of the Act to postpone the final determinations to coincide with the final determinations in the concurrent antidumping investigations. The postponement notice was published in the **Federal Register** on September 29, 1988 (53 FR 38049). We subsequently received requests from the petitioner and all respondents in the antidumping investigations pursuant to sections 735(a)(2)(A) and (B) of the Act to postpone the final determinations in the antidumping investigations until March 24, 1989. The postponement notice was published in the **Federal Register** on December 8, 1988 (53 FR 49581). Accordingly, the final determinations in these investigations were also postponed until March 24, 1989.

Pursuant to section 705(a)(1) of the Act and in keeping with Article 5, Paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), we terminated suspension of liquidation on all five classes or kinds of merchandise as of January 4, 1989, 120 days after the date of publication of the *Preliminary Determinations*.

Both petitioner and respondents requested a public hearing in these investigations. Petitioner and respondents filed pre-hearing briefs on January 27 and February 9, 1989. A public hearing was held on February 10, 1989. Petitioner filed a post-hearing brief on February 21, 1989.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), and all merchandise entered or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The Department is providing both the appropriate TSUSA item number(s) and the appropriate HTS item number(s) with its product descriptions for

convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the products covered by these investigations.

The products covered by these investigations constitute five separate "classes or kinds" of bearings, as outlined in Appendix A attached to *AFBs from the FRG.*

Injury Determination

Since Thailand is not a "country under the Agreement" within the meaning of section 701(b) of the Act, section 303 of the Act applies to these investigations. However, Thailand is a signatory to the General Agreement on Tariffs and Trade, and certain products included in the scope of the ball bearings investigation may enter under non-dutiable TSUSA categories (*i.e.*, those classified under TSUSA items 681.1010, 681.1030, 681.3900, and 692.3295). Therefore, in accordance with section 303(a)(2), the ITC is required to determine whether imports of these nondutiable products from Thailand materially injure, or threaten material injury to, a U.S. industry. If the ITC determines that imports of ball bearings classified under these four TSUSA items materially injure, or threaten material injury to, a U.S. industry, we will amend our countervailing duty order to include ball bearings classified under these TSUSA categories and will direct the U.S. Customs Service to resume suspension of liquidation on all entries of ball bearings from Thailand under these categories that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of our amended countervailing duty order.

Analysis of Programs

For purposes of these final determinations, the period for which we are measuring bounties or grants ("the review period") October 1, 1986 to September 30, 1987, which corresponds to the fiscal year of the respondent companies.

Based upon our analysis of the petition, the responses to our questionnaires, verification, and written comments filed by petitioner and respondents, we determine the following:

I. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Thailand of ball bearings under the following programs:

A. Short-Term Loans Provided Under the Export Packing Credits Program

Export packing credits (EPCs) are short term loans used for either pre-shipment or post-shipment financing. Exporters apply to commercial banks for EPCs. The commercial banks, in turn, must submit an application for approval to the Bank of Thailand (BOT). Under the "Regulations Governing the Purchase of Promissory Notes Arising from Exports" (B. E. 2528), effective January 2, 1986, the BOT repurchases promissory notes issued by creditworthy exporters through commercial banks. To qualify for the repurchase arrangement, promissory notes must be supported by a letter of credit, sales contract, purchase order, usance bill or warehouse receipt. The notes are available for up to 180 days, and interest is paid on the due date of the loan rather than the date of receipt.

The BOT charges an interest rate of five percent per annum to commercial banks on repurchased packing credits issued in connection with exports of goods specified in categories one and two of the "Notification of the Board of Investment No. 40/2521." The commercial banks are permitted to charge exporters no more than seven percent per annum for the purchase of such notes. For goods other than those listed in categories one and two, such as bearings, the repurchase and purchase rates are four percent and seven percent, respectively.

At verification we found that, on the due date of the loan, the BOT debits the commercial bank's account for the principal amount and the four percent interest charged the commercial bank. If the terms of the loan are not met, the BOT charges the commercial bank a penalty, retroactive to the first day of the loan, at an eight percent interest rate.

Similarly, on the due date of the loan, the commercial bank debits the exporter's account for the principal amount and the maximum of seven percent interest charged the exporter. If the exporter has not met the terms of the loan, the commercial bank passes on the additional eight percent penalty charge over the term of the loan.

The penalty is refunded to the commercial bank by the BOT and by the commercial bank to the exporter if the company can prove shipment of the goods took place within 60 days after the due date (in the case of pre-shipment loans), or the foreign currency was received within 60 days after the due date (in the case of post-shipment loans). Otherwise, the penalty is not refunded. The purpose of the penalty charge is to ensure that companies take out EPC loans only to finance actual export sales.

On October 1, 1988, the GOT issued new regulations that coexisted with the prior regulations until December 31, 1988. On January 1, 1989, the new regulations completely replaced the former ones. Until January 1, 1989, exporters could still receive EPC loans under the terms of the program described above. Under the new regulations, the maximum rate commercial banks can charge exporters was raised from seven to 10 percent. In addition, the BOT now rediscounts only up to 50 percent of the loan amount, whereas under the previous program the BOT could rediscount the full value of the loan.

We verified that both NMB and Pelmec received and paid interest on EPC loans for exports of ball bearings during the review period and that all penalty payments charged were subsequently refunded. Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential rates.

