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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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 99–092–2]

Tuberculosis in Cattle, Bison, and Captive Cervids; State and Zone Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the bovine tuberculosis regulations to recognize two separate zones with different tuberculosis risk classifications in the State of Texas. The interim rule was necessary to prevent the spread of tuberculosis and to further the progress of the domestic bovine tuberculosis eradication program.

EFFECTIVE DATE: The interim rule became effective on November 22, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Van Tiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, USDA, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7716.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on November 22, 2000 (65 FR 70284–70286, Docket No. 99–092–1), we amended the bovine tuberculosis regulations in 9 CFR part 77 by recognizing two separate zones with different tuberculosis risk classifications in the State of Texas. That action was necessary to prevent the spread of tuberculosis and to further the progress of the domestic bovine tuberculosis eradication program.

Comments on the interim rule were required to be received on or before January 22, 2001. We received one comment by that date, from a veterinary medical association. The commenter supported the interim rule.

Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Lists of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 77 and that was published at 65 FR 70284–70286 on November 22, 2000.

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b and 134f; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 21st day of September 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–24191 Filed 9–26–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM196; Special Conditions No. 25–185–SC]

Special Conditions: Dassault Aviation Mystere-Falcon 50; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Dassault Aviation Mystere-Falcon 50 airplanes modified by ElectroSonics. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual Electronic Primary Flight Display systems that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is September 7, 2001. Comments must be received on or before October 29, 2001.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM196, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM196. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2138; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these

special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in duplicate to the address specified above. The Administrator will consider all communications received on or before the closing date for comments. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM196.'' The postcard will be date stamped and returned to the commenter.

Background

On July 3, 2001, ElectroSonics, 4391 International Gateway, Columbus, Ohio, applied for a Supplemental Type Certificate (STC) to modify Dassault Aviation Mystere-Falcon 50 airplanes. The Dassault Aviation Mystere-Falcon 50 is a small transport category airplane. The Dassault Aviation Mystere-Falcon 50 airplanes are powered by three AlliedSignal Model TFE 731–3–1C Turbofan Engines with a maximum takeoff weight of 38,800 pounds. This aircraft operates with a 2-pilot crew and can hold up to 19 passengers. The modification incorporates the installation of a Rockwell Collins FDS–2000 Flight Display System. The FDS–2000 is a replacement for the existing Analog Flight Instrumentation, while also providing additional functional capability and redundancy in the system. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, ElectroSonics must show that the Dassault Aviation Mystere-Falcon 50 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A46EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations included in the certification basis for the Dassault Aviation Mystere-Falcon 50 airplanes include 14 CFR part 25, dated February 1, 1965, as amended by amendment 25–1 through amendment 25–34; § 25.255, as amended by amendment 25–42; §§ 25.979(d) and (e), as amended by amendment 25–38; 25.1013(b)(1) as amended by amendment 25–36; § 25.1351(d), as amended by amendment 25–41; 25.1353(c)(6), as amended by amendment 25–42; Special Conditions No. 25–86–EU–24 dated March 6, 1979.

If the Administrator finds that the applicable airworthiness regulations (that is, part 25, as amended) do not contain adequate or appropriate safety standards for the Dassault Aviation Mystere-Falcon 50 airplanes modified by ElectroSonics because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, these Dassault Aviation Mystere-Falcon 50 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34, and the noise certification requirements of part 36.

Special conditions, as defined in § 11.19, are issued in accordance with 11.38 and become part of the airplane's type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should ElectroSonics apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

As noted earlier, the Dassault Aviation Mystere-Falcon 50 airplanes modified by ElectroSonics will incorporate dual Electronic Primary Flight Display systems that will perform critical functions. These systems may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Dassault Aviation Mystere-Falcon 50 airplanes modified by ElectroSonics. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from the Table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Dassault Aviation Mystere-Falcon 50 airplanes modified by ElectroSonics. Should ElectroSonics apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Dassault Aviation Mystere-Falcon 50 airplanes modified by ElectroSonics. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Dassault Aviation Mystere-Falcon 50 airplanes modified by ElectroSonics.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on September 7, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–24219 Filed 9–26–01; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 211, 231 and 241

[Release Nos. 33–8005A; 34–44820A; FR–58A]

Calculation of Average Weekly Trading Volume Under Rule 144 and Termination of a Rule 10b5–1 Trading Plan

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: This release expresses the Commission's view on how to calculate the average weekly reported volume of trading in securities under Rule 144(e), given the lack of trading during the week of September 10, 2001. This release also expresses the Commission's view that termination of a Rule 10b5–1 trading plan during the period between September 11, 2001 and September 28, 2001, inclusive, does not, by itself, suggest that the plan was not ''entered into in good faith and not as part of a plan or scheme to evade'' the insider trading rules within the meaning of Rule 10b5–1(c).

EFFECTIVE DATE: September 21, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Plesnarski, Special Counsel, or Paula Dubberly, Chief Counsel, Office of the Chief Counsel, Division of Corporation Finance, at (202) 942–2900, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0402.

SUPPLEMENTARY INFORMATION:

I. Introduction and Summary

In light of the emergency closure of the U.S. equity and options markets from September 11, 2001 through September 14, 2001, law firms and registrants have asked the Commission how to calculate the average weekly reported volume of trading in an issuer's securities for purposes of Rule 144 [1] under the Securities Act of 1933.[2] Because the markets were open for only one day during the week beginning on September 10, 2001, the Commission believes that it is appropriate to use weeks preceding and subsequent to the week of September 10, 2001, but to not include that calendar week, in determining the average weekly reported volume of trading under Rule 144(e).

The Commission also believes that termination of a written Rule 10b5–1 [3] plan between September 11, 2001 and September 28, 2001, inclusive, will not, by itself, call into question whether the plan was ''entered into in good faith and not as part of a plan or scheme to evade'' the insider trading rules.

II. Discussion

A. Average Weekly Reported Volume of Trading for Rule 144

Rule 144 defines specific circumstances in which a person will be deemed not to be engaged in a distribution and, therefore, not to be an underwriter as defined in Section 2(a)(11) of the Securities Act.[4] The

[1] 17 CFR 230.144.

[2] 15 U.S.C. 77b(a) *et seq.*

[3] 17 CFR 240.10b5–1.

[4] 15 U.S.C. 77b(a)(11).

amount of securities that may be sold under this safe harbor is limited to a percentage of the shares outstanding or a percentage of the average weekly trading volume of an issuer's securities. Rule 144(e) prescribes that the average weekly trading volume for a class of securities will be calculated using the average weekly reported volume of trading in such securities on all national securities exchanges and/or reported through the automated quotation system of a registered securities association during the four calendar weeks preceding the dates outlined in Rule 144(e). The markets were open for only one day during the week beginning on September 10, 2001. Accordingly, that week will not provide a representative trading volume. Therefore, the Commission believes that the week of September 10, 2001 should be excluded from the calculation of the average weekly reported volume of trading in an issuer's securities under Rule 144(e) during a four calendar week period, and an additional prior week should be included, for a total of four calendar weeks.

B. Rule 10b5–1 Plans

In May 2001, the Commission staff issued interpretations regarding the termination of a written plan for trading securities that satisfies the affirmative defense conditions of Rule 10b5–1(c).[5] The affirmative defense is available only for plans that are ''entered into in good faith and not as part of a plan or a scheme to evade'' the insider trading rules. Questions 15(b) and 15(c) of the staff's interpretations make clear that a written plan may be terminated through either the affirmative termination of the plan itself or the deemed termination of the plan through the cancellation of one or more plan transactions. Therefore, for example, if a plan previously had specified that sales be made during the week of September 17, 2001, a security holder would be terminating the plan if he or she cancelled that sale in order to continue to hold the securities. The interpretations also state that termination of a plan could affect the availability of the Rule 10b5–1(c) defense for prior plan transactions if the termination calls into question whether the plan was ''entered into in good faith and not as part of a plan or scheme to evade'' the insider trading rules within the meaning of Rule 10b5–1(c)(1)(ii). The absence of good faith or presence of a scheme to evade would eliminate the Rule 10b5–1(c) defense for prior transactions under the plan.

Due to the tragic events of September 11, 2001 and the subsequent closure of the U.S. equity and options markets, the Commission believes that termination of a written plan established prior to September 11, 2001 will not, by itself, call into question whether the plan was ''entered into in good faith and not as part of a plan or scheme to evade'' the insider trading rules within the meaning of Rule 10b5–1(c)(1)(ii) if the plan is terminated between September 11, 2001 and September 28, 2001, inclusive. Thus, the Commission believes that availability of the Rule 10b5–1(c) defense for transactions under the written plan would not be affected solely by termination of that plan between September 11, 2001 and September 28, 2001.

List of Subjects in 17 CFR Parts 211, 231 and 241

Securities.

Amendment of the Code of Federal Regulations

For the reasons set forth in the preamble, we are amending title 17, chapter II of the Code of Federal Regulations as follows:

PART 211—INTERPRETATIONS RELATING TO FINANCIAL REPORTING MATTERS

1. Part 211, Subpart A, is amended by adding Release No. FR–58A and the release date of September 21, 2001 to the list of interpretive releases.

PART 231—INTERPRETIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

2. Part 231, is amended by adding Release No. 33–8005A and the release date of September 21, 2001, to the list of interpretive releases.

PART 241—INTERPRETIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

3. Part 241, is amended by adding Release No. 34–44820A and the release date of September 21, 2001, to the list of interpretive releases.

Dated: September 21, 2001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–24187 Filed 9–26–01; 8:45 am]

BILLING CODE 8010–01–P

[5] *See,* Division of Corporation Finance: Manual of Publicly Available Telephone Interpretations, Fourth Supplement (May 30, 2001). These interpretations are available at www.sec.gov/interps/telephone/phonesupplement4.htm.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

[T.D. 01–69]

Name Change of User Fee Airport in Ocala, FL

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the list of user fee airports in the Customs Regulations to reflect that the name of the user fee airport located in Ocala, Florida, has been changed from Ocala Regional Airport to Ocala International Airport. User fee airports are those which, while not qualifying for designation as an international or landing rights airport because of insufficient volume or value of business, have been approved by the Commissioner of Customs to receive the services of Customs officers on a fee basis for the processing of aircraft entering the United States and their passengers and cargo.

EFFECTIVE DATE: September 27, 2001.

FOR FURTHER INFORMATION CONTACT: Nancy Bruner, Office of Field Operations, 202–927–2290.

SUPPLEMENTARY INFORMATION:

Background

User fee airports are those which, while not qualifying for designation as an international or landing rights airport because of insufficient volume or value of business, have been approved by the Commissioner of Customs to receive the services of Customs officers on a fee basis for the processing of aircraft entering the United States and their passengers and cargo.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Secretary of the Treasury determines that the volume of Customs business at the airport is insufficient to justify the availability of Customs services at the airport and the governor of the State in which the airport is located approves the designation. Generally, the type of airport that would seek designation as a user fee airport would be one at which a company, such as an air courier service, has a specialized interest in regularly landing.

Section 122.15(b), Customs Regulations (19 CFR 122.15(b)), sets forth a list of the user fee airports designated by the Commissioner of Customs in accordance with 19 U.S.C. 58b. Section 122.15(b) was most

recently updated by a final rule published in the **Federal Register** (65 FR 31263) on May 17, 2000.

This document amends § 122.15(b) to reflect that the name of the user fee airport located in Ocala, Florida, has been changed from Ocala Regional Airport to Ocala International Airport.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely reflects the changed name of a user fee airport that has already been designated by the Commissioner of Customs in accordance with 19 U.S.C. 58b and neither imposes additional burdens on, nor takes away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. This amendment does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch, Office of Regulations and Ruling, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 122

Air carriers, Aircraft, Airports, Customs duties and inspection, Freight.

Amendment to the Regulations

Part 122, Customs Regulations (19 CFR part 122) is amended as set forth below.

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

2. Section 122.15(b) is amended by removing the name ''Ocala Regional Airport'' in the ''Name'' column adjacent to ''Ocala, Florida'' in the ''Location'' column and adding in its place ''Ocala International Airport''.

Charles W. Winwood,

Acting Commissioner of Customs.

Approved: September 20, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 01–24167 Filed 9–26–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB30

Labor Certification and Petition Process for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the United States; Delegation of Authority To Adjudicate Petitions; Deferral of Effective Date

AGENCY: Employment and Training Administration, Labor.

ACTION: Interim final rule with request for comments; deferral of effective date of final rule.

SUMMARY: The Department of Labor (DOL or Department) is deferring the effective date of its final rule implementing the delegation of authority to adjudicate petitions for the temporary employment of nonimmigrant aliens in agriculture in the United States. The Immigration and Naturalization Service (INS) is also delaying the delegation of INS' authority to the Department to adjudicate petitions for the temporary employment of nonimmigrant aliens in agriculture in the United States. The Department has the need for additional time to effectively implement the delegation of authority, develop new systems and procedures, and to train and brief members of the affected public and the employment and training community in the new systems and procedures. Therefore the Department has determined to defer the effective date of the Final Rule promulgated at 65 FR 43538 (July 13, 2000). Comments are being requested on this action. The rule being deferred amends the Employment and Training Administration (ETA) regulations to implement the delegation of authority to adjudicate petitions for temporary nonimmigrant agricultural workers (H–2A's) from the INS to the Department.

DATES: The effective date of the final rule in FR Doc. 00–17641, published at 65 FR 43538 (July 13, 2000), was deferred from November 13, 2000, until October 1, 2001, by an interim final rule published in FR Doc. 00–28897, published at 65 FR 67628 (November 13, 2000). This interim final rule defers the effective date of the final rule until September 27, 2002.

Comments: Comments are invited on the deferral of the effective date. Submit comments on or before October 29, 2001.

ADDRESSES: Send comments to Assistant Secretary of Labor for Employment and Training, Attention: Division of Foreign Labor Certifications, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4456, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Denis M. Gruskin, Senior Specialist, Division of Foreign Labor Certifications, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4456, Washington, DC 20210. Telephone (202) 693–2953 (this is not a toll-free number)

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL or Department) published a final rule in this rulemaking in the **Federal Register** at 65 FR 43538 (July 13, 2000), with an effective date of November 13, 2000, implementing a delegation of authority from the INS to the Department to adjudicate petitions for the temporary employment of nonimmigrant aliens in agriculture in the United States. Concurrently, the INS published a Final Rule at 65 FR 43528 (July 13, 2000) with an effective date of November 13, 2000, transferring to the Secretary of Labor the authority to adjudicate petitions for temporary agricultural workers and the authority to decide appeals on these decisions and to make determinations for revocation of petition approvals.

Subsequently, the INS at 65 FR 67616 (November 13, 2000) published a final rule and DOL at 65 FR 67628 (November 13, 2000) published an interim final rule (IFR) deferring the effective dates of their final rules. The Department in its IFR invited comments on the deferral of the effective date. No comments were received by DOL on the deferral of the effective date.

The Department also reopened and extended the comment period at 65 FR 50170 (August 17, 2000) on a companion notice of proposed rulemaking (NPRM) published at 65 FR 43545 (July 13, 2000) setting forth implementation measures necessary to the successful implementation of the delegation of authority to adjudicate petitions. Among the implementation measures was a new Form ETA 9079,

Application for Alien Employment Certification and H–2A Petition, which consolidated two current forms, ETA 750 Application for Alien Employment Certification) and INS I–129 (Petition for Nonimmigrant Workers). The NPRM also set forth the implementation of a new fee schedule to collect a combined fee for processing the petition and labor certification application. It is contemplated that under the administrative procedures arrived at by INS and the Employment and Training Administration to implement the delegation of the petition authority from INS to the Department, DOL will collect the petition fee on behalf of INS and will be reimbursed by INS for the costs involved in processing the H–2A petition.

The INS reopened and extended the comment period at 65 FR 50166 (August 17, 2000) on a proposed rule published concurrently at 65 FR 43535 (July 13, 2000) with its final rule delegating the authority to adjudicate petitions to DOL. The INS proposed rule provided, among other things, that all petition requests and extensions of stay and change of status petitions must be filed with DOL and the current INS petition fee will be collected by DOL as part of a combined fee.

Commenters raised a number of issues about the proposed rules. The comments received by the Department as a result of the August 17, 2000, reopening and extension of the proposed rule did not provide sufficient information to permit the Department to draft a final rule concerning a number of issues, such as the design of the new form and the fee structure. Consequently, the Department intends in the near future to again reopen and extend the comment period on the July 13, 2000, NPRM. In a document published elsewhere in this issue of the **Federal Register**, the Department is reopening and extending the comment period on the NPRM. In another document, the Department is announcing informal briefings to allow agricultural workers and employers and other interested parties to communicate directly with the Department regarding the proposed rule changes which would require employers to submit fees for temporary labor certification and the associated H–2A petition with a consolidated application form at the time of filing, and as indicated above, sets forth a new fee structure for the labor certification.

Finalizing the proposed rules is essential to the effective implementation of any delegation of authority to DOL to adjudicate petitions for temporary employment of nonimmigrant aliens in the United States. Allowing the Final Rule to become effective without finalizing action on the proposed rule published by the Department would lead to administrative uncertainty and result in confusion on the part of employers, agricultural workers, and other interested parties. Accordingly, the Department has concluded good causes exists to defer the effective date of the July 13, 2000, Final Rule until the rulemaking on the companion proposal is completed. At this time we are extending the effective date of the final rule published at 65 FR 43538 for one year, until October 27, 2002. The regulatory certifications set forth in the July 13, 2000, Final Rule apply to this deferral as well.

Signed at Washington, DC, this 24th day of September 2001.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. 01–24208 Filed 9–26–01; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration.

21 CFR Part 341

[Docket No. 76N–052G]

RIN 0910–AA01

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Partial Final Rule for Combination Drug Products Containing a Bronchodilator

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that cough-cold combination drug products containing any oral bronchodilator active ingredient in combination with any analgesic(s) or analgesic-antipyretic(s), anticholinergic, antihistamine, oral antitussive, or stimulant active ingredient are not generally recognized as safe and effective and are misbranded for over-the-counter (OTC) use. FDA is issuing this final rule after receiving no public comments on the agency's proposed nonmonograph status of these specific combination drug products, which was issued in the form of a tentative final monograph for OTC cough-cold combination drug products. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

DATES: This regulation is effective October 29, 2001.

FOR FURTHER INFORMATION CONTACT: Cazemiro R. Martin, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 9, l976 (41 FR 38312), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic (cough-cold) drug products, together with the recommendations of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. The Panel placed the combination of an oral bronchodilator with either an analgesic-antipyretic, anticholinergic, antihistamine, or antitussive (when the product is labeled only for cough associated with asthma) ingredient in Category II (not generally recognized as safe and/or effective) (41 FR 38312 at 38326).

The agency concurred with the Panel in the tentative final monograph for cough-cold combination drug products (53 FR 30522 at 30556, August 12, 1988). The agency also classified the combination of caffeine and ephedrine or pseudoephedrine in Category II (53 FR 30522 at 30557). No comments on these specific combinations were submitted in response to the tentative final monograph.

The current monograph oral bronchodilator active ingredients are ephedrine, ephedrine hydrochloride, ephedrine sulfate, and racephedrine hydrochloride (21 CFR 341.16(a), (b), (c), and (f)). The agency is not aware of any OTC drug products currently marketed containing an oral bronchodilator active ingredient in combination with any analgesic(s) or analgesic-antipyretic(s), anticholinergic, antihistamine, oral antitussive, or stimulant active ingredient.

II. The Agency's Conclusion

The OTC drug review program establishes conditions under which OTC drugs are generally recognized as safe and effective and not misbranded.

Two principal conditions examined during the review are allowable ingredients and allowable labeling. The Panel evaluated the submitted data on active ingredients in combination products from the standpoint of safety and effectiveness and, based on its evaluation, recommended specific combinations of ingredients from the same and different pharmacologic groups. The Panel classified a number of cough-cold combinations as Category II (41 FR 38312 at 38326) and considered medical rationale and drug interaction in making these recommendations.

In the tentative final monograph for OTC cough-cold combination drug products (53 FR 30522 at 30556 to 30557), the agency agreed with the Panel's recommended Category II status of any oral bronchodilator active ingredient in combination with any analgesic(s) or analgesic-antipyretic(s), anticholinergic, antihistamine, oral antitussive, or stimulant active ingredient. The agency invited interested persons to submit written comments and new data demonstrating the safety and effectiveness of those conditions not classified in Category I (53 FR 30522 at 30560). The agency did not receive any comments in response to its request for such information concerning the proposed Category II status of any of the above-mentioned OTC cough-cold combination drug products containing an oral bronchodilator.

Accordingly, in this final rule the agency is finalizing the nonmonograph status of any oral bronchodilator active ingredient in combination with any analgesic(s) or analgesic-antipyretic(s), anticholinergic, antihistamine, oral antitussive, or stimulant active ingredient. Thus, any drug product labeled, represented, or promoted for use as an OTC cough-cold combination drug that contains any oral bronchodilator active ingredients in combination with any of these specific active ingredients may be considered a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)) and misbranded under section 502 of the act (21 U.S.C. 352). These specific combination drug products can not be marketed for OTC cough-cold use unless they are the subject of an approved application under section 505 of the act (21 U.S.C. 355) and part 314 of the regulations (21 CFR part 314). Any OTC cough-cold combination drug product included in new § 310.545(a)(6)(iv)(D) that is initially introduced or initially delivered for introduction into interstate commerce after the effective date stated in § 310.545(d)(33) of this final rule that is not in compliance with the regulations is subject to regulatory action.

III. Analysis of Impacts

The agency did not receive any comments in response to its request in the tentative final monograph (53 FR 30522 at 30560) for specific comment on the economic impact of this rulemaking. FDA has examined the impacts of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The purpose of this final rule is to declare any oral bronchodilator active ingredient in combination with any analgesic(s) or analgesic-antipyretic(s), anticholinergic, antihistamine, oral antitussive, or stimulant active ingredient as not generally recognized as safe and effective. The agency does not believe that any of these combination drug products are currently marketed OTC. Therefore, this final rule should have no economic impact on any manufacturer.

Under the Unfunded Mandates Reform Act, FDA is not required to prepare a statement of costs and benefits for this final rule because this final rule is not expected to result in an expenditure that would exceed $100 million adjusted for inflation in any one year.

The agency certifies that the final rule will not have a significant impact on a substantial number of small entities.

IV. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that is categorically excluded from the preparation of an environmental assessment because these actions, as a class, will not result in the production or distribution of any substance and therefore will not result in the production of any substance into the environment.

V. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b-360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b-263n.

2. Section 310.545 is amended by adding paragraph (a)(6)(iv)(D), by revising paragraph (d) introductory text, by adding and reserving paragraph (d)(32), and by adding paragraph (d)(33) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(6) * * *

(iv) * * *

(D) Approved as of October 29, 2001. Any oral bronchodilator active ingredient (e.g., ephedrine, ephedrine

hydrochloride, ephedrine sulfate, racephedrine hydrochloride, or any other ephedrine salt) in combination with any analgesic(s) oranalgesic-antipyretic(s), anticholinergic, antihistamine, oralantitussive, or stimulant active ingredient.

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initiallyintroduced or initially delivered for introduction intointerstate commerce after the dates specified in paragraphs(d)(1) through (d)(33) of this section.

* * * * *

(32) [Reserved]

(33) October 29, 2001, for products subject to paragraph (a)(6)(iv)(D) of this section.

Dated: September 20, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–24127 Filed 9–26–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8964]

RIN 1545–AY55

Liabilities Assumed in Certain Corporate Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the assumption of liabilities in certain corporate transactions under section 301 of the Internal Revenue Code. These final regulations affect corporations and their shareholders. Changes to the applicable law were made by the Miscellaneous Trade and Technical Corrections Act of 1999.

DATES: *Effective Date*: These regulations are effective September 27, 2001.

Applicability Date: For dates of applicability, see the Effective Date portion of the preamble under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Douglas Bates (202) 622–7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Changes to the applicable law were made by the Miscellaneous Trade and Technical Corrections Act of 1999, Public Law 106–36 (113 Stat. 127). On January 4, 2001, temporary regulations (TD 8924) were published in the **Federal Register** (66 FR 723) under section 301 of the Internal Revenue Code, relating to liabilities assumed in connection with a distribution of property made by a corporation with respect to its stock. A notice of proposed rulemaking cross-referencing the temporary regulations was published in the **Federal Register** for the same day (66 FR 748). No public hearing was requested or held.

No written comments responding to the notice were received. This document adopts, without substantive change, final regulations with respect to the notice of proposed rulemaking.

Effective Date

The regulations apply generally to distributions occurring after January 4, 2001. The regulations also apply to distributions occurring on or prior to January 4, 2001, if the distribution is made as part of a transaction described in, or substantially similar to, the transaction in Notice 99–59 (1999–2 C.B. 761), including transactions designed to reduce gain. Under section 7805(b)(3), the Secretary may provide that any regulation may take effect or apply retroactively to prevent abuse. These regulations are being applied retroactively to prevent the abuse described in Notice 99–59. No inference should be drawn regarding the tax treatment of distributions not covered by these regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

It is hereby certified that these final regulations do not have a significant economic impact on a substantial number of small entities. These final regulations under section 301 address distributions by corporations in which liabilities are assumed by the shareholders or in which the distributed property is subject to liabilities. These final regulations provide that the amount of a distribution under section 301 will be reduced by the amount of any liability that is treated as assumed by the distributee within the meaning of section 357(d).

These regulations apply to persons receiving distributions of property in which the property is subject to a liability, or in which liabilities are assumed by the distributee. These regulations, however, will affect only those persons described in the preceding sentence that would have, but for the regulations, considered liabilities to have been assumed in circumstances other that those described in section 357(d). Therefore, most businesses will not be affected by the final regulations in any given year. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking accompanying these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Michael N. Kaibni of the Office of the Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *. Section 1.301–1 also issued under 26 U.S.C. 357(d)(3). * * *

Par. 2. Section 1.301–1 is amended by revising paragraph (g) to read as follows:

§ 1.301–1 Rules applicable with respect to distributions of money and other property.

* * * * *

(g) *Reduction for liabilities*—(1) *General rule*. For the purpose of section 301, no reduction shall be made for the amount of any liability, unless the liability is assumed by the shareholder within the meaning of section 357(d).

(2) *No reduction below zero*. Any reduction pursuant to paragraph (g)(1) of this section shall not cause the amount of the distribution to be reduced below zero.

(3) *Effective dates*—(i) *In general*. This paragraph (g) applies to distributions occurring after January 4, 2001.

(ii) *Retroactive application*. This paragraph (g) also applies to

distributions made on or before January 4, 2001, if the distribution is made as part of a transaction described in, or substantially similar to, the transaction in Notice 99–59 (1999–2 C.B. 761), including transactions designed to reduce gain (see § 601.601(d)(2) of this chapter). For rules for distributions on or before January 4, 2001 (other than distributions on or before that date to which this paragraph (g) applies), see rules in effect on January 4, 2001 (see § 1.301–1(g) as contained in 26 CFR part 1 revised April 1, 2001).

* * * * *

§ 1.301–1T [Removed]

Par. 3. Section 1.301–1T is removed.

Approved: September 17, 2001.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Mark A. Weinberger,

Assistant Secretary of the Treasury for Tax Policy.

[FR Doc. 01–23985 Filed 9–26–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF–466; Re: Notice No. 915]

RIN 1512–AC26

Addition of New Grape Variety Names for American Wines (2000R–307P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Alcohol, Tobacco, and Firearms (ATF) is adding two new names, ''Counoise'' and ''St. Laurent,'' to the list of prime grape variety names for use in designating American wines.

EFFECTIVE DATE: Effective November 26, 2001.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Bureau of Alcohol, Tobacco and Firearms, Regulations Division, 111 W. Huron Street, Room 219, Buffalo, NY 14202–2301; Telephone (716) 551–4048.

SUPPLEMENTARY INFORMATION:

1. Background

Under 27 CFR 4.23 (b), a wine bottler may use a grape variety name as the designation of a wine if not less than 75 percent of the wine (51 percent in circumstances detailed in § 4.23(c)) is derived from that grape variety. Under § 4.23(d), a bottler may use two or more grape variety names as the designation of a wine if:

- All grapes used to make the wine are the labeled varieties;
- The percentage of the wine derived from each grape variety is shown on the label; and
- If labeled with multiple appellations, the percentage of the wine derived from each varietal from each appellation is shown on the label.

Treasury Decision ATF–370 (61 FR 522), January 8, 1996, adopted a list of grape variety names that ATF has determined to be appropriate for use in designating American wines. The list of prime grape names and their synonyms appears at § 4.91, while additional alternative grape names temporarily authorized for use are listed at § 4.92.

ATF has received petitions proposing that new grape variety names be listed in § 4.91. Under § 4.93 any interested person may petition ATF to include additional grape varieties in the list of prime grape names. Information with a petition should provide evidence of the following:

- Acceptance of the new grape variety;
- The validity of the name for identifying the grape variety;
- That the variety is used or will be used in winemaking; and
- That the variety is grown and used in the United States.

For the approval of names of new grape varieties, the petition may include:

- A reference to the publication of the name of the variety in a scientific or professional journal of horticulture or a published report by a professional, scientific or winegrowers' organization;
- A reference to a plant patent, if patented; and
- Information about the commercial potential of the variety, such as the acreage planted and its location or market studies.

Section 4.93 also places certain eligibility restrictions on the approval of grape variety names. A grape variety name will not be approved:

- If the name has previously been used for a different grape variety;
- If the name contains a term or name found to be misleading under § 4.39; or
- If the name of a new grape variety contains the term ''Riesling.''

The Director reserves the authority to disapprove the name of a new grape variety developed in the United States if the name contains words of geographical significance, place names, or foreign words which are misleading under § 4.39. The Director will not approve the use of a grape variety name that is misleading.

2. Rulemaking

Counoise Petition

Tablas Creek Vineyard in Paso Robles, California, petitioned ATF proposing the addition of the name ''Counoise'' to the list of prime grape variety names approved for the designation of American wines. Counoise is a red varietal originally from the Rhône region of France, where it has traditionally been a component of Châteauneuf-du-Pape.

The petitioner submitted the following published references to Counoise to establish its acceptance as a grape and the validity of its name:

- Cépages et Vignobles de France, Volume II, by Pierre Galet, 1990, pp. 106–107.
- Catalogue of Selected Wine Grape Varieties and Clones Cultivated in France, published by the French Ministry of Agriculture, Fisheries and Food, 1997, pp. 67 & 216.
- Traité General de Viticulture Ampelographie, Volume II, by P. Viala and V. Vermoral, 1991, pp. 78–80.
- Guide to Wine Grapes, Oxford University Press, 1996, by Jancis Robinson, p. 61.

The first three references are scientific articles that discuss the grape's origin, cultivation, and ampelography (the study and classification of grapevines). The Guide to Wine Grapes, intended for the general reader, discusses the cultivation of Counoise in the Rhône region and notes that it is ''one of the more rarefied ingredients in red Châteauneuf-du-Pape.''

Tablas Creek Vineyard stated that it imported the Counoise plant into the USDA station in Geneva, New York, in 1990. The plant was declared virus free in 1993 and shipped bare-root to Tablas Creek Vineyard in Paso Robles, California in February 1993. The winery multiplied, grafted and started planting Counoise in 1996.

The petitioner stated that the Counoise grape is currently grown and used in the United States in winemaking. It reported that in 1999 and 2000, it shipped several orders for Counoise grafted vines, own-root plants and budwood to vineyards in California, Washington, and Arizona. When ATF contacted some of these vineyards, they reported that the plants are doing well and that they plan to produce wine from the resulting grapes.

In addition, the petitioner stated that Counoise has enormous commercial potential in California. The variety is easy to graft and moderately vigorous. It

is well adapted to most California regions, ripening fairly late in the cycle, after Grenäche but before Mourvèdre and Cabernet Sauvignon. Tablas Creek has had three crops off their 3.5 acre planting. The winery reported that the 1998 harvest had a brix of 23.6 with a pH of 3.4, while the 1999 harvest had a brix of 26.9 with a pH of 3.4. The petitioner further stated that the wine is well-colored and rich, with excellent aromatics and spice.

St. Laurent Petition

Mr. Robin Partch of Northern Vineyards Winery in Stillwater, Minnesota, petitioned ATF for the addition of the name ''St. Laurent'' to the list of prime grape variety names approved for the designation of American wines. St. Laurent is a red Vitis vinifera grape originally from France, but now grown mainly in central Europe, especially Austria.

The petitioner submitted several published references to St. Laurent as evidence of its acceptance and name validity, including the following:

- The Oxford Companion to Wine, 1st edition, edited by Jancis Robinson, 1994, pp. 839–840.
- Production of Grapes and Wine in Cool Climates, by David Jackson and Danny Schuster, 1994, pp. 105–106.
- Vines, Grapes and Wines, by Jancis Robinson, 1986, p. 221. According to these references, St. Laurent is a deeply colored grape with a thick skin, which makes it disease resistant. It buds early and is thus susceptible to spring frosts, but it also ripens early.

The petitioner offered the following evidence that the St. Laurent grape is grown and used in the U.S. for winemaking. According to the petitioner, one commercial grower in Minnesota, a member of the Minnesota Winegrowers Cooperative, planted about ¼ an acre of St. Laurent in 1995. The petitioner has made wine from the 1999 crop and is pleased with the results. The grower reported that the grape's disease-resistance and tendency to ripen early make it suitable for cooler climates with a short growing season.

The petitioner reported that St. Laurent plants are also being grown in the collection of the University of Minnesota. This was confirmed by Peter Hemstad, a research viticulturist at the University's Horticulture Research Center, who reported that he has made a good quality red wine from the University's grapes. Mr. Hemstad stated that he expects St. Laurent to become more widely planted in the U.S., especially in cooler climates. He further stated that he would recommend St. Laurent to growers in cooler climate states such as Minnesota, Michigan, and New York.

Notice No. 915

Based on the evidence submitted by the petitioners, ATF published Notice 915 on April 17, 2001, proposing to add the names ''Counoise'' and ''St. Laurent'' to the list of approved names in § 4.91. ATF received two comments in response to the notice. One was from the vineyard manager of the Viticulture and Enology Department at the University of California at Davis, who noted that Counoise has been in the university's collections since 1975. The other comment, from a London wine merchant, discussed the marketability of Counoise and St. Laurent wines in the export market.

After reviewing the evidence and comments, ATF has decided that sufficient evidence has been provided to satisfy the requirements under § 4.93. ATF is therefore amending § 4.91 to include the names ''Counoise'' and ''St. Laurent.''

3. Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Final Rule?

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

How Does the Regulatory Flexibility Act Apply to This Final Rule?

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will permit the use of the grape varietal names ''Counoise'' and ''St. Laurent.'' No negative impact on small entities is expected. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

This is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

4. Drafting Information

The principal author of this document is Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspections, Imports, Labeling, Packaging and containers, Wine.

Authority and Issuance

Accordingly, 27 CFR part 4, Labeling and Advertising of Wine, is amended as follows:

Paragraph 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.91 is amended by republishing the introductory text and adding the names ''Counoise'' and ''St. Laurent,'' in alphabetical order, to the list of prime grape names, to read as follows:

§ 4.91 List of approved prime names.

The following grape variety names have been approved by the Director for use as type designations for American wines. When more than one name may be used to identify a single variety of grape, the synonym is shown in parentheses following the prime name. Grape variety names may appear on labels of wine in upper or in lower case, and may be spelled with or without the hyphens or diacritic marks indicated in the following list.

* * * * *

Counoise

* * * * *

St. Laurent

* * * * *

July 11, 2001.

Bradley A. Buckles,

Director.

Approved: August 23, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement).

[FR Doc. 01–24053 Filed 9–26–01; 8:45 am]

BILLING CODE 4810–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[CGD01–01–162]

RIN 2115–AA84, 2115–AA97, and 2115–AA98

Anchorages, Regulated Navigation Areas, Safety and Security Zones; Boston Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing three temporary Regulated Navigation Areas (RNAs) and one

temporary Anchorage Ground for certain vessels over 300 gross tons operating within the Boston Marine Inspection Zone and Captain of the Port Zone. This action is necessary to ensure public safety and prevent sabotage or terrorist acts. The rule will regulate the circumstances under which certain vessels may enter, transit or operate within Boston Harbor, Salem Harbor and Weymouth Fore River Channel and establish a temporary Massachusetts Bay Anchorage Ground for certain vessels awaiting the Captain of the Port's permission to enter the Regulated Navigation Areas. This rule also establishes five safety and security zones excluding all vessels from waterfront facilities and other areas within the Captain of the Port Zone at high risk from sabotage and terrorist acts.

DATES: This rule is effective from September 18, 2001 until March 16, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Dave Sherry, Marine Safety Office Boston, Waterways Management Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon on the same day. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. This rulemaking is urgently required to prevent future terrorist strikes within and adjacent to waters within the Boston Marine Inspection Zone and Captain of the Port Zone. The delay inherent in the NPRM process is contrary to the public interest insofar as it may render individuals, vessels and facilities within and adjacent to the Boston Marine Inspection Zone and Captain of the Port Zone vulnerable to subversive activity, sabotage or terrorist attack.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures contemplated by the rule are intended to prevent future terrorist attack against individuals, vessels and waterfront facilities within or adjacent to the Boston Marine Inspection Zone and Captain of the Port Zone. Immediate action is required to accomplish these objectives. Any delay in the effective date of this rule is impracticable and contrary to the public interest.

Background and Purpose

On September 11, 2001, terrorists launched attacks on civilian and military targets within the United States killing large numbers of people and damaging properties of national significance. Vessels operating within the Boston Marine Inspection Zone and Captain of the Port Zone present possible targets of terrorist attack or platforms from which terrorist attacks may be launched upon other vessels, waterfront facilities and adjacent population centers. The Coast Guard has established a temporary anchorage ground on Massachusetts Bay and Regulated Navigation Areas within the waters of Boston Harbor, Salem Harbor and Weymouth Fore River Channel, as part of a comprehensive, port security regime designed to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts. The Captain of the Port will determine the threat posed by and to affected vessels before they are allowed to enter the Regulated Navigation Areas and may establish conditions under which they are allowed to enter, transit or operate within those areas. Prior to the determination of whether and under what conditions a vessel may enter, transit or operate within the Regulated Navigation Areas, vessels may be directed by the Captain of the Port to temporarily anchor in the temporary anchorage area established in Massachusetts Bay. In addition, the Coast Guard has established five (5) safety and security zones having identical boundaries, which restrict entry into or movement within portions of Boston Inner Harbor, Salem Harbor and Plymouth Bay.

Regulated Navigation Area and Anchorage Area

The rule establishes three Regulated Navigation Areas (RNAs) comprised of the waters within Boston Inner Harbor, Salem Inner Harbor and the Weymouth Fore River Channel, respectively. Towing vessels, tankers, tug and barge combinations, research vessels, container, dry bulk ships and passenger ships over 300 gross tons are required to obtain authorization from the Captain of the Port before entering any of these RNAs. The rule does not apply to commuter ferries, recreational boats or commercial fishing vessels.

In order to obtain authorization, a vessel subject to this rule is required to submit a ''Notice of Arrival'' information sheet and its crew list to Coast Guard Marine Safety Office Boston at least 24 hours in advance of its intended entry into an RNA. In addition, it will be required to undergo an inspection to the satisfaction of the Captain of the Port. Vessels awaiting Captain of the Port inspection or authorization will be directed to anchor in the Massachusetts Bay Anchorage Grounds established by this rule. Vessels to which this rule is applicable must also receive approval prior to leaving the port. Vessels will be required to notify the Captain of the Port of any changes in crew while in Port prior to receiving authorization to depart any of the Regulated Navigation Areas.

The Captain of the Port may authorize a vessel subject to this rule to enter an RNA under such circumstances and conditions as he deems appropriate to minimize the threat of injury to the vessel, the port, waterfront facilities or adjacent population centers resulting from sabotage or terrorist acts launched against or from the vessel.

Violations of the RNA regulations are punishable by civil penalties (not to exceed $25,000 per violation), criminal penalties (imprisonment for not more than 6 years and a fine of not more than $250,000) and in rem liability against the offending vessel.

Safety and Security Zones

The rule also establishes five distinct safety and security zones having identical boundaries. Four of these zones are being established by reference to a radius around a particular coordinate or easily identifiable landmark. One zone is being established by reference to readily identifiable boundaries. All of the zones are being established in order to protect the waterfront facilities, terminals, power plants, as well as persons and vessels from subversive or terrorist acts.

No person or vessel may enter or remain in the prescribed safety and security zones at any time without the permission of the Captain of the Port. Each person or vessel in a safety and security zone shall obey any direction or

order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a safety and security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port.

Any violation of any safety or security zone described herein, is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $100,000), in rem liability against the offending vessel, and license sanctions.

Regulatory Evaluation

While this rule may be later determined to be a significant regulatory action under section 3(f) of Executive Order 12866, requiring further analysis of potential costs and benefits under section 6(a)(3) of that order, immediate implementation of this rule is necessary to ensure the safety and security of the Port and, as such, must be made without the requisite, prior administrative finding. The Office of Management and Budget has not reviewed it under that order. It may, or may not, be significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). However, the sizes of the zones are the minimum necessary to provide adequate protection for the public, vessels, and vessel crews. Any vessels seeking entry into or movement within the safety and security zones must request permission from the Captain of the Port or his authorized patrol representative. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting the public, vessels, and vessel crews from the further devastating consequences of the aforementioned acts of terrorism, and from potential future sabotage or other subversive acts, accidents, or other causes of a similar nature.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard has not yet determined whether this proposal will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. The Coast Guard is not presently able to certify under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities. However, given the continued risk and potential damage to the national security interests of the United States, in addition to the need to protect and safeguard innocent civilians within and near the port, it is necessary to implement this regulation before said analysis may be fully accomplished. Maritime advisories will be initiated by normal methods and means and will be widely available to users of the area.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call Lieutenant (junior grade) Dave Sherry, Marine Safety Office Boston, at (617) 223–3000. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it

does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 110

Anchorage Grounds.

33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 110 and 165 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Add temporary § 110.T01–162 to read as follows:

§ 110.T01–162 Anchorage Grounds: Massachusetts Bay.

(a) *Anchorage grounds.* The waters of Massachusetts Bay enclosed by a line beginning at position 42°30′00″N, 070°32′00″W and running east to position 42°30′00″N, 070°25′00″W; thence running south to position 42°23′00″N, 070°25′00″W; thence running west to position 42°23′00″N, 070°32′00″ and thence running north back to the beginning position.

(b) *Effective dates.* This regulation is effective from September 18, 2001 until March 16, 2002.

(c) *Regulations.* (1) The Massachusetts Bay Anchorage Grounds are reserved for vessels over 300 gross tons which have been directed to the anchorage grounds while awaiting the Captain of the Port's authorization to enter Regulated Navigation Areas comprised of the waters within Boston Inner Harbor, Salem Inner Harbor or Weymouth Fore River Channel.

(2) Vessels anchored in this area shall move promptly upon notification by the Captain of the Port.

(3) When directed to enter the anchorage by the Captain of the Port, vessels shall do so at safe speed in accordance with the applicable navigation rules.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

3. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

4. Add temporary § 165.T01–162 to read as follows:

§ 165.T01–162 Regulated Navigation Area: Boston Marine Inspection Zone and Captain of the Port Zone.

(a) *Regulated navigation area.* The following waters within the boundaries of the Boston Marine Inspection Zone and Captain of the Port Zone are established as Regulated Navigation Areas:

(1) *Regulated Navigation Area A.* All waters of the Boston Inner Harbor, including the Mystic River, Chelsea River, and Reserved Channel west of a line running from Deer Island Light at position 42°20′–25″N, 070°57′–15″W to Long Island at position 42°19′–48″N, 070°57′–15″W, and west of the Long Island Bridge, running from Long Island to Moon Head.

(2) *Regulated Navigation Area B.* All waters of the Salem Inner Harbor southwest of a line running from Juniper Point at position 42°32′–02″N, 070°51′–52″ W and Fluen Point at position 42°31′–16″N, 070°51′–12″W.

(3) *Regulated Navigation Area C.* All waters of the Weymouth Fore River Channel, Hingham Bay and Hull Bay, south of a line running from Windmill Point at position 42°18′–14″N, 070–55′–19″ to Peddocks Island at position 42°18′–10″N, 070°55′–38″W and a east of a line running across West Gut from West Head at position 42°17′–13″N, 070°56′–55″W and Nut Island at position 42°16′–48″N, 070°57′–15″W.

(b) *Applicability.* This section applies to all towing vessels, tankers, tug and barge combinations, research vessels, container and dry bulk vessels, and passenger ships over 300 gross tons. It does not apply to commuter boats, recreational boats or commercial fishing vessels.

(c) *Effective dates.* This section is effective from September 18, 2001 until March 16, 2002.

(d) *Regulations.* (1) Any vessel intending to enter, transit or operate within the Regulated Navigation Areas is required to submit its crew list and a ''Notice of Arrival'' information sheet to the Captain of the Port at Coast Guard Marine Safety Office Boston no less than 24 hours in advance of the vessel's intended port call. ''Notice of Arrival'' information sheets may be obtained from Marine Safety Office Boston. Requests for and submission of forms may be made via facsimile machine number (617) 223–3032.

(2) Any vessel intending to transit, operate within, or leave the Regulated Navigation Areas is required to submit a notification of any change of crew that occurred while in port, if any, including a list of old and new crew members, and the names, nationality, and passport numbers of any crew who have left the vessel.

(3) Vessels must be inspected to the satisfaction of the United States Coast Guard and obtain authorization from the Captain of the Port before entering the Regulated Navigation Areas.

(4) Vessels awaiting inspection or Captain of the Port authorization to enter Regulated Navigation Areas will anchor in the Massachusetts Bay Anchorage Ground.

5. Add temporary °165.T01–171 to read as follows:

§ 165.T01–171 Safety and Security Zones: Boston Marine Inspection Zone and Captain of the Port Zone.

(a) *Safety and security zones.* The following are established as safety and security zones:

(1) All waters of the Mystic River within a five hundred (500) yard radius of the Distrigas terminal pier in Everett, MA.

(2) All waters of Boston Harbor, including the Reserved Channel, west of a line connecting the Southeastern tip of the North Jetty and the Northeastern corner of the Paul W. Conley Marine Terminal pier.

(3) All waters of Boston Inner Harbor within a two hundred (200) yard radius of Pier 2 at the Coast Guard Integrated Support Command Boston, Boston, MA.

(4) All waters of Plymouth Bay within a five hundred (500) yard radius of the cooling water discharge canal at the Pilgrim Nuclear Power Plant, Plymouth, MA.

(5) All waters of Salem Harbor within a five hundred (500) yard radius of the PG & E U.S. Generating power plant pier in Salem, MA.

(b) *Effective dates.* This section is effective from September 18, 2001 until March 16, 2002.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 and 165.33 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the

designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: September 18, 2001.

G.N. Naccara,

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

[FR Doc. 01–24236 Filed 9–26–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–125]

RIN 2115–AA97

Security Zone; Lake Ontario, Rochester, New York

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing the navigable waters of Lake Ontario in the vicinity of the Ginna nuclear power plant. This security zone is necessary to prevent damage to this nuclear power plant. Unauthorized entry into this security zone is prohibited.

DATES: This rule is effective from September 12, 2001, through June 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–01–125 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd., Buffalo, New York 14203 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant David Flaherty, U.S. Coast Guard Marine Safety Office Buffalo, (716) 843–9574.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard had insufficient advance notice to publish an NPRM followed by a temporary final rule that would be effective before the necessary date. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or damage to property.

Background and Purpose

This temporary security zone is necessary to ensure the security of the Ginna nuclear power plant, as a result of the terrorist attacks on the United States on September 11, 2001. This security zone consists of all navigable waters of Lake Ontario within a line from 43°16.9′ N, 77°18.9′ W; north to 43°17.5′ N, 77°18.9′ W; east to 43°17.5′ N, 77°18.3′ W; south to 43°16.7′ N, 77°18.3′ W; back to the starting point 43°16.9′ N, 77°18.9′ W. (NAD 83). Entry into, transit through or anchoring within this security zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The designated on-scene representative will be the Patrol Commander and may be contacted via VHF/FM Marine Channel 16.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Buffalo (see **ADDRESSES**.)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, it is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–101 is added to read as follows:

§ 165.T09–101 Security Zone; Lake Ontario, Rochester, NY.

(a) *Location.* The following area is a temporary security zone: all navigable waters of Lake Ontario within a line from 43°16.9′ N, 77°18.9′ W; north to 43°17.5′ N, 77°18.9′ W; east to 43°17.5′ N, 77°18.3′ W; south to 43°16.7′ N, 77°18.3′ W; back to the starting point 43°16.9′ N, 77°18.9′ W. (NAD 83).

(b) *Effective time and date.* This section is effective from September 12, 2001, through June 15, 2002.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Buffalo, or the designated Patrol Commander. The designated Patrol Commander on scene may be contacted on VHF–FM Channel 16.

Dated: September 12, 2001.

S. D. Hardy,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 01–24241 Filed 9–26–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–124]

RIN 2115–AA97

Security Zone; Lake Ontario, Oswego, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing the navigable waters of Lake Ontario in the vicinity of the Nine Mile Point and James A. Fitzpatrick nuclear power plants. This security zone is necessary to prevent damage to these nuclear power plants. Unauthorized entry into this security zone is prohibited.

DATES: This rule is effective from September 12, 2001, through June 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–01–124 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd., Buffalo, New York 14203 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant David Flaherty, U. S. Coast Guard Marine Safety Office Buffalo, (716) 843–9574.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard had insufficient advance notice to publish an NPRM followed by a temporary final rule that would be effective before the necessary date. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or damage to property.

Background and Purpose

A temporary security zone is necessary to ensure the security of the Nine Mile Point and James A. Fitzpatrick nuclear power plants as a result of the terrorist attacks on the United States on September 11, 2001. The security zone consists of all navigable waters of Lake Ontario within a line from 43°30.8′ N, 76°25.7′ W; north to 43°31.2′ N, 76°25.7′ W; east-northeast to 43°31.6′ N, 76°24.9′ W; east to 43°31.8′ N, 76°23.2′ W; south to 43°31.5′ N, 76°23.2′ W. (NAD 83). Entry into, transit through or anchoring within this security zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The designated on-scene representative will be the Patrol Commander and may be contacted via VHF/FM Marine Channel 16.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory

Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Buffalo (*see* **ADDRESSES**).

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, it is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–999 is added to read as follows:

§ 165.T09–999 Security Zone; Lake Ontario, Oswego, NY.

(a) *Location.* The following area is a temporary security zone: all waters of Lake Ontario within a line from 43°30.8′ N, 76°25.7′ W; north to 43°31.2′ N, 76°25.7′ W; east-northeast to 43°31.6′ N, 76°24.9′ W; east to 43°31.8′ N, 76°23.2′ W; south to 43°31.5′ N, 76°23.2′ W.(NAD 83).

(b) *Effective time and dates.* This section is effective from September 12, 2001, through June 15, 2002.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Buffalo, or the designated Patrol Commander. The designated Patrol Commander on scene may be contacted on VHF–FM Channel 16.

Dated: September 12, 2001.

S. D. Hardy,

Captain, U.S. Coast Guard,Captain of the Port Buffalo.

[FR Doc. 01–24237 Filed 9–26–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Charleston–01–097]

RIN 2115–AA97

Security Zones; Port of Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving security zone 100 yards around all tank vessels, passenger vessels and military pre-positioned ships entering or departing the Port of Charleston. We are also establishing temporary fixed security zones 100 yards around all tank vessels, passenger vessels and military pre-positioned ships when these vessels are moored in the Port of Charleston. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port, Charleston, South Carolina or his designated representative.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP Charleston 1–097] and are available for inspection or copying at Marine Safety Office Charleston, 196 Tradd Street, Charleston, S.C. 29401 between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

DATES: This regulation is effective from 4 a.m. on September 14, 2001 through 11:59 p.m. on October 15, 2001.

FOR FURTHER INFORMATION CONTACT: LT James V. Mahney, Coast Guard Marine Safety Office Charleston, at (843) 724–7686.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States. The Coast Guard will issue a broadcast notice to mariners and place Coast Guard vessels in the vicinity of these zones to advise mariners of the restriction.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Port of Charleston, South Carolina, against tank vessels, cruise ships and military pre-positioned vessels entering, departing and moored within this port. There is a risk that subversive activity could be launched by vessels or persons in close proximity to the Port of Charleston, South Carolina against tank vessels, cruise ships and military pre-positioned vessels entering, departing and moored within these ports. Military pre-positioned ships are U.S. commercial ships on long-term charter to the Military Sealift Command. They are utilized to transport military equipment and cargo. There will be Coast Guard and local police department patrol vessels on scene to monitor traffic through these areas. Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port, Charleston, South Carolina.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because small entities may be allowed to enter on a case by case basis with the authorization of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Environmental

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or use. We have determined that it is not a ''significant energy action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T07–097 is added to read as follows:

§ 165.T07–097 Security Zone; Port of Charleston, South Carolina.

(a) *Regulated area.* Temporary moving security zones are established 100 yards around all tank vessels, passenger vessels and military pre-positioned ships during transits entering or departing the port of Charleston, South Carolina. Temporary fixed security zones are established 100 yards around all tank vessels, passenger vessels and military pre-positioned ships docked in the Port of Charleston, South Carolina.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port, or a Coast Guard commissioned, warrant, or petty officer designated by him. The Captain of the Port will notify the public via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 13 and 16 (157.1 MHz) of all active security zones in port by identifying the names of the vessels around which they are centered.

(c) *Dates.* This section becomes effective at 4 a.m. on September 14, 2001 and will terminate at 11:59 p.m. on October 15, 2001.

Dated: September 13, 2001.

G. W. Merrick,

Captain, U. S. Coast Guard, Captain of the Port.

[FR Doc. 01–24238 Filed 9–26–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–128]

RIN 2115–AA97

Security Zone; Saint Lawrence River, Massena, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing United States navigable waters of the St. Lawrence River in the vicinity of the Moses-Saunders Power Dam. The security zone is necessary to prevent damage to the dam. Unauthorized entry into this security zone is prohibited.

DATES: This rule is effective from September 12, 2001, through June 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–01–128] and are available for inspection or copying at the U.S. Coast Guard Marine Safety Office Buffalo, 1 Furhmann Blvd., Buffalo, New York 14203, between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant David Flaherty, U. S. Coast Guard Marine Safety Office Buffalo, (716) 843–9574.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. The Coast Guard for good cause finds that, under 5 U.S.C. 553(b)(B) and (d)(3), notice and public comment on the rule before the effective date of the rule and advance publication are impracticable and contrary to public interest. Immediate action is necessary to ensure the safety of life, property, the environment, as well as safe passage for vessels transiting this area. The conduct of notice and comment rulemaking proceedings and compliance with advance notice requirements present significant public safety concerns that outweigh the public interest in compliance with these provisions. Public rulemaking proceedings and advance publication could provoke consequences that would pose a risk of harm to the public, military personnel, and law enforcement personnel charged with enforcement of the security zone. This regulation is geographically limited and in effect for such limited duration that it meets the needs of national security with a minimal burden on the public.

Background and Purpose

This security zone is required to ensure the security of the Moses-Saunders Power Dam as a result of the terrorist attacks on the United States on September 11, 2001. Pursuant to this regulation, no vessel or person will be allowed to enter, transit through, or anchor in the security zone unless specifically authorized by the District Commander, the Captain of the Port Buffalo (COTP), or one of the Captain of the Port's designated representatives. The Captain of the Port or one of his

designated representatives can be reached on Marine Channel 16.

This security zone is established pursuant to the authority of Subpart D of part 165 of Title 33 of the Code of Federal Regulations and the Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including subparts 6.01 and 6.04 or part 6 Title 33 of the Code of Federal Regulations. See Executive Order 10173, as amended. The security zone is needed to protect the Moses-Saunders Power Dam on the St. Lawrence River. This zone in Massena, New York, encompasses United States navigable waters of the St. Lawrence River from the point 45°00.3′ N, 74°48.2′ W; east to the international border at 45°00.5′ N, 74°47.9′ W; then southeast along the international border to 45°00.3′ N, 74°47.6′ W; along the international border to 45°00.3′ N, 74°47.4′ W; southwest to 44°00.0′ N, 74°47.8′ W; northwest to 45°00.2′ N, 74°48.0′ W; back to starting point 45°00.3′ N, 74°48.2′ W. (NAD 83).

Vessels or persons violating this section are subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel, a monetary penalty of not more than $250,000, and imprisonment for not more than 10 years.

Regulatory Evaluation

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

The security zone covers a vital portion of the St. Lawrence River transited by commercial vessels and is being created to protect the Moses-Saunders Power Dam. In addition, the security zone is necessary to ensure the safety of land and adjacent waterfront facilities. The Coast Guard does not foresee any interruption to the passage of vessels through this area. While the vessels will need authorization to transit the zone, the Coast Guard expects this not to interfere with or delay their passage.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard considered whether this rule will have a significant impact on a substantial number of small businesses and not-for-profit organizations that are not dominant in their respective fields, and government jurisdictions with populations less than 50,000.

The Coast Guard certifies under section 605 (b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the St. Lawrence River in the vicinity of the Moses-Saunders Power Dam.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic will be allowed to pass through the zone with the permission of the COTP or his designated on scene representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding this rule so that they can better evaluate its effectiveness and participate in the rulemaking process. If your small business or organization is affected by this rule, and you have questions concerning its provisions or options for compliance, please contact the office listed in **ADDRESSES** in this preamble.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for Federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, it is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–103 is added to read as follows:

§ 165.T09–103 Security Zone: St. Lawrence River, Massena, New York.

(a) *Location.* The following area is designated a security zone: all waters of the St. Lawrence River encompassed by the points from 45°00.3′ N, 74°48.2′ W; east to the international border at 45°00.5′ N, 74°47.9′ W; then southeast along the international border to 45°00.3′ N, 74°47.6′ W; along the international border to 45°00.3′ N, 74°47.4′ W; southwest to 44°00.0′ N, 74°47.8′ W; northwest to 45°00.2′ N, 74°48.0′ W; back to starting point 45°00.3′ N, 74°48.2′ W. (NAD 83).

(b) *Effective dates.* This section is effective from September 12, 2001, through June 15, 2002.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Buffalo, or the designated Patrol Commander. The designated Patrol Commander on scene may be contacted on VHF-FM Channel 16.

Dated: September 12, 2001.

S.D. Hardy,

Commander, U.S. Coast Guard, Captain of the Port Buffalo, NY.

[FR Doc. 01–24239 Filed 9–26–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR PART 165

[CGD09–01–127]

RIN 2115–AA97

Security Zone; Snell and Eisenhower Locks, St. Lawrence Seaway, Massena, New York

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a security zone covering a portion of the St. Lawrence Seaway and adjacent land, including waterfront facilities, from a line approximately one-half mile east of the Snell Lock to a line approximately one mile west of the Eisenhower Lock, including all waters of the Wiley-Dondero Canal between the locks, in Massena, New York. No portion of the Grasse River is included in the zone. The security zone is necessary to prevent damage to the Snell and Eisenhower locks. Unauthorized entry into this security zone is prohibited.

DATES: This rule is effective from September 12, 2001, through June 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–01–127] and are available for inspection or copying at the U.S. Coast Guard Marine Safety Office Buffalo, 1 Furhmann Blvd, Buffalo, New York 14203, between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant David Flaherty, U.S. Coast Guard Marine Safety Office Buffalo, (716) 843–9574.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. The Coast Guard for good cause finds that, under 5 U.S.C. 553(b)(B) and (d)(3), notice and public comment on the rule before the effective date of the rule and advance publication are impracticable and contrary to public interest. Immediate action is necessary to ensure the safety of life, property, the environment, as well as safe passage for vessels transiting this area. The conduct of notice and comment rulemaking proceedings and compliance with advance notice requirements present significant public safety concerns that outweigh the public interest in compliance with these provisions. Public rulemaking proceedings and advance publication could provoke consequences that would pose a risk of harm to the public, military personnel, and law enforcement personnel charged with enforcement of the security zone. This regulation is geographically limited and is in effect for such a limited duration so as to meet the needs of national security while presenting a minimal burden on the public.

Background and Purpose

This security zone is required to ensure the security of the Snell and Eisenhower locks as a result of the terrorist attacks on the United States on September 11, 2001. Use of these locks is vital to national security. Pursuant to this regulation, no vessel or person will be allowed to enter, transit through, or anchor in the security zone unless specifically authorized by the District Commander, the Captain of the Port Buffalo (COTP), or one of the Captain of the Port's designated representatives. The Captain of the Port or one of his designated representatives can be reached on Marine Channel 16.

The security zone encompasses the area beginning at a line drawn from 44°59.17′ N, 74°46.01′ W; to 44°59.49′ N, 74°46.01′ W. These coordinates are on opposite sides of the Wiley-Dondero Canal 100 yards inland from the shoreline. The security zone then proceeds in a westerly direction, encompassing all waters in the canal and land 100 yards inland from the shoreline, along the Wiley-Dondero Canal past the Snell and Eisenhower Locks, to a line drawn from 44°58.75′ N, 74°52.35′ W; to 44°58.14′ N, 74°52.28′ W (NAD 83). These coordinates are on opposite sides of the Wiley-Dondero Canal 100 yards inland from the shoreline. The security zone does not include any portion of the Grasse River.

This security zone is established pursuant to the authority of Subpart D of part 165 of Title 33 of the Code of Federal Regulations and the Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including subparts 6.01 and 6.04 or part 6 Title 33 of the Code of Federal Regulations. See Executive Order 10173, as amended. The security zone is needed to protect persons, transiting vessels, adjacent waterfront facilities, and the adjacent land of the St. Lawrence River from a line approximately one-half mile east of the Snell Lock to a line approximately one mile west of the Eisenhower Lock, including all waters of the Wiley-

Dondero Canal between the locks, in Massena, New York.

Vessels or persons violating this section are subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel, a monetary penalty of not more than $250,000, and imprisonment for not more than 10 years.

Regulatory Evaluation

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

The security zone covers a vital portion of the St. Lawrence River transited by commercial vessels and is being created to protect the Snell and Eisenhower locks. In addition, the security zone is necessary to ensure the safety of land and adjacent waterfront facilities. The Coast Guard does foresee minor interruption to the passage of vessels through this area. While vessels will need authorization to transit the zone, the Coast Guard expects minimal interference with or delay in their passage.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) the Coast Guard considered whether this rule will have a significant impact on a substantial number of small businesses and not-for-profit organizations that are not dominant in their respective fields, and government jurisdictions with populations less than 50,000.

The Coast Guard certifies under section 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the St. Lawrence River up-river, between, and down-river of the Snell and Eisenhower Locks immediately until terminated by COTP Buffalo.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic will be allowed to pass through the zone after obtaining permission of the COTP or his designated on scene representative.

Assistance for Small Entities

Under section 213(a) of the small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding this rule so that they can better evaluate its effectiveness and participate in the rulemaking process. If your small business or organization is affected by this rule, and you have questions concerning its provisions or options for compliance, please contact the office listed in **ADDRESSES** in this preamble.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for Federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, it is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–102 is added to read as follows:

§ 165.T09–102 Security Zone: St. Lawrence Seaway, Massena, New York.

(a) *Location.* The following area is designated as a security zone: beginning at a line drawn from 44° 59.17′ N, 74° 46.01′ W to 44° 59.49′ N, 74° 46.01′ W. These coordinates are on opposite sides of the Wiley-Dondero Canal of the St. Lawrence Seaway, 100 yards inland from the shoreline. The security zone then proceeds in a westerly direction, encompassing all waters in the canal and land 100 yards inland from the shoreline, along the Wiley-Dondero Canal past the Snell and Eisenhower locks, to a line drawn from 44° 58.75′ N, 74° 52.35′ W; to 44° 58.14′ N, 74° 52.28′ W (NAD 83). These coordinates are on opposite sides of the Wiley-Dondero Canal 100 yards inland from the shoreline. The security zone does not include any portion of the Grasse River.

(b) *Effective dates.* This section is effective from September 12, 2001, through June 15, 2002.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Buffalo, or the designated Patrol Commander. The designated Patrol Commander on scene may be contacted on VHF–FM Channel 16.

Dated: September 12, 2001.

S.D. Hardy,

Commander, U.S. Coast Guard, Captain of the Port, Buffalo, NY.

[FR Doc. 01–24240 Filed 9–26–01; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4138a; FRL–7061–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Eleven Individual Sources Located in the Pittsburgh-Beaver Valley Area; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to receipt of a letter of adverse comment, EPA is withdrawing the direct final rule to approve revisions which establish reasonably available control technology (RACT) requirements for eleven major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) located in the Pittsburgh-Beaver Valley ozone nonattainment area. In the direct final rule published on August 21, 2001 (66 FR 43788), EPA stated that if it received adverse comment by September 20, 2001, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments from the Citizens for Pennsylvania's Future (PennFuture). EPA will address the comments received in a subsequent final action based upon the proposed action also published on August 21, 2001 (66 FR 43823). EPA will not institute a second comment period on this action.

EFFECTIVE DATE: The Direct final rule is withdrawn as of September 27, 2001.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford at (215) 814–2108.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 14, 2001.

James W. Newson,

Acting Regional Administrator, Region III.

Accordingly, the addition of § 52.2020(c)(172) is withdrawn as of September 27, 2001.

[FR Doc. 01–23631 Filed 9–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4142a; FRL–7060–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Eight Individual Sources Located in the Pittsburgh-Beaver Valley Area; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to receipt of a letter of adverse comment, EPA is withdrawing the direct final rule to approve revisions which establish reasonably available control technology (RACT) requirements for eight major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) located in the Pittsburgh-Beaver Valley ozone nonattainment area. In the direct final rule published on August 20, 2001 (66 FR 43492), EPA stated that if it received adverse comment by September 19, 2001, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments from the Citizens for Pennsylvania's Future (PennFuture). EPA will address the comments received in a subsequent final action based upon the proposed action also published on August 20, 2001 (66 FR 43550). EPA will not institute a second comment period on this action.

DATE: The Direct final rule is withdrawn as of September 27, 2001.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford at (215) 814–2108.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 14, 2001.

James W. Newson,

Acting Regional Administrator, Region III.

Accordingly, the addition of § 52.2020(c)(176) is withdrawn as of September 27, 2001.

[FR Doc. 01–23628 Filed 9–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4141a; FRL–7061–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO_X RACT Determinations for Armco Inc., Butler Operations Main Plant and Butler Operations Stainless Steel Plant Located in the Pittsburgh-Beaver Valley Area; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to receipt of a letter of adverse comment, EPA is withdrawing the direct final rule to approve revisions which establish reasonably available control technology (RACT) requirements for Armco Inc., Butler Operations Main Plant and Butler Operations Stainless Steel Plant, major sources of nitrogen oxides (NO_X) located in the Pittsburgh-Beaver Valley ozone nonattainment area. In the direct final rule published on August 22, 2001 (66 FR 44053), EPA stated that if it received adverse comment by September 21, 2001, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments from the Citizens for Pennsylvania's Future (PennFuture). EPA will address the comments received in a subsequent final action based upon the proposed action also published on August 22, 2001 (66 FR 44097). EPA will not institute a second comment period on this action.

DATE: The Direct final rule is withdrawn as of September 27, 2001.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford at (215) 814–2108.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 14, 2001.

James W. Newson,

Acting Regional Administrator, Region III.

Accordingly, the addition of § 52.2020(c)(175) is withdrawn as of September 27, 2001.

[FR Doc. 01–23630 Filed 9–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4143a; FRL–7061–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Eight Individual Sources Located in the Pittsburgh-Beaver Valley Area; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to receipt of a letter of adverse comment, EPA is withdrawing the direct final rule to approve revisions which establish reasonably available control technology (RACT) requirements for eight major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) located in the Pittsburgh-Beaver Valley ozone nonattainment area. In the direct final rule published on August 21, 2001 (66 FR 43783), EPA stated that if it received adverse comment by September 20, 2001, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments from the Citizens for Pennsylvania's Future (PennFuture). EPA will address the comments received in a subsequent final action based upon the proposed action also published on August 21, 2001 (66 FR 43822). EPA will not institute a second comment period on this action.

DATE: The Direct final rule is withdrawn as of September 27, 2001.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford at (215) 814–2108.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 14, 2001.

James W. Newson,

Acting Regional Administrator, Region III.

Accordingly, the addition of § 52.2020(c)(177) is withdrawn as of September 27, 2001.

[FR Doc. 01–23632 Filed 9–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–7057–3]

Approval and Promulgation of Implementation Plans: Texas State Implementation Plan—Transportation Control Measures Rule; Removal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Removal of amendments in direct final rule.