As the benchmark for short-term loans, it is our practice to use the national average commercial interest rate or the most comparable, predominant form of short-term financing. For purposes of these determinations, we are using the weighted-average interest rate charged by commercial banks on domestic loans, bills and overdrafts during 1987, and, where loans were issued in 1986, the weighted-average interest rate of the same composition for 1986. This is the benchmark that we have applied in all previous Thai cases, most recently in *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Malleable Iron Pipe Fittings from Thailand,* 54 FR 6439, February 10, 1989 (*Pipe Fittings*).

The data used to calculate these weighted-average interest rates was verified at the BOT. Comparing the weighted-average interest rates for 1986 and 1987 to the rate charged on EPCs, we find that the rate on EPCs is preferential and, therefore, confers bounties or grants on exports of ball bearings.

To calculate the benefit from the EPC loans on which interest was paid during the review period, we followed the short-term loan methodology which has been applied consistently in our past determinations and which is described in more detail in the *Subsidies Appendix* attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from*

Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (49 FR 18006, April 26, 1984); *see also, Alhambra Foundry v. United States*, 626 F. Supp. 402 (CIT, 1985).

We compared the amount of interest actually paid during the review period to the amount that would have been paid at the benchmark rate. Because we verified that the EPC loans received by NMB and Pelmec covered shipments to more than one destination, we included all EPC loans on which interest was paid during the review period. We calculated the amount of interest that would have been paid at the benchmark rate and subtracted the amount of interest that was actually paid. We then divided the result by the respondents' total export sales during the review period. The estimated net bounty or grant is 1.42 percent *ad valorem*.

B. Tax Certificates for Exports

Under the "Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act" (Tax and Duty Act), the GOT issues tax certificates to exporters of record to rebate indirect taxes and import duties levied on inputs into exported products. The rebate rates under the Tax and Duty Act are computed on the basis of an input/output (I/O) study initially published in 1980, based on 1975 data, and updated in 1985 using 1980 data. Using the I/O study's input structure table, the Thai Ministry of Finance (MOF) computes the value of total inputs (both imports and local purchases) at ex-factory prices. The MOF then calculates two rebate rates: the "A" rate and the "B" rate.

The "A" rate rebates import duties and business and municipal taxes on both imported and domestically purchased inputs. The "B" rate rebates only the business and municipal taxes passed through on domestically purchased inputs, and is used by exporters that receive import duty exemptions or drawbacks under other programs. The "A" or "B" rate, as appropriate, is then applied to the total FOB value of exports in the I/O sector to determine the amount of the rebate.

Under the Tax and Duty Act, the rebates are paid to companies through tax certificates which can be used to pay other tax liabilities. These tax certificates can also be transferred to other companies which can use them to pay their tax liabilities.

The rebate rates in effect during the review period were announced on February 5, 1986, in the Notification of the Committee on Tax Rebates, No. Or. 1/2529. The calculation of these rates was based on an updated study completed in 1982. For exports of ball bearings under Customs Cooperative Council Nomenclature (CCCN) category 84.62, the "A" rate is 7.19 percent and the "B" rate is 0.59 percent.

We verified that both NMB and Pelmec received tax certificates at the "B" rate.

To determine whether an indirect tax rebate system confers a bounty or grant, we must apply the following analysis. First, we examine whether the system is intended to operate as a rebate of both indirect taxes and import duties. Second, we analyze whether the GOT properly ascertained the level of the rebate. This includes a review of the sample used in the study, including the documentation and the accuracy of the information gathered from the sample on input coefficients, import prices and rates of duty on imported inputs, the ratio of imported inputs to domestically produced inputs (when, for a given imported input, there is also domestic production of the input), and the exchange rates used to convert import prices denominated in a foreign currency to the local currency. Third, we review whether the rebate schedules are revised periodically.

When the I/O study upon which the indirect tax and import duty rebate system is based meets these three conditions, the Department will consider that the system does not confer a bounty or grant if the amount rebated for duties and indirect taxes on physically incorporated inputs does not exceed the fixed amount set forth in the rebate schedule for the exported product. When the system rebates duties and indirect taxes on both physically incorporated and non-physically incorporated inputs, we find that a bounty or grant exists to the extent that the fixed rebate exceeds the allowable rebate on physically incorporated inputs.

Applying our three-part analysis to the facts of this investigation, we found that the taxes and duties eligible for rebate under the Tax and Duty Act include those on materials, equipment, spare parts and machinery used in the production of exports. Direct taxes such as income tax and taxes which are otherwise refundable or exempt are excluded from the rebate. Thus, the program operates to rebate indirect taxes and import duties.

The information obtained during verification on the methodology and sampling used in calculating the rebate rates based on the revised I/O study leads us to conclude that the GOT employed a reasonable methodology for establishing the rebate levels. Furthermore, after a thorough examination of the methodologies employed in revising the 1975 I/O study and in calculating new rebate rates based on the revised study, we find that the GOT has a system in place to periodically update the rebate schedules.

Although the rebate under the Tax and Duty Act meets the three conditions required for indirect tax rebate systems not to be considered a bounty or grant, the inputs itemized in the GOT's calculations include both physically incorporated items as well as non-physically incorporated items. Since the indirect tax on non-physically incorporated items is also included in the GOT's rebate rate calculation, we must determine the extent to which the rebate rates confer an excessive remission of indirect taxes. We have reviewed the documentation and printouts submitted by the GOT in its response and at verification showing a detailed calculation of the rebate rates. Under the Tax and Duty Act, these calculations itemize the inputs and list ex-factory prices, import values, import duties and taxes, and domestic indirect taxes.

Based on verified information, we calculated the indirect tax incidence on physically incorporated inputs at FOB prices according to the most recent GOT rebate rate calculation. We then subtracted the percentage of indirect tax incidence attributable to physically incorporated inputs from the authorized rebate rate. Using this methodology, the overrebate on the "B" rate applicable to NMB and Pelmec is 0.49 percent *ad valorem*.

C. Electricity Discounts for Exporters

The Electricity Generating Authority of Thailand (EGAT), the Metropolitan Electricity Authority (MEA), and the Provincial Electricity Authority (PEA) administer discounts on electricity rates charged producers of export products. These discounts represent approximately 20 percent of total electricity costs and are available to any company eligible for and receiving tax certificates.

Once the export transactions have been completed, the exporter may apply for the discount by presenting to the electricity authority from which it receives its electricity bill the appropriate documents to verify that export shipments have been made. The discount is calculated based on the rebate rate in effect during that year for that company and appears as a credit on a subsequent electricity bill.

We verified that NMB received electricity discounts during the review period based on its export shipments. Because these discounts are available only to exporters, we determine that they are countervailable.

We allocated the discounts received over the total value of respondents' export sales during the review period to obtain an estimated net bounty or grant of 0.25 percent *ad valorem.*

D. Tax and Duty Exemptions Under the Investment Promotion Act (IPA): Sections 28, 36(1) and 31

The IPA of 1977 provides incentives for investment to promote development of the Thai economy. The IPA is administered by the Board of Investment (BOI) through promotion certificates. These certificates list the various sections of the IPA under which a company is eligible to receive benefits. We verified that the certificates are applied for and granted on a case-by-case basis.

Section 28 of the IPA provides an exemption from payment of import duties and business and municipal taxes on machinery and equipment. Section 36(1) provides an exemption from payment of duties and taxes on raw and "essential" materials used in the production of exports. At verification we found that respondents did not use the exemptions available under section 36(1) with respect to raw materials physically incorporated in exports because these raw materials enter duty free through their bonded warehouses. Section 31 provides a three- to eight-year exemption from payment of corporate income taxes on profits derived from promoted activities, as well as deductions from net profits for losses incurred during the tax exemption period. We verified that NMB and Pelmec received exemptions under these three sections of the IPA during the review period.

At verification we found that the certificates granted NMB and Pelmec are labeled "export" certificates, meaning that benefits under the IPA sections listed in them are predicated on export performance. The BOI examines a number of criteria and conditions including the supply and demand conditions in the Thai and overseas markets. For companies in "Production or Assembly of Electronics" (the industrial category under which bearing producers qualify for IPA benefits), the BOI has found that new projects will not be viable unless the companies are able to sell overseas. Accordingly, the BOI places a requirement on such companies that their products be "largely or fully exported." We therefore determine that, for purposes of these investigations, the benefits received by NMB and Pelmec under IPA sections 28, 36(1) and 31 are countervailable.

Under our tax methodology, we calculated the difference between the amount each company paid in income taxes with the section 31 exemption during the review period (*i.e.*, zero) and the amount each would have paid during the review period absent the exemption. We then added these tax savings to the total duty and tax exemptions for machinery and "essential" materials received by each company under IPA sections 28 and 36(1) during the review period, and divided the result by the respondents' total export sales during the review period. On this basis, we calculated an estimated net bounty or grant of 19.38 percent *ad valorem.*

II. Program Determined Not To Confer Bounties or Grants

We determine that bounties or grants are not being provided to manufacturers, producers or exporters in Thailand of ball bearings under the following program:

IPA Section 34

Section 34 of the IPA states that dividends derived from a promoted activity shall be granted an exemption from computation of taxable income. This exemption is applicable throughout the period in which the company issuing the dividends receives an exemption from corporate income tax under section 31. According to Thai tax law, dividends are distributed from after-tax income; the distributor withholds an additional dividend tax. Section 34 exempts NMB and Pelmec from withholding this tax on dividends when they issue dividends to their foreign parent company. Because the section 34 exemption applies to withholding taxes on dividends, and the dividends are paid by respondents to their foreign parent, the taxes are on the parent's dividend income, and the exemption bestows no benefit on respondents. The Department has consistently found that dividend tax exemptions for non-resident shareholders do not confer a countervailable benefit. See *Final Results of Administrative Review: Bicycle Tires and Tubes from Korea* (48 FR 32205, July 14, 1983) and *Final Affirmative Countervailing Duty Determinations and Orders: Certain Textile Mill Products and Apparel from Sri Lanka* (50 FR 9826, March 12, 1985).

III. Programs Determined Not To Be Used

We determine, based on verified information, that manufacturers, producers or exporters in Thailand of ball bearings did not apply for, claim or receive benefits during the review period for exports of ball bearings to the United States under the following programs, which were listed in the Notice of Initiation (53 FR 15086, April 27, 1988):

A. *Rediscount of Industrial Bills*
B. *International Trade Promotion Fund*
C. *Export Processing Zones*
D. *Reduced Business Taxes for Producers of Intermediate Goods for Export Industries*
E. *Tax Exemptions for Goodwill and Royalty Payments under Section 33 of the IPA*
F. *Double Deduction of Foreign Marketing Expenses under Section 36(4) of the IPA*

For a complete description of these programs, see the *Preliminary Determinations.*

Critical Circumstances

Petitioner's allegation that "critical circumstances" exist in these investigations is based on aggregated TSUSA categories. However, all merchandise imported under the categories specified by petitioner in its allegation, with the exception of TSUSA items 681.1010 and 681.1030, is dutiable, and under section 303 of the Act, dutiable merchandise cannot be subject to a critical circumstances determination. *See* 19 U.S.C. 1303(b)(3).