SUMMARY: Due to an adverse comment, EPA is removing the direct final rule to approve Texas Transportation Control Measures rule. In the direct final rule published on July 16, 2001 (66 FR 36921), we stated that if we received adverse comment by August 15, 2001, the rule would be withdrawn and would not take effect. EPA subsequently received an adverse comment, but did not publish the withdrawal notice prior to the effective date of the rule. In this action, EPA is removing the amendments published on July 16. EPA will address the comments received in a subsequent final action based upon the proposed action also published on July 16, 2001 (66 FR 36963). EPA will not institute a second comment period on this action.

EFFECTIVE DATE: This rule is effective as of September 27, 2001.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Air quality-transportation planning, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Transportation control measures, Volatile organic compounds.

Dated: September 6, 2001.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

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

PART 52—[AMENDED]

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

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

Subpart SS—Texas

2. In § 52.2270 the table in paragraph (c) is amended under Chapter 114 as follows:

(a) by removing Section 114.5, Transportation Planning Definition, under Subchapter A; and

(b) by removing Section 114.270, Transportation Control Measures, under Subchapter G.

3. In § 52.2270 the table in paragraph (e) is amended by removing ''Transportation Control Measures SIP Revision'', in the table entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP.''

[FR Doc. 01–24213 Filed 9–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 063–0046; FRL–7066–7]

Revisions to the Arizona State Implementation Plan, Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of a revision to the Pinal County Air Quality Control District (PCAQCD) portion of the Arizona State Implementation Plan (SIP). This revision was proposed in the **Federal Register** on July 17, 2001 and concerns volatile organic compound (VOC) emissions from organic solvents, dry cleaners, coating operations, and degreasers. We are approving the removal of a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This rule is effective on October 29, 2001.

ADDRESSES: You can inspect copies of the administrative record for this action

at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revision at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012

Pinal County Air Quality Control District, 31 North Pinal Street, Building F, Florence, AZ 85232

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1199.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Proposed Action

On July 17, 2001 (66 FR 37204), EPA proposed to approve the removal of the following rule from the Arizona SIP.

Local agency	Rule #	Rule title	Adopted	Submitted
PCAQCD	7–3–3.4	Organic Solvents (rescission)	10/12/95	11/27/95

We proposed to approve the rescission of this rule because we determined that it was consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we did not receive any comments.

III. EPA Action

Our assessment that the submitted rule rescission complies with the relevant CAA requirements has not changed. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving the removal of this rule from the Arizona SIP.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 26, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 17, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(46)(i)(D) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(46) * * *

(i) * * *

(D) Previously approved on April 12, 1982 in paragraph (c)(46)(i)(A) of this section and now deleted without replacement with respect to Pinal County only Rule 7–3–3.4.

* * * * *

[FR Doc. 01–24196 Filed 9–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA242–0294; FRL–7066–8]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a disapproval of revisions to the Imperial County Air Pollution Control District's (ICAPCD) portion of the California State Implementation Plan (SIP). These revisions concern visible emissions (VE) from different sources of air pollution. We are taking final action on Rule 401—Opacity of Emissions, a local rule regulating these different emission sources. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act) Act, our action maintains the existing version of this rule within the SIP.

EFFECTIVE DATE: This rule is effective on October 29, 2001.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

California Air Resources Board (CARB), Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814; and

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1226.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Proposed Action

On June 26, 2001 (6 FR 33930), EPA proposed a disapproval of the following rule submitted by CARB for incorporation into the SIP.

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
ICAPCD	401	Opacity of Emissions	09/14/99	05/26/00

We proposed a disapproval of Rule 401 because provisions of Rule 401 conflict with section 110 and part D of the Act and prevent full approval of this SIP revision. First, given the section 189 RACM requirement, Rule 401 should not grandfather existing sources as it does at section B.3. Second, California has not submitted the sections of the Health and Safety Code (HSC) cited in section C for SIP inclusion. Consequently, EPA can neither review, nor act on these incorporations by reference. While one remedy would be to include the full text of the desired exemptions within the rule, they would be subject to EPA review and approval. Finally, section 42350 of the HSC allows for variances to a district's opacity limits. We object to these variance provisions because they provide broad discretion to modify the SIP in violation of CAA sections 110(i), 110(l), and 193.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments concerning our proposed disapproval of Rule 401.

III. EPA Action

No comments were submitted in response to our proposed action on Rule 401 and our assessment of the rule remains unchanged. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing this disapproval of Rule 401. Our action preserves the versions of Rule 401 & 402 approved in 1989 within the federally approved SIP. These rules remain federally enforceable. As a result, this disapproval action does not trigger sanctions or Federal Implementation Plan time clocks under section 179 of the CAA.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13211

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that

EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

D. Executive Order 13132

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

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

F. Regulatory Flexibility Act

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

EPA's disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

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

G. Unfunded Mandates

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

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

H. National Technology Transfer and Advancement Act

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

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

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

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 26, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: August 24, 2001.

Sally Seymour,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.242 is amended by adding paragraph (a)(3) to read as follows:

§ 52.242 Disapproved rules and regulations.

(a) * * *

(3) Imperial County Air Pollution Control District.

(i) Rule 401, Opacity of Emissions submitted on May 26, 2000. Rule 401 submitted on June 9, 1987, is retained.

[FR Doc. 01–24217 Filed 9–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN138–2; FRL–7056–2]

Approval and Promulgation of Implementation Plans; IN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final rule, the EPA is announcing approval of a State Implementation Plan (SIP) revision submitted by the Indiana Department of Environmental Management (IDEM) on June 8, 2000. The revised SIP pertains to the Indiana motor vehicle inspection and maintenance (I/M) program. The purpose of this action is to approve certain amendments to the Indiana program, which EPA originally approved on March 19, 1996 (61 FR 11142). EPA proposed approval of the June 8, 2000 SIP revision submittal in the **Federal Register** on June 28, 2001 (66 FR 34391). Because EPA did not receive any public comments in response to its proposed approval, we are approving Indiana's submission.

DATES: This rule is effective on October 29, 2001.

ADDRESSES: Copies of this SIP revision request are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Francisco J. Acevedo at (312) 886–6061 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6061, e-mail: acevedo.francisco@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''you'' and ''me'' refer to the reader of this proposed rulemaking and to sources subject to the State rule addressed by this proposed rulemaking, and the terms ''we,'' ''us,'' or ''our'' refer to the EPA.

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A. What Is a State Implementation Plan (SIP)?

Section 110 of the Clean Air Act (Act or CAA) requires states to develop air pollution control regulations and strategies to ensure that state air quality meets the national ambient air quality standards established by the EPA. Each state must submit the regulations and emission control strategies to the EPA for approval and promulgation into the federally enforceable SIP.

Each federally approved SIP protects air quality primarily by addressing air pollution at its points of origin. The SIPs can be and generally are extensive, containing many state regulations or other enforceable documents and supporting information, such as emission inventories, monitoring documentation, and modeling (attainment) demonstrations.

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

In order for state regulations to be incorporated into the federally enforceable SIP, states must formally adopt the regulations and emission control strategies consistent with state and federal requirements. This process generally includes public notice, public hearings, public comment periods, and formal adoption by state-authorized rulemaking bodies.

Once a state has adopted a rule, regulation, or emissions control strategy it submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed federal action on the state submission. If we receive adverse comments we address them prior to any final federal action (we generally address them in a final rulemaking action).

The EPA incorporates into the federally approved SIP all state regulations and supporting information it has approved under section 110 of the Act. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, titled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations the EPA has approved are not reproduced in their entirety in the CFR, but are ''incorporated by reference,'' which means that EPA has approved a given state regulation (or rule) with a specific effective date.

C. What Does Federal Approval of a State Rule Mean to Me?

Enforcement of a state rule before and after it is incorporated into a federally approved SIP is primarily a state responsibility. After the rule is federally approved, however, the CAA authorizes the EPA to take enforcement actions against violators. The CAA also offers citizens legal recourse to address violations, as provided in section 304 of the Act.

D. What Is EPA Addressing in This Document?

In a letter dated June 8, 2000 to Francis X. Lyons, Regional Administrator, Lori F. Kaplan, Commissioner, Indiana Department of Environmental Management, submitted amendments to the Indiana I/M rule as a SIP revision. These amendments revise portions of the I/M requirements in Lake/Porter Counties (Hammond, Gary, East Chicago) and Clark/Floyd Counties (Louisville area) in Indiana. Among the most significant changes being made to the program are: the exemption of the current calendar year model vehicles plus the three previous model year vehicles from emission testing; the inclusion of language that allows the use of the IM93 alternative vehicle emission test currently being used in the program; language that updates the requirement to test vehicles equipped with second generation on-board diagnostics systems (OBDII); and the elimination of the off-cycle test, which is the emission test currently required when there is a change in possession of motor vehicle titles. In addition, a number of minor administrative changes are also included. On June 28, 2001, we published a Notice of Proposed Rulemaking (NPR) to approve the SIP revision request. The public comment period was open through July 30, 2001, and EPA received no comments. This **Federal Register** document takes final action to approve the June 8, 2000 SIP revision submittal.

E. Does Indiana's Submission Meet the Requirements for Approval of a SIP Revision?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in our proposal published June 28, 2001, these revisions meet the substantive SIP requirements on the CAA including I/M program requirements addressed in 40 CFR part 51, subpart S. In the June 28 proposal, we discussed in detail how the state's submittal meets each of the relevant requirements of the I/M rule and EPA's rationale for approval. The reader is referred to that discussion for the rationale of this final action.

F. What Action Is EPA Taking?

The EPA is approving Indiana's I/M SIP revision submitted by Indiana on June 8, 2000. The SIP revision amends certain program elements of Indiana's motor vehicle inspection and maintenance requirements.

G. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''(66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective October 29, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 26, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial

review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

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

Dated: September 14, 2001.

Thomas V. Skinner,

Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.770, is amended by adding paragraph (c)(142) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(142) On June 8, 2000 the Indiana Department of Environmental Management submitted a State Implementation Plan (SIP) revision amending certain provisions of the Indiana vehicle inspection and maintenance (I/M) program in operation in Lake, Porter, Clark, and Floyd Counties. Among the most significant changes being made to the program include: the exemption of the current calendar year model vehicle plus the (3) previous model years vehicles from emission testing; the inclusion of language that allows the use of the IM93 alternative vehicle emission test currently being used in the program; language that updates the requirement to test vehicles equipped with second generation on-board diagnostics systems (OBDII); and the elimination of the off-cycle test, which is the emission test currently required when there is a change in possession of motor vehicle titles. The Air Pollution Control Board amended 326 IAC 13–1.1 and repealed 326 IAC 13–1.1–17, thereby putting in place the revisions to the I/M program.

(i) Incorporation by reference.

(A) 326 Indiana Administrative Code 13–1.1 adopted December 2, 1998, effective January 22, 1999.

(ii) Other material.

(A) June 8, 2000 letter and enclosures from the Indiana Department of Environmental Management (IDEM) Commissioner to the Regional Administrator of the United States Environmental Protection Agency (USEPA) submitting Indiana's revision to the ozone State Implementation Plan (SIP).

[FR Doc. 01–24200 Filed 9–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–7067–9]

RIN 2060–AG91

National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: On June 17, 1999, we issued the national emission standards for hazardous air pollutants from oil and natural gas production facilities and the national emission standards for hazardous air pollutants from natural gas transmission and storage facilities (64 FR 32610). On June 29, 2001, we issued technical corrections to clarify intent and correct errors in these national emission standards for hazardous air pollutants (NESHAP) (66 FR 34548). This action corrects an error in the June 29, 2001 technical corrections for the Natural Gas Transmission and Storage Facilities NESHAP. This technical correction does not change the level of health protection or the basic control requirements of the Natural Gas Transmission and Storage Facilities NESHAP, which requires new and existing major sources to control emissions of hazardous air pollutants (HAP) to the level reflecting application of the maximum achievable control technology.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impractible, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this error correction without prior proposal and opportunity for comment because the change to the rule is a minor technical correction, is noncontroversial in nature, and does not substantively change the requirements of the natural gas transmission and storage facilities NESHAP. Thus, notice and public procedure are unnessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(5).

EFFECTIVE DATE: September 27, 2001.

ADDRESSEES: Docket No. A–94–04 contains the supporting information used in the development of this rulemaking. The docket is located at the U.S. EPA in room M–1500, Waterside Mall (ground floor), 401 M Street SW, Washington, DC 20460, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Nizich, Waste and Chemical Processes Group, Emission Standards Division(MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–3078, facsimile: (919) 541–0246, electronic mail address: *nizich.greg@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated entities.* Entities that will potentially be affected by this correction are those that store or transport natural gas and are major sources of HAP as defined in section 112 of the Clean Air Act. The regulated categories and entities include:

Category	Examples of regulated entities
Industry	Glycol dehydration units and natural gas transmission and storage facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability criteria in § 63.1270 of the natural gas transmission and storage facilities NESHAP. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

World Wide Web (WWW). The text of today's document will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be

posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

I. Correction

Today's action consists of one error correction to the natural gas transmission and storage facilities NESHAP technical corrections notice that was published on June 29, 2001 (66 FR 34548). This error correction is minor in nature and noncontroversial.

This correction is being made to reinstate a portion of the first sentence in § 63.1270(a) that was mistakenly deleted during the editing process for the June 29, 2001 technical corrections. Reinstatement of this language will make it clear that the natural gas transmission and storage facilities NESHAP only applies to natural gas transmission and storage facilities that are major sources of HAP, and that transmission and storage systems are subject to the rule up to a final end user only when a local distribution company is not present.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget (OMB). Because the EPA has made a ''good cause'' finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA. This action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This technical correction does not have substantial direct effects on the States, or on the relationship between the national government and the States, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This technical correction also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant.

This technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (15 U.S.C. 272) do not apply. This technical correction also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this technical correction, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this rule correction in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This technical correction does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 17, 1999 **Federal Register** document containing the Oil and Natural Gas Production final rule and Natural Gas Transmission and Storage final rule (64 FR 32610).

This technical correction is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

The Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of September 27, 2001. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects for 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 19, 2001.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

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

PART 63—[AMENDED]

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

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

Subpart HHH—[Amended]

2. Section 63.1270 is amended by revising the first sentence of paragraph (a) introductory text to read as follows:

§ 63.1270 Applicability and designation of affected source.

(a) This subpart applies to owners and operators of natural gas transmission and storage facilities that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user (if there is no local distribution company), and that are major sources of hazardous air pollutants (HAP) emissions as defined in § 63.1271. * * *

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[FR Doc. 01–24210 Filed 9–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301169; FRL–6801–5]

RIN 2070–AB78

Bifenthrin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of bifenthrin in or on sweet potato. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on sweet potato. This regulation establishes a maximum permissible level for residues of bifenthrin in this food commodity. The tolerance will expire and is revoked on December 31, 2003.

DATES: This regulation is effective September 27, 2001. Objections and requests for hearings, identified by docket control number OPP–301169, must be received by EPA on or before November 26, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION:** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301169 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; and e-mail address:brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this actionmight apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301169. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the insecticide bifenthrin, [(2-methyl [1,1'-biphenyl] -3-yl) methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate], in or on sweet potato at 0.05 part per million (ppm). This tolerance will expire and is revoked on December 31, 2003. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.''This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Bifenthrin on Sweet potato and FFDCA Tolerances

EPA has authorized under FIFRA section 18 the use of bifenthrin on sweet potato for control of the sweet potato weevil and beetle in the states of Mississippi and Louisiana. After having reviewed the submission, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of bifenthrin in or on sweet potato. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 31, 2003, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on sweet potato after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether bifenthrin meets EPA's registration requirements for use on sweet potato or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of bifenthrin by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any States other than Mississippi and Louisiana to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for bifenthrin, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of bifenthrin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of bifenthrin in or on sweet potato at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10x to account for interspecies differences and 10x for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10x to account for interspecies differences and 10x for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non- linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for bifenthrin used for human risk assessment is shown in the following Table 1.

TABLE 1. — SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR BIFENTHRIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary general population including infants and children	Oral NOAEL = 1.0 mg/kg/day UF = 100 Acute RfD = 0.01 mg/kg/day	FQPA SF = 1x aPAD = acute RfD FQPA SF = 0.01 mg/kg/day	Developmental toxicity, Rats - tremors in dams during & post dosing
Chronic dietary all populations	Oral dietary exposure NOAEL= 1.5 mg/kg/day UF = 100 Chronic RfD = 0.015 mg/kg/day	FQPA SF = 1x cPAD = chronic RfD FQPA SF = 0.015 mg/kg/day	Chronic oral, dogs - tremors in both sexes
Short-term dermal (1 to 7 days) (Occupational/Residential)	Dermal exposure Oral NOAEL= 1.0 mg/kg/day (dermal absorption rate = 25%	LOC for MOE = 100 (Residential)	Developmental toxicity, Rats - tremors in dams during & post dosing
Intermediate-term dermal (1 week to several months) (Occupational/Residential)	Dermal exposure Oral NOAEL= 1.0 mg/kg/day (Dermal absorption rate = 25%	LOC for MOE = 100 (Residential)	Developmental toxicity, Rats - tremors in dams during & post dosing
Chronic dermal (several months to lifetime) (Occupational/Residential)	Inhalation exposure Oral NOAEL = 1.5 mg/kg/day (Use inhalation absorption rate= 25%)	LOC for MOE = 100 (Residential)	Chronic oral, dogs - tremors in both sexes
All time periods: Inhalation (Occupational/Residential)	Inhalation exposure Oral NOAEL = 1.0 mg/kg/day (Inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential) Risk assessment should be inclusive of dietary &inhalation exposure components	Development toxicity, Rats - tremors in dams during & post dosing (No appropriate inhalation studies available)
Cancer	Dietary/Dermal/Inhalation Exposure group C carcinogen	Use reference dose (RfD) approach Long-term consumption of bifenthrin are adequately addressed by the chronic exposure analysis	Carcinogenicity, Mice - urinary bladder tumors in male mice

* The reference to the FQPA safety factor refers to any additional safety factor retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.442) for the residues of bifenthrin, in or on the following raw agricultural commodities: Globe artichoke; brassica, head and stem subgroup excluding cabbage; cabbage; caneberry subgroup; corn; cottonseed; eggplant; grape; head lettuce; pea and bean succulent shelled subgroup; pepper (bell and non-bell); rapeseed; strawberries; cucurbit vegetable crop group; and edible podded legume vegetable subgroup. Egg; fat, meat by product, and meat of cattle, goats, hogs, horses, poultry and sheep; and milk fat tolerances have also been established for bifenthrin. Time-limited tolerances under section 18 currently exists for grapes and peanuts (nutmeats) and are set to expire on December 31, 2001. Additional tolerances also include citrus (dried pulp, oil, whole fruit) and potato, and are set to expire on December 31, 2003. Risk assessments were conducted by EPA to assess dietary exposures from bifenthrin in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA (1994–1996) nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: A probabilistic Monte Carlo analysis (Tier 3) was used. PCT (% crop treated) and anticipated residues were used for registered crops, and 100% crop treated was used for all other unregistered crops.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM analysis evaluated the individual food consumption as reported by respondents in the USDA (1994–1996) nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure

assessments: In conducting this new DEEM analysis for the chronic dietary (food only) risk assessment, the agency used anticipated residue values which were determined from field trial data conducted at maximum label conditions of maximum application rates and minimum preharvest intervals. Mean anticipated residue values were calculated. 100% crop treated was assumed for all crops except hops (43%) and cottonseed-oil and cottonseed-meal (4%).

iii. *Cancer*. Bifenthrin has been classified as a Group C chemical (possible human carcinogen) based upon urinary bladder tumors in mice. No Q* was assigned because the RfD approach was recommended for cancer risk assessment. Based on this recommendation, a quantitative dietary cancer risk assessment was not performed since dietary risk concerns due to long-term consumption of bifenthrin are adequately addressed by the chronic exposure analysis using the RfD.

iv. *Anticipated residue and percent crop treated information*. Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows.43% hops, and 4% cottonseed-oil and cotton-meal

The Agency believes that the three conditions listed above have been met. With respect to condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to under estimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which bifenthrin may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for bifenthrin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of bifenthrin.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to bifenthrin they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models, EECs for bifenthrin acute and chronic exposure for surface water are estimated to be 0.1 parts per billion (ppb) and 0.032 (average 56–day) ppb, respectively. The ground water

screening concentration is 0.006 ppb. These values represent upper-bound estimates of the concentrations that might be found in surface water and ground water from the highest application rate for bifenthrin, 0.5 lb ai/A, used on cotton.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Bifenthrin is currently registered for use on the following residential non-dietary sites: Lawn for flea infestation control, and residential flowable insecticide/miticide. Under current EPA guidelines, these uses do not present a chronic exposure scenario, but may constitute a short- and/or intermediate-term exposure scenario. A residential exposure assessment for the lawn care uses of bifenthrin was conducted in conjunction with the ''Risk Assessment for Extension of Tolerances for Synthetic Pyrethroids.''

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether bifenthrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, bifenthrin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that bifenthrin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies*. In a rabbit developmental toxicity study, there were no developmental effects observed in the fetuses exposed to bifenthrin. The maternal NOAEL was 2.67 milligram/kilogram/day (mg/kg/day) based on head and forelimb twitching at the LOAEL of 4 mg/kg/day.

In the rat developmental study, the maternal NOAEL was 1 mg/kg/day, based on tremors at the LOAEL of 2 mg/kg/day. The developmental (pup) NOAEL was also 1 mg/kg/day, based upon increased incidence of hydroureter at the LOAEL of 2 mg/kg/day. There were 5/23 (22%) of the litters affected (5/141 fetuses since each litter only had one affected fetus) in the 2 mg/kg/day group, compared with zero in the control, 1, and 0.5 mg/kg/day groups. According to recent historical data (1992–1994) for this strain of rat, background incidence of distended ureter averaged 11% with a maximum incidence of 90%.

3. *Reproductive toxicity study*. In the rat reproduction study, parental toxicity occurred as decreased body weight and tremors at 5.0 mg/kg/day with a NOAEL of 3.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 5.0 mg/kg/day (highest dose tested).

4. *Prenatal and postnatal sensitivity*—

i. *Prenatal*. Since there was not a dose-related finding of hydroureter in the rat developmental study and in the presence of similar incidences in the recent historical control data, the marginal finding of hydroureter in rat fetuses at 2 mg/kg/day (in the presence of maternal toxicity) is not considered a significant developmental finding. Nor does it provide sufficient evidence of a special dietary risk (either acute or chronic) for infants and children which would require an additional safety factor.

ii. *Postnatal*. Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special postnatal sensitivity to infants and children in the rat reproduction study.

5. *Conclusion*. There is a complete toxicity data base for bifenthrin and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10x safety factor to protect infants and children should be removed. Based on the above, EPA concludes that reliable data support use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the US EPA Office of Water are used to calculate DWLOCs: 2Liters/70 kilograms (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to bifenthrin in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the

future, OPP will reassess the potential impacts of bifenthrin on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to bifenthrin will occupy 60% of the aPAD for the U.S. population, 40% of the aPAD for females 13 years and older, 75% of the aPAD for all infants <1 year old and 99.7% of the aPAD for children (1–6 years old). In addition, despite the potential for acute dietary exposure to bifenthrin in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of bifenthrin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2.

TABLE 2. — AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO BIFENTHRIN

Population Subgroup	aPAD (mg/kg)	%aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. Population (48 contiguous states)	0.01	60	0.1	0.006	140
Female 13+ yr	0.01	40	0.1	0.006	180
Children (1–6 yr)	0.01	99.7	0.1	0.006	0.30

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to bifenthrin from food will utilize 3% of the cPAD for the U.S. population, 3% of the cPAD for females 13 years and older and 8.2% of the cPAD for children (1–6 years old). Based the use pattern, chronic residential exposure to residues of bifenthrin is not expected. In addition, despite the potential for chronic dietary exposure to bifenthrin in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of bifenthrin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3.

TABLE 3. — AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO BIFENTHRIN

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population (48 continguous states)	0.015	3	0.032	0.006	530
Females 13+	0.015	3	0.032	0.006	450
Children (1–6 yrs old)	0.015	8.2	0.032	0.006	140

3. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Bifenthrin is currently registered for use(s) that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for bifenthrin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 940 for adults, 350 for children (1–6 yrs old), and 470 for infants < 1 yr old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of bifenthrin in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 4.

TABLE 4. — AGGREGATE RISK ASSESSMENT FOR SHORT- AND INTERMEDIATE-TERM EXPOSURE TO BIFENTHRIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
Adult	940	100	0.032	0.006	320
Children (1–6yrs)	350	100	0.032	0.006	270
Infants <1yr	470	100	0.032	0.006	71

4. *Aggregate cancer risk for U.S. population*. Bifenthrin has been classified as a Group C chemical (possible human carcinogen) based upon urinary bladder tumors in mice. No Q* was assigned because the RfD approach was recommended for cancer risk assessment. Based on this recommendation, a quantitative dietary

cancer risk assessment was not performed since dietary risk concerns due to long-term consumption of bifenthrin are adequately addressed by the chronic exposure analysis using the RfD. Based on a comparison of the calculated DWLOCs and the estimated exposure to bifenthrin in drinking water, the agency does not expect the chronic aggregate exposure to exceed 100% of the cPAD (cRfD) for adults. Thus, EPA concludes with reasonable certainty that the carcinogenic risk is within acceptable limits.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to bifenthrin residues.

V. Other Considerations

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

VI. Conclusion

Therefore, the tolerance is established for residues of bifenthrin, [(2-methyl [1,1'-biphenyl] -3-yl) methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate], in or on sweet potato at 0.05 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301169 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 26, 2001.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2.Mail your copies, identified by the docket control number OPP–301169, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive

Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

IX. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: September 11, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.442 is amended by alphabetically adding the following commodity to the table in paragraph (a) to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

(a)* * *

Commodity	Parts per million	Expiration/ Revocation Date
* *	*	* *
Sweet potato	0.05	12/31/03
* *	*	* *

* * * * *

[FR Doc. 01–24199 Filed 9–26–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301167; FRL–6800–2]

RIN 2070–AB78

Cyhalofop-butyl; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of cyhalofop-butyl plus the cyhalofop-acid and di-acid metabolites in or on rice grain and rice straw. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on rice. This regulation establishes a maximum permissible level for residues of cyhalofop-butyl plus the cyhalofop-acid and di-acid metabolites in this food commodity. These tolerances will expire and are revoked on June 30, 2002.

DATES: This regulation is effective September 27, 2001. Objections and requests for hearings, identified by docket control number OPP–301167, must be received by EPA on or before November 26, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the

SUPPLEMENTARY INFORMATION: To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301167 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone

number: (703) 305–6463; and e-mail address: madden.barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules, '' and then look up the entry for this document under the '' **Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301167. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m.to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for combined residues of the herbicide cyhalofop-butyl, 2-[4-(4-cyano-2-fluorophenoxy)phenoxyl]-propanoic acid, butyl ester (R) plus the cyhalofop-acid and di-acid metabolites, in or on rice grain at 0.03 part per million (ppm) and rice straw at 8.0 ppm. These tolerances will expire and are revoked on June 30, 2002. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Cyhalofop-butyl on Rice and FFDCA Tolerances

Weeds cause economic damage by competing with rice plants for soil, nutrients and sunlight, and by interfering with harvesting equipment. Bearded sprangletop is one of the most important grass weeds in California rice. The California Rice Research Board surveyed growers in 1999, and found that more than half reported an increasing trend in sprangletop infestation, while only 4% thought the weed was decreasing. The remainder called the weed populations ''variable'' or ''stable.''

As for impacts on yield, the University of California Cooperative Extension Service in 1999 conducted trials to investigate a link between sprangletop infestations and yield loss. The UC found that a 50% sprangletop cover results in yield losses ranging from 20% to as high as 60%.

In 2000, Rice Researchers, Inc. measured yield impacts of sprangletop at levels of infestation ranging from 1–3 plants per square meter to 25–30 plants per square meter. In three replications it was shown that yields were impacted as much as 25%.

The following conditions give rise to sprangletop infestations in California leading to yield losses: (1) thiobencarb cannot be applied to soils with Delayed Phytotoxicity Syndrome (DPS); (2) water management practices (BMPs) necessary for the protection or promotion of the rice that incidentally lead to heavier weed infestations; and (3) the lack of

suitable herbicides that are effective under all conditions.

EPA has authorized under FIFRA section 18 the use of cyhalofop-butyl on rice for control of Bearded sprangletop in California. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of cyhalofop-butyl in or on rice. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on June 30, 2002, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on rice grain or rice straw after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether cyhalofop-butyl meets EPA's registration requirements for use on rice or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of cyhalofop-butyl by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than California to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for cyhalofop-butyl, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of cyhalofop-butyl and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for combined residues of cyhalofop-butyl plus the cyhalofop-acid and di-acid metabolites in or on rice grain at 0.03 ppm and rice straw at 8.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure '' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for cyhalofop-butyl used for human risk assessment is shown in the following Table 1.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CYHALOFOP-BUTYL FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary females 13–50 years of age and the general population including infants and children	None	None	An appropriate endpoint attributable to a single exposure (dose) was not identified in any study including the acute neurotoxicity study or developmental toxicity studies. No systemic effects were observed in the acute neurotoxicity study in rats at 2,000 mg/kg (limit dose), and no developmental effects were observed in the developmental toxicity studies.
Chronic dietary all populations	NOAEL = 0.99 mg/kg/day UF = 100 Chronic RfD = 0.01 mg/kg/day	FQPA SF = 10 cPAD = chronic RfD ÷ FQPA SF = 0.001 mg/kg/day	Carcinogenicity in mice LOAEL = 10.06 mg/kg/day based on kidney effects in females including tubular dilatation, chronic glomerulonephritis, and hyaline casts.
Short-term dermal (1 to 30 days) and intermediate-term dermal (1–6 months) (residential)	None	None	No hazard has been identified to support quantification of risk. No systemic effects were observed in the 21–day dermal study in the rat at doses up to 1,000 mg/kg/day (limit dose). In addition, no developmental effects were observed in the developmental studies.
Long-term dermal (greater than 6 months) (residential)	oral study NOAEL= 0.99 mg/kg/day (dermal absorption rate = 34% when appropriate)	LOC for MOE = 1,000 (residential)	Carcinogenicity in mice LOAEL = 10.06 mg/kg/day based on kidney effects in females including tubular dilatation, chronic glomerulonephritis, and hyaline casts.
Short-term inhalation (1 to 30 days) and intermediate-term inhalation (1–6 months) (residential)	inhalation (or oral) study NOAEL= 4.3 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 1,000 (residential)	Subchronic feeding study in mice LOAEL = 14.1 mg/kg/day based on enlarged kidneys in females accompanied by swelling of the proximal tubule cells.
Long-term inhalation (greater than 6 months) (residential) Inhalation (or oral) study NOAEL = 1.0 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 1,000 (residential)	Carcinogenicity in mice LOAEL = 10.06 mg/kg/day based on kidney effects in females including tubular dilatation, chronic glomerulonephritis, and hyaline casts.	
Cancer (oral, dermal, inhalation)	None	None	At the doses tested, there were no treatment-related increase in tumor incidence when compared to controls.

*The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Cyhalofop-butyl is a new chemical, this is the first tolerance established for the combined residues of cyhalofop-butyl plus the cyhalofop-acid and di-acid metabolites, in or on a raw agricultural commodity (rice grain and rice straw). Risk assessments were conducted by EPA to assess dietary exposures from cyhalofop-butyl in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An appropriate endpoint attributable to a single exposure (dose) was not identified in any study including the acute neurotoxicity study or developmental toxicity studies. Therefore, acute dietary risk assessments were not conducted.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the

Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Use of 100% crop treated and tolerance level residues.

iii. *Cancer*. The Agency has not yet classified cyhalofop-butyl for cancer. A combined chronic toxicity/carcinogenicity study in rats and a carcinogenicity study in mice were conducted to assess the carcinogenic potential of cyhalofop-butyl. At the doses tested, there was no treatment-related increase in tumor incidence when compared to controls.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for cyhalofop-butyl in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of cyhalofop-butyl.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to cyhalofop-butyl they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the estimated environmental concentrations (EECs) of cyhalofop-butyl for chronic exposures are estimated to be 4 parts per billion (ppb) for surface water and 0.016 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Cyhalofop-butyl is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether cyhalofop-butyl has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cyhalofop-butyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cyhalofop-butyl has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies*. In a developmental toxicity study in rats the maternal toxicity NOAEL is 1,000 mg/kg/day (limit dose). At the 1,000 mg/kg/day treatment level, the liver to body weight ratio and the liver to adjusted body weight ratio were both increased (106–107% of controls; $p < 0.01$), and there were slight, non-statistical increases in the mean absolute liver weights of all treated groups; however, these increases can be attributed to enzyme induction as an adaptive response to a xenobiotic agent rather than a treatment-related adverse effect. There were no treatment-related effects observed at 25 and 250 mg/kg/day. The developmental toxicity NOAEL is greater than or equal to 1,000 mg/kg/day (limit dose).

In a developmental toxicity study in rabbits the maternal LOAEL is 200 mg/kg/day based on maternal death. The maternal NOAEL is 40 mg/kg/day. The developmental NOAEL is greater than or equal to 1,000 mg/kg/day (limit test).

3. *Reproductive toxicity study*. In a 2–generation reproduction study in rats no treatment-related deaths, clinical signs, body weight changes, or food consumption differences were observed for parental male or female rats in either generation administered any dose of the test material. No effects were observed for F0 or F1 females during gestation or lactation. The Reproductive NOAEL is greater than or equal to 1,000 ppm (50.1–138.7 mg/kg/day for males; 69.2–147.7 mg/kg/day for females, highest dose tested (HDT)) and the Offspring NOAEL is greater than or equal to 1,000 ppm (50–147.7 mg/kg/day, HDT).

4. *Neurotoxicity studies.* In an acute neurotoxicity study in rats the NOAEL is greater than or equal to 2,000 mg/kg

(limit dose) based on the absence of clinical signs, a lack of effects on FOB parameters and motor activity, and the absence of neuropathologic lesions following gavage dosing.

In a subchronic neurotoxicity study in rats the NOAEL is greater than or equal to 75 mg/kg/day HDT in males and greater than or equal to 250 mg/kg/day (HDT) in females based on the absence of clinical signs, lack of effects on FOB parameters and motor activity, and absence of neuropathologic lesions.