For the non-dutiable TSUSA categories 681.1010 and 681.1030, U.S. import statistics show that there have been no imports from Thailand in 1987 or 1988. However, there were imports from Thailand under two other non-dutiable basket TSUSA categories, which were not included in petitioner's critical circumstances allegation but which are included in the product scope of ball bearings and parts thereof (see Appendix A attached to *Bearings from the FRG*). Therefore, we examined whether critical circumstances exist with respect to entries under these two categories.

In determining whether critical circumstances exist within the meaning of section 703(e)(1) of the Act, we must examine whether there is a reasonable basis to believe or suspect that: (1) the alleged subsidy is inconsistent with the Agreement, and (2) there have been massive imports of the subject merchandise over a relatively short period.

In determining whether imports have been massive over a relatively short period of time, we consider the following factors: (1) the volume and value of the imports; (2) seasonal trends;

and (3) the share of domestic consumption accounted for by the imports. In making this determination our preference is to examine company-specific shipment data on exports to the United States of the subject merchandise. However, respondents cannot segregate their data to show which merchandise, if any, entered under the non-dutiable TSUSA categories. Moreover, it is not feasible within the statutory deadline for the Department to determine with certainty the TSUSA categories under which shipments of ball bearings from Thailand are classified. Therefore, for purposes of this investigation, we examined import statistics for the two basket TSUSA categories under which there were entries from Thailand to determine whether there have been massive imports over a relatively short period. Imports from Thailand under category 681.3900 in 1988 were six percent of what they were in 1987, and imports from Thailand under category 692.3295 were lower in the three months following the filing of the petition than in the three months preceding its filing.

Since we have not found massive imports over a relatively short period of time, we do not need to consider whether the alleged subsidies are inconsistent with the Agreement. Therefore, we determine that critical circumstances do not exist.

Comments

Comment 1: Petitioner argues that there should be only one class or kind of merchandise, rather than five classes or kinds of merchandise, because respondents could circumvent a countervailing duty order covering only one class or kind of bearings by exporting one or more of the other four classes or kinds to the United States. Respondents argue that, since they export only ball bearings to the United States, the Department should issue negative final determinations with respect to the other four classes or kinds of bearings.

DOC Position: Petitioner has not presented us with information that would cause us to reconsider our June 5, 1988 decision in which we divided the bearings under investigation into five classes or kinds. (For a more complete discussion of our class or kind determination, see Appendix B attached to *AFBs from the FRG.*) At verification we found that the only type of bearings produced by respondents are ball bearings and parts thereof, and that there are no exports from Thailand of any of the other four classes or kinds of merchandise. Because we verified that there are no exports of the other four classes or kinds of merchandise, we are limiting our affirmative countervailing duty determination to ball bearings, and issuing negative determinations with respect to the other four classes or kinds.

Comment 2: Respondents argue that we should treat certain sales made to a third country that are subsequently reimported into Thailand as export sales for purposes of the countervailing duty investigations.

DOC Position: We are treating these sales as export sales for purposes of the countervailing duty investigations because they benefit from export subsidies and are included in the export statistics of Thailand. Furthermore, these sales are treated as export sales by respondents.

Comment 3: Respondents note that the value of the subject merchandise entering the United States is greater than the sales revenue received by the companies in Thailand due to a net mark-up imposed by the parent company, located in a third country, through which the merchandise is invoiced. Respondents argue that if the net mark-up is not added to the denominator, a distortion in the bounty or grant rate will result, since the rate is imposed as a percentage of the value of the merchandise entering the United States. Petitioner states that the mark-up should not be included in the denominator.

DOC Position: We do not consider it appropriate to incorporate mark-ups or mark-downs levied in a third country in calculating our net bounty or grant rates because the bounties or grants were received based on the value of respondents' sales as exported from Thailand. We are therefore using this value as our denominator.

Comment 4: Respondents argue that their bonded warehouse-to-bonded warehouse sales should be added to the denominator for purposes of calculating benefits under the IPA, since these sales are considered export sales for purposes of receiving benefits under the IPA. Petitioner argues that these sales should not be added to the denominator because (1) they were originally reported in the questionnaire response as domestic sales, and (2) there is no proof that they were eventually exported out of the country.

DOC Position: We are not treating these sales as export sales for purposes of any of the programs under investigation, including benefits received under the IPA. We have made this decision in order to avoid possible double counting of sales. Respondents raised this issue at verification and have provided us with no information to demonstrate that these sales do not include sales between the two respondents' bonded warehouses. Since these sales may include sales between the two respondents which were subsequently exported by one of them, such sales could be double counted against respondents' export sales.

Furthermore, the fact that merchandise is placed in a bonded warehouse does not automatically mean that the merchandise will be subsequently exported. Merchandise can be subsequently removed from the bonded warehouse for domestic consumption, provided that appropriate duties are paid.

Comment 5: Petitioner argues that we should use for our benchmark, as best information available, rates published by *Financing Foreign Operations* (FFO) and the International Monetary Fund (IMF), which ranged "between 12—15 percent," because BOT officials were not able to answer certain questions at verification. Petitioner states that these rates "averaged approximately 15 percent" and that we should use 15 percent as our benchmark.