5. *Conclusion*. There is no evidence of quantitatively or qualitatively increased susceptibility in the developmental toxicity studies in rats and rabbits, or in the two generation reproductive toxicity study in rats. However, cyhalofop-butyl has not been evaluated by the Agency's FQPA Safety Factor Committee. Therefore, for the purposes of this emergency exemption, the FQPA safety factor of 10X, to protect infants and children has been retained for all dietary and residential risk assessments.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g.,allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to cyhalofop-butyl in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of cyhalofop-butyl on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. An appropriate endpoint attributable to a single exposure (dose) was not identified in any study including the acute neurotoxicity study or developmental toxicity studies. Therefore, acute dietary risk assessments were not conducted.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to cyhalofop-butyl from food will utilize less than 1% of the cPAD for the U.S. population, 4% of the cPAD for non-nursing infants (infant subpopulation at greatest exposure) and 2% of the cPAD for children 1–6 years old (children subpopulation at greatest exposure. There are no residential uses for cyhalofop-butyl. In addition, despite the potential for chronic dietary exposure to cyhalofop-butyl in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of cyhalofop-butyl in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 2:

TABLE 2. —AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO CYHALOFOP-BUTYL

Population subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface water EEC (ppb)	Ground water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.001	1%	4	0.016	35
Children 1–6 years old	0.001	2%	4	0.016	5
Non-nursing infants	0.001	4%	4	0.016	5

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Cyhalofop-butyl is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Cyhalofop-butyl is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *Aggregate cancer risk for U.S. population*. The Agency has not yet classified cyhalofop-butyl for cancer. A combined chronic toxicity/carcinogenicity study in rats and a carcinogenicity study in mice were conducted to assess the carcinogenic potential of cyhalofop-butyl. At the doses tested, there was no treatment-related increase in tumor incidence when compared to controls. Therefore, a risk assessment to estimate risk from cancer was not conducted.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to cyhalofop-butyl residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance

expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There is neither a Codex proposal, nor Canadian or Mexican limits, for residues of cyhalofop-butyl and its metabolite in or on rice. Therefore, harmonization is not an issue for this use.

VI. Conclusion

Therefore, the tolerance is established for combined residues of cyhalofop-butyl, 2-[4-(4-cyano-2-fluorophenoxy)phenoxyl]propanoic acid, butyl ester (R) plus the cyhalofop-acid and di-acid metabolites in or on rice grain at 0.03 ppm and rice straw at 8.0 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301167 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 26, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(I) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP–301167, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: August 29, 2001.

Anne E. Lindsey,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[ADDED]

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

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.576 Cyhalofop-butyl, tolerances for residues.

2. Section 180.576 is added to read as follows:

(a) *General.* [Reserved]

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for combined residues of cyhalofop-butyl, 2-[4-(4-cyano-2-fluorophenoxy)phenoxyl]propanoic acid, butyl ester (R), plus the cyhalofop-acid and di-acid metabolites in connection with use of the pesticide under section 18 emergency exemptions granted by the EPA. The tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/revocation date
*	* * * *	
Rice, grain	0.03	6/30/02
Rice, straw	8.0	6/30/02

(c) *Tolerances with regional registration.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 01-24198 Filed 9–26–01; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

48 CFR Parts 419 and 452

[AGAR Case 2000–01]

RIN 0599–AA09

Agriculture Acquisition Regulation; North American Industrial Classification System

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Direct final rule.

SUMMARY: This direct final rule amends the Agriculture Acquisition Regulation (AGAR) by replacing references to Standard Industrial Classification (SIC) Codes with references to North American Industrial Classification System (NAICS) codes. On July 26, 2000, the Federal Acquisition Regulation (FAR) was amended to employ NAICS codes for small business size determinations and other purposes in lieu of SIC codes. Since the AGAR supplements the FAR, USDA is amending the AGAR to reflect the FAR's adoption of NAICS codes.

DATES: This rule is effective November 26, 2001 without further action, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before October 29, 2001. If we receive adverse comments, the Office of Procurement and Property Management will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Please submit any adverse comments, or a notice of intent to submit adverse comments, in writing to U.S. Department of Agriculture, Office of Procurement and Property Management, Procurement Policy Division, Stop 9303, 1400 Independence Avenue SW, Washington, DC 20250–9303. You may submit comments or request additional information via electronic mail (E-mail) to *joe.daragan@usda.gov* or via fax at (202) 720–8972.

FOR FURTHER INFORMATION CONTACT: Joseph J. Daragan, (202) 720–5729.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Executive Orders Nos. 12866 and 12988
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Small Business Regulatory Enforcement Fairness Act
E. Unfunded Mandates Reform Act
F. Executive Order 13132: Federalism
G. Executive Order 13084: Consultation and Coordination With Indian Tribal governments

I. Background

The AGAR implements the FAR (48 CFR chapter 1) where further implementation is needed, and supplements the FAR when coverage is needed for subject matter not covered by the FAR. On July 26, 2000, the FAR was amended to employ NAICS codes for small business size determinations and other purposes in lieu of SIC codes (65 FR 46055–46063). AGAR 452.219–70, a solicitation provision prescribed for use by AGAR 419.508, informs prospective offerors which small business size standards will be used in determining whether an offeror is a large business or a small business. The provision sets out size standards by SIC code. We are amending this provision and prescription to use NAICS codes to identify business classifications and applicable size standards. In this rulemaking document, USDA is amending the AGAR as a direct final rule, since the changes are non-controversial and unlikely to generate adverse comment.

Rules that an agency believes are noncontroversial and unlikely to result in adverse comments may be published in the **Federal Register** as direct final rules. The Office of Procurement and Property Management published a policy statement in the **Federal Register** (63 FR 9158, Feb. 24, 1998) notifying the public of its intent to use direct final rulemaking in appropriate circumstances.

This rule makes the following changes to the AGAR:

(a) In parts 419 and 452, we substitute the term ''North American Industrial Classification System'' and its acronym ''NAICS'' for the term ''Standard Industrial Classification'' and its acronym ''SIC'.

(b) In part 452, we change the date of the solicitation provision at AGAR 452.219–70, because the provision is amended by this direct final rule.

II. Procedural Requirements

A. Executive Orders Nos. 12866 and 12988

USDA prepared a work plan for this regulation and submitted it to the Office of Management and Budget (OMB) pursuant to Executive Order No. 12866. OMB determined that the rule was not significant for the purposes of Executive Order No. 12866. Therefore, the rule has not been reviewed by OMB. USDA has reviewed this rule in accordance with Executive Order No. 12988, Civil Justice Reform. The proposed rule meets the applicable standards in section 3 of Executive Order No. 12988.

B. Regulatory Flexibility Act

USDA reviewed this rule under the Regulatory Flexibility Act, 5 U.S.C. 601–611, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. USDA certifies that this rule will not have a significant economic effect on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared. However, comments from small entities concerning the effects of the rule will be considered. Such comments must be submitted separately and cite 5 U.S.C. 609 (AGAR Case 2000–01) in correspondence.

C. Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed on the public by this rule. Accordingly no OMB clearance is required by the Paperwork Reduction Act, 44 U.S.C. chapter 35, or OMB's implementing regulations at 5 CFR Part 1320.

D. Small Business Regulatory Enforcement Fairness Act

A report on this rule has been submitted to each House of Congress and the Comptroller General in accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801–808. This rule is not a major rule for purposes of the Act.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. USDA has determined that this direct final rule does not contain a Federal mandate as defined in 2 U.S.C. 658(a). USDA has also determined that this direct final rule does not significantly or uniquely affect small governments. Accordingly, this rule is not subject to the requirements of Title II of UMRA.

F. Executive Order 13132: Federalism

Executive Order 13132, Federalism (64 FR 43255, Aug. 10, 1999), imposes requirements in the development of regulatory policies that have federalism implications. ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

USDA has determined that this rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule will not impose substantial costs on States and localities. Accordingly, this rule is not subject to the procedural requirements of Executive Order 13132 for regulatory policies having federalism implications.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, Nov. 9, 2000), imposes requirements in the development of regulatory policies that have tribal implications. Executive Order 13175 defines ''policies that have tribal implications'' as having ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' USDA has determined that this rule does not have tribal implications and, therefore, the consultation and coordination requirements of Executive Order 13175 do not apply.

List of Subjects in 48 CFR Parts 419 and 452

Acquisition regulations, Government contracts, Government procurement, Procurement.

For the reasons set out in the preamble, the Office of Procurement andProperty Management amends 48 CFR Parts 419 and 452 as set forth below:

PART 419—SMALL BUSINESS PROGRAMS

1. The authority citation for Part 419 continues to read as follows:

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

2. Amend section 419.508 by removing the acronym ''SIC'' and adding, in its place, the acronym ''NAICS''.

PART 452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for Part 452 continues to read as follows:

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

2. Amend section 452.219–70 as follows:

a. Remove the acronym ''SIC'' and add, in its place, the acronym ''NAICS''.

b. Remove the date ''NOV 1996'' and add, in its place, the date ''SEP 2001''.

c. Remove the words ''Standard Industrial Classification'' and add, in their place, the words ''North American Industrial Classification System''.

Done at Washington, DC, this 20th day of September, 2001

W.R. Ashworth,

Director, Office of Procurement and Property Management.

[FR Doc. 01–24057 Filed 9–26–01; 8:45 am]

BILLING CODE 3410–TX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 010111010–1223–02; I.D. 113000B]

RIN 0648–AO42

International Fisheries Regulations; Pacific Tuna Fisheries

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement fishery conservation and management measures for the U.S. purse seine fishery in the eastern Pacific Ocean (EPO) to reduce bycatch of juvenile tuna, non-target fish species, and non-fish species. These measures were recommended by the Inter-American Tropical Tuna Commission (IATTC) and approved by the U.S. Department of State (DOS), in accordance with the Tuna Conventions Act of 1950. In addition, this rule establishes reporting requirements for U.S. vessels fishing for tuna in the EPO in order to gather information that NMFS can provide to the IATTC for a regional vessel register. The vessel register will promote consistent compliance across all IATTC member nations by ensuring constant attention to fleets active in the area and aiding in identification of vessels engaged in illegal, unreported or undocumented fishing in the EPO.

DATES: Effective October 29, 2001.

ADDRESSES: Copies of the final environmental assessment regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained from the Southwest Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802–4213. Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this final rule, including suggestions to reduce the burden, to the Regional Administrator, Southwest Region, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Sustainable Fisheries Division, Southwest Region, NMFS, 562–980–4030; fax 562–980–4047.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at the Office of the Federal Register's website at http://www.access.gpo.gov/su-docs/aces/aces140.html.

Background

The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed in 1949. The IATTC was established to provide an international arrangement to ensure conservation and management of yellowfin tuna and of other fish species taken by tuna fishing vessels in the EPO (also known as the Convention Area), defined at 50 CFR part 300, subpart C, as the waters bounded by the coast of the Americas, 40° N. lat., 150° W. long., and 40° S. lat. The IATTC maintains a scientific research and fishery monitoring program, which annually assesses the status of tuna stocks and conditions in the fisheries to determine appropriate harvest levels or other measures to prevent overexploitation and promote maximum sustainable yield. The IATTC is devoting an

increased amount of time and resources to assessing the need for, and recommending, conservation and management measures to deal with problems such as bycatch in the tuna fisheries.

The actions in this final rule are intended to address concerns about bycatch in purse seine fisheries in the EPO and to establish a regional vessel register that will be useful for compliance monitoring and for management decisions affecting the many fishing gears used in the EPO to take tuna and tuna-like fishes. These measures were recommended by the IATTC and approved by the DOS. The preamble to the proposed rule published for this action (66 FR 17387, March 30, 2001, corrected at 66 FR 20419, April 23, 2001) presented the history and provisions of the action, and they are not repeated here. Pursuant to the Tuna Conventions Act, NMFS convened a public hearing on the proposed rule in San Diego, California, on April 27, 2001.

Changes From the Proposed Rule

Several clarifications to the language contained in the proposed rule were made based on comments and recommendations that NMFS received.

Comments and Responses

Comment 1: The rule fails to address over-capacity and overfishing.

Response: The recommendations of the IATTC did not address these issues; therefore, the rule, which is intended to carry out the IATTC recommendations, does not address them. The IATTC staff has been charged with developing a fleet capacity program consistent with the Food and Agricultural Organization Plan of Action for fishing capacity management.

Comment 2: The IATTC member nations are not enforcing the IATTC recommendations.

Response: The U.S. agrees that there is concern about the uneven level of enforcement among the members and is working with them to improve this situation. A new permanent Working Group on Compliance was established and met for the first time in June 2000. Reports on the implementation of, and compliance with, IATTC recommendations will be among priority subjects for future meetings of this working group. The working group discussions should result in increased peer pressure to improve enforcement and compliance by all members.

Comment 3: The proposed rule fails to implement time and area closures, which would be more effective in reducing bycatch.

Response: Time and area closures are only one of several possible tools to limit bycatch, especially of juvenile tuna. The 2000 resolution, which sets the quota for yellowfin tuna included two area closures that would go into effect when the purse seine catch reached 240,000 metric tons. These were intended to ensure that juvenile yellowfin catches (which are historically higher in these areas) would be curtailed if the total yellowfin catch were high. However, catches were slow the second half of 2000, and the closures were not needed. The IATTC also agreed to and the parties implemented a 90-day closure of the purse seine fishery on floating objects (any natural object or manmade fish aggregating device around which fishing vessels may catch tuna) from September 15, 2000, to December 15, 2000. The goal of this closure was to reduce the probability of high catches of juvenile yellowfin and bigeye tuna. End-of-year data indicate that catches of juvenile tuna were indeed relatively low.

Comment 4: The bycatch reduction provisions should be extended to all gear types that fish in the EPO.

Response: The IATTC has historically focused on managing the tuna purse seine fisheries, which account for the bulk of tuna fishing and fishing mortality in the EPO. However, the IATTC is aware of the need to consider other fishing gears in the future. The regional vessel register should provide the initial data on the degree to which other gears are used. For the time being, however, the IATTC only recommended actions dealing with bycatch reduction in the purse seine fishery, and therefore, the proposed rule could only deal with those recommendations. However, the Pacific Fishery Management Council (Council) is preparing a fishery management plan (FMP) for highly migratory species fisheries off the West Coast. The FMP will contain management measures that, to the extent practicable, minimize bycatch and, to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

Comment 5: The bycatch rule should last longer than 1 year.

Response: The IATTC's initial recommendation called for only a 1-year pilot project. At its meeting in June 2001, however, the IATTC agreed to extend the pilot project through 2002.

Comment 6: The terms of reference for the evaluation of the effectiveness of the pilot program should be made available for review and comment.

Response: The IATTC did not establish terms of reference for the evaluation; therefore, they are not available at this time. However, NMFS and the DOS expect the review to include the extent of application by the parties, the records of observers from initial trips (indicating both the degree of compliance and the degree of difficulties that operators may have had in implementing the measure), and the records of the amount of fish, by species and size, that were retained and discarded. Only very preliminary results were discussed at the annual meeting in June, and it was agreed that first year results would be discussed at a Bycatch Working Group meeting early in 2002. The Bycatch Working Group meetings are open to the public, and the IATTC often posts analytical results on its website.

Comment 7: The recordkeeping and reporting requirements did not explicitly list all the information listed in the IATTC Resolution.

Response: NMFS intends to provide to the IATTC all the data elements listed in the IATTC Resolution. NMFS already has (or has access to) much of the information needed, and will only request missing data elements from individual vessel owners. The rule requires owners to provide such information as requested by the Regional Administrator. Also, the IATTC may change the data elements needed in the future. The approach contained in the rule should allow NMFS to implement new recommendations in the future without going through additional rulemaking, although Paperwork Reduction Act (PRA) requirements will apply.

Comment 8: The rules fail to address alternative means of harvesting free-swimming mature tuna.

Response: NMFS appreciates the many suggestions it received concerning research and testing of alternative technological innovations that can locate and harvest mature yellowfin tuna not associated with dolphins or significant bycatch, and has provided these suggestions to the NMFS Southwest Fisheries Science Center and IATTC staff for consideration. However, since neither the IATTC recommends, nor the Tuna Convention Act mandates, the use of alternative measures for locating and harvesting mature tuna, the rule cannot require them under the Tuna Conventions Act.

Comment 9: NMFS should have prepared an environmental impact statement (EIS) for the proposed rule.

Response: The proposed measures are limited in scope and time, and fewer than 30 U.S. vessels are likely to be affected by this rule. Therefore, NMFS has determined that an EIS is not necessary. However, NMFS has

considered the comments on this rule and modified accordingly the EA for this action.

Comment 10: The EA is inadequate in several ways: It did not take into consideration all information before it made an unwarranted conclusion that the yellowfin stock is healthy; it did not contain an examination of the effect of bycatch reduction efforts on dolphins; and it did not take into consideration that finfish and sharks released from purse seine nets will already be dead. Further, the EA should not have been separated from the programmatic EA for the implementation of the International Dolphin Conservation Program Act (IDCPA).

Response: NMFS agrees that the actions are related, in that both EAs address management of the U.S. purse seine fleet in the EPO. However, this rule was adopted independently of the actions under the IDCPA. The final EA for this action refers to the EA for the IDCPA to the extent necessary.

Comment 11: The term ''discard'' should be defined or clarified to prevent a vessel operator from circumventing the intent of the measure by dumping dead fish from a net before bringing them on board. The intent of the measure was ''full retention'' of all tuna caught in a set.

Response: The prohibition on discarding tuna (other than those unfit for human consumption) has been revised to match the language of the IATTC recommendation, which provides the circumstances under which fish should be discarded. NMFS agrees that, under this rule, a vessel operator could abort a set or terminate brailing of fish on board if it was determined that there was a large amount of small tuna or non-tuna species with little market value. If a substantial number of these fish survive, then aborting the set would be beneficial. This is one of the factors that should be considered by the IATTC in evaluating the pilot program.

Comment 12: The term ''as soon as practicable'', as used in §§ 300.28 and 300.29 of this chapter should be defined for clarification.

Response: The language in §§ 300.28 and 300.29 has been revised to clarify the term ''as soon as practicable.'' Non-target species of fish must be returned to the sea as soon as practicable after the fish have been brought on board the vessel during the brailing operation and identified.

Classification

This rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA describing the impact of this action on small entities. For the 2001 fishing year, the final rule requires: (1) Full retention of all tuna taken in a set and brought on board a fishing vessel, except on the last set when there might not be sufficient well space to accommodate all tuna in a set; (2) the prompt release of non-target species; and (3) the use of special procedures to release sea turtles with a minimum of injury, and to reduce overall sea turtle mortality. These measures should not have significant economic impacts. Requiring fishermen to retain all tuna caught may force the fishermen to retain fish with little market value (due to small size), resulting in lower income per trip. However, this also should result in faster filling of the vessel, incurring less total cost for a fishing trip. The net impact should be minimal. Furthermore, the requirement would reduce the time normally taken to sort the tuna catch by size and to discard small fish. Moreover, in the longterm, any reduction in discards and associated mortality should assist in maintaining the productivity of the stocks, which would benefit the fisheries through higher catches of large fish in the future, as the fish released at a small size may be caught in the future at a larger size. The requirement to promptly release non-target species essentially codifies current practice under which most if not all vessels release sea turtles, and would not generate additional cost to U.S. fishermen. The requirement to release non-target species would not prevent retention of occasional non-target species for consumption on the vessel. Finally, the measures to handle sea turtles with special care are already standard practice, and the measure relating to resuscitation of comatose sea turtles is already codified in the regulations at 50 CFR 223.206(d)(1)(i)(B) that implement the IDCPA. No added costs to fishermen will be generated.

All of these measures would apply to U.S. purse seine vessels fishing for tuna in the EPO. From 1993 to 1997, the maximum number of U.S. tuna vessels active in the EPO was 35 vessels. Of these, 27 small vessels (less than 363 mt carrying capacity) are considered to be small business entities. None of the final measures would have any disproportionate economic impact on these small entities.

With respect to information collection, the final rule would require reporting certain information about vessels if that information is not already being reported to Federal or state agencies under other programs. It is estimated that about 1,290 vessels would be involved. However, most of the information required for the IATTC register can be obtained from other sources, and the added reporting burden is estimated to average about 565 hours and $1,720 per year for 3 years.

Two alternatives to the selected action were considered: A no action alternative and an additional action alternative.

Under the no action alternative, U.S. regulations would be deferred until it is clear that other nations have placed restrictions on their vessels equal to those imposed by the U.S. Deferring implementation of these regulations at this time would not immediately have any impacts on fish stocks because the U.S. share of total fishing in the EPO is quite small, and U.S. fishermen generally try to avoid small fish already because of their low value. U.S. vessels currently take measures to minimize harm to sea turtles as well. However, this approach could result in serious long-term impacts if other nations viewed failure of the U.S. to implement regulations in a timely manner as a sign of disagreement with the measures recommended by the IATTC. The U.S. has obligations under the Tuna Conventions Act to implement such recommendations as are approved by the DOS. Failure of the U.S. to fulfill its obligations would weaken the ability of the U.S. to argue strongly for aggressive implementation and enforcement of IATTC recommendations by all other member nations.

Under the additional action alternative, the U.S. would go beyond the recommendations of the IATTC or take an alternative approach to the vessel register information collection. For example, NMFS might require vessels to abort sets if the first brailing of fish on board demonstrates that there is a certain percentage of fish below a given size. NMFS could perhaps also prohibit log sets (especially sets involving fish aggregating devices, or FADs) to ensure that bycatch will be reduced, as was done from September 15, 2000, through December 15, 2000. This would reduce bycatch. NMFS might also establish a separate EPO licensing program, with applications to include all the specific items of information specified in the IATTC recommendation.

Taking additional actions would have greater impact on U.S. fleets than the proposed action. To prevent having to retain a large amount of low-value tuna, vessel operators probably would abort more sets than is now the case. This could put U.S. vessels at a disadvantage compared to foreign fleets. It is not clear that the benefits of further reductions

would offset the loss of economic value associated with log set fishing. Log sets constitute a cost-effective fishing technique, and approaches other than closures or full retention may be equally effective in reducing bycatch.

With respect to licensing, a single Federal license may be an efficient way to document who is fishing for these species in the EPO, to establish the universe of persons who would need to be contacted, and to determine whose fishing would need to be monitored in order to ensure adequate information for future management decisions.

Neither of these alternatives was adopted. First, the Tuna Conventions Act does not provide authority for independent action to carry out more than the recommendations of the IATTC. Second, NMFS notes that the Council is preparing an FMP for U.S. fisheries involving highly migratory species off California, Oregon, and Washington. Appropriate conservation and management measures for the fisheries and licensing and reporting requirements are among the matters under consideration. NMFS believes it is more appropriate to defer action on approving a licensing and reporting program to carry out obligations under the Tuna Conventions Act until it is known which measures the Council will recommend and the basis for those recommendations. NMFS does not want to foreclose the Council's options at this time and, therefore, rejected this alternative.

An informal section 7 consultation under the Endangered Species Act was concluded by NMFS in October 2000, on the operation of the U.S. purse seine fishery under the terms of the IDCPA. The consultation concluded that the management measures considered would not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of any identified critical habitat. The Regional Administrator has determined that fishing activities conducted pursuant to this rule will not affect endangered or threatened species or critical habitat in any manner not considered in prior consultations on this fishery. This action is within the scope of that earlier consultation, and no further consultations are necessary.

This action is consistent with the Marine Mammal Protection Act, as amended by the IDCPA.

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the PRA. This requirement has been approved by OMB under control number 0648-0431.

Public reporting burden for this collection is estimated to average 65-80 minutes per individual response. This includes the time for reviewing an information form provided by NMFS, checking the accuracy of the information, correcting erroneous information and providing information for empty elements on the form, and submitting the form with the picture to NMFS. Send comments regarding this burden estimate or any other aspect of the collection, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 300

Fisheries, High seas fishing, International agreements, Permits, Reporting and recordkeeping requirements.

Dated: September 21, 2001.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300, subpart C, is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Pacific Tuna Fisheries

1. The authority citation for subpart C continues to read as follows:

Authority: 16 U.S.C. 951-961 and 971 *et seq.*

2. In § 300.22, the section heading is revised; the existing paragraph is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 300.22 Recordkeeping and reporting.

* * * * *

(b) The owner of any fishing vessel that uses purse seine, longline, drift gillnet, harpoon, or troll fishing gear to harvest tuna in the Convention Area for sale or a person authorized in writing to serve as agent for the owner must provide such information about the vessel and its characteristics as the Regional Administrator requests to conform to IATTC actions to establish a regional register of all vessels used to fish for species under IATTC purview in the Convention Area. This initially includes, but is not limited to, vessel name and registration number; a photograph of the vessel with the registration number showing; vessel length, beam and moulded depth; gross tonnage and hold capacity in cubic meters and tonnage; engine horsepower; date and place where built; and type of fishing method or methods used.

3. In § 300.28, paragraphs (h) through (l) are added to read as follows:

§ 300.28 Prohibitions.

* * * * *

(h) Fail to retain any bigeye, skipjack, or yellowfin tuna brought on board a purse seine vessel in the Convention Area, except fish unfit for human consumption due to spoilage, and except on the last set of the trip if the well capacity is filled;

(i) When using purse seine gear to fish for tuna in the Convention Area, fail to release any non-tuna species as soon as practicable after being identified on board the vessel during the brailing operation;

(j) Land any non-tuna fish species taken in a purse seine set in the Convention Area;

(k) Fail to use the sea turtle handling, release, and resuscitation procedures in § 300.29(e); or

(l) Fail to report information when requested by the Regional Administrator under § 300.21.

4. In § 300.29, a new paragraph (e) is added to read as follows:

§ 300.29 Eastern Pacific fisheries management.

* * * * *

(e) *Bycatch reduction measures.* (1) Through December 31, 2001, all purse seine vessels must retain on board and land all bigeye, skipjack, and yellowfin tuna brought on board the vessel after a set, except fish deemed unfit for human consumption for other than reason of size. This requirement shall not apply to the last set of a trip if the available well capacity is insufficient to accommodate the entire fish catch brought on board.

(2) All purse seine vessels must release all sharks, billfishes, rays, mahimahi (*dorado*), and other non-tuna fish species, except those being retained for consumption aboard the vessel, as soon as practicable after being identified on board the vessel during the brailing operation.

(3) All purse seine vessels must apply special sea turtle handling and release procedures, as follows:

(i) Whenever a sea turtle is sighted in the net, a speedboat shall be stationed close to the point where the net is lifted out of the water to assist in release of the turtle;

(ii) If a turtle is entangled in the net, net roll shall stop as soon as the turtle

comes out of the water and shall not resume until the turtle has been disentangled and released;

(iii) If, in spite of the measures taken under paragraphs (e)(3)(i) and (ii) of this section, a turtle is accidentally brought onboard the vessel alive and active, the vessel's engine shall be disengaged and the turtle shall be released as quickly as practicable;

(iv) If a turtle brought on board under paragraph (e)(3)(iii) of this section is alive but comatose or inactive, the resuscitation procedures described in § 223.206(d)(1)(i)(B) of this title shall be used before release of the turtle.

[FR Doc. 01–24223 Filed 9–26–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 092001A]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: General category daily retention limit adjustment; Harpoon category reopening; Quota transfer.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) General category daily catch limit should be adjusted to two large medium or giant BFT per vessel. NMFS has also determined that the BFT General category restricted fishing day (RFD) schedule should be adjusted; i.e., certain RFDs should be waived in order to allow for maximum utilization of the General category subquota for the October-December fishing period. Therefore, NMFS increases the daily retention limit from zero to two large medium or giant BFT on the RFDs previously designated for October 1 and 3, 2001, and from one to two large medium or giant BFT for all other fishing days through October 31, 2001. NMFS has also determined that the adjusted BFT Harpoon category quota has not been fully attained. Therefore, NMFS reopens the Harpoon category until the adjusted quota is reached. Additionally, NMFS has determined that a quota transfer to the Harpoon category from the Reserve is warranted, and therefore transfers 20 metric tons (mt) from the Reserve to the Harpoon category for the remainder of the 2001 fishing year.

DATES: The Harpoon category reopening and quota transfer are effective September 21, 2001, through May 31, 2002. The General category catch limit adjustments are effective September 24, 2001, through October 31, 2001.

FOR FURTHER INFORMATION CONTACT: Pat Scida or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories, and General category effort controls (including time-period subquotas and RFDs) are specified annually under 50 CFR 635.23(a) and 635.27(a). The 2001 General category effort controls were effective on July 13, 2001 (66 FR 37421, July 18, 2001).

Adjustment of Daily Retention Limits

Under § 635.23 (a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. Based on a review of dealer reports, daily landing trends, and the availability of BFT on the fishing grounds, NMFS has determined that an increase of the daily retention limit for the remainder of September through October 31, 2001 is appropriate. Therefore, NMFS adjusts the daily retention limit to two large medium or giant BFT per vessel from September 24, 2001, through October 31, 2001. Also under 50 CFR 635.23(a)(4), NMFS has determined that adjustment to the RFD schedule, and, therefore, an increase of the daily retention limit for certain previously designated RFDs, is necessary. Therefore, NMFS adjusts the daily retention limit for October 1 and 3, 2001, from zero to two large medium or giant BFT per vessel.

The intent of these adjustments is to allow for maximum utilization of the General category subquotas for the September and October-December fishing periods (specified under 50 CFR 635.27(a)) by General category participants in order to achieve optimum yield in the General category fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP.

Reopening of the Harpoon Category

The final initial 2001 BFT quota specifications issued pursuant to 50 CFR 635.27 set a quota of 55 mt of large medium and giant BFT to be harvested from the regulatory area by vessels permitted in the Harpoon category during the 2001 fishing year (66 FR 37421, July 18, 2001). The Harpoon category quota was adjusted on August 29, 2001, when 15 mt were transferred from the Reserve to the Harpoon category for an adjusted Harpoon category quota of 70 mt (66 FR 46400, September 5, 2001). Based on reported landings and effort, NMFS projected that this quota would be reached by September 16, 2001. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT by vessels in the Harpoon category ceased at 11:30 p.m. local time, Sunday, September 16, 2001 (66 FR 48221, September 19, 2001). Upon review of actual landings reports as of September 19, 2001, NMFS has determined that Harpoon category landings totaled approximately 68 mt. Therefore, NMFS is reopening the Harpoon category effective September 21, 2001, through May 31, 2002.

Quota Transfer

Under the implementing regulations at 50 CFR 635.27 (a)(7), NMFS has the authority to allocate any portion of the Reserve to any category quota in the fishery, other than the Angling category school BFT subquota (for which there is a separate reserve), after considering the following factors: (1) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; (2) the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no allocation is made; (3) the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded; (5) effects of the transfer on BFT rebuilding and overfishing; and (6) effects of the transfer on accomplishing the objectives of the HMS FMP.

Annual BFT quota specifications issued under 50 CFR 635.27 provide for a quota of 55 mt of large medium and giant BFT to be harvested from the regulatory area by vessels fishing under the Harpoon category quota during the

2001 fishing year. The Harpoon category quota was adjusted on August 29, 2001, when 15 mt were transferred from the Reserve to the Harpoon category for an adjusted Harpoon category quota of 70 mt (66 FR 46400, September 5, 2001).

After considering the reopening of the Harpoon category fishery and the criteria for making transfers between categories and from the Reserve, NMFS has determined that 20 mt of the remaining 26.9 mt of Reserve should be transferred to the Harpoon category. Thus, the adjusted annual quota for the Harpoon category is 90 mt for the 2001 fishing year.

Once the adjusted Harpoon category quota has been attained, the Harpoon category will be closed. Announcement of the closure will be filed with the Office of the Federal Register, stating the effective date of closure and further communicated through the Highly Migratory Species Fax Network, the Atlantic Tunas Information Line, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of closure will be provided as far in advance as possible, fishermen are encouraged to call the Atlantic Tunas Information Line at (888) USA-TUNA or (978) 281–9305, to check the status of the fishery before leaving for a fishing trip.

Classification

This action is taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: September 21, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–24123 Filed 9–21–01; 4:23 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 010502110–1110–01; I.D. 091001C]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Adjustment for the Commercial Salmon Season from Queets River, WA, to Cape Falcon, OR

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

ACTION: Inseason adjustment to the 2001 annual management measures for the ocean salmon fishery; request for comments.

SUMMARY: NMFS announces a modification of the open periods and limited retention regulation for the commercial fishery from the Queets River, WA, to Cape Falcon. The fishing period opened August 17, 2001, and closed at midnight on August 27, 2001, with a limit of 150 chinook per boat for the entire open period. The fishery was assessed on August 29, 2001, and any further openings announced as needed. This action is necessary to conform to the 2001 annual management measures for ocean salmon fisheries.

DATES: Adjustment in the area from Queets River, WA, to Cape Falcon, OR — effective 0001 hours local time (l.t.), August 17, 2001, through 2359 hours l.t. August 27, 2001. Comments will be accepted through October 12, 2001.

ADDRESSES: Submit comments to D. Robert Lohn, Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; fax 206–526–6376; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; fax 562–980–4018. Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140, Northwest Region, NMFS, NOAA.

SUPPLEMENTARY INFORMATION: The Northwest Regional Administrator, NMFS (Regional Administrator) has determined that the commercial fishery from the Queets River, WA, to Cape Falcon, OR, should reopen for 11 days, starting August 17, 2001, and closing at midnight on August 27, 2001, with a limit of 150 chinook for this open period per boat. Modification of fishing seasons is authorized by regulations at 50 CFR 660.409 (b)(1)(i). Modification of the species that may be caught and landed during specific seasons and the establishment or modification of limited retention regulations is authorized by regulations at 50 CFR 660.409 (b)(1)(ii).

In the 2001 annual management measures for ocean salmon fisheries (66 FR 23185, May 8, 2001), NMFS announced that the commercial fishery for all salmon in the area from the Queets River, WA to Cape Falcon, OR would open the earlier of the day following closure of the U.S.-Canada Border to Leadbetter Pt. July troll fishery or July 28, 2001, but not before July 20, 2001, through the earliest of September 30 or the overall chinook quota (preseason 6,000-chinook guideline) or a 63,000 marked coho guideline. The fishery was scheduled to run continuously until 75 percent of either guideline was caught; it would then revert to a cycle of 4 days open/3 days closed. The 2001 annual management measures for ocean salmon fisheries also stated that trip limits, gear restrictions, and guidelines would be instituted or adjusted inseason.

The U.S.-Canada Border to Leadbetter Pt. July troll fishery closed on July 9, 2001, at 2359 hours l.t.(66 FR 38573, July 25, 2001). The commercial fishery for all salmon from Queets River, WA to Cape Falcon, OR therefore started July 20, 2001.