Respondents argue that we should use a company-specific benchmark because "the companies have demonstrated access to short-term commercial loans at interest rates equal to, or lower than, the allegedly, "preferential" interest rates offered by the EPC program." They state that the assumptions which "underlie Commerce's use of a nationwide benchmark in determining whether to countervail short-term loans...are not supported by the facts verified in this investigation."

DOC Position: As stated in section I.A., it is our practice to use as our benchmark for short-term loans the national average commercial interest rate or the most comparable, predominant form of short-term financing. Petitioner has not provided any information showing that the rates it cites represent the most comparable, predominant form of short-term financing in Thailand. Moreover, these rates, as the FFO publication provided by petitioner shows, are rates that were in effect as of the end of August 1986, and are thus irrelevant with respect to respondents' EPC loans on which interest was paid during the review period, since the vast majority of these loans were taken out after August 1986. With respect to the IMF data, petitioner did not specify which rates it considered appropriate; based on our review of the IMF rates, there is nothing that indicates that these rates are more reflective of short-term commercial rates than the

national average rate provided by respondents. Although BOT officials were not able to answer all of our questions at verification, we were able to verify the information used to construct the national average benchmark rate provided in the response.

As for respondents' argument, the facts verified in this investigation indicate that the commercial loans received by respondents are not comparable to their EPC loans because the EPC loans are for significantly longer time periods than the commercial loans. Assuming, *arguendo*, that we should consider a company-specific benchmark, it would therefore be inappropriate to base such a benchmark on these commercial loans.

Comment 6: Respondents make two arguments concerning the subsequently refunded penalty payments assessed on the companies' EPC loans. The first argument is that, since the penalty charge tips the interest on the loan over the benchmark rate, the borrower does not know whether he has received the preferential EPC rate net of penalties until the penalty is refunded. Respondents therefore argue that all loans for which penalties were refunded after the review period should not be counted. The second argument is that interest lost due to the penalty charges should be subtracted from the benefit calculated for the program.

Petitioner argues that penalty payments should not be taken into account because they are not a permissable offset under section 771(6) of the Act. Petitioner adds that respondents' first argument should not be accepted because respondents failed to incorporate the other side of the coin by providing information on loans with interest paid prior to the review period for which penalty refunds were made during the review period.

DOC Position: We agree with petitioner concerning respondents' first argument. Because respondents did not provide any information on those loans with interest paid before the review period for which penalties were refunded during the review period, we have not excluded loans with penalties refunded after the review period from our calculation of the benefit for this program. With regard to respondents' second argument, they raised this issue at verification and have provided no information to demonstrate that the companies actually lost interest on the penalty payments from the time these payments were debited from their accounts until the time the payments were refunded. Claims of lost interest are therefore speculative and have not been taken into account.

Comment 7: Respondents argue that if they did not receive an exemption from corporate income tax under section 31 of the IPA or an exemption from indirect taxes and duties on machinery, machine parts and "consummables" (lubricants and other items used with the machines) under sections 28 and 36(1) of the IPA, they would be allowed to deduct the indirect taxes and duties paid on consummables on their corporate income tax returns. They therefore suggest that we should perform the following calculation to avoid double counting: (1) obtain the difference between the income tax they would have paid with the deduction and the tax they would have paid without the deduction; and (2) subtract this difference from the total indirect tax and duty exemptions received under sections 28 and 36(1).

Petitioner argues that benefits received under sections 28 and 36(1) should be calculated separately from benefits received under section 31. Petitioner makes two arguments: (1) section 776(1) of the Act (19 U.S.C. 1671(6)) makes no mention of double counting in allowing the Department to offset a gross subsidy, and (2) benefits the respondents would have received under one of these IPA sections absent the others are "speculative."

DOC Position: We agree with petitioner. It is not our policy to consider the tax consequences of a subsidy when calculating the benefit of that subsidy. Such tax consequences are a secondary effect that cannot be considered a valid offset under section 771(6) of the Act. (*See, e.g., Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Canada,* 51 FR 15037, April 22, 1986.) Furthermore, such tax consequences would be speculative (*see id*).

Comment 8: Respondents argue that the Department should account for a program-wide change regarding benefits received under IPA section 31 due to a drop in the corporate income tax rate from 40 to 35 percent. They state that we should calculate the benefit for duty deposit purposes by taking 35 percent of their taxable income from their tax returns filed during the review period and allocate the result over their review period sales.

Petitioner argues that there should not be a program-wide change because the amount of the benefit based on the change is "unclear."

DOC Position: At verification we found that the corporate tax rate applicable to respondents was reduced from 40 to 35 percent, effective January 1, 1986. We confirmed that the new rate was first applied to respondents' tax returns filed after the review period (which were based on their fiscal year beginning in 1986) by examining their returns filed during and after the review period. The actual effect of this program-wide change can only be measured by taking 35 percent of respondents' taxable income from their tax returns filed after the review period and allocating the result over their sales from the same period. However, we are unable to measure the effect of the change because respondents did not provide us with information regarding their post-review period sales. We therefore based our estimated net duty deposit rate for this program on the estimated net bounty or grant rate calculated for the review period.

Comment 9: Respondents argue that benefits received under IPA section 34 do not bestow a bounty or grant because it is the non-resident shareholders and not the respondent companies that are ultimately liable for the dividend tax. Petitioner argues that benefits received under section 34 do bestow a bounty or grant because "the amount of the dividends paid is exempt from the * * * corporate tax rate."