Because of a higher than expected chinook/coho catch ratio, the commercial fishery from the Queets River, WA, to Cape Falcon, OR began July 20, 2001, under a cycle of 4 days open/3 days closed, and with a limit of 65 chinook per open period per boat (66 FR 45634, August 29, 2001). The modifications to the fishing season were adopted to avoid closing the fishery early due to reaching the chinook quota, thus precluding the opportunity to catch available marked hatchery coho salmon.

Evaluation of the catch rates during the first open period indicated that no further season modifications were necessary for the second 4 day opening (July 27-30, 2001).

Because the availability of coho salmon was increasing, the next fishing season opening was lengthened to 10 days, reopening August 3 and closing at midnight on August 12, 2001, with a limit of 100 chinook for the open period per boat (66 FR 46403, September 5, 2001).

On August 14, 2001, after the third open period, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife (WDFW), and Oregon Department of Fish and Wildlife (ODFW) by conference call. The chinook/coho catch rates and effort data indicated that the availability of coho was increasing in the area while the availability of chinook was decreasing. The WDFW and ODFW recommended, and the Regional Administrator concurred, that the season would reopen August 17, 2001, for 11 days and close at midnight on August 27, 2001, with a limit of 150 chinook per boat for the entire open period. All other restrictions that apply to this fishery

remain in effect as announced in the 2001 annual management measures for ocean salmon fisheries and subsequent inseason actions. A conference call with all the parties involved was scheduled for August 29, 2001, to assess the catch information and determine the structure for the next open period.

The Regional Administrator has determined that the best available information on August 14, 2001, indicated that the catch and effort data, and projections, supported the commercial fishery season modifications recommended by WDFW and ODFW. WDFW and ODFW manage the fisheries in state waters of Washington and Oregon, respectively, adjacent to the areas of the exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishermen of the adjustments in the area from Queets River, WA to Cape Falcon, OR effective 0001 hours l.t., August 17, 2001, was given prior to the effective date by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

The Assistant Administrator for Fisheries, NOAA), finds for the following reasons that good cause existed for this notification to be issued without affording a prior opportunity for public comment under 5 U.S.C. 553(b)(3)(B), and delaying the effectiveness of this rule for 30 days under 5 U.S.C. 553 (d)(3), because such notification and delay would be impracticable and contrary to the public interest. As previously noted, actual notice of this action was provided to fishermen through telephone hotline and radio notification. There was insufficient time for publication of a **Federal Register** action and to take comments between the time the data were provided and the time this action needed to be taken in order to comply with the requirements of the annual management measures for ocean salmon fisheries (66 FR 23185, May 8, 2001) and the Pacific Coast Salmon Plan. Delay in the effectiveness of this rule would not allow fishermen appropriately controlled access to the available fish at the time they were available.

This action does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

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

Dated: September 21, 2001.

Bruce C. Morehead

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

[FR Doc. 01–24221 Filed 9–26–01; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 188
Thursday, September 27, 2001

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Plants

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Availability of draft rule wording.

SUMMARY: The Nuclear Regulatory Commission (NRC) is making available the draft wording of a possible amendment of its regulations. The proposal would amend Title 10 of the Code of Federal Regulations (10 CFR) part 52, ''Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Plants,'' and associated regulations based on experience gained from design certification reviews and discussions with stakeholders on the early site permit and combined license processes. The changes should reduce the regulatory burden for future applicants and improve the effectiveness of 10 CFR part 52. The availability of the draft wording is intended to inform stakeholders of the current status of the NRC staff's activities to amend 10 CFR part 52 and to provide stakeholders the opportunity to comment on the draft changes.

DATES: Comments should be submitted within 45 days from the date of this notice. Any comments received after this date may not be considered during drafting of the proposed rule.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, Mail Stop O–16C1 or deliver written comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC's home page at *http://www.ruleforum.llnl.gov.* This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher at (301) 415–5905 or by e-mail to cag@nrc.gov. Copies of any comments received and certain documents related to this rulemaking may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at http://www.nrc.gov/ NRC/ ADAMS/index.html. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Jerry N. Wilson, New Reactor Licensing Project Office, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Telephone: (301) 415–3145; Internet: *jnw@nrc.gov.*

SUPPLEMENTARY INFORMATON: Part 52 of 10 CFR was originally issued to reform the licensing process for nuclear power plant applications. The licensing processes in Part 52 include early site permits, standard design certifications, and combined licenses. These licensing processes provide procedures for the early resolution of safety and environmental issues in licensing proceedings. Three nuclear plant designs have been certified under Subpart B of Part 52, by the NRC [U.S. Advanced Boiling Water Reactor, System 80+, and AP600], and were codified in Appendices A, B, and C of Part 52, respectively.

The NRC intends to update Part 52 based on experience gained in the use of the rule and discussions with stakeholders in public meetings and from comments on SECY–00–0092, ''Combined License Review Process,'' dated April 20, 2000. As a result of the above, the NRC has initiated this rulemaking to: (i) Make corrections to Parts 21, 50, 52, including the three design certification rules, 72 and 140; (ii) Modify Part 52 to enhance its provisions; and (iii) Consider comments on the draft rule.

This rulemaking began with the issuance of SECY–98–282, ''Part 52 Rulemaking Plan,'' dated December 4, 1998. The Commission issued a staff requirements memorandum, dated January 14, 1999, approving the NRC staff's plan for revising Part 52. Notification of this rulemaking was included in the NRC's rulemaking Web site on June 16, 1999, and letters were sent to ten stakeholders alerting them to this rulemaking on September 3, 1999. Comments on this rulemaking were submitted by the Nuclear Energy Institute on April 3, 2001 (ADAMS Accession Number ML011100405) and are being considered by the NRC staff.

The NRC has now developed draft wording for the changes to its regulations and has made them available on the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* This draft rule language is preliminary and may be incomplete in one or more respects. This draft rule language was released to inform stakeholders of the current status of the 10 CFR Part 52 update rulemaking and to provide stakeholders with an opportunity to comment on the draft revisions. Comments received prior to publishing the proposed rule will be considered in the development of the proposed rule. As appropriate, the Statements of Consideration for the proposed rule will briefly discuss substantive changes made to the rule language as a result of comments received. Comments may be provided through the rulemaking Web site at *http://ruleforum.llnl.gov/* or by mail as indicated under the **ADDRESSES** heading. The NRC may post updates periodically on the rulemaking Web site that may be of interest to stakeholders.

Dated at Rockville, Maryland, this 20th day of September 2001.

For the Nuclear Regulatory Commission.

James E. Lyons,

Director New Reactor Licensing Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 01–24177 Filed 9–26–01; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket Number: EE–RM/STD–01–375]

RIN 1904–AB06

Energy Efficiency Program for Consumer Products: Energy Conservation Standards for Commercial Unitary Air Conditioners and Heat Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of rescheduling of public workshop and extension of time to submit comments.

SUMMARY: This document: (1) Announces a new date of Monday, October 1, 2001, for the informal public workshop on commercial unitary air conditioner and heat pump efficiency standards originally scheduled for Wednesday, September 12, 2001; and (2) extends the time period to November 1, 2001, for submitting comments regarding the Framework Document, as described in a previous announcement on Friday, August 17, 2001 in the **Federal Register**. (66 FR 43123).

DATES: The public workshop originally scheduled for Wednesday, September 12, 2001 in Washington, DC, has been rescheduled for Monday, October 1, 2001 in Washington, DC at 9 a.m. to 5 p.m. Written comments must be received on or before Thursday, November 1, 2001.

ADDRESSES: The workshop will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC 20585. (Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. If you are a foreign national and wish to participate in the workshop, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards-Jones at (202) 586–2945 so that the necessary procedures can be completed.)

A limited number of call-in phone lines will be provided for the October 1, 2001, workshop from 9 a.m. to 5 p.m. for those unable to travel. Please contact Ms. Brenda Edwards-Jones at (202) 586–2945 to obtain the call-in phone number.

On June 18, 2001, the draft Framework Document was placed on the DOE website at: *http://www.eren.doe.gov/buildings/codes_standards/index.htm.*

Written comments are welcome, especially following the workshop. Please submit written comments to: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Energy Conservation Standards for Commercial Unitary Air Conditioners and Heat Pumps, Docket Number: EE–RM/STD–01–375, EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945; Telefax: (202) 586–4617. You should label comments both on the envelope and on the documents and submit them for DOE receipt by November 1, 2001. Please submit one signed copy and a computer diskette (WordPerfect 8) or 10 copies (no telefacsimiles). The Department will also accept electronically-mailed comments, e-mailed to *Brenda.Edwards-Jones@ee.doe.gov,* but you must supplement such comments with a signed hard copy.

Copies of the transcript of the public workshop, the public comments received, the Framework Document, and this notice may be read at the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–0371, email: *bryan.berringer@ee.doe.gov,* or Francine Pinto, U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–7432, email: *francine.pinto@hq.doe.gov.*

Issued in Washington, DC, on September 21, 2001.

David K. Garman,

Assistant Secretary for Energy Efficiency and Renewable Energy.

[FR Doc. 01–24226 Filed 9–26–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket Number EE–RM/STD–98–440]

RIN 1904–AA77

Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking; rescheduling of public hearing, extension of time to submit comments.

SUMMARY: This document: Announces a new date of October 2, 2001, for the public hearing originally scheduled for September 13, 2001; and extends the time period to October 19, 2001 for submitting comments regarding the supplemental notice of proposed rulemaking published on July 25, 2001.

DATES: Oral views, data, and arguments may be presented at the public hearing rescheduled to begin at 9 a.m. on October 2, 2001 in Washington, DC. DOE must receive requests to speak at the public hearing and a copy of your statements no later than 4 p.m., September 26, 2001, and we request that you provide a computer diskette (WordPerfect 8) of each statement at that time. Unless we hear otherwise, we will assume that persons who previously submitted requests to speak at the public hearing scheduled for September 13, 2001 will present oral statements at the hearing on October 2, 2001.

Comments must be received on or before October 19, 2001. DOE is requesting a signed original, a computer diskette (WordPerfect 8) and 10 copies of the written comments. DOE will also accept e-mailed comments, but you must send a signed original.

ADDRESSES: Please submit written comments, oral statements, and requests to speak at the public hearing to: Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps, Docket No. EE–RM/STD–98–440, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone (202) 586–2945; Telefax: (202) 586–4617. You should label comments both on the envelope and on the documents and submit them for DOE receipt by October 19, 2001. You

may send emails to: *brenda.edwards-jones@ee.doe.gov.*

The workshop will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585. (Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. If you are a foreign national and wish to participate in the workshop, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards-Jones at (202) 586–2945 so that the necessary procedures can be completed.) You can find more information concerning public participation in this rulemaking proceeding in Section VII, ''Public Comment,'of the previous published notice of proposed rulemaking. (66 FR 38822).

A limited number of call-in phone lines will be provided for the October 2, 2001, workshop from 9 a.m. to 5 p.m. for those unable to travel. Please contact Ms. Brenda Edwards-Jones at (202) 586–2945 to obtain the call-in phone number.

Copies of the transcript of the public hearing, the public comments received and this notice may be read at the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Michael E. McCabe, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586-0854, e-mail: ME.mccabe@ee.doe.gov, or Michael Bowers, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8140, e-mail: mike.bowers@hq.doe.gov.

Issued in Washington, DC., on September 21, 2001.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 01–24227 Filed 9–26–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–32–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company GE90 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to General Electric Company (GE) GE90 series turbofan engines. This proposal would require removing from service high pressure turbine (HPT) interstage seals, identified by GE as the pre-life-improved rotor (pre-LIR) configuration, and installing a new design, identified by GE as the life improved rotor (LIR) configuration seal. This proposal would also require a new lower life limit for the LIR configuration seal. This proposal is prompted by an uncontained engine failure which occured during a factory development engine ground test. The actions specified by the proposed AD are intended to prevent failure of the HPT interstage seal that could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by November 26, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No.2001–NE–32–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: *9–ane–adcomment@faa.gov* Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The service information referenced in the proposed rule may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, OH 45215; telephone: (513) 672–8400, fax: (513) 672–8422. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: John E. Golinski, Aerospace Engineer, Engine Certification Office, FAA, Engine and PropellerDirectorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7135; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NE–32–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–32–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

In September, 2000 a GE90 factory development engine experienced an uncontained failure of the HPT interstage seal during an engineering ground test. The failure occurred on the current configuration HPT interstage seal, identified as the LIR configuration. The LIR configuration HPT interstage seal was introduced as part of an HPT product improvement package. The

earlier production configuration HPT interstage seal, identified as the pre-LIR interstage seal, part numbers (P/N's) are 1711M20P08, 1711M20P14, 1711M20P16, and 1711M20P17. The LIR HPT interstage seal P/N is 1847M96P02.

GE initiated an investigation to understand the root cause of the failure and to define the necessary field containment and corrective actions. As part of the investigation GE initiated inspections on pre-LIR and LIR HPT interstage seals that would provide additional data to support the failure investigation and assist in the determination of the necessary field containment actions. These inspections identified four pre-LIR interstage seals and one LIR interstage seal that had confirmed cracks.

The failure investigation consisted of analysis and testing to identify the failure modes of the pre-LIR and LIR HPT interstage seals. In addition, GE instituted an on-wing inspection program of pre-LIR seals to acquire additional data to support the investigation. To prevent pre-LIR HPT interstage seal failures, GE issued a service bulletin that removes pre-LIR HPT interstage seals from service and replaces them with improved LIR HPT interstage seals that are not susceptible to the same failure modes. This AD proposes scheduled replacement of pre-LIR HPT interstage seals.

As a result of the root cause investigation into the failure of the LIR HPT interstage seal and the investigation of the cracked HPT seals identified by the inspection program, GE determined the root cause of the cracks in the forward retainer tip area of the LIR HPT interstage seal were attributed to exposure to higher than anticipated operating temperatures. This causes a reduction of the low cycle fatigue properties of the material in this local area, which results in crack initiation. Analysis concludes that a reduction of the life limit for the LIR HPT interstage seal P/N 1847M96P02 is required. GE is in the process of incorporating design enhancements that will provide improved cooling in the forward retainer tip area that may allow for a life limit increase at some future date. This condition, if not corrected, could result in failure of the HPT interstage seal, uncontained engine failure, and damage to the airplane.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other GE90 series turbofan engines of the same type design, the proposed AD would require scheduled replacement of HPT interstage seal P/N's 1711M20P08, 1711M20P14, 1711M20P16, and 1711M20P17 with a serviceable HPT interstage seal. This proposed AD would also establish a new, lower life limit of 3,500 cycles-since-new for HPT interstage seal P/N 1847M96P02. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Economic Analysis

There are approximately 232 GE90–76B, –77B, –85B, –90B, and –94B series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 36 engines installed on airplanes of U.S. registry, with one domestic operator would be affected by this proposed AD. The FAA estimates that the cost for replacing the pre-LIR HPT interstage seals is $536,340, based on an assumption of how many seals will be replaced prior to reaching the full retirement life. The FAA also estimates that the LIR HPT interstage seal life reduction cost will be $3,396,820, and is based on the pro-rated costs of HPT interstage seals that will be removed due to the reduced life limit. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $3,933,160.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. 2001–NE–32–AD

Applicability

This airworthiness directive (AD) is applicable to General Electric Company (GE) GE90–76B, –77B, –85B, –90B, and –94B turbofan engines with high pressure turbine (HPT) interstage seals part numbers (P/N's) 1711M20P08, 1711M20P14, 1711M20P16, 1711M20P17, and 1847M96P02 installed. These engines are installed on, but not limited to Boeing 777 airplanes.

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

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent failure of the HPT interstage seal that could result in an uncontained engine failure, and damage to the airplane, do the following:

Replacement of HPT Interstage Seals P/N's 1711M20P08, 1711M20P14, 1711M20P16, and 1711M20P17

(a) For GE90–76B, –77B, –85B, –90B engines with HPT interstage seals P/N's 1711M20P08, 1711M20P16, and 1711M20P17 installed, and GE90–76B and –77B engines with interstage seal P/N 1711M20P14 installed, replace seals at next shop visit piece-part exposure with a serviceable HPT interstage seal, after the effective date of this AD, but not to exceed

4,800 cycles-since-new (CSN), or before December 31, 2006, whichever occurs earlier.

(b) For GE90–85B and –90B engines with HPT interstage seal P/N 1711M20P14 installed, replace seal at next shop visit piece-part exposure with a serviceable HPT interstage seal, after the effective date of this AD, but not to exceed 2,800 CSN, or before December 31, 2006, whichever occurs earlier.

(c) After the effective date of this AD, do not install any HPT interstage seal P/N's 1711M20P08, 1711M20P14, 1711M20P16, and 1711M20P17 into an engine.

Reduced Life Limit

(d) For engines with HPT interstage seals P/N 1847M96P02 installed, remove engine from service before exceeding the reduced cyclic life limit of 3,500 CSN.

(e) This AD establishes a new cyclic life limit for HPT interstage seal, P/N 1847M96P02. Except as provided in paragraph (g) of this AD, no alternate life limits for this part may be approved.

Definition

(f) For the purpose of this AD, a shop visit piece-part exposure is defined as an engine removal, for maintenance that cannot be performed while installed on the airplane, and that the HPT interstage seal is completely disassembled when accomplished in accordance with the disassembly instructions of the engine manual.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Burlington, Massachusetts, on September 20, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–24274 Filed 9–26–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB24

Labor Certification and Petition Process for Temporary Agricultural Employment of Nonimmigrant Workers in the United States (H–2A Workers); Modification of Fee Structure; Reopening and Extension of Comment Period

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: This document reopens and extends the period for filing comments on the proposed rule that would require employers to submit fees for labor certification and the associated H–2A petition with a consolidated application form at the time of filing. The proposed rule also would modify the fee structure for H–2A labor certification applications. This action is once again being taken to permit additional comment from interested persons.

DATES: Interested persons are invited to submit written comments on or before October 29, 2001.

ADDRESSES: Submit written comments to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4318, Washington, DC 20210, Attention: Dale Ziegler, Chief, Division of Foreign Labor Certifications.

FOR FURTHER INFORMATION CONTACT: Charlene Giles; telephone 202–693–2950 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 13, 2000, (65 FR 43545) we published a notice requesting comments on a proposed rule to require employers to submit the fees for temporary alien agricultural (H–2A) labor certification and the associated non-immigrant H–2A petition with a consolidated application form at the time of filing. The proposal also would modify the fee structure for H–2A labor certification applications. On August 17, 2000, the comment period was reopened and extended. 65 FR 50170. Because of comments received during the comment period and continuing interest in the proposal, it is desirable to reopen the comment period for all interested persons. Therefore, the comment period for the proposed rule amending 20 CFR part 655, subpart B (Labor Certification Process for Temporary Agricultural Employment in the United States (H–2A Workers) is reopened and extended until October 29, 2001.

What Comments Did the Department Receive on the Proposed Rule?

During the reopened comment period, the Department of Labor (Department or DOL) received fourteen additional written comments to the proposed rule. The comments were from agricultural growers and associations, farmworker advocacy groups, and other interested parties. The comments generally were divided among four categories, Immigration and Naturalization Service (INS) Issues, DOL Issues, Fee Structure, and the proposed ETA–9079 Form. The following is a discussion of the comments and the Department's responses:

1. Overnight Delivery

Some commenters believe the overnight delivery requirement is not practical. This is a requirement the Department has placed upon itself and is not intended to be mandated for employers filing labor certifications. In order to allow Department staff to review and process certification requests on a timely basis, it is necessary to forward application packets to the Employment and Training Administration (ETA) Regional Offices from the ETA Service Centers on an overnight basis.

2. Fourteen-Day Grace Period

Some commenters objected to the fourteen-day grace period, (*i.e.,* the addition of 14 days of certified employment to the period requested), stating it may have an effect on the employer's duty to guarantee three-fourth's of the offered work (¾ guarantee) and the employer's duty to accept U.S. workers who seek employment through 50 percent of the work contract period (50-percent rule).

In view of the issues raised by commenters concerning the possible effects of the 14-day grace period on the employer's ¾ guarantee and the administration of the 50-percent rule, the Department is seeking additional comments on short-term extensions of 14 days or less. One possible approach would be not to make 14-day extensions automatic, but to provide that ETA would grant such extensions if an employer applies for an extension of 14 days or less directly to the appropriate Regional Administrator.

3. Fee Structure

Some commenters recommended that the fees should be higher to generate

additional monies to sustain the program. The Department lacks the statutory authority to retain H–2A labor certification fees (20 CFR 656.32).

4. ETA Form 9079

A number of the comments addressed the proposed consolidated certification and petition form.

(a) *Style and Layout.* Some commenters objected to the form for a variety of reasons, including comments stating that Form 9079 is too burdensome, time-consuming, and confusing. As a result of these comments, the Department is developing a more ''user-friendly'' version of Form 9079, which will be published for public comment. As part of this revision, as requested by commenters, space will be provided on the form indicating that the employer is represented by counsel.

(b) *Data Collection.* Some commenters objected to the amount of information requested on the new form, comparing it to the existing Form ETA–750. This is not an accurate comparison, since DOL now is performing some of the functions previously performed by INS. Thus, in addition to the ETA–750, the proposed ETA 9079 replaces INS petition Form I–129, resulting in an overall paperwork reduction for employers.

(c) *Circles and Boxes.* Some commenters stated that the use of circles and boxes on the ETA 9079 is inconsistent. This will be addressed on the newly revised Form 9079.

(d) *Redundant Information.* Some commenters stated that ETA is requesting the same information of employers on both the ETA 9079 and the ETA 790 job order with respect to crop and wage information. The new Form 9079 will address this concern by not capturing crop and wage activity on both forms.

(e) *Multiple Languages.* Some commenters asked that the ETA 9079 be translated into other languages in addition to English. Since the application form is prepared by agricultural employers, DOL does not anticipate that the target population will require language assistance. To the extent feasible, local ES offices, particularly those with bilingual (English-Spanish) staff, will do their best to assist those employers in need of such assistance. Foreign language assistance is provided to U.S. workers recruited through the Employment Service System.

(f) *Addendum C.* Confusion about filing of the ETA From 9079 Addendum C as to whether it should be filed up front or after acceptance. Instructions on page 43553 which include a chart indicates Addendum C may be submitted any time after acceptance letter and 5 days prior to certification. Addendum C refers to Consulate locations from where the foreign workers will be processed and issued visas to enter the United States. If workers cannot be located in one consulate office, the employer needs the option of requesting worker from another consulate.

(g) *Number of Workers.* Some commenters were confused about where on the ETA 9079 the total number of workers is specified. Worker requested information is found on page 1, number II and number III, of the ETA 9079.

(h) *Shared Housing.* Some commenters asked where on the ETA 9079 a sole employer can indicate that it is sharing housing. This information is not collected using Form ETA 9079. This information is collected on form ETA 790.

(i) *Web-Based Form.* Some commenters suggested that the forms for the program should be accessible on the World Wide Web. A website is currently under development. which will have a web-accessible on-line application form, allowing applicants to register demographic and static information that can be used to pre-fill application forms, thus reducing applicant's data entry requirements. For those forms that will require signatures, the applicant will be able to print the completed form at their local printer. Applicants would be required to sign the form and then send it in to DOL along with any associated fees.

(j) *Worksite Transfers.* Some commenters stated that the new form requires transfers to more than one worksite to be specified before the actual places are known to employers. This transfer information has never been tracked by DOL and under the new system the information will no longer be gathered by Form 9079.

(k) *General Comments.* The Department is seeking specific comments regarding Form 9079. Commenters are requested to specifically indicate what they like or dislike about Form 9079. Specific comments will be addressed by the Department when Form 9079 is redeveloped. As stated above, it will be published for public comment.

Signed at Washington, DC, this 24th day of September, 2001.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. 01–24207 Filed 9–26–01; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB24

Labor Certification and Petition Process for Temporary Agricultural Employment of Nonimmigrant Workers in the United States (H–2A Workers); Modification of Fee Structure; Informal Briefing

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule; notice of informal briefing.

SUMMARY: The Division of Foreign Labor Certification, Employment and Training Administration (ETA), Department of Labor (Department), announces two informal briefings to allow agricultural workers and employers and other interested parties to communicate directly with the Department regarding proposed rule changes which would require employers to submit fees for temporary alien agricultural labor certification and the associated H–2A petition with a consolidated application form at the time of filing. See proposed rule reopening the comment period, published elsewhere in today's **Federal Register**. The proposed rule also would modify the fee structure for H–2A labor certification applications. These briefings are being held to allow the Department to solicit individual responses and experiences from interested persons and other entities.

DATES: The briefing dates are:

- Thursday, November 8, 2001, 9:30 a.m. to 4 p.m., Washington, DC.
- Friday, November 16, 2001, 9:30 a.m. to 4 p.m., Monterey, CA.

Notices of intention to appear at the briefing must be postmarked no later than October 11, 2001.

ADDRESSES: The briefing locations are:

- U.S. Department of Labor, Francis Perkins Building, 200 Constitution Avenue, Plaza Level Auditorium, Washington, DC 20010.
- Hilton Monterey, 1000 Oguajito Road, Monterey, CA 93940.

Send notices of intention to appear to: Charlene Giles, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4318, Washington, DC 20210. Notices also may be faxed to Charlene Giles at 202–693–2760 (this is not a toll-free number), or submitted by e-mail at dflc@uis.doleta.gov.

FOR FURTHER INFORMATION CONTACT: Charlene Giles; telephone 202–693–2950. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The informal public briefings will be chaired by a senior official of the Employment and Training Administration. Persons appearing at the briefings will be allowed to present their views and pose questions of Department staff and other parties presenting their views.

Signed at Washington, DC, this 24th day of September, 2001.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. 01–24209 Filed 9–26–01; 8:45 am]

BILLING CODE 4510–30–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2001–6]

Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Extension of comment period.

SUMMARY: The Copyright Office is extending the period to file comments to proposed amendments to the regulations governing the content and service of certain notices on the copyright owner of a musical work. The notice is served or filed by a person who intends to use the work to make and distribute phonorecords, including by means of digital phonorecord deliveries, under a compulsory license.

DATES: Comments are due no later than October 12, 2001.

ADDRESSES: An original and ten copies of any comment shall be delivered to: Office of the General Counsel, Copyright Office, James Madison Building, Room LM–403, First and Independence Avenue, SE., Washington, DC; or mailed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024–0977.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: On August 28, 2001, the Copyright Office published a notice of proposed rulemaking seeking comments on proposed amendments to the regulations governing the content and service of certain notices on the copyright owner of a musical work. 66 FR 45241 (August 28, 2001). The notice is served or filed by a person who intends to use the work to make and distribute phonorecords, including by means of digital phonorecord deliveries, under a compulsory license. 17 U.S.C. 115. Comments on the proposed amendments were due on September 27, 2001.

On September 21, 2001, the Office received a request for an extension of the filing date for comments until October 12, 2001. The Office is granting this request and is extending the deadline for filing comments to October 12, 2001.

Dated: September 24, 2001.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 01–24248 Filed 9–26–01; 8:45 am]

BILLING CODE 1410–31–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2156; MM Docket No. 01–243; RM–10263]

Radio Broadcasting Services; Freer, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Jeraldine Anderson, requesting the allotment of Channel 288A to Freer, Texas, as that community's second local FM transmission service. This proposal requires a site restriction 6.8 kilometers (4.2 miles) south of the community, utilizing coordinates 27–49–20 NL and 98–38–04 WL. Additionally, as Freer, Texas, is located within 320 kilometers (199 miles) of U.S.-Mexico border, concurrence of the Mexican government to this proposal is required.

DATES: Comments must be filed on or before November 5, 2001, and reply comments on or before November 20, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Jeraldine Anderson, 1702 Cypress Drive, Irving, TX 75061.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–243, adopted September 5, 2001, and released September 14, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 288A at Freer.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01–24139 Filed 9–26–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 801, 825, 832, 836, 846, and 852

RIN 2900–AJ56

VA Acquisition Regulation: Construction and Architect-Engineer Contracts

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs Acquisition Regulation (VAAR). We propose to update position titles, to make minor grammatical corrections and revisions, to revise and update section numbers and titles, to relocate material to correspond to the Federal Acquisition Regulation (FAR), and to delegate authority. In addition, we propose to update regulations on Construction and Architect-Engineer Contracts and on Solicitation Provisions and Contract Clauses, and to add coverage regarding the authority of the National Cemetery Administration to award architect-engineer contracts. Also, we propose to replace a general prescription directing the use of all VAAR clauses relating to construction contracts with specific prescriptions for each clause, remove obsolete or duplicative material, update the VAAR regarding the requirement for certificates of current cost or pricing data, and provide agency procedures regarding disclosure of the Government cost estimate on construction contracts. This document would also remove a ''guarantee'' clause from the VAAR and provide agency procedures for VA contracting officers to use the FAR ''warranty'' clause for construction contracts exceeding the micro-purchase threshold in order to protect the best interests of the Government. In addition, this document would revise provisions regarding the acceptance of foreign construction materials to correspond to changes made in the FAR and to comply with the North American Free Trade Agreement and the Trade Agreements Act.

DATES: Comments on the proposed rule should be submitted on or before November 26, 2001 to be considered in the formulation of the final rule.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to ''OGCRegulations@mail.va.gov''. Comments should indicate that they are submitted in response to ''RIN 2900–AJ56.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Don Kaliher, Acquisition Program Management Team (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, telephone (202) 273–8819.

SUPPLEMENTARY INFORMATION: The Federal Acquisition Regulation (FAR) contains prescriptions for the use of clauses in the applicable related FAR part. It contains the actual clauses in one part, part 52. Consistent with this organization of the FAR, the prescription for the use of the FAR clause at 52.236–26, Preconstruction Conference, is located in FAR part 36, which deals with construction. Although the Department of Veterans Affairs Acquisition Regulation (VAAR) contains all clauses in one part, part 852, it currently does not, in most cases, follow the organization used in the FAR regarding the location of the prescriptions. This document proposes to reorganize the VAAR to correspond to the organization of the FAR by relocating the existing prescriptions or placing the new proposed prescriptions in the appropriate parts of the VAAR.

The VAAR currently contains a general prescription at 852.236–70, Clauses and provisions for fixed-price construction contracts, which requires the contracting officer to include the construction-related clauses in the VAAR in all construction solicitations and contracts, regardless of dollar value. In addition, a few of the clauses in the VAAR have their own individual prescriptions. This document proposes, as set forth below, to remove the general prescription that applies to all construction-related clauses in the VAAR and, for each clause that does not currently have an individual prescription, to provide an individual prescription to specify when the clause is to be used.

The general prescription at 852.236–70 requires the contracting officer to include the following clauses in all solicitations and contracts for construction, regardless of dollar value:

852.236–76, Correspondence.
852.236–77, Reference to ''standards.''
852.236–78, Government supervision.
852.236–80, Subcontracts and work coordination.
852.236–84, Schedule of work progress.
852.236–85, Supplementary labor standard provisions.
852.236–86, Worker's compensation.
852.236–88, Contract changes—supplement.
852.236–91, Special notes.

This document proposes to require use of these clauses only if the solicitation or contract is expected to exceed the micro-purchase threshold (currently $2,000 for construction) rather than in all solicitations and contracts, regardless of dollar value, as is currently required by the VAAR. The FAR does not require the use of any clauses in contracts below the micro-purchase threshold and this change would correspond to the FAR.

The general prescription at 852.236–70 also requires the contracting officer to include the clause at 852.236–79, Daily report of workers and materials, in all solicitations and contracts for construction, regardless of dollar value. This document proposes to require use of this clause only if the solicitation or contract is expected to exceed the simplified acquisition threshold (currently $100,000) rather than in all solicitations and contracts as is currently required by the VAAR. Use of this clause in lesser dollar value contracts would be optional on the part of the contracting officer, when determined to be in the best interest of the Government. This clause requires information from the contractor that appears critical to the proper administration of more complicated, larger dollar value contracts, but may not be necessary on smaller, less complicated projects.

The general prescription at 852.236–70 further requires the contracting officer to include the following clauses in all solicitations and contracts for construction, regardless of dollar value:

852.236–71, Specifications and drawings for construction.
852.236–72, Performance of work by the contractor.
852.236–74, Inspection of construction.
852.236–82, Payment under fixed-price construction contracts (without NAS).
852.236–83, Payment under fixed-price construction contracts (including NAS).

This document proposes to require use of these clauses only if the solicitation or contract includes the FAR clauses that these clauses supplement rather than in all solicitations and contracts. Since these clauses supplement particular FAR clauses, we believe there is no reason to include them in the solicitation or contract if the solicitation or contract does not also include the applicable FAR clauses.

FAR 36.203(c) states that the overall amount of the Government's construction cost estimate shall not be disclosed except as permitted by agency regulations. The VAAR does not currently contain regulations addressing this issue. We propose to add regulations at section 836.203 providing that the overall amount of the Government's construction cost estimate shall not be disclosed until after contract award and then may be disclosed upon request. We believe this would ensure that release of this sensitive information does not inappropriately influence the outcome of the solicitation prior to award.

The FAR at section 36.208 delegates to the head of the contracting activity the authority to authorize the use of cost-plus-fixed-fee, price-incentive, or other cost-variation type contracts concurrently with firm-fixed-price contracts. Section 836.208 of the VAAR currently restricts such authority to the Chief Facilities Management Officer or the Under Secretary for Health. We know of no reason for VA to be more restrictive than the FAR in delegating this authority. This document proposes to remove section 836.208 of the VAAR, thereby making the FAR delegation of authority applicable to VA.

FAR section 36.209 requires the approval of the head of the agency or authorized representative before a contract for construction can be awarded to the architect-engineer firm that designed the project. The FAR does not specify whether section 36.209 applies to both design-bid-build projects and design-build projects, as defined at FAR 36.102, or only to design-bid-build projects. A design-bid-build project is one where the design and construction are sequential and are contracted for separately with two contracts, one to design the project and the other to build the project, normally with two separate and independent contractors. A design-build project is one where both the design and construction work are combined in a single contract with one contractor. We believe a requirement for approval to award a design-build contract, where a single contractor both designs and builds a project, is not necessary. Thus, this document proposes to add a statement to section 836.209 to clarify that the provisions of FAR 36.209 and this section are applicable only to design-bid-build projects, not to design-build projects.

The FAR at 36.602–3 states that, when acquiring architect-engineer (A/E) services, agencies shall provide for one or more A/E evaluation boards. The VAAR currently delegates authority to, and provides procedures for the establishment of A/E evaluation boards by, the Office of Facilities Management (OFM) and VA medical facilities. This document proposes to delegate the same authority to the National Cemetery Administration (NCA). This is necessary to clarify that NCA has the same authority to acquire A/E services as does OFM and VA medical facilities.

FAR 36.211 states that advance notices and solicitations should be distributed to reach as many prospective offerors as practicable and provides other guidance to contracting officers on how to accomplish this. Section 836.211 of the VAAR currently authorizes the VA Central Office Project Manager to determine how VA Central Office construction specifications will be distributed. We believe there is no need for VA to have a separate section covering distribution of advance notices and solicitations applicable only to Central Office. Therefore, we propose to remove section 836.211. Upon removal of this section, VA Central Office would follow the FAR regarding the distribution of specifications.

Section 836.213–4, Notice of award, is proposed to be added to specify when a notice of award (letter of acceptance) is required on a construction contract. The FAR specifies that the contracting officer shall make award by written notice when using sealed bid procedures (FAR 14.408–1(a)) and by furnishing the executed contract or other notice of award when using negotiated procedures (FAR 15.504). The FAR does not specify the method of notice when using the simplified procedures of FAR part 13. This document proposes to require the contracting officer to issue a notice of award (letter of acceptance) for any contract award in excess of $25,000. Contracts in excess of $25,000 require either payment protection (contracts greater than $25,000 but not greater than $100,000) or payment and performance bonds (contracts of $100,000 or more). The FAR at 36.213–4 requires the contracting officer to provide certain information to the contractor when a notice of award is issued, including information on bonds. We believe that use of a letter of acceptance is the best way to provide that information to the contractor, including information on the requirement for either payment protection or bonds.

Section 836.371 of the VAAR currently contains guidance on the ''notice to proceed,'' the letter that is sent to contractors on construction contracts establishing the start date for contract work. Section 836.371 currently requires the contracting officer to send the ''notice to proceed'' by certified mail, return receipt requested, in order to provide proof of delivery. Other methods of delivery, such as overnight package delivery services, provide proof of delivery and may be less expensive or less administratively burdensome than certified mail. This document proposes to renumber this section as 836.213–70 and to revise the section to allow the contracting officer to use any delivery method that would provide proof of delivery. We believe this would reduce the cost and administrative burden of sending the ''notice to proceed.''

The introductory text in section 852.236–88 currently requires that all proposed construction contract changes costing between $100,000 and $500,000 shall be accompanied by certificates of current cost or pricing data. This document proposes to relocate this introductory text to section 836.578 and to revise the text to require certificates of current cost or pricing data only if the proposed change exceeds $500,000. The FAR threshold for requiring certificates of current cost or pricing data is $500,000 and this proposed change appears necessary to ensure that the VAAR corresponds to the FAR requirements.

Paragraph (b) of section 836.602–2 currently provides that the head of the contracting activity (HCA) or alternate shall serve on architect-engineer (A/E) evaluation boards at VA field facilities. Due to reorganization, not all VA field facilities have an HCA on site. Therefore, this document proposes to revise 836.602–2(b) to allow the senior contracting officer to serve on the board if an on-site HCA is not present. We believe this would ensure that a local representative with contracting experience and authority is available to serve on the board in the event that an HCA is not available.

The FAR states that, when authorized by the agency, the short selection procedures of FAR 36.602–5 may be used to select firms for architect-engineer contracts not expected to exceed the simplified acquisition threshold. Although the VAAR currently authorizes the use of the short selection procedures, it also requires the approval of specified VA officials before those procedures may be used. This document proposes to remove the approval requirements and to simply authorize the use of the short selection procedures. We believe this will simplify the acquisition process and will remove an unnecessary administrative burden.

The FAR at 36.603(c) provides that, under the direction of the parent agency, A/E evaluation boards shall

maintain an A/E qualifications file. We propose to add section 836.603 to provide that the Chief Facilities Management Officer for VA Central Office, or the Chief, Engineering Service, for field facilities, shall be responsible for maintaining this file.

The FAR at 46.710 authorizes agencies to use the FAR clause at 52.246–21, Warranty of Construction, if use of a warranty clause has been approved under agency procedures. The VAAR does not currently contain agency procedures for use of the FAR warranty clause. Instead, the VAAR contains a ''Guaranty'' clause at 852.236–75 that is similar to the FAR clause at 52.246–21. This document proposes to delete the VAAR Guaranty clause, with the exception of paragraph (f) and Supplement I of that clause, and to provide agency procedures authorizing contracting officers to use the FAR clause in construction solicitations and contracts exceeding the micro-purchase threshold. We believe this proposed change would ensure that all VA construction contracts exceeding the micro-purchase threshold contain a warranty provision to protect the best interests of the Government.

Paragraph (f) of the current VAAR clause at 852.236–75, Guaranty, provides VA with additional protections not found in the FAR clause at 52.246–21, Warranty of Construction. Paragraph (f) provides that any special guaranties required under the contract are subject to the same elections set forth in the basic guaranty/warranty clause. This document proposes to retain this paragraph and to relocate the paragraph (as a new clause) to new section 852.246–1, Special warranties. This document also proposes to add a prescription for use of this new clause at 846.710–70 providing that contracting officers shall include the new clause in contracts as a supplement to the FAR clause at 52.246–21, Warranties. We believe this would ensure that this additional protection regarding special warranties, currently provided by the VAAR as paragraph (f) of 852.236–75, Guaranty, is continued, despite the proposed deletion of clause 852.236–75.

The VAAR currently contains, as part of the Guaranty clause at 852.236–75, a supplemental paragraph (Supplement I) for use in construction contracts that include guarantee period services. This supplemental paragraph provides remedies for the Government in the event that the contractor fails to furnish the guarantee period services. The FAR does not contain provisions addressing guarantee period services. This document proposes to renumber and keep this supplemental paragraph as new section 852.246–2, Warranty for construction—guarantee period services, to revise the paragraph to make it a supplement of the FAR clause at 52.246–21, Warranty for Construction, and to add a prescription for its use at new section 846.710–71. We believe this would ensure that the VAAR retains an appropriate warranty clause addressing guarantee period services and a prescription for use of that clause.

For a number of clauses currently in the VAAR, the VAAR states, in the introductory text of the respective sections, that the clauses supplement FAR clauses. This document proposes to move these introductory text statements to the bodies of the VAAR clauses to ensure that the statements are part of those clauses. This would ensure that contracts in which these clauses appear clearly state that these clauses supplement the applicable FAR clauses.

The VAAR currently contains a number of clause alternates/supplements that are to be used with the respective clauses under the specified circumstances. This document proposes to revise the method used in the VAAR to identify alternates to match the method used in the FAR. For instance, the introductory text for the clause at 836.236–81, Work coordination (alternate provision), states that the clause may be substituted for paragraph (b) of the clause at 852.236–80, Subcontracts and work coordination. In other words, it is an alternate for the clause at 852.236–80. We proposed to delete section number 852.236–81 and revise the introductory text to clarify that the currently existing material at 852.236–81 is Alternate I to the clause at 852.236–80. We propose similar changes to the other alternates and supplements in the VAAR to match the way alternates are used in the FAR.

The VAAR currently contains a prescription for the use of the clause at 852.236–89, Buy American Act, in the introductory text of that section. This document proposes to revise the prescription and relocate it to part 825, Foreign Acquisition. Since the clause concerns the Buy American Act (BAA) and foreign acquisition, the prescription is more appropriately located in that part of the VAAR.

In addition, this document proposes to revise the prescription to the clause at 852.236–89, Buy American Act, and to revise the clause to correspond to changes in the FAR. Part 825 of the FAR was recently revised to make accommodations for the North American Free Trade Agreement (NAFTA) and the Trade Agreements Act (TAA). In doing so, an old FAR clause, 52.225–5, Buy American Act—Construction Materials, was deleted and two new clauses were created, 52.225–9, Buy American Act—Balance of Payment Program—Construction Materials, and 52.225–11, Buy American Act—Balance of Payment Program—Construction Materials Under Trade Agreements. The VAAR clause at 852.236–89 currently references the old deleted FAR clause 52.225–5 and does not take into consideration the impact of NAFTA or TAA. This document proposes to revise the prescription for the use of the clause at 852.236–89 and to revise the clause to accommodate NAFTA and TAA. As currently written, the clause places extensive limitations on the acceptance of any foreign material on a VA construction project, regardless of the country of origin. Thus, the clause conflicts with NAFTA and TAA, which provide that, over certain dollar thresholds, construction materials from NAFTA or TAA designated countries will be exempt from BAA restrictions. This document proposes to add two alternate provisions for use with the VAAR clause at 852.236–89 to correspond to the changes made in the FAR and to ensure compliance with NAFTA and TAA. In addition, this document proposes to remove a delegation of authority reserved to the Secretary to approve determinations to accept foreign construction material and to instead follow the delegations of authority contained in the FAR at 25.202.

The clause at 852.236–91, Special notes, currently requires a bidder to certify its business status and to certify that it will furnish data on its business if so requested. The Clinger-Cohen Act of 1996 precludes agencies from requiring certifications in agency procurement regulations except those required by law or as approved by the head of the agency. This document proposes to remove the certification requirement in 852.236–91 and to change paragraph (a) of the clause to be a ''representation'' by the bidder. This proposed change is consistent with similar language used in the FAR, such as in FAR clause 52.219–19. The information attested to in this clause is considered important and VA's ability to require bidders to furnish business data is considered essential to the evaluation of the bidders' responsibility. By changing from a ''certification'' to a ''representation,'' VA will still be able to collect the needed information and will be in compliance with the Clinger-Cohen Act.

Miscellaneous Changes

This document proposes to make new delegations of authority, to revise and

update section numbers and titles, to update position titles, to make minor grammatical and other corrections and revisions, and to relocate material, all to correspond to the FAR. This document would also remove obsolete or duplicative material and make non-substantive clarifying changes.

This document proposes to revise section 801.301–70, paragraph (c), to clarify which Office of Management and Budget (OMB) Paperwork Reduction Act (PRA) Control Numbers are assigned to which clauses. VAAR clause 852.236–81 is currently assigned OMB Control No. 2900–0422. This document proposes to rename section 852.236–81 as ''Alternate I'' under section 852.236–80. Therefore, this document proposes to remove the reference to 852.236–81 from section 801.301–70, paragraph (c), and replace it with a reference to 852.236–80 (Alt. I).

This document proposes to obtain specific OMB PRA Control Numbers for the following clauses, shown below in full text:

Buy American Act (00/2001)

(a) Reference is made to the clause entitled ''Buy American Act—Balance of Payments Program—Construction Materials,'' FAR 52.225–9.

(b) Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225–9, VA does not anticipate accepting an offer that includes foreign construction material.

(c) If a bidder chooses to submit a bid that includes foreign construction material, that bidder must provide a listing of the specific foreign construction material he/she intends to use and a price for said material. Bidders must include bid prices for comparable domestic construction material. If VA determines not to accept foreign construction material and no comparable domestic construction material is provided, the entire bid will be rejected.

(d) Any foreign construction material proposed after award will be rejected unless the bidder proves to VA's satisfaction: (1) It was impossible to request the exemption prior to award, and (2) said domestic construction material is no longer available, or (3) where the price has escalated so dramatically after the contract has been awarded that it would be unconscionable to require performance at that price. The determinations required by (1), (2), and (3) of this paragraph shall be made in accordance with subpart 825.2 and FAR 25.2.

(e) By signing this bid, the bidder declares that all articles, materials and supplies for use on the project shall be domestic unless specifically set forth on the Bid Form or addendum thereto.

(End of Cause)

Alternate I (00/2001). As prescribed in 825.1102(b), substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

(a) Reference is made to the clause entitled ''Buy American Act—Balance of Payment Program—Construction Materials Under Trade Agreements,'' FAR 52.225–11.

(b) The restrictions contained in this clause 852.236–89 are waived for North American Free Trade Agreement (NAFTA) country construction material, as defined in FAR 52.225–11. Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225–11, VA does not anticipate accepting an offer that includes foreign construction material, other than NAFTA country construction material.

Alternate II (00/2001). As prescribed in 825.1102(c), substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

(a) Reference is made to the clause entitled ''Buy American Act—Balance of Payment Program—Construction Materials Under Trade Agreements,'' FAR 52.225–11.

(b) The restrictions contained in this clause 852.236–89 are waived for designated country and North American Free Trade Agreement (NAFTA) country construction material, as defined in FAR 52.225–11. Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225–11, VA does not anticipate accepting an offer that includes foreign construction material, other than designated country or NAFTA country construction material.

852.236–91, Special Notes (00/2001)

(a) Signing of the bid shall be deemed to be a representation by the bidder that:

(1) Bidder is a construction contractor who owns, operates, or maintains a place of business, regularly engaged in construction, alteration or repair of buildings, structures, communications facilities, or other engineering projects, including furnishing and installing of necessary equipment; or

(2) If newly entering into a construction activity, bidder has made all necessary arrangements for personnel, construction equipment, and required licenses to perform construction work; and

(3) Upon request, prior to award, bidder will promptly furnish to the Government a statement of facts in detail as to bidder's previous experience (including recent and current contracts), organization (including company officers), technical qualifications, financial resources and facilities available to perform the contemplated work.

(b) Unless otherwise provided in this contract, where the use of optional materials or construction is permitted the same standard of workmanship, fabrication and installation shall be required irrespective of which option is selected. The contractor shall make any change or adjustment in connecting work or otherwise necessitated by the use of such optional material or construction, without additional cost to the Government.

(c) When approval is given for a system component having functional or physical characteristics different from those indicated or specified, it is the responsibility of the contractor to furnish and install related components with characteristics and capacities compatible with the approved substitute component as required for systems to function as noted on drawings and specifications. There shall be no additional cost to the Government.

(d) In some instances it may have been impracticable to detail all items in specifications or on drawings because of variances in manufacturers' methods of achieving specified results. In such instances the contractor will be required to furnish all labor, materials, drawings, services and connections necessary to product systems or equipment which are completely installed, functional, and ready for operation by facility personnel in accordance with their use.

(e) Claims by the contractor for delay attributed to unusually severe weather must be supported by climatological data covering the period and the same period for the 10 preceding years. When the weather in question exceeds in intensity or frequency the 10 year average, the excess experienced shall be considered ''unusually severe.'' Comparison shall be on a monthly basis. Whether or not unusually severe weather in fact delays the work will depend upon the effect of weather on the branches of work being performed during the time under consideration.

(End of Clause)

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), collections of information are contained in clauses 852.236–89, Buy American Act, and 852.236–91, Special Notes, as set forth in the **SUPPLEMENTARY INFORMATION** portion of this proposed rule. These are existing clauses and the

paperwork requirements were previously included in VA's approved, but now expired, Paperwork Reduction Act request covering all acquisition activities under parts 813, 814, and 815 of the VAAR. This notice is to obtain specific Office of Management and Budget (OMB) control numbers for these specific clauses. As required under section 3507(d) of the Act, VA has submitted a copy of this proposed rulemaking action to OMB for its review of the collection of information.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the collection of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AJ56.''

Title and Provision/Clause Number: Clause at 852.236–89, Buy American Act.

Summary of collection of information: This clause is used in solicitations and contracts for construction that also contain the FAR clause at 52.225–9, Buy American Act—Balance of Payment Program—Construction Material, or the FAR clause at 52.225–11, Buy American Act—Balance of Payment Program—Construction Material Under Trade Agreements. It requires the contractor, if the contractor wishes to submit a bid that includes foreign materials, to furnish a list of the specific foreign materials the contractor intends to use and a price for such materials.

Description of need for information and proposed use of information: The information is required to evaluate whether VA will accept or reject the bid that includes foreign materials. The information is needed to ensure compliance with the Buy American Act while still allowing for the use of materials subject to the North American Free Trade Agreement or the Trade Agreements Act.

Description of likely respondents: Firms submitting bids which include foreign materials.

Estimated number of respondents: 40.

Estimated frequency of responses: Once with the bid.

Estimated average burden per collection: 30 minutes.

Estimated total annual reporting and recordkeeping burden: 20 hours.

Title and Provision/Clause Number: Clause at 852.236–91, Special notes.

Summary of collection of information: This clause is used in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold. It requires the bidder, at the request of the contracting officer, to furnish information on the bidder's previous experience, organization, technical qualifications, financial resources, and facilities available to perform the work. Generally, this information is requested only from the bidder in line for award.

In addition, this clause requires contractors to submit, along with any claim for weather delay, climatological data covering the period of the claim and covering the same period for the 10 preceding years.

Description of need for information and proposed use of information: The information is required to assist the contracting officer in evaluating the bidder's qualifications and responsibility and to assist the contracting officer in evaluating a contractor's claim based on severe weather.

Description of likely respondents: The low bidder on a construction contract solicitation and any contractors submitting a contract claim based on severe weather conditions.

Estimated number of respondents: 850 low bidders and 20 contractors submitting weather related claims.

Estimated frequency of responses: Once for each low bidder and once for each weather related claim.

Estimated average burden per collection: 30 minutes for each low bidder and 60 minutes for each weather related claim.

Estimated total annual reporting and recordkeeping burden: 445 hours.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the proposed collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The proposed changes are small-business neutral and will not have a significant economic impact on a substantial number of small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

List of Subjects

48 CFR Part 825

Foreign currencies, Foreign trade, Government procurement.

48 CFR Parts 832 and 846

Government procurement.

48 CFR Parts 801, 836 and 852

Government procurement, Reporting and recordkeeping requirements.

Approved: May 23, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR Chapter 8 is proposed to be amended as follows:

PART 801—VETERANS AFFAIRS ACQUISITION REGULATIONS SYSTEM

1. The authority citation for part 801 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

801.103–70 [Redesignated as 801.104–70]

2. Section 801.103–70 is redesignated as section 801.104–70.

3.–4. In section 801.301–70, paragraph (b) introductory text is added; paragraph (b)(1) is revised; and the table in paragraph (c) is amended by removing ''852.236–81'' and adding in its place ''852.236–82'', and by adding in numerical order the following sections and OMB control numbers to read as follows:

801.301–70 Paperwork Reduction Act requirements.

* * * * *

(b) Contractors will not be requested to maintain systems of records unless prescribed in FAR or this VAAR.

(1) A deviation to this prohibition may be processed in accordance with 801.403 in order to allow the contracting officer to require contractor reporting or recordkeeping beyond that prescribed in FAR and VAAR. The request for deviation will clearly specify what information or recordkeeping will be required and why it is required. The request will be signed by the head of the contracting activity.

* * * * *

(c) * * *

48 CFR part or section where identified and described	Current OMB Control No.
* * *	* *
852.236–80 (Alt. I)	2900–0422
* * *	* *
852.236–89	2900–XXXX
852.236–91	2900–XXXX
* * *	* *

PART 825—FOREIGN ACQUISITION

5. The authority citation for part 825 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

6. Subpart 825.9 is amended by:

A. Redesignating subpart 825.9 as 825.10 and revising the subpart heading.

B. Redesignating section 825.901 as 825.1001 and revising the section heading.

The redesignations and revisions read as follows:

Subpart 825.10—Additional Foreign Acquisition Regulations

825.1001 Waiver of right to examination of records.

7. Subpart 825.11 and section 825.1102 are added to read as follows:

Subpart 825.11—Solicitation Provisions and Contract Clauses

825.1102 Solicitation provisions and contract clauses.

The Buy American Act (41 U.S.C. 10a–d), except as modified by the North American Free Trade Agreement (NAFTA) and the Trade Agreements Act (TAA), requires that only domestic construction material shall be used in the performance of contracts for construction. To clarify VA's position on foreign material, the contracting officer shall insert the clause at 852.236–89, Buy American Act, in solicitations and contracts for construction that contain the FAR clause at 52.225–9, Buy American Act—Balance of Payments Program—Construction Materials.

(b) For solicitations and contracts for construction that include the FAR clause at 52.225–11, Buy American Act—Balance of Payment Program—Construction Materials Under Trade Agreements, with its Alternate I (i.e., subject only to NAFTA), insert the clause at 852.236–89, Buy American Act, with its Alternate I.

(c) For solicitations and contracts that include the FAR clause at 52.225–11 without its Alternate I (i.e., subject to both NAFTA and TAA), insert the clause at 852.236–89, Buy American Act, with its Alternate II.

PART 832—CONTRACT FINANCING

8. The authority citation for part 832 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

9. Subpart 832.1, consisting of section 832.111, is added to read as follows:

Subpart 832.1—Non-Commercial Item Purchase Financing

832.111 Contract clauses for non-commercial purchases.

(a) The contracting officer shall insert the clause at 852.236–82, Payments under fixed-price construction contracts (without NAS), in solicitations and contracts for construction that include the FAR clause at 52.232–5, Payments Under Fixed-Price Construction Contracts, but that do not contain a section entitled ''Network Analysis System (NAS).'' When the solicitations or contracts include guarantee period services, the contracting officer shall use the clause with its Alternate I.

(b) The contracting officer shall insert the clause at 852.236–83, Payments under fixed-price construction contracts (including NAS), in solicitations and contracts for construction that include the FAR clause at 52.232–5, Payments Under Fixed-Price Construction Contracts, and that also contain a section entitled ''Network Analysis System (NAS).'' When the solicitations or contracts include guarantee period services, the contracting officer shall use the clause with its Alternate I.

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

10. The authority citation for part 836 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

836.202 [Amended]

11. Section 836.202 is amended by:

A. In paragraph (b), removing ''of contract'' and adding, in its place, ''of a contract''.

B. In paragraph (c), adding a ''comma'' immediately after ''FAR 52.236–5''; removing ''the clause'' and adding, in its place, ''the contracting officer shall include the clause''; and removing ''shall be included''.

12. Section 836.203 is added to read as follows:

836.203 Government estimate of construction costs.

The overall amount of the Government estimate shall not be disclosed until after award of the contract. After award, the overall amount may then be disclosed upon request.

836.208 [Removed]

13. Section 836.208 is removed.

14. Section 836.209 is revised to read as follows:

836.209 Construction contracts with architect-engineer firms.

When it is considered necessary or advantageous to award a contract for construction of a design-bid-build project, as defined at FAR 36.102, to the firm or person that designed the project, prior approval will be requested from the facility director or manager or the Director, Technical Support Service (for National Cemetery Administration contracts) for contracts involving nonrecurring maintenance (NRM) funds or from the Chief Facilities Management Officer, Office of Facilities Management, for contracts involving construction funds. Complete justification will be furnished in the request. This section does not apply to design-build contracts, as defined at FAR 36.102.

836.211 [Removed]

15. Section 836.211 is removed.

16. Section 836.213–4 is added to read as follows:

836.213–4 Notice of award.

The contracting officer shall provide the contractor a notice of award (letter of acceptance) for any contract award in excess of $25,000.

836.371 [Redesignated as 836.213–70]

17. Section 836.371 is amended by:

A. Redesignating section 836.371 as 836.213–70.

B. In paragraph (b), removing ''requested. It will'' and adding, in its place, ''requested, or any other method that provides signed evidence of receipt. The notice to proceed will''; and removing ''post office.'' and adding, in its place, ''post office or on the proof of delivery provided by the delivery service.''

C. In paragraph (d), removing ''mail is used, the certified mail receipt card returned by the post office will'' and adding, in its place, ''mail or other method of delivery is used, the certified mail receipt card returned by the post office or the proof of delivery provided by the delivery service will''.

836.3 [Removed]

18. Subpart 836.3 is removed.

19. Section 836.501 is added to read as follows:

836.501 Performance of work by the contractor.

The contracting officer shall insert the clause at 852.236–72, Performance of work by the contractor, in solicitations and contracts for construction that contain the FAR clause at 52.236–1, Performance of Work by the Contractor. When the solicitations and contracts include a section entitled ''Network Analysis System (NAS),'' the contracting officer shall use the clause with its Alternate I.

20. Section 836.521 is added to read as follows:

836.521 Specifications and drawings for construction.

The contracting officer shall insert the clause at 852.236–71, Specifications and drawings for construction, in solicitations and contracts for construction that contain the FAR clause at 52.236–21, Specifications and Drawings for Construction.

21. Sections 836.570 through 836.579 are added to read as follows:

836.570 Correspondence.

The contracting officer shall insert the clause at 852.236–76, Correspondence, in solicitations and contracts for construction expected to exceed the micro-purchase threshold.

836.571 Reference to ''standards.''

The contracting officer shall insert the clause at 852.236–77, Reference to ''standards,'' in solicitations and contracts for construction expected to exceed the micro-purchase threshold.

836.572 Government supervision.

The contracting officer shall insert the clause at 852.236–78, Government supervision, in solicitations and contracts for construction expected to exceed the micro-purchase threshold.

836.573 Daily report of workers and materials.

The contracting officer shall insert the clause at 852.236–79, Daily report of workers and materials, in solicitations and contracts for construction expected to exceed the simplified acquisition threshold. The contracting officer may, when in the best interest of the Government, insert the clause in solicitations and contracts for construction when the contract amount is expected to be at or below the simplified acquisition threshold.

836.574 Subcontractors and work coordination.

The contracting officer shall insert the clause at 852.236–80, Subcontracts and work coordination, in solicitations and contracts for construction expected to exceed the micro-purchase threshold. When the solicitations or contracts are for new construction work with complex mechanical-electrical work, the contracting officer may use the clause with its Alternate I.

836.575 Schedule of work progress.

The contracting officer shall insert the clause at 852.236–84, Schedule of work progress, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold and that do not contain a section entitled ''Network Analysis System (NAS).''

836.576 Supplementary labor standards provisions.

The contracting officer shall insert the clause at 852.236–85, Supplementary labor standards provisions, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

836.577 Worker's compensation.

The contracting officer shall insert the clause at 852.236–86, Worker's compensation, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

836.578 Contract changes—supplement.

(a) The contracting officer shall insert the clause at 852.236–88, Contract changes—supplement, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

(b) Paragraph (a) of the clause at 852.236–88 will apply to negotiated changes exceeding $500,000 and does not provide ceiling rates for indirect expenses. Such expenses will be included as part of the submission of certified cost or pricing data, will be negotiated by the contracting officer, and may be audited in accordance with FAR 15.404–2. When the negotiated change will be $500,000 or less, paragraph (b) of the clause at 852.236–88 will apply.

(c) Proposals over $500,000 shall be accompanied by certificates of current cost or pricing data, as provided in FAR 15.403–4. If cost or pricing data is required for proposals of $500,000 or less, the contracting officer may require that the data be certified in accordance with FAR 15.403–4(a)(2).

(d) It is emphasized that the indirect cost rates in paragraph (b) of the clause at 852.236–88, for changes costing $500,000 or less, are ceiling rates only and the contracting officer must negotiate the indirect expense rates within the ceiling limitations. The clause is a result of an approved FAR deviation pursuant to subpart 801.4.

836.579 Special notes.

The contracting officer shall insert the clause at 852.236–91, Special notes, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

836.602–1 [Amended]

22. Section 836.602–1, paragraph (c) is amended by removing ''project, and'' and adding, in its place, ''project and their''.

23. Section 836.602–2 is amended by:

A. In paragraph (a), removing ''Director of the Architect-Engineer Evaluation Staff, or the Area Project Manager (or Deputy Area Project Manager) will be designated to act when'' and adding, in its place, ''Director, A/E Evaluation and Program Support Service. The Area Project Director or Project Manager will be designated to act as Chair when''; and by adding a ''comma'' immediately after ''board's members''.

B. In paragraph (b), removing ''activity and'' and adding, in its place, ''activity (HCA) (or the senior contracting officer at the facility if there is no HCA on site) and''.

C. Paragraph (c) is added.

The addition reads as follows:

836.602–2 Evaluation boards.

* * * * *

(c) The evaluation board for National Cemetery Administration (NCA) contracts will be appointed by the Director, Technical Support Service, and will consist of no less than three members, one of whom will serve as the board's Chair, and one of whom will be an NCA senior level contracting officer.

836.602–4 [Amended]

24. Section 836.602–4 is amended by removing ''Central Office contracts) and'' and adding, in its place, ''Central Office contracts), the Deputy Under Secretary for Operations (for National Cemetery Administration contracts), and''.

25. Section 836.605–5 is revised as follows:

836.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.

Either of the procedures provided in FAR 36.602–5 may be used to select firms for architect-engineer contracts not expected to exceed the simplified acquisition threshold.

26. Section 836.603 is added to read as follows:

836.603 Collecting data on and appraising firms' qualifications.

The Chief Facilities Management Officer, Office of Facilities Management, for Central Office; the Director, Technical Support Service, for National Cemetery Administration acquisitions; and the Chief, Engineering Service, for field facilities, are responsible for collecting Standard Forms 254 and 255 and for maintaining a data file on architect-engineer qualifications.

27. Section 836.606 heading is added immediately preceding 836.606–70, to read as follows:

836.606 Negotiations.

836.606–73 [Amended]

28. Section 836.606–73, paragraph (a)(3)(iii) is amended by adding a ''comma'' immediately after ''samples'.

PART 846—QUALITY ASSURANCE

29. The authority citation for part 846 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

846.302–70 [Amended]

30. Section 846.302–70 is amended by removing ''852.210–72(a)'' and adding, in its place, ''852.211–72(a)'', and by removing ''852.210–72(b)'' and adding, in its place, ''852.211–72(b)''.

31. Section 846.312 is added to read as follows:

846.312 Construction contacts.

The contracting officer shall insert the clause at 852.236–74, Inspection of construction, in solicitations and contracts for construction that contain the FAR clause at 52.246–12, Inspection of Construction.

32. Subpart 846.7, consisting of sections 846.710, 846.710–70, and 846.710–71, is added to read as follows:

Subpart 846.7—Warranties

Sec.
846.710 Construction contracts.
846.710–70 Special warranties.
846.710–71 Warranty for construction—guarantee period services.

Subpart 846.7—Warranties

846.710 Construction contracts.

Contracting officers shall insert the FAR clause at 52.246–21, Warranty of Construction, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

846.710–70 Special warranties.

The contracting officer shall insert the clause at 852.246–1, Special warranties, in solicitations and contracts for construction that include the FAR clause at 52.246–21, Warranty for Construction.

846.710–71 Warranty for construction—guarantee period services.

The contracting office shall insert the clause at 852.246–2, Warranty for construction—guarantee period services, in solicitations and contracts for construction that include the FAR clause at 52.246–21, Warranty for Construction, and also include guarantee period services.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

33. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

852.236–70 [Redesignated as 836.500]

34. Section 852.236–70 is amended by:

A. Redesignating section 852.236–70 as section 836.500 and transferring newly designated section 836.500 to subpart 836.5.

B. In paragraph (a) of new section 836.500, removing ''section'' and adding, in its place, ''subpart''.

C. Revising the new section heading.

The revision reads as follows:

836.500 Scope of subpart.

35. Section 852.236–71 is amended by:

A. Revising the section introductory text.

B. Revising the date in the undesignated center heading clause.

C. In paragraph (d) of the clause, removing the ''comma'' immediately after ''work''.

D. Adding introductory text to the clause.

The revisions and addition read as follows:

852.236–71 Specifications and drawings for construction.

As prescribed in 836.521, insert the following clause:

Specifications and Drawings for Construction

The clause entitled ''Specifications and Drawings for Construction'' in FAR 52.236–21 is supplemented as follows:

* * * * *

36.–37. Section 852.236–72 is amended by:

A. Revising the section introductory text.

B. Revising the date in the undesignated center heading clause.

C. Adding introductory text to the clause.

D. Revising paragraphs (b) and (d).

E. Revising the introductory Alternate I paragraph and paragraph (c) of Alternate I.

The revisions and addition read as follows:

852.236–72 Performance of work by the contractor.

As prescribed in 836.501, insert the following clause:

Performance of Work by The Contractor (00/2001)

The clause entitled ''Performance of Work by the Contractor'' in FAR 52.236–1 is supplemented as follows:

* * * * *

(b) The contractor shall submit, simultaneously with the schedule of costs required by the Payments Under Fixed-Price Construction Contracts clause of the contract, a statement designating the branch or branches of contract work to be performed with his/her forces. The approved schedule of costs will be used in determining the value of a branch or branches, or portions thereof, of the work for the purpose of this article.

* * * * *

(d) In the event the contractor fails or refuses to meet the requirement of the FAR clause at 52.236–1, it is expressly agreed that the contract price will be reduced by 15 percent of the value of that portion of the percentage requirement that is accomplished by others. For the purpose of this clause, it is agreed that 15 percent is an acceptable estimate of the contractor's overhead and profit, or mark-up, on that portion of the work which the contractor fails or refuses to perform, with his/her own forces, in

accordance with the FAR clause at 52.236–1.

(End of clause)

Alternate I (00/2001). For requirements which include Network Analysis System (NAS), substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

* * * * *

(c) If, during progress of work hereunder, the contractor requests a change in activities of work to be performed by the contractor's forces and the contracting officer determines it to be in the best interest of the Government, the contracting officer may, at his or her discretion, authorize a change in such activities of said work.

38. Section 852.236–74 is amended by:

A. Revising the section introductory text.

B. Revising the date in the undesignated center heading clause.

C. Adding introductory text to the clause.

The revisions and addition read as follows:

852.236–74 Inspection of construction.

As prescribed in 846.312, insert the following clause:

Inspection of Construction (00/2001)

The clause entitled ''Inspection of Construction'' in FAR 52.246–12 is supplemented as follows:

* * * * *

852.236–75 [Redesignated as 852.246–2]

39. Section 852.236–75 is redesignated as 852.246–2, and is revised to read as follows:

852.246–2 Warranty for construction—guarantee period services.

As prescribed in 846.710–71, insert the following clause:

Warranty for Construction—Guarantee Period Services (00/2001)

The clause entitled ''Warranty of Construction'' in FAR 52.246–21 is supplemented as follows:

Should the contractor fail to prosecute the work or fail to proceed promptly to provide guarantee period services after notification by the contracting officer, the Government may, subject to the default clause contained at FAR Section 52.249–10, Default (Fixed-Price Construction), and after allowing the contractor 10 days to correct and comply with the contract, terminate the right to proceed with the work (or the separable part of the work) that has been delayed or unsatisfactorily performed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliance, and plant on the work site necessary for completing the work. The contractor and its sureties shall be liable for any damages to the Government resulting from the contractor's refusal or failure to complete the work within this specified time, whether or not the contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(End of clause)

40. In section 852.236–76, introductory text is added to read as follows:

852.236–76 Correspondence.

As prescribed in 836.570, insert the following clause:

* * * * *

41. Section 852.236–77 is amended by:

A. Adding introductory text.

B. Revising the undesignated center heading clause and its date.

The addition and revision read as follows:

852.236–77 Reference to ''standards.''