DOC Position: We agree with respondents. See section II, above. We note that petitioner's understanding of section 34 is incorrect. The section 34 exemption is applicable throughout the period in which the company issuing the dividends receives an exemption from corporate income tax under section 31. It would therefore not make sense to exempt the amount of dividends paid from the corporate tax rate.

Comment 10: Petitioner argues that the GOT's I/O study on which our analysis of the Tax Certificates for Exports program is based is out of date. Petitioner states that we should countervail the entire rebate rate of 0.59 percent received by respondents as "best information available."

Respondents argue that the I/O study, which covers a broad spectrum of industries, is updated periodically, and that we should continue to base our analysis on it, as we have done in all previous Thai cases.

DOC Position: We agree with respondents. The I/O study is a macroeconomic study and has, as respondents indicate, been accepted in all previous Thai investigations, most recently in *Pipe Fittings*. Moreover, as stated in section I.B., we verified the validity of the I/O study during the current investigations. The GOT updated the I/O study in 1985, using

1980 data, for all the output sectors, including the one under which bearings are classified. We have therefore used this study to assess the extent to which overrebates were given under the Tax Certificates for Exports program.

Comment 11: Petitioner argues that the tax incidence on sector 087 (paints and varnishes) should not be considered because paints and varnishes are not physically incorporated in bearings. Respondents argue that, in calculating the tax rebate on physically incorporated items, both the numerator and denominator must have the same product coverage. Since the denominator covers the total output of the sector into which bearings fall (sector 111), the numerator should therefore encompass the tax incidence on all inputs which are physically incorporated in any of the finished products included in this sector, as opposed to just the tax incidence on all inputs physically incorporated in bearings. Thus, for example, although paints and varnishes may not be physically incorporated in bearings, they are physically incorporated in other sector 111 products. Petitioner rebuts respondents by stating that the Department would have to "conduct a physical incorporation verification for each of the products in the sector," a task which it is not mandated to perform.

DOC Position: We agree with petitioner. Section 776(b) of the Act requires that the Department shall verify all information relied upon in making a final determination. Respondents provided no information at verification to demonstrate what the physically incorporated inputs are in relation to the entire output of sector 111. We have therefore based our determination of the overrebate received by respondents on verified information by comparing the rebate rate received to the average incidence of indirect taxes on inputs physically incorporated in bearings only.

Comment 12: A number of interested parties have questioned petitioner's standing in all the countervailing duty and antidumping duty investigations pertaining to antifriction bearings (other than tapered roller bearings). We have determined that petitioner had standing to bring the investigation with regard to ball bearings. For a description of their arguments and the Department's position, see Appendix B attached to *AFBs from the FRG.*

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determinations. During verification, we followed standard verification procedures, including meeting with government and company officials, inspecting documents and ledgers, tracing information in the response to source documents, accounting ledgers, and financial statements, and collecting additional information that we deemed necessary for making our final determinations. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Suspension of Liquidation

We are directing the U.S. Customs Service to resume suspension of liquidation on all dutiable entries of ball bearings from Thailand which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** In accordance with section 706(a) of the Act (19 U.S.C. 1671e), we are directing the U.S. Customs Service to require a cash deposit for each such entry equal to 21.54 percent *ad valorem.*

If the ITC injury determination with respect to the non-dutiable TSUSA categories under which ball bearings may enter the United States is affirmative, we will direct the U.S. Customs Service to resume suspension of liquidation on all non-dutiable entries of ball bearings from Thailand that are entered, or withdrawn from warehouse, for consumption on or after the date of our amended countervailing duty order.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination with respect to products entered under the four nondutiable TSUSA categories included in the scope of the ball bearings investigation. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating 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.

These determinations and partial order are published pursuant to section 705(d) and 706(a) of the Act (19 U.S.C. 1671d(d), 1671e(a)).

Jan W. Mares,

Assistant Secretary for Import Administration.

March 24, 1989.

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Wednesday
May 3, 1989

Part III

Department of Education

Graduate Assistance in Areas of National Need Program; Invitation for Applications for New Awards for Fiscal Year (FY) 1989; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.200]

Graduate Assistance in Areas of National Need Program; Invitation for Applications For New Awards for Fiscal Year (FY) 1989

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program including the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To provide—through academic departments and programs of institutions of higher education—fellowships to assist graduate students of superior ability who demonstrate financial need, in order to sustain and enhance the capacity for teaching and research in areas of national need.

Deadline for Transmittal of Applications: June 23, 1989.

Available Funds: $12,844,000 of which $5,185,000 is estimated for new awards and $7,659,000 is estimated for continuation awards.

Estimated Range of Awards: $100,000–$500,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of New Awards: 21.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions that Apply to Department Regulations), and 34 CFR Part 85 (Governmentwide Debarment and Suspension) (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

Description of Program

The Graduate Assistance in Areas of National Need Program is authorized under Part D of Title IX of the Higher Education Act of 1965, as amended by Pub. L. 99–498, the Higher Education Amendments of 1986 (20 U.S.C. 1134l–1134q).

Eligibility: (a)(1) Any academic department, program or unit (hereafter referred to as "academic department") of an institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, as amended, that offers a program of post-baccalaureate study leading to a graduate degree in an area of national need as established in the PRIORITIES section of this notice and that has been in existence for at least four years at the time of application is eligible to apply for a grant.