As prescribed in 836.571, insert the following clause:

Reference To ''Standards'' (00/2001)

* * * * *

42. In section 852.236–78, paragraph (c) is amended by removing ''may by written direction make'' and adding, in it place ''may, by written direction, make''; and a section introductory text is added to read as follows:

852.236–78 Government supervision.

As prescribed in 836.572, insert the following clause:

* * * * *

43. In section 852.236–79, section introductory text is added to read as follows:

852.236–79 Daily report of workers and materials.

As prescribed in 836.573, insert the following clause:

* * * * *

44. Section 852.236–80 is amended by:

A. Revising the introductory text.

B. Adding a new paragraph immediately following the phrase ''(End of clause)''.

The revision and addition read as follows:

852.236–80 Subcontracts and work coordination.

As prescribed in 836.574, insert the following clause:

* * * * *

(End of clause)

Alternate I (00/2001). For new construction work with complex mechanical-electrical work, the following paragraph relating to work coordination may be substituted for paragraph (b) of the basic clause:

* * * * *

45. Section 852.236–81 is amended by:

A. Removing the section introductory text.

B. Removing the undesignated center clause heading.

C. Adding a paragraph ''(b)'' designation to the undesignated clause paragraph.

D. Removing the phrase ''(End of clause)'' at the end of the newly designated paragraph (b).

E. Transferring the newly designated paragraph (b) to section 852.236.80 immediately following the ''Alternate I'' paragraph.

F. Removing section 852.236–81 section heading.

46.–47. In section 852.236–82, the introductory text and paragraphs (b)(2) and (b)(3) are revised; the ''Supplement I (Jan 1988)'' clause is removed and an alternate I clause is inserted in its place to read as follows:

852.236.82 Payments under fixed-price construction contracts (without NAS).

As prescribed in 832.111, insert the following clause in contracts that do not contain a section entitled ''Network Analysis System (NAS)'':

* * * * *

(b) * * *

(2) Costs as shown on this schedule must be true costs and, should the resident engineer so desire, he/she may require the contractor to submit the original estimate sheets or other information to substantiate the detailed makeup of the schedule.

(3) The sum of the subbranches, as applied to each branch, shall equal the total cost of such branch. The total cost of all branches shall equal the contract price.

* * * * *

Alternate I (00/2001). If the specifications include guarantee period services, the contracting officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

(6)(i) The contractor shall at the time of contract award furnish the total cost of the guarantee period services in accordance with specification section(s) covering guarantee period services. The contractor shall submit, within 15 calendar days of receipt of the notice to proceed, a guarantee period performance program which shall include an itemized accounting of the number of work-hours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the established salary costs, including employee fringe benefits, and what the contractor reasonably expects to pay over the guarantee period, all of which will be subject to the contracting officer's approval.

(ii) The cost of the guarantee period service shall be prorated on an annual basis and paid

in equal monthly payments by VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld, and the contracting officer shall inform the contractor of the unsatisfactory performance, allowing the contractor 10 days to correct deficiencies and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

48. Section 852.236–83 is amended by:

A. Revising the section introductory text.

B. Revising the date in the undesignated center heading clause.

C. Revising the clause introductory text.

D. Removing the ''Supplement I (JAN 1988)'' introductory text and inserting in its place an Alternate I paragraph, and revising paragraphs (6)(ii) and (iii).

The revisions and additions read as follows:

852.236.83 Payments under fixed-price construction contracts (including NAS).

As prescribed in 832.111, insert the following clause in contracts that contain a section entitled ''Network Analysis System (NAS)'':

Payments Under Fixed-Price Construction Contracts(00/2001)

The clause entitled ''Payments Under Fixed-Price Construction Contracts'' in FAR 52.232–5 is implemented as follows:

* * * * *

(End of clause)

Alternate I (00/2001). If the specifications include guarantee period services, the contracting officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

(6)(i) * * *

(ii) The contractor shall submit with the CPM a guarantee period performance program which shall include an itemized accounting of the number of work-hours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the established salary costs, including employee fringe benefits, and what the contractor reasonably expects to pay over the guarantee period, all of which will be subject to the contracting officer's approval.

(iii) The cost of the guarantee period service shall be prorated on an annual basis and paid in equal monthly payments by VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld and the contracting officer shall inform the contractor of the unsatisfactory performance, allowing the contractor 10 days to correct and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

852.236–84 [Amended]

49. In section 852.236–84, the introductory text is revised to read as follows:

852.236–84 Schedule of work progress.

As prescribed in 836.575, insert the following clause:

* * * * *

50. In section 852.236–85, introductory text is added to read as follows:

852.236.85 Supplementary labor standards provisions.

As prescribed in 836.576, insert the following clause:

* * * * *

51. Section 852.236–86 is revised to read as follows:

852.236–86 Worker's compensation.

As prescribed in 836.577, insert the following clause:

Worker's Compensation (00/2001)

The Act of June 25, 1936, 49 Stat. 1938 (40 U.S.C. 290) authorizes the constituted authority of States to apply their worker's compensation laws to all lands and premises owned or held by the United States.

(End of clause)

52.–53. Section 852.236–88 is amended by:

A. Revising the section heading and introductory text.

B. Removing paragraph (a) of the section.

C. Revising the first clause undesignated center heading.

D. Redesignating paragraphs (a) through (d) of the first clause as paragraphs (a)(1) through (a)(4), respectively.

E. Adding a new paragraph (a) introductory text to the first clause.

F. Removing from newly designated paragraph (a)(1) ''to be submitted'' and adding, in it place, ''to be submitted as expeditiously as possible but''.

G. Removing from newly designated paragraph (a)(2) ''submit a proposal'' and adding, in its place, ''submit a proposal, which includes the information required by paragraph (a)(1),''.

H. Removing from newly designated paragraph (a)(3) the comma immediately following the phrase ''the contract'', and the comma immediately following the phrase ''calendar days''.

I. Removing at end of the first clause the parenthetical ''(End of clause)''.

J. Removing paragraph (b) of the section.

K. Removing the second clause introductory text immediately following the second undesignated center clause heading.

L. Redesignating paragraphs (a) through (k) of the second clause as paragraphs (b)(1) through (b)(11), respectively.

M. Adding a new clause paragraph (b) introductory text.

N. Removing from newly designated paragraph (b)(1) ''to be submitted'' and adding, in its place, ''to be submitted as expeditiously as possible but''; and removing ''data are required under FAR 15.403 for proposals over $100,000, the cost of pricing'' and adding, in its place, ''data or information other than cost or pricing data are required under FAR 15.403, the''.

O. Removing from newly designated paragraph (b)(2) ''submit a proposal for cost of changes in work within 30 calendar days.'' and adding, in its place, ''submit with 30 calendar days a proposal, which includes the information required by paragraph (b)(1), for the cost of the changes in work.''

P. Removing from newly designated paragraph (b)(3) the comma immediately following the phrase ''the contract'', and the comma immediately following the phrase ''calendar days''.

Q. Removing from newly designated paragraph (b)(9) ''Workmen's'' and adding, in its place, ''Worker's'.

R. Removing the second clause undesignated center heading.

The revisions and additions read as follows:

852.236–88 Contract changes—supplement.

As prescribed in 836.578, insert the following clause:

Contract Changes—Supplement (00/2001)

* * * * *

(a) Paragraphs (a)(1) through (a)(4) apply to proposed contract changes costing over $500,000:

* * * * *

(b) Paragraphs (b)(1) through (b)(11) apply to proposed contract changes costing $500,000 or less:

* * * * *

852.236–89 [Amended]

54. Section 852.236–89 is revised to read as follows:

852.236–89 Buy American Act.

As prescribed in 825.1102, insert the following clause:

Buy American Act (00/2001)

(a) Reference is made to the clause entitled ''Buy American Act—Balance of Payments Program—Construction Materials,'' FAR 52.225–9.

(b) Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225–9, VA does not anticipate accepting an offer that includes foreign construction material.

(c) If a bidder chooses to submit a bid that includes foreign construction material, that bidder must provide a listing of the specific foreign construction material he/she intends to use and a price for said material. Bidders must include bid prices for comparable domestic construction material. If VA determines not to accept foreign construction material and no comparable domestic construction material is provided, the entire bid will be rejected.

(d) Any foreign construction material proposed after award will be rejected unless the bidder proves to VA's satisfaction: (1) It was impossible to request the exemption prior to award, and (2) said domestic construction material is no longer available, or (3) where the price has escalated so dramatically after the contract has been awarded that it would be unconscionable to require performance at that price. The determinations required by (1), (2), and (3) of this paragraph shall be made in accordance with subpart 825.2 and FAR 25.2.

(e) By signing this bid, the bidder declares that all articles, materials and supplies for use on the project shall be domestic unless specifically set forth on the Bid Form or addendum thereto.

(End of Cause)

Alternate I (00/2001). As prescribed in 825.1102(b), substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

(a) Reference is made to the clause entitled ''Buy American Act—Balance of Payment Program—Construction Materials Under Trade Agreements,'' FAR 52.225–11.

(b) The restrictions contained in this clause 852.236–89 are waived for North American Free Trade Agreement (NAFTA) country construction material, as defined in FAR 52.225–11. Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225–11, VA does not anticipate accepting an offer that includes foreign construction material, other than NAFTA country construction material.

Alternate II (00/2001). As prescribed in 825.1102(c), substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

(a) Reference is made to the clause entitled ''Buy American Act—Balance of Payment Program—Construction Materials Under Trade Agreements,'' FAR 52.225–11.

(b) The restrictions contained in this clause 852.236–89 are waived for designated country and North American Free Trade Agreement (NAFTA) country construction material, as defined in FAR 52.225–11. Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225–11, VA does not anticipate accepting an offer that includes foreign construction material, other than designated country or NAFTA country construction material.

55. Section 852.236–91 is amended by:

A. Adding an introductory text to the section.

B. Revising the undesignated center clause heading and its date.

C. Revising paragraph (a) introductory text.

D. In paragraph (b), adding a ''comma'' immediately following the phrase ''is permitted'.

The additions and revisions read as follows:

852.236–91 Special notes.

As prescribed in 836.579, insert the following clause:

Special Notes (00/2001)

(a) Signing of the bid shall be deemed to be a representation by the bidder that:

* * * * *

56. Section 852.246–1 is added to read as follows:

852.246–1 Special warranties.

As prescribed in 846.710–70, insert the following clause:

Special Warranties (00/2001)

The clause entitled ''Warranty of Construction'' in FAR 52.246–21 is supplemented as follows:

Any special warranties that may be required under the contract shall be subject to the elections set forth in the FAR clause at 52.246–21, Warranty of Construction, unless otherwise provided for in such special warranties.

(End of clause)

[FR Doc. 01–23772 Filed 9–26–01; 8:45 am]

BILLING CODE 8320–01–P

Notices

Federal Register

Vol. 66, No. 188

Thursday, September 27, 2001

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 01–019–1]

Declaration of Emergency Because of Chronic Wasting Disease

Chronic wasting disease (CWD), a disease of deer and elk, is part of a group of diseases known as transmissible spongiform encephalopathies (TSE's), a group that also includes scrapie and bovine spongiform encephalopathy (BSE). While considered rare, the incidence of CWD is on the rise among both wild and domestic cervids. The disease, which occurs mostly in adult animals, is progressive and always fatal. The origin and mode of transmission of CWD are unknown. The disease has become of particular concern due to its fatal nature, lack of known prevention or treatment, its impact on the farmed cervid industry, and its possible transmissibility to cattle or other domestic livestock and humans.

CWD is known to be endemic in free-ranging deer and elk in a limited area in the western United States. Officials have detected it in free-ranging deer and elk in southeastern Wyoming, northeastern Colorado, and southwestern Nebraska. State departments of wildlife are taking steps to conduct surveillance in the endemic areas and to control the spread of CWD in wild cervids.

In recent years, CWD has been found in 14 captive elk herds in Colorado, Montana, Nebraska, Oklahoma, and South Dakota. Some of these herds have since been depopulated. Of the 2,300 farmed elk herds (with a total of 110,000 animals) in the United States, currently only 4 (with a total of approximately 1,000 animals) are known to be CWD-positive. We do not know the full extent of infection in farmed elk in the United States. Limited funds and the absence of a CWD program have allowed the Animal and Plant Health Inspection Service (APHIS) to conduct only minimal surveillance and testing, and not depopulation. Presently, herds are placed under State quarantine when infection is found.

While current efforts have been sufficient to depopulate or send to slaughter a number of positive herds, primarily through State indemnity programs and voluntary depopulation, APHIS has determined that this method will not work to eliminate the disease in farmed cervids. First, there is no live animal test for CWD, so it is impossible to determine whether a live animal is positive; nor is there a vaccine to prevent the disease. Second, the incubation period is lengthy, and 3 to 5 years of continued surveillance is needed (with no new infection found) before a herd can be declared free of CWD through quarantine. To date, only 1 of the 14 known CWD-positive herds has been declared free of CWD following quarantine.

Indemnity from State programs has not been adequate to pay fair market value for depopulated elk, so each depopulation has caused considerable financial loss to the herd owner. Because no funds are available within APHIS for depopulation and payment of indemnity, the only option for producers to gain some compensation for eliminating a CWD-positive herd is to slaughter the animals for human consumption. This option represents a very limited incentive for producers to participate in an eradication program. Also, it poses potential problems related to contamination of slaughter facilities and potential human exposure to preclinical infected animals that are not detectable with our current testing tools.

Aggressive action in controlling this disease now will decrease the chance of having to deal with a much larger, widespread, and costly problem later, such as the situation with BSE in Europe. The European Union is struggling to rebuild consumer confidence in Europe's beef after recent outbreaks of BSE in France, Spain, and Germany. As demonstrated in Europe, once shaken, consumer confidence is very difficult to rebuild. BSE's human form, known as variant Creutzfeldt-Jakob Disease (vCJD), has killed more than 80 people in the United Kingdom and 2 in Spain. There is no known cure for this deadly disease, or for any of the other diseases caused by TSE's that affect humans or animals. Although there is currently no evidence that CWD is linked to disease in humans, or in domestic animals other than deer and elk, a theoretical risk of such a link exists. Public perception and consumer fears that CWD from deer and elk could cause disease in humans or in domestic livestock could destroy the markets for elk or deer products. Canada has prohibited the import of U.S. cervids due to CWD, and other countries are contemplating import restrictions on elk and deer and their products. Recently, Korea informed APHIS that it is temporarily suspending the importation of deer and elk and their products from the United States and Canada.

Without a Federal program in place to depopulate infected and exposed animals, the movement of infected elk into new herds and States with no known infection will continue or may even accelerate. APHIS needs to take action to document the prevalence of the disease and to prevent its further spread. Furthermore, the Agency needs to demonstrate, as with other TSE's, that it is able and willing to take early and effective action to protect the health of U.S. animals and animal industries.

Therefore, in order to address the CWD threat to U.S. livestock, APHIS has determined that additional funds are needed for a CWD eradication program. In addition to the purchase of animals, the additional funds will be used for program activities such as depopulation and disposal, clean-up and disinfection, establishment of surveillance and certification programs, testing, implementation and maintenance of quarantines, surveillance, and training for producers and veterinarians. These additional funds will reduce the spread of CWD in captive elk herds and discourage entry of positive or exposed animals into the human and animal food chains, and should save the Federal Government and farmed elk industry from having to deal with a more costly and widespread problem later.

Therefore, in accordance with the provisions of the Act of September 25, 1981, as amended (7 U.S.C. 147b), I declare that there is an emergency that threatens the livestock industry of this country and hereby authorize the transfer and use of such funds as may be necessary from appropriations or

other funds available to the agencies or corporations of the United States Department of Agriculture to establish a chronic wasting disease eradication program in the United States.

Effective Date: This declaration of emergency shall become effective September 21, 2001.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 01–24192 Filed 9–26–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting cancellation.

SUMMARY: On September 18, 2001, the Forest Service published notice in the **Federal Register** (66 FR 48114) of a National Urban and Community Forestry Advisory Council meeting to be held in Burlington, Vermont, October 4–6, 2001. That meeting has been cancelled. Notices of future meetings of the Advisory Council will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Cooperative Forestry Staff, (209) 536–9201.

Dated: September 20, 2001.

Michael T. Rains,

Deputy Chief, State and Private Forestry.

[FR Doc. 01–24249 Filed 9–26–01; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Amended Final Results of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 27, 2001.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Maureen Flannery, AD/CVD Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4052 or (202) 482–3020, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR part 351 (2000).

Scope of the Reviews

The product covered by these reviews is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10, 0306.19.00.10 and 0306.29.00.00. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

Amendment of Final Results

On August 27, 2001, the Department of Commerce (the Department) published the final results of its antidumping new shipper reviews on freshwater crawfish tail meat (crawfish tail meat) from the People's Republic of China (PRC). *Final Results of Antidumping Duty New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China* 66 FR 45002 (August 27, 2001). The companies covered by these new shipper reviews are China Kingdom Import & Export Co., Ltd. (China Kingdom), Nantong Shengfa Frozen Food Co., Ltd. (Nantong Shengfa), and Weishan Fukang Frozen Foodstuffs Co., Ltd. (Weishan Fukang). The period of review (POR) is September 1, 1999 through March 31, 2000.

On August 29, 2001, we received a submission from petitioner alleging ministerial errors in the final results of these new shipper reviews. The allegation was timely filed pursuant to section 351.224(c)(2) of the Department's regulations. We did not receive any submissions alleging ministerial errors in the final results of these new shipper reviews from China Kingdom, Nantong Shengfa, or Weishan Fukang.

Comment 1: Application of Wet-to-Dry Conversion Factor.

Petitioner argues that the Department made a ministerial error in its application of the wet-dry conversion for the crawfish scrap credit to the raw crawfish input used in the calculation of normal value based on factors of production. Petitioner explains that 70% of the weight of crawfish scrap is water and argues that, therefore, to convert the dry-weight price to an equivalent wet-weight price, the Department must multiply the dry-weight price by 30 percent. Petitioner notes that in its narrative, the Department explained that it was adjusting the amount of scrap reported by the respondents by 30 percent to account for its wet condition. Petitioner states that the Department made an error in its calculations by multiplying the dry-weight surrogate price by 70 percent.

Department's Position: We agree with petitioner. We should have multiplied the dry-weight price by 30 percent as detailed in petitioner's comments on ministerial errors. We are making this correction for these amended final results.

Comment 2: HTS Numbers.

Petitioner argues that the description of the tariff classifications of subject merchandise in the ''Scope of Reviews'' section that the Department used in the preliminary and final results of these new shipper reviews contains several errors, omissions, and other inaccuracies which could confuse or mislead the U.S. Customs Service or market participants. *Preliminary Results of New Shipper Reviews and Rescission of a New Shipper Review: Freshwater Crawfish Tail Meat from the People's Republic of China* 66 FR 18604 (April 10, 2001) (*Preliminary Results*) and *Final Results of Antidumping Duty New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China* 66 FR 45002 (August 27, 2001) (*Final Results*). Petitioner states that HTS item number 1605.40.10.10 provides the most specific category for freshwater crawfish tail meat. Petitioner also states that HTS item number 1605.40.10.90, which was listed in the preliminary and final results, applies to various prepared or preserved crustacean products other than freshwater crawfish tail meat. *See Preliminary Results; see also Final Results.* Petitioner concludes its comments by providing suggested language for the scope of these reviews, which excludes the HTS item number 1605.40.10.90.

Petitioner further argues that the Department's description does not identify all classifications that may be expected to have been used from September 1, 1999 through March 31, 2000, which is the period of review (POR). Petitioner notes that the POR precedes the promulgation date of the new HTS item numbers, 1605.40.1010 and 1605.40.1090, which occurred in mid-2000. Petitioner further states that subject merchandise may have entered under HTS item number 1605.40.1000 during the POR, because it was prior to the introduction of these two new HTS item numbers.

Petitioner requests that the HTS item numbers listed in the Department's scope description identify all of the HTS item numbers under which subject merchandise is ''reasonably believed to have been entered during the POI, and all of the HTS item numbers under which subject merchandise can reasonably be expected to enter in the future, regardless whether such classifications were or are proper.'' Petitioner argues that the Department's description should not create a false impression that Chapters 3 and 16 currently provide equally correct classifications of subject merchandise. Petitioner states that the Department's description should be neutral with respect to this question.

Department's Position: We agree in part with petitioner. We have corrected the description of the scope of these amended final results to omit the reference to HTS item number 1605.40.10.90. As published in the **Federal Register** notices, the HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

Amended Final Results of Administrative Review

In making the above corrections for these amended final results, we found transcription errors in China Kingdom's calculations. We are correcting these errors for these amended final results. *See Analysis for the Amended Final Results of the Antidumping Duty New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China: China Kingdom Import & Export Co., Ltd. and American Coast Processing Enterprises Corp. (China Kingdom), dated August 20, 2001.*

As a result of our review and the correction of the ministerial transcription errors described above, we have determined that the following margins exist:

Manufacturer/exporter	Margin (percent)
China Kingdom	77.30
Nantong Shengfa	21.85
Weishan Fukang	20.16

The Department shall determine, and the U.S. Customs Service (Customs) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we will instruct Customs to assess an importer-specific percentage margin against the entered Customs values for the subject merchandise on each of that importer's entries during the review period.

Furthermore, the following deposit requirements will be effective upon publication of this notice of amended final results of antidumping new shipper reviews for all shipments of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore de minimis, the Department shall require no deposit of estimated antidumping duties; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate, 201.63 percent; and (4) for all other non-PRC exporters of the subject merchandise, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely written notification of the return or destruction of APO materials is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

These new shipper reviews and notice are in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: September 24, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–24410 Filed 9–26–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–837]

Antidumping Duty Investigation On Greenhouse Tomatoes From Canada: Notice of Postponement of Preliminary Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of preliminary antidumping duty determination in antidumping duty investigation.

EFFECTIVE DATE: September 27, 2001.

FOR FURTHER INFORMATION CONTACT: Mark Ross or Minoo Hatten, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone; (202) 482–4794 or (202) 482–1690, respectively.

SUMMARY: The Department of Commerce is postponing the preliminary determination of the antidumping duty investigation on greenhouse tomatoes from Canada from September 24, 2001, until October 1, 2001. This postponement is made pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to Department of Commerce's (the Department's)

regulations are to 19 CFR Part 351 (2000).

Background

On April 17, 2001, the Department initiated an antidumping duty investigation on greenhouse tomatoes from Canada covering producers and exporters of the subject merchandise to the United States during the period January 1, 2000, through December 31, 2000. See *Initiation of Antidumping Duty Investigation: Greenhouse Tomatoes From Canada,* 66 FR 20630 (April 24, 2001). The notice stated that, unless postponed, the Department would issue its preliminary determination no later than 140 days after the date of the initiation. On August 21, 2001, the Department published a partial extension of the time limit for the preliminary results of this investigation based on a timely request by the petitioner. See *Antidumping Duty Investigation Covering Greenhouse Tomatoes from Canada: Notice of Postponement of Preliminary Determination,* 66 FR 43838 (August 21, 2001).

Postponement of Preliminary Determination

Currently, the preliminary determination is due no later than September 24, 2001. However, pursuant to section 733(c)(1)(B) of the Act, we have determined that this investigation is ''extraordinarily complicated'' and are therefore postponing the preliminary determination by seven days to October 1, 2001.

Under section 733(c)(1)(B) of the Act, the Department can extend the period for reaching a preliminary determination until not later than the 190th day after the date on which the administering authority initiates an investigation if:

(B) The administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the transactions to be investigated or adjustments to be considered,

(II) the novelty of the issues presented; or

(III) the number of firms whose activities must be investigated; and

(ii) additional time is necessary to make the preliminary determination.

The parties concerned are cooperating in this investigation. Additional time is necessary, however, to complete the preliminary determination due to the number of firms whose activities must be investigated. Specifically, there are over 100 Canadian producers/exporters that shipped fresh or chilled tomatoes to the United States during the period of investigation, and most of these producers/exporters ship greenhouse tomatoes. Since it was not practicable to examine all known producers/exporters of subject merchandise, in accordance with section 777A(c)(2) of the Act and 19 CFR 351.204(c)(2), we chose to investigate producers and exporters accounting for the largest volume of the subject merchandise that can reasonably be examined. See the ''Selection of Respondents'' memorandum dated May 15, 2001, from Laurie Parkhill, Director, Office 3, to Richard W. Moreland, Deputy Assistant Secretary, Group I. Although this limited our examination to five producers/exporters of subject merchandise, several of these respondents had over a dozen suppliers that we needed to evaluate for cost reporting. After identifying the appropriate companies for cost reporting and issuing questionnaires to these companies, we discovered that two of them were resellers of greenhouse tomatoes, not growers. Therefore, we had to request cost-of-production data from the growers that supplied these resellers. After selecting five producers/exporters for reporting sales data and eight growers for reporting cost-of-production data, we discovered several affiliations among these companies that resulted in revisions to our requests for information. Investigating the activities of this large number of companies, and considering the complex sales, cost, and affiliation issues associated with them, has significantly delayed our issuance of requests for information. In addition, this has delayed our ability to review and analyze this information for purposes of calculating dumping margins. As such, we determine that additional time is necessary to complete the preliminary determination in this investigation.

Further, certain members of the Department's team in this investigation were unable to return to the United States from abroad as scheduled during the week of September 10, 2001, due to the closure of the U.S. air system. Because these individuals were knowledgeable about the issues and facts in this investigation and had the responsibility to prepare the preliminary calculations, their delayed return to the United States has affected the Department's ability further to prepare an accurate preliminary determination for this investigation by September 24, 2001.

Therefore, pursuant to section 733(c)(1)(B) of the Act, we are postponing the preliminary determination in this investigation until October 1, 2001. This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f).

Dated: September 20, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–24246 Filed 9–26–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–864]

Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: September 27, 2001.

FOR FURTHER INFORMATION CONTACT: Jennifer Gehr or Shawn Thompson, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1779 or (202) 482–1776, respectively.

SUMMARY: On April 30, 2000, the Department of Commerce published its preliminary determination of sales at less than fair value of pure magnesium in granular form from the People's Republic of China. The period of investigation is April 1, 2000, through September 30, 2000.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. The final weighted-average dumping margins for the investigated companies are listed below in the section entitled ''Final Determination.''

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations

to the regulations of the Department of Commerce (the Department) are to 19 CFR part 351 (2000).

Final Determination

We determine that pure magnesium in granular form from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act.

Case History

The preliminary determination in this investigation was issued on April 23, 2001. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Pure Magnesium in Granular Form from the People's Republic of China,* 66 FR 21314 (April 30, 2001) (*Preliminary Determination*).

In June, we conducted verification of the questionnaires responses of the sole participating respondent in this case, Minmetals Precious & Rare Minerals Import and Export/China National Nonferrous Metals Industry Trading Group Corp. (Minmetals).

In July, we received case briefs from the petitioners (*i.e.,* Magnesium Corporation of America, the United Steelworkers of America, USWA 482 and 8319, and Concerned Employees of Northwest Alloys, Inc.) and the respondent, as well as from two U.S. producers of magnesium-based reagent mixtures and importers of magnesium products (*i.e.,* Rossborough Manufacturing Co L.P. (Rossborough) and ESM Group, Inc.). The Department held a public hearing on August 2, 2001, at the request of the petitioners, Minmetals, and Rossborough.

Although the deadline for this determination was originally September 12, 2001, in light of the events of September 11, 2001 and the subsequent closure of the Federal Government for reasons of security, the time-frame for issuing this determination has been extended by two days.

Scope of Investigation

There is an existing antidumping duty order on pure magnesium from the PRC. *See Notice of Antidumping Duty Orders: Pure Magnesium From the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From the Russian Federation,* 60 FR 25691 (May 12, 1995). The scope of this investigation excludes pure magnesium that is already covered by the existing order, and classifiable under item numbers 8104.11.00 and 8104.19.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS).

The scope of this investigation includes imports of pure magnesium products, regardless of chemistry, including, without limitation, raspings, granules, turnings, chips, powder, and briquettes, except as noted above.

Pure magnesium includes: (1) products that contain at least 99.95 percent primary magnesium, by weight (generally referred as ''ultra-pure'' magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as ''pure'' magnesium); (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy'' [1] (generally referred to as ''off-specification pure'' magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight. Excluded from this order are mixtures containing 90 percent or less pure magnesium by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures. The non-magnesium granular materials which the Department is aware are used to make such excluded reagents are: lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, aluminum, alumina (Al_2O_3), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomitic lime, and colemanite. A party importing a magnesium-based reagent which includes one or more materials not on this list is required to seek a scope clarification from the Department before such a mixture may be imported free of antidumping duties.

The merchandise subject to this investigation is classifiable under item 8104.30.00 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Comments on Scope

We made changes to the scope based on comments received from interested parties. *See Comment 14* of the Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Pure Magnesium from the People's Republic of China (Decision Memorandum), from Richard W. Moreland, Deputy Assistant Secretary, Import Administration to Faryar Shirzad, Assistant Secretary for Import Administration, dated September 14, 2001.

Period of Investigation

The period of investigation is April 1, 2000 through September 30, 2000, which corresponds to Minmetals' two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* October 2000).

Nonmarket Economy Status for the PRC

The Department has treated the PRC as a nonmarket economy (NME) country in all past antidumping investigations. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China,* 63 FR 72255, 72256 (Dec. 31, 1998). A designation as a NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. No party in this investigation has requested a revocation of the PRC's NME status. Therefore, we have continued to treat the PRC as an NME in this investigation. For further details, see the *Preliminary Determination.*

Separate Rate

In our preliminary determination, we found that Minmetals had met the criteria for receiving a separate antidumping rate. We have not received any information since the preliminary determination which would warrant reconsideration of our separate rate determination with respect to this company. Therefore, we continue to find that Minmetals should be assigned in individual dumping margin. For further discussion, see *Comment 1* in the Decision Memorandum.

Surrogate Country

For purposes of the final determination, we continue to find that India is the appropriate primary surrogate country for the PRC. For further discussion and analysis regarding the surrogate country selection for the PRC, see the *Preliminary Determination,* 66 FR at 18442.

PRC-Wide Rate and Use of Facts Otherwise Available

As explained in the Department's *Preliminary Determination,* Minmetals was the only exporter to respond to the

[1] The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.*

Department's questionnaire and cooperative in this investigation. Therefore, we have continued to calculate a company-specific rate for Minmetals only. However, in the preliminary determination, we stated that our review of U.S. import statistics from the PRC revealed that Minmetals did not account for all imports into the United States from the PRC. For this reason, we determined that some PRC exporters of subject merchandise failed to cooperate in this investigation. In accordance with our standard practice, as adverse facts available, we are assigning at the PRC-wide rate the higher of: (1) the highest margins stated in the notice of initiation; or (2) margin calculated for Minmetals. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From The People's Republic of China,* 65 FR 34660 (May 31, 200) and accompanying decision memorandum at *Comment 1.* For purposes of the final determination of the investigation, we are using the margin stated in the notice of initiation (*i.e.,* 305.56 percent) since it is higher than the margin calculated for Minmetals.

Analysis of Comments Received

All issued raised in the case briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Decision Memorandum, which is adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce Building. In addition a complete version of the Decision Memorandum can be accessed directly to the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made certain changes to the margin calculations. For a discussion of these changes, see the ''Margin Calculations'' section of the Decision Memorandum.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Final Determination

We determine that the following percentage weighted-average margins exist for the period April 1, 2000 through September 30, 2000:

Manufacturer/exporter	Margin (percent)
Minmetals Precious & Rare Minerals Import and Export/China National Nonferrous Metals Industry Trading Group Corp	24.67
PRC-Wide Rate	305.56

The PRC-wide rate applies to all entries of the subject merchandise except for entries from exporters/producers that are identified individually above.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of pure magnesium in granular form from the PRC that are entered, or withdrawn from warehouse, for consumption on or after April 30, 2001. The Customs Service shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown above. The suspension of liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections section 735(d) and 777(i) of the Act.

Dated: September 14, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in the Decision Memorandum

Comments

Comment 1: Separate Rate for Minmetals
Comment 2: The Use of a Combination Rate
Comment 3: The Proper Surrogates for Overhead, SG&A and Profit Ratios
Comment 4: Calculation of Overhead and SG&A Ratios Applied to HEBI
Comment 5: Valuation of Steam Coal
Comment 6: Valuation of Ferrosilicon and Dolomite
Comment 7: Marine Insurance Adjustment for Inflation
Comment 8: Ocean Freight
Comment 9: Treatment of Fluorite Powder as Overhead Expense vs. Direct material Input
Comment 10: Valuation of Tiayuan's July 2000 Electricity Consumption Factor
Comment 11: Correction of Tiayuan's Direct Labor Hours
Comment 12: Correction of HEBI's Packing Material Weights
Comment 13: Treatment of Magnesium Shreds
Comment 14: Revision to the Scope of the Investigation
Comment 15: Reconsideration of Industry Standing

[FR Doc. 01–24230 Filed 9–19–01; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–813]

Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at not less than fair value.

EFFECTIVE DATE: September 27, 2001.

FOR FURTHER INFORMATION CONTACT: Alysia Wilson or Shawn Thompson,

AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0108 or (202) 482–1776, respectively.

Summary: The Department of Commerce is conducting an antidumping duty investigation of pure magnesium from the Russian Federation. We determine that sales have not been made at less than fair value.

The Applicable Statute: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''Department's'') regulations are to 19 CFR part 351 (2000).

Final Determination: We determine that pure magnesium from the Russian Federation (Russia) is not being, nor is it likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act.

Case History

The preliminary determination in this investigation was issued on April 23, 2001. *See, Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation,* 66 FR 21319 (April 30, 2001) (*Preliminary Determination*).

In May and June, 2001, we conducted verification of the questionnaire responses submitted by each of the respondents in this investigation (*i.e.,* Avisma Titanium Magnesium Works (Avisma), Greenwich Metals Corporation (Greenwich), and Solikamsk Magnesium Works (SMW)).

In July 2001, we received case briefs from the petitioners (*i.e.,* Magnesium Corporation of America, the United Steelworkers of America, USWA 482 and 8319, and Concerned Employees of Northwest Alloys, Inc.), the three respondents noted above, and a U.S. producer of magnesium-based reagent mixtures and importer of magnesium products (*i.e.,* Rossborough Manufacturing Co. (Rossborough)). Also in July 2001, we received rebuttal briefs from the petitioners, Avisma, Greenwich, and Rossborough.

Although the deadline for this determination was originally September 12, 2001, in light of the events of September 11, 2001 and the subsequent closure of the Federal Government for reasons of security, the timeframe for issuing this determination has been extended by two days.