(2) An academic department, as described in paragraph (a)(1) of this section, may submit a joint application with one or more nondegree granting institutions which have formal arrangements for the support of doctoral dissertation research with degree-granting institutions. For the purposes of this program, a nondegree granting institution is any organization which—

(i) Is described in section 501(c)(3) of the Internal Revenue code of 1954, and is exempt from tax under section 501(a) of the Code;

(ii) Is organized and operated substantially to conduct scientific and cultural research and graduate training programs;

(iii) Is not a private foundation;

(iv) Has academic personnel for instruction and counseling who meet the standards of the institution of higher education; and

(v) Has necessary research resources not otherwise readily available in the institution of higher education.

(b) An individual is eligible to receive an award from an academic department participating in this program if the individual—

(1) Has financial need, as determined under criteria developed by the institution of higher education;

(2) Has an excellent academic record in the individual's previous program or programs of study;

(3) Plans a teaching or research career;

(4) Plans to pursue the highest possible degree available in the individual's course of study; and

(5)(i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than temporary purposes with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Republic of Palau or the Commonwealth of the Northern Mariana Islands.

(c) An institution must provide assurances that it will seek talented students from traditionally underrepresented backgrounds. The Secretary suggests that applicants consider "traditionally underrepresented backgrounds" to mean minorities and other groups, including women, who historically have been underrepresented in the specific area of graduate study for which a fellowship is awarded.

(d) The academic department of the institution of higher education is responsible for making accurate determination concerning the criteria in paragraph (b) of this section.

Priorities

The Secretary gives an absolute preference to applications that propose to provide fellowships in one or more of the following areas of national need: Chemistry, Engineering, Mathematics, and Physics. Under 34 CFR 75.105(c)(3) the Secretary funds under this competition only applications that meet one or more of these absolute priorities.

Selection Procedures

(a) Geographically balanced review panels of nationally recognized scholars will use the selection criteria to evaluate, score, and rank applications.

(b) Consistent with an allocation of awards based on quality of competing applications, an equitable geographic distribution among eligible public and private institutions of higher education will be promoted.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of 10 U.S.C. 1134 l–q, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (13 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (7 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Funding Requirements: (a) No grant to an academic department of an institution of higher education shall be less than $100,000 nor greater than $500,000 for any fiscal year.

(b) From at least 60 percent of the funds received under this program, an academic department of an institution of higher education shall, consistent with the limitations in this paragraph, make commitments to graduate students at any point of their graduate study to provide stipends for applicable expenses, except for tuition and fees, for the length of time necessary to complete the course of graduate study. Because original awards to an academic department of an institution of higher education may not be made for longer than three years, an academic department of an institution of higher education may not make a commitment to a graduate student for more than three calendar years of support. If an institution successfully competes for a new award in a subsequent competition, a student may receive additional support, but in no case shall a student receive more than five calendar years of support.

(c) The size of the stipend awarded to students each year shall be determined by the institution, except that no annual stipend award under this program may exceed $10,000, or the demonstrated level of need, determined on the basis of criteria developed by the institution, whichever is less.

(d) From the remainder of funds, the academic department or program may award fellowship recipients amounts to pay tuition, fees and other costs of education not included in student stipends. No grant funds may be used for the general operational overhead of the academic department.

Matching Requirements: An academic department must provide from non-Federal sources an amount at least equal to 25 percent of the grant. The matching funds must be used for the same purposes as the grant funds, as specified in paragraphs (a) through (d) of the Funding Requirements section of this notice.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to:

U.S. Department of Education, Application Control Center, Attention: (CFDA #84.200), Washington, DC 20202-4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to:

U.S. Department of Education, Application Control Center, Attention: (CFDA #84.200), Room #3633, Regional Office Building #3, Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms:

The appendix to this application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative

Statutory Assurances

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS-008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (Ed Form GCS-009) and instructions. (Note: ED Form GCS-009 is intended for the use of primary participants and should not be transmitted to the Department.)

One or both of the following, as appropriate:

Certification Regarding Drug-Free Workplace Requirements: Grantees Other than Individuals (ED 80-0004).

Certification Regarding Drug-Free Workplace Requirements: Grantees Who Are Individuals (ED 80-0005).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

Technical Assistance Workshops: Applicants are invited to participate in technical assistance workshops to assist applicants in application preparation. Workshops will take place on Wednesday, May 24, 9:00 A.M., in Room 101, Seeley G. Mudd Building, University of Southern California, Los Angeles, CA and on Wednesday, May 31, 9:00 A.M., in the auditorium of the G.S.A. Regional Office Building, 7th and D Streets SW., Washington, DC. For specific information on the workshops, please contact the Division of Higher Education Incentive Programs on (202) 732-4389.

FOR FURTHER INFORMATION CONTACT: Dr. Allen P. Cissell, U.S. Department of Education, Division of Higher Education Incentive Programs, 400 Maryland Avenue SW., Washington, D.C. 20202-5251. Telephone: (202) 732-4415.

Program Authority: 20 U.S.C. 1134l-q.

Dated: April 27, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED | Applicant Identifier

1. TYPE OF SUBMISSION: Application: ☐ Construction ☒ Non-Construction; Preapplication: ☐ Construction ☐ Non-Construction

3. DATE RECEIVED BY STATE | State Application Identifier

4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier

5. APPLICANT INFORMATION

Legal Name | Organizational Unit

Address (give city, county, state, and zip code) | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A State, B County, C Municipal, D Township, E Interstate, F Intermunicipal, G Special District, H Independent School Dist., I State Controlled Institution of Higher Learning, J Private University, K Indian Tribe, L Individual, M Profit Organization, N Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es) ☐ ☐
A Increase Award, B Decrease Award, C Increase Duration, D Decrease Duration, Other (specify) _____

9. NAME OF FEDERAL AGENCY: U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 4 0
TITLE: Graduate Assistance in Areas of National Need

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$	00
b. Applicant	$	00
c. State	$	00
d. Local	$	00
e. Other	$	00
f. Program Income	$	00
g. TOTAL	$	00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative | b. Title | c. Telephone number

d. Signature of Authorized Representative | e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry
1	Self-explanatory
2	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable)
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e g., State, counties, cities)
13.	Self-explanatory
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor Value of in-kind contributions should be included on appropriate lines as applicable If the action will result in a dollar change to an existing award, indicate *only* the amount of the change For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4000-01-C

PART II.—BUDGET INFORMATION, GRADUATE ASSISTANCE IN AREAS OF NATIONAL NEED, FISCAL YEAR 1989

Section A—Summary of Fellowships

Area of Application	Number of Fellowships Requested

Section B—Funds Requested and Cost Sharing

1. Federal Funds Requested for Student Stipends. $
2. Federal Funds Requested for Tuition, Fees and Other Costs of Education Not Included in Student Stipends. $
3. Total Federal Funds Requested ..... $
4. Non-Federal Funds ..... $
5. Total Program Funds ..... $

Instructions for Part II—Budget Information

Heading Information: Enter the current fiscal year.

Section A—Summary of Fellowships

Enter the number of fellowships requested for area of application.

Section B—Funds Requested and Costs Sharing

1. Federal Funds Requested for Student Stipends: Enter the dollar amount of Federal funds requested for student stipends for applicable expenses except for tuition and fees. (At least 60% of the funds received under this program must be used to provide stipends.) See "Funding Requirements."

2. Federal Funds Requested for Tuition, Fees and Other Costs of Education Not Included in Student Stipends: Enter the dollar amount of Federal funds requested for tuition, fees and other costs of education not included in student stipends.

3. Total Federal Funds Requested: Enter the total Federal funds requested (sum of 1 and 2). Total Federal funds requested must not be less than $100,000 nor greater than $500,000 per year.

4. Non-Federal Funds: Enter the dollar amount of funds to be provided from other sources, e.g., state governments, local governments, private organizations, etc., which must equal at least 25 percent of the amount of Federal funds requested.

5. Total Program Funds: Enter the total program funds (sum of 3 and 4).

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the information regarding proritities, and the *selection criteria* the Secretary uses to evaluate applications.

The narrative should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the current academic program and the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this notice;

3. Set forth policies and procedures to ensure that Federal funds made available under this program will be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purpose of the program and in no case to supplant those funds;

4. Set forth policies and procedures to assure that, in making fellowship awards under this part, the institution will make awards to individuals who—

(A) have financial need, as determined under criteria developed by the institution;

(B) have excellent academic records in their previous programs of study;

(C) plan teaching or research careers;

(D) plan to pursue the highest possible degree available in their course of study; and

(E) to the extent possible, are from traditionally underrepresented backgrounds. The Secretary suggests that applicants consider that "traditionally underrepresented backgrounds" mean minorities and other groups, including women, who historically have been underrepresented in the specific area of graduate study for which a fellowship is awarded; and

5. Include any other pertinent information that might assist the Secretary in reviewing the application.

Please limit the Application Narrative to no more than 25 doublespaced, typed pages (on one side only).

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, and gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C 20202-4651; and to the Paperwork Reduction Project, OMB 1840-0604, Office of Management and Budget, Washington, DC 20503.

(Information collection approved under OMB control number 1840-0604. Expiration date: June 30, 1991.)

Statutory Assurances

1. In the event that funds made available to the academic department under the program are insufficient to provide the assistance due a student under the commitment entered into between the academic department and the student, the academic department will endeavor, from any funds available to it to fulfill the commitment to the student.

2. The applicant will ensure that no student shall receive an award except during periods in which such student is maintaining satisfactory progress in, and devoting essentially full time to study or research in the field in which such fellowship was awarded, or if the student is engaging in gainful employment other than part-time employment involved in teaching, research, or similar activities determined by the institution to be in support of the student's progress towards a degree.

3. The applicant will comply with the matching and funding requirements contained in the Funding Requirements and Matching Requirments sections of this application notice.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P L 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more

11. Will comply with environmental standards which may be prescribed pursuant to the following (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P L. 91 190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738, (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988, (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U S C §§ 1451 et seq), (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U S C § 7401 et seq); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P L 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U S C §§ 1271 et seq) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U S C 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U S C 469a 1 et seq)

14 Will comply with P L 93 348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15 Will comply with the Laboratory Animal Welfare Act of 1966 (P L 89-544, as amended, 7 U S C 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead Based Paint Poisoning Prevention Act (42 U S C §§ 4801 et seq) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18 Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name | PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED Form GCS-008, (REV 12/88)

Instructions for Certification

1 By signing and submitting this proposal, the prospective primary participant is providing the certification set out below

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4 The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7 The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal

Organization Name | PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED Form GCS-009 (REV 12-88

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name | PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED 80-0004

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