Scope of Investigation

The scope of this investigation includes imports of pure magnesium products, regardless of chemistry, form, or size, including, without limitation, ingots, raspings, granules, turnings, chips, powder, and briquettes.

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as ''ultra-pure'' magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as ''pure'' magnesium); (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy'' [1] (generally referred to as ''off-specification pure'' magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight. Excluded from this order are mixtures containing 90 percent or less pure magnesium by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures. The non-magnesium granular materials which the Department is aware are used to make such excluded reagents are: Lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, aluminum, alumina (Al_2O_3), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomitic lime, and colemanite. A party importing a magnesium-based reagent which includes one or more materials not on this list is required to seek a scope clarification from the Department before such a mixture may be imported free of antidumping duties.

The merchandise subject to this investigation is classifiable under items 8104.11.00, 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

For a full discussion of scope comments and determinations, *see* the accompanying September 14, 2001, Issue and Decision Memorandum from Richard W. Moreland, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration (''Issues and Descision Memorandum''), Comment 12, which is on file in the Central Records Unit of the main Department building (''B–099'') and on the Web at http://ia.ita.doc.gov.

Period of Investigation

The period of investigation (''POI'') is April 1, 2000, through September 30, 2000, which corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* October 2000).

Nonmarket Economy Country Status for Russia

The Department has treated Russia as a nonmarket economy (NME) country in all past antidumping duty investigations and administrative reviews. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation,* 64 FR 38626 (July 19, 1999); *Titanium Sponge from the Russian Federation: Final Results of Antidumping Administrative Review,* 64 FR 1599 (Jan. 11, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation,* 62 FR 61787 (Nov. 19, 1997); *Notice of Final Determination of Sale at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation,* 60 FR 16440 (Mar. 30, 1995) (*Magnesium 1995 Investigation*). A designation as a NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. No party in this investigation has requested a revocation of Russia's NME status. Therefore, we have continued to treat Russia as a NME in this investigation. For further details, see the *Preliminary Determination.*

Separate Rates

In our preliminary determination, we found that Avisma and SMW had met the criteria for the application of separate antidumping rates. We have not received any other information since the preliminary determination which would warrant reconsideration of our separate rates determination with respect to these two companies. Therefore, we continue to find that

[1] The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.*

Avisma and SMW should be assigned individual dumping margins.

Regarding Greenwich, as stated in the *Preliminary Determination,* since Greenwich is located in a market economy country and is not affiliated with a Russian producer/exporter, we calculated a separate rate in accordance with our practice. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China,* 61 FR 19026, 19027 (Apr. 30, 1996).

Russia-Wide Rate

As explained in the *Preliminary Determination,* in all NME cases, the Department implements a policy whereby there is a rebuttable presumption that all exporters or producers located in the NME comprise a single exporter under common government control, the ''NME entity.'' The Department assigns a single NME rate to the NME entity unless an exporter can demonstrate eligibility for a separate rate.

Information on the record of this investigation indicates that Avisma and SMW were the only Russian producers and/or exporters of the subject merchandise with sales or shipments to the United States during the POI. Based upon our examination and clarification of Customs data, we have determined that there are no other Russian producers and/or exporters of the subject merchandise and consequently none which were required to respond to the Department's questionnaire. *See* the memorandum from Christopher Priddy to the file entitled ''Examination of Customs Data for Pure Magnesium Russian Imports During the Period of Investigation'' dated April 23, 2001. We have not received any other information since the *Preliminary Determination* which would warrant reconsideration of this determination. Therefore, we have continued not to assign a Russia-wide rate in this investigation.

Surrogate Country

For purposes of the final determination, we find that South Africa remains the appropriate primary surrogate country for Russia. For further discussion and analysis regarding the surrogate country selection for Russia, see the *Preliminary Determination.*

Analysis of Comments Received

All issues raised in the case briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Decision Memorandum, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made certain changes to the margin calculations. For a discussion of these changes, see the ''Margin Calculations'' section of the Decision Memorandum.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents.

Final Determination

We determine that the following percentage weighted-average margins exist for the period April 1, 2000 through September 30, 2000:

Manufacturer/exporter	Margin (percent)
Avisma Titanium Magnesium Works	0.00
Greenwich Metals Corporation	0.00
Solikamsk Magnesium Works	0.00

Suspension of Liquidation

Because the estimated weighted-average dumping margins for all the examined companies are 0.00 percent, we are not directing the Customs Service to suspend liquidation of entries of pure magnesium from Russia.

Notification of the International Trade Commission

In accordance with section 735(d) of the Act, we have notified the International Trade Commission of our determination.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i) of the Act.

Dated: September 14, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in the Decision Memorandum

Comment 1: Valuation of Factory Overhead and Profit
Comment 2: Adjustment to Factory Overhead for Cell Rebuild Costs
Comment 3: Knowledge of Destination of Sales—Avisma
Comment 4: By-Product Processing Costs—Avisma
Comment 5: Treatment of Sulfur and Boric Acid—Avisma
Comment 6: Chlorine Offset Purity Levels—Avisma
Comment 7: Rounding Surrogate Value Used for Electricity—Avisma
Comment 8: Trial Shipments—Greenwich
Comment 9: Date of Sale—Greenwich
Comment 10: U.S. Freight Expenses—SMW
Comment 11: U.S. Warehousing Expenses—SMW
Comment 12: Scope
Comment 13: Standing

[FR Doc. 01–24229 Filed 9–26–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–508–809]

Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: We determine that pure magnesium from Israel is being, or is likely to be, sold in the United States at less than fair value. On April 30, 2001, the Department of Commerce published its preliminary determination of sales at less than fair value of pure magnesium from Israel. Based on the results of verification and our analysis of the comments received, we have made changes in the margin calculations. Therefore, this final determination differs from the preliminary determination. The final weighted-average dumping margins are listed below in the section entitled ''*Continuation of Suspension of Liquidation.*''

EFFECTIVE DATE: September 27, 2001.

FOR FURTHER INFORMATION CONTACT: Craig Matney or Andrew Covington, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–1778 or 482–3534, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Case History

Since the preliminary determination of this investigation (*see Notice of Preliminary Determination of Sales at Less than Fair Value: Pure Magnesium from Israel,* 66 FR 21325 (April 30, 2001) (''*Preliminary Determination*'')), the following events have occurred:

On May 2, 2001, DSM submitted a supplemental questionnaire response regarding the appropriate date of sale and revised databases which include sales which were contracted during the POI but invoiced after the POI.

On May 14, 2001, we postponed the final determination until no later than September 12, 2001, at the request of Dead Sea Magnesium, Ltd. (''DSM''), the sole respondent in this investigation (66 FR 24324, May 14, 2001).

We verified DSM's questionnaire responses in May.

The petitioners (Magnesium Corporation of America (''Magcorp''), the United Steelworkers of America, USWA Local 8319, and Concerned Employees of Northwest Alloys, Inc.), and DSM filed case briefs on July 17 and 18, 2001, respectively. The petitioners and DSM filed rebuttal briefs on July 26 and 27, 2001, respectively. A brief was also filed by Rossborough Manufacturing Co. LP on July 26, 2001, regarding the scope of this and the companion antidumping investigations of pure magnesium from Russia and the People's Republic of China. Additonal comments on the scope of this investigation were submitted by the petitioners on August 9 and 27, 2001. No hearing was held because the parties withdrew their earlier requests for a hearing.

Although the deadline for this determination was originally September 12, 2001, in light of the events of September 11, 2001, and the subsequent closure of the Federal Government for reasons of security, the timeframe for issuing this determination has been extended by two days.

Scope of Investigation

The scope of this investigation includes imports of pure magnesium products, regardless of chemistry, form, or size, including, without limitation, ingots, raspings, granules, turnings, chips, powder, and briquettes.

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as ''ultra-pure'' magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as ''pure'' magnesium); (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy'' [1] (generally referred to as ''off-specification pure'' magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight. Excluded from this order are mixtures containing 90 percent or less pure magnesium by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures. The non-magnesium granular materials which the Department is aware are used to make such excluded reagents are: Lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, aluminum, alumina (Al_2O_3), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomitic lime, and colemanite. A party importing a magnesium-based reagent which includes one or more materials not on this list is required to seek a scope clarification from the Department before such a mixture may be imported free of antidumping duties.

The merchandise subject to this investigation is classifiable under items 8104.11.00, 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

For a full discussion of scope comments and determinations, see the accompanying September 14, 2001, Issue and Decision Memorandum from Richard W. Moreland, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration (''Decision Memorandum''), comments 9 and 10, which is on file in the Central Records Unit of the main Department building (''B–099'') and on the Web at ia.ita.doc.gov/frn/.

Period of Investigation

The period of investigation (''POI'') is October 1, 1999, through September 30, 2000. This period corresponds to the respondent's four most recently completed fiscal quarters prior to the filing of the petitions (*see* 19 CFR 351.204(b)).

Normal Value (''NV'')

We used the same methodology as that described in the *Preliminary Determination* to determine the cost of production (''COP''), whether comparison market sales were at prices below the COP, and the NV, with the following exceptions:

a. Cost of Production Analysis

We used the reported COP amounts to compute a weighted-average COP during the POI, except in the following instances in which the costs were not appropriately quantified or valued. Specifically, we restated the revenue received from sales of chlorine to DSM's affiliated party to reflect an arm's length price (*see,* Decision Memorandum, comment 6), adjusted the price paid by DSM to its affiliated electricity supplier to reflect a market price (*see,* Decision Memorandum, comment 7), adjusted DSM's reported cost of manufacturing (''COM'') by treating certain joint products as byproducts (rather than as coproducts) which required the reallocation of manufacturing costs (see, Decision Memorandum, comment 2), and recalculated DSM's reported interest and general and administrative (''G&A'') expenses based on this revised COM. For further information, see the September 12, 2001, Cost Calculation Memorandum.

b. Calculation of NV Based on Constructed Value

We calculated the NV based on the methodology used in the *Preliminary Determination,* with the exception of the

[1] The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.*

changes described in the Cost of Production Analysis section, above.

Fair Value Comparisons

To determine whether sales of pure magnesium from Israel to the United States were made at less than fair value, we compared the export price (''EP'') or constructed export price (''CEP'') to the NV.

Date of Sale

At the *Preliminary Determination*, we used DSM's invoice date as the date of sale, and stated that we would examine this issue further for the final determination. Based on our review of DSM's May 2, 2001, submission and the information examined at verification, it is clear that the material terms of sale of DSM's various long-term agreements can, and frequently do, change prior to the date of invoice, but are fixed at the time of the invoice. *See, e.g.*, public version of June 29, 2001, ''Sales Verification Report'' at 5. Accordingly, we are continuing to use DSM's invoice date as the date of sale for the final determination.

Export Price and Constructed Export Price

For certain sales to the United States, we used EP as defined in section 772(a) of the Act. For the remaining sales to the United States, we used CEP as defined in section 772(b) of the Act. We calculated EP and CEP based on the same methodologies described in the *Preliminary Determination*. At the commencement of verification DSM notified the Department that it had discovered a data sorting error which misclassified certain CEP sales as EP sales and vice versa. We have corrected this misclassification for the final determination. Additionally, based on our verification findings, we revised DSM's reported values for inventory carrying costs for all sales and, for selected sales, we revised DSM's reported values for its sale terms, contract dates, contract type, payment dates, imputed credit, U.S. warehousing, inland freight, and international freight. See June 26, 2001, Verification Report and September 12, 2001, Calculation Memorandum.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act in the same manner as in the *Preliminary Determination*.

Verification

As provided in section 782(i)(1) of the Act, we verified the information submitted by DSM for our final determination. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondent.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the September 14, 2001, Issues and Decision Memorandum, which is hereby adopted and incorporated by reference into this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Issues and Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in B–099. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at: *http://ia.ita.doc.gov/frn/*. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(A) of the Act, we are directing the U.S. Customs Service (''Customs'') to continue to suspend liquidation of all imports of pure magnesium from Israel that are entered, or withdrawn from warehouse, for consumption on or after April 30, 2001, the date of publication of the *Preliminary Determination* in the **Federal Register**. Customs shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Dead Sea Magnesium	28.14
All Others	28.14

In accordance with section 735(c)(5)(A), we have based the ''all others'' rate on the dumping margin found for the sole producer/exporter investigated in this proceeding, DSM.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: September 14, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

I. Issues Related to DSM's Sales
- Comment 1: Sales of ''Off Specification'' Magnesium

II. Issues Related to DSM's Cost of Production/Constructed Value
- Comment 2: Treatment of Chlorine and Sylvanite as Byproducts
- Comment 3: Identification of ''Split-off'' Point in the Production of Joint Products
- Comment 4: Cost Allocation Methodology
- Comment 5: Allocation of Production Costs to Pure and Alloy Magnesium
- Comment 6: Calculation of Byproduct Offset
- Comment 7: Adjustment of Electricity Costs for Affiliated Party Transactions
- Comment 8: Calculation of Profit for Constructed Value

III. Issues Related to Petitioners' Standing and Scope
- Comment 9: Reconsideration of Industry Standing
- Comment 10: Scope

[FR Doc. 01–24231 Filed 9–26–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–508–810]

Final Affirmative Countervailing Duty Determination: Pure Magnesium From Israel

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final affirmative determination in a countervailing duty investigation.

SUMMARY: The Department of Commerce (the Department) has made a final

determination that countervailable subsidies are being provided to producers and exporters of pure magnesium from Israel. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

EFFECTIVE DATE: September 27, 2001.

FOR FURTHER INFORMATION CONTACT: Annika O'Hara or Melanie Brown, Office of AD/CVD Enforcement 1, Import Administration, U.S. Department of Commerce, Room 3096, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3798 or 482–4987, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (April 2000).

Petitioners

The petitioners in this investigation are the Magnesium Corporation of America (Magcorp), the United Steel Workers of America (USWA), USWA Local 8319, and Concerned Employees of Northwest Alloys, Inc. (collectively, petitioners).

Case History

Since the publication of the preliminary determination in the **Federal Register** (*see Preliminary Affirmative Countervailing Duty Determination: Pure Magnesium from Israel,* 66 FR 11144 (February 22, 2001) (*Preliminary Determination*)), the following events have occurred:

On March 13, 2001, we aligned the countervailing duty investigation of pure magnesium from Israel with the companion antidumping duty investigation at the request of the petitioners, in accordance with section 705(a)(1) of the Act. *See Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Pure Magnesium From Israel, the Russian Federation, and the People's Republic of China and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Pure Magnesium From Israel,* 66 FR 14546 (March 13, 2001).

We conducted verification of the questionnaire responses submitted by the only responding company in this investigation, Dead Sea Magnesium Ltd. (DSM) from May 6–8, 2001.

On May 14, 2001, based on a request from DSM (which is also the respondent in the companion antidumping duty investigation), we postponed the final antidumping determination until September 12, 2001. Because of the alignment of the countervailing duty investigation with the antidumping duty investigation, the final determination in the countervailing duty investigation was also postponed until September 12, 2001. *See Notice of Postponement of Final Antidumping Determination and Extension of Provisional Measures and Postponement of Final Countervailing Duty Determination: Pure Magnesium From Israel; and Notice of Postponement of Final Antidumping Determination: Pure Magnesium From the Russian Federation,* 66 FR 24324 (May 14, 2001).

On June 21 and 22, 2001, we received case briefs from DSM, the petitioners, and Rossborough Manufacturing Co. L.P. (Rossborough), an interested party in this investigation. Rebuttal briefs were filed by DSM and the petitioners on June 28 and 29, 2001. No hearing was held because the parties withdrew their earlier requests for a hearing.

Although the deadline for this determination was originally September 12, 2001, in light of the events of September 11, 2001 and the subsequent closure of the Federal Government for reasons of security, the timeframe for issuing this determination has been extended by two days.

Scope of Investigation

The scope of this investigation includes imports of pure magnesium products, regardless of chemistry, form, or size, including, without limitation, ingots, raspings, granules, turnings, chips, powder, and briquettes.

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as ''ultra-pure'' magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as ''pure'' magnesium); (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy'' [1] (generally referred to as ''off-specification pure'' magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight. Excluded from this order are mixtures containing 90 percent or less pure magnesium by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures. The non-magnesium granular materials which the Department is aware are used to make such excluded reagents are: lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, aluminum, alumina (Al_2O_3), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomitic lime, and colemanite. A party importing a magnesium-based reagent which includes one or more materials not on this list is required to seek a scope clarification from the Department before such a mixture may be imported free of countervailing duties.

The merchandise subject to this investigation is classifiable under items 8104.11.00, 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

For a full discussion of scope comments and determinations, *see* the accompanying September 14, 2001 memorandum from Richard W. Moreland, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, entitled ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of *Pure Magnesium from Israel (''Decision Memorandum*''), Comments 9 and 10.

Injury Test

Because Israel is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry. On December 13, 2000, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from Israel of the subject merchandise (*see Pure Magnesium from China, Israel,*

[1] The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.*

and Russia; Determinations, 65 FR 77910).

Period of Investigation

The period for which we are measuring subsidies (the POI) is calendar year 1999.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the *Decision Memorandum,* which is hereby adopted by this notice. Attached to this notice as Appendix I is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum.* Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/* under the heading ''Israel.'' The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual rate for DSM. Because DSM is the only respondent in this case, its rate serves as the all-others rate. We determine that the total estimated net subsidy rate is 16.52 percent *ad valorem* for DSM and for all other producers and exporters of the subject merchandise.

In accordance with our *Preliminary Determination,* we instructed the Customs Service to suspend liquidation of all entries of pure magnesium from Israel, which were entered or withdrawn from warehouse, for consumption on or after February 14, 2001, the date of the publication of our *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed Customs to discontinue the suspension of liquidation for merchandise entered on or after June 22, 2001, but to continue the suspension of liquidation of entries made between February 14, 2001 and June 21, 2001.

We will issue a countervailing duty order and reinstate the suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an Administrative Protective Order (APO), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: September 14, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Comment 1: The Department failed to take into account the effects of the privatization of ICL.
Comment 2: The Department should change the AUL used to allocate non-recurring subsidies over time.
Comment 3: The infrastructure grant is not countervailable.
Comment 4: The Department should treat DSM's ECIL grant as multiple grants.
Comment 5: The Department should use uncreditworthy discount rates to allocate benefits.
Comment 6: Use of variable discount rates.
Comment 7: The Department should correct DSW's 1993 interest rate
Comment 8: The Department should change its calculation of the benefits conveyed by the EIRD grants
Comment 9: Reconsideration of industry standing
Comment 10: Scope

[FR Doc. 01–24232 Filed 9–26–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091801B]

Endangered Species; Permits

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

ACTION: Receipt of request to modify research permit 1245 and 1324.

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has received a request to modify permit (1245) from Mr. J. David Whitaker, of South Carolina Department of Natural Resources (SCDNR) and a request to modify permit (1324) from Dr. Nancy Thompson, of the NMFS-Southeast Fisheries Science Center.

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on October 29, 2001.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review in the indicated office, by appointment:

Endangered Species Division, F/PR3, 1315 East West Highway, Silver Spring, MD 20910 (phone:301–713–1401, fax: 301–713–0376).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Silver Spring, MD (phone: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and

policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under Section 10(a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice:

Sea turtles

Threatened and endangered Green turtle (*Chelonia mydas*)

Endangered Hawksbill turtle (*Eretmochelys imbricata*)

Endangered Kemp's ridley turtle (*Lepidochelys kempii*)

Endangered Leatherback turtle (*Dermochelys coriacea*)

Threatened Loggerhead turtle (*Caretta caretta*)

Modification Requests Received

Permit 1245

The applicant requests a modification to Permit 1245. Permit 1245 authorizes the take, via capture, handling, tagging, sampling, and release of 250 loggerhead, 50 Kemp's ridley, 10 green, one leatherback, and 5 hawksbill turtles. Modification ι3 would extend the expiration date to October 31, 2004 without an increase in the authorized annual take.

The goal of the research is to establish a scientifically-valid indices of abundance for the northern sub-population of the threatened loggerhead turtle and the endangered Kemp's ridley, green and leatherback sea turtles which occur in the Atlantic Ocean off the southeastern United States. This study is intended to capture juveniles and adults, thereby providing a more comprehensive assessment of total population abundance and an assessment of the health of individual animals.

Permit 1324

The applicant requests a modification to Permit 1324. Permit 1324 authorizes the take of threatened and endangered species of sea turtles in the northeast distant statistical sampling area (NED) for the U.S. longline fishery. The purpose of the research is to develop and test methods to reduce bycatch of research that occurs incidental to commercial, pelagic longline fishing. The researchers propose to work cooperatively with U.S. pelagic longline fishermen in the NED area to conduct this fishery-dependent testing. The fishery dependent use of commercial fishing boats for this research is necessary because (1) a large level of fishing effort is necessary for the statistical power to complete this testing and fishery independent work would be cost-prohibitive and (2) testing should be conducted aboard a mix of representative platforms so that the testing results are clearly applicable to the fleets that would ultimately adopt bycatch reduction measures through this research.

Modification #1 would increase the authorized lethal take of leatherback turtle from one to two over the life of the permit and to increase the authorized lethal take of green, hawksbill, and Kemp's ridley turtles, in combination, from one to two. The permit holder has requested this modification to prevent the introduction of confounding of year and season effects that could result in a shutdown due to meeting lethal take limits authorized in the original permit.

Dated: September 20, 2001.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–24222 Filed 9–26–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092101A]

Endangered Species; Permits

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

ACTION: Issuance of modification #1 to permit 1260.

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has issued modification #1 to permit 1260 to Dr. Joseph Powers, of the NMFS – Southeast Regional Office (SERO) (1260).

ADDRESSES: The permit, application and related documents are available for review in the indicated office, by appointment:

Endangered Species Division, F/PR3, 1315 East West Highway, Silver Spring, MD 20910 (phone:301–713–1401, fax: 301–713–0376).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Silver Spring, MD (phone: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov)

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under Section 10 (a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice:

Sea turtles

Threatened and endangered Green turtle (*Chelonia mydas*)

Endangered Hawksbill turtle (*Eretmochelys imbricata*)

Endangered Kemp's ridley turtle (*Lepidochelys kempii*)

Endangered Leatherback turtle (*Dermochelys coriacea*)

Threatened Loggerhead turtle (*Caretta caretta*)

Threatened and endangered Olive ridley turtle (*Lepidochelys olivacea*)

Permits and Modified Permits Issued

Permit #1260

Notice was published on (65 FR 52988) that Dr. Joseph Powers, of SERO applied for a scientific research permit (1260). Permit #1260 was issued on June 18, 2001. The original permit application underwent a 30–day public comment period following notification of receipt in the **Federal Register**. The applicant addressed all comments submitted on this application. The modification did not under go public review because the activities being authorized under the modification were previously reviewed under the original application or are not different in scope or magnitude than those reviewed in the original application. The requestor currently holds a permit authorizing the take of listed sea turtles in the coastal waters of the Atlantic Ocean and Gulf of Mexico. The research conducted in these areas support the National Marine Fisheries Service sea turtle recovery program. Research activities include: directed in-water research, aerial surveys, resource surveys, and fishery technology testing and implementation. Leatherback, loggerhead, green, hawksbill and Kemp's ridley sea turtles are the focus of the recovery efforts in the southeast region. For modification #1, the applicant has requested take in the Albermarle-Pamlico Sound Complex in North Carolina, coverage of turtle research by observers covering oil rig removal activities in the Gulf of Mexico, addition of turtle species to the Longline gear modification experiments and extension of the permit expiration date. The permit holder has also requested that the permit expiration date be extended to June 30, 2006. Modification #1 to Permit 1260 was issued on September 18, 2001, authorizing take of listed endangered and threatened sea turtles. Permit 1260 expires June 30, 2006.

Dated: September 20, 2001.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–24224 Filed 9–26–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Membership of the National Oceanic and Atmospheric Administration Performance Review Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of membership of NOAA Performance Review Board

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), NOAA announces the appointment of four additional members to serve on the NOAA Performance Review Board (PRB). The NOAA PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and reviewing recommendations for potential Presidential Rank Award nominees, and SES recertification. The appoint of members to the NOAA PRB will be for a period of 24 months.

DATES: The effective date of service of the four additional appointees to the NOAA Performance Review Board is September 14, 2001.

FOR FURTHER INFORMATION CONTACT: David M. Belt, Executive Resources Program Manager, Human Resources Management Office, Office of Finance and Administration, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–05320 (ext. 204).

SUPPLEMENTARY INFORMATION: The names and position titles of the additional members of the NOAA PRB is set forth below:

Jordan P. St. John, Director, Office of Public and Constituent Affairs, office of Public and Constituent Affairs, NOAA

Mary Beth S. Nethercutt, Director, Office of legislative Affairs, Office of legislative Affairs, NOAA

K. David Holmes, Jr., Deputy Assistant Secretary and Director for Security, Office of the Secretary, Department of Commerce

Anthony A. Fleming, Director for Administrative Services, Office of the Secretary, Department of Commerce

Dated: September 17, 2001.

Scott B. Gudes,

Acting Under Secretary/Administrator and Deputy Under Secretary.

[FR Doc. 01–24155 Filed 9–26–01; 8:45 am]

BILLING CODE 3510–12–M

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0012, Futures Volume, Open Interest, Price, Deliveries and Exchange of Futures for Physicals

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on futures volume, open interest, price, deliveries, and exchange of futures for physicals.

DATES: Comments must be submitted on or before November 26, 2001.

ADDRESSES: Comments may be mailed to Gary J. Martinaitis, Division of Economic Analysis, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Gary J. Martinaitis, (202) 418–5209; FAX: (202) 418–5527; email: gmartinaitis@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct of sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of end information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

• Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

• The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

• Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

Futures Volume, Open Interest, Price, Deliveries and Exchange of Futures for Physicals, OMB control number 3038–0012—Extension

Commission Regulation 16.01 requires the U.S. futures exchanges to publish daily information on the items listed in the title of the collection. The information required by this rule is in the public interest and is necessary for market surveillance. This rule is promulgated pursuant to the Commission's rulemaking authority contained in Sections 5 and 5a of the Commodity Exchange Act, 7 U.S.C. 7 and 7a (2000).

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
16.01	12	On occasion	2,640	0.5	1,320

Dated: September 20, 2001.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–24166 Filed 9–26–01; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Notice of Statement of Commission Policy Regarding Temporary Relief From Certain Provisions of the Commission's Regulations

AGENCY: Commodity Futures Trading Commission.

ACTION: Statement of policy.

SUMMARY: In light of disruptions to the financial markets caused by the terrorist attacks of September 11, 2001, the Commission, as a matter of regulatory policy, has determined not to require compliance with certain Commission regulations to the extent set forth below.

EFFECTIVE DATE: September 11, 2001.

FOR FURTHER INFORMATION CONTACT: Tom Smith, Special Counsel (202–418–5495, *tsmith@cftc.gov*), or Robert Wasserman, Associate Director (202–418–5092, *rwasserman@cftc.gov*), Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: In light of disruptions to the financial markets caused by the terrorist attacks of September 11, 2001, the Commission, as a matter of regulatory policy, has determined not to require compliance with certain Commission regulations to the extent set forth below. The Commission recognizes that there may be registrants whose individual circumstances warrant relief beyond that provided by this Statement of Policy. Such registrants are encouraged to contact the National Futures Association, their Designated Self-Regulatory Organization, or Commission staff, and advise them of the particulars of their situation and of the relief needed.

(1) Futures Commission Merchants (''FCMs'') and Introducing Brokers (''IBs'') need not count September 11, 12, 13, and 14 as business days for the purpose of calculating the filing deadlines under Commission Rule 1.10 for forms 1FR–FCM AND 1FR–IB.

(2) FCMs need not count September 11, 12, 13, and 14 as business days for purposes of the calculations under Commission Rule 1.17.

(3) Any registrant that has had its physical operations disrupted as a result of the attacks of September 11, 2001, and therefore is unable to comply with the following requirements of 1.31, 1.35, 4.23, and/or 4.33 relating to books or records created on or before September 11, 2001, shall not be required:

a. To keep such books or records readily accessible, as required by Commission Rule 1.31(a), during the period September 11, 2001 through October 11, 2001;

b. To have available at all times, or to be ready at all times to provide, during the period September 11, 2001 through October 11, 2001 the facilities and/or records under Rules 1.31(b)(2)(i), 1.31(b)(2)(ii), and 1.31(b)(3); or

c. To provide such books or records promptly, as required by Commission Rule 1.35, during the period September 11, 2001 through October 11, 2001.

(4) FCMs and IBs that have had their physical operations disrupted as a result of the attacks of September 11, 2001, and therefore are unable to comply with the timestamping requirements of Rule 1.35(a–1)(1) due to their inability to access timestamping devices shall not be required to comply with those requirements between September 11, 2001 and September 21, 2001. In that event, any such FCM or IB shall use reasonable alternative methods to document the time sequence of orders.

(5) Any FCM that has had its physical operations disrupted as a result of the attacks of September 11, 2001, and therefore was unable to comply with the requirements of Commission Rules 1.32 or 30.7(f) on September 11, 12, 13, and/or 14 shall not be required to comply with those requirements.

(6) Any FCM that has had its physical operations disrupted as a result of the attacks of September 11, 2001, and therefore is unable to complete the computations required under Commission Rules 1.32 and 30.7(f) by the noon deadline set forth in the applicable rule, shall be permitted to extend that deadline to the close of business of the applicable day during the period from September 17, 2001 through October 11, 2001.

(7) Any FCM that has had its physical operations disrupted as a result of the attacks of September 11, 2001, and therefore was unable to comply with the requirements of Commission Rules 1.33(b) or 1.46(a) need not count September 11, 12, 13, and 14 as business or calendar days for the purpose of such rules.

(8) Any FCM or IB that has had its physical operations disrupted as a result of the attacks of September 11, 2001, and therefore is unable to comply with the requirement of Commission Rule 1.65(g) need not count September 11,

12, 13, and 14 as business or calendar days for the purpose of such rule.

(9) Any Commodity Pool Operator that has had its physical operations disrupted as a result of the attacks of September 11, 2001, and therefore was unable to comply with the requirements of Commission Rule 4.22(a) or the introductory paragraph of Rule 4.23 need not count September 11, 12, 13, and 14 as calendar or business days for the purposes of the filing or inspection provisions of such rules.

(10) Registrants that file paper copies of reports with the New York Regional office should submit the reports to the Chicago Regional Office at the following address: Commodity Futures Trading Commission, 300 South Riverside Plaza, Suite 1600 North, Chicago, IL 60606.

The Commission encourages Self-Regulatory Organizations to grant analogous relief from provisions of their own rules as necessary and appropriate.

Issued in Washington, D.C. on September 19, 2001 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–24165 Filed 9–26–01; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 01–23]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 01–23 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 19, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

5 September 2001

In reply refer to:
I-01/007052

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 01-23, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Malaysia for defense articles and services estimated to cost $45 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 01-23

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser**: Malaysia

(ii) **Total Estimated Value**:

Major Defense Equipment*	$19 million
Other	$26 million
TOTAL	$45 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase**: Five AN/ALQ-165(V) Airborne Self-protection Jammers (ASPJ), pre-amplifiers, filters, racks, update/development of electronic warfare suite software, spare and repair parts, support and test equipment, modification kits, operator and maintenance training, software/technical support, publications and technical data, U.S. Government and contractor technical and logistics assistance and other related elements of logistics and program support

(iv) **Military Department**: Navy (LAN)

(v) **Prior Related Cases, if any**: none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: Yes. Consistent with FAR and DFARS.

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: See Annex attached

(viii) **Date Report Delivered to Congress**: 5 September 2001

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Malaysia - Airborne Self-Protection Jammers

The Government of Malaysia has requested a possible sale of five AN/ALQ-165(V) Airborne Self-protection Jammers (ASPJ), pre-amplifiers, filters, racks, update/development of electronic warfare suite software, spare and repair parts, support and test equipment, modification kits, operator and maintenance training, software/technical support, publications and technical data, U.S. Government and contractor technical and logistics assistance and other related elements of logistics and program support. The estimated cost is $45 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Southeast Asia.

Malaysia plans to upgrade their electronic warfare capability of F-18D aircraft through replacement of their old equipment that has little or no capability against pulse doppler and continuous wave threats. The proposed sale of the ASPJ will allow Malaysia to maintain its defensive capability against existing threat systems in the area. Malaysia will have no difficulty absorbing these new jammers into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Northrop-Grumman in Linthicum, Maryland; ITT Avionics in Clifton, New Jersey; and Boeing Corporation in St. Louis, Missouri. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of 23 U.S. Government representatives for two-week intervals twice annually to participate in training, program management and technical review. There will be up to 15 contractor representatives in Malaysia for one year to assist in the production, installation, and modification of the jammers.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 01-23

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The AN/ALQ-165(V) Airborne Self-Protection Jammer (APSJ) is classified Confidential. The ASPJ is an automated modular reprogrammable active radar frequency (RF) deception jammer designed to contribute to the electronic self-protection of the host tactical aircraft from a variety of air-to-air and surface-to-air RF threats. The ASPJ was designed to accomplish threat sorting, threat identification, and jamming management in a dense signal environment to counter multiple threats. The modular architecture supports internal integration with other avionics/weapons systems in a variety of aircraft. The Digital RF Memory (DRFM) within the ASPJ is classified Confidential. The DRFM allows the ASPJ to perform countermeasures techniques again pulse doppler and continuous wave threats. The Operational Flight Programs and User Data Files used in the ASPJ are classified Secret. These software programs control the ASPJ hardware, allowing it to generate RF signals designed to defeat the threats.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Malaysia can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 01–24122 Filed 9–26–01; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 01–24]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 01–24 with attached transmittal and policy justification.

Dated: September 19, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

5 September 2001

In reply refer to:
I-01/007283

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 01-24, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Kuwait for defense articles and services estimated to cost $166 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 01-24

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Kuwait**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$166 million
TOTAL	$166 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Contractor maintenance and technical services in support of the F/A-18 aircraft to include Contractor Engineering Technical Services (CETS), Contractor Maintenance Support (CMS), technical ground support equipment, spare and repair parts, publications and technical data and other related elements of logistics support.**

(iv) **Military Department: Navy (GFP)**

(v) **Prior Related Cases, if any:**
FMS case GEU - $97 million - 12May96
FMS case SAO - $1.6 billion - 05Jan89

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none**

(viii) **Date Report Delivered to Congress: 5 September 2001**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Kuwait - Technical/Logistics Support for F/A-18 Aircraft

The Government of Kuwait has requested a proposed continuation sale of contractor maintenance and technical services in support of the F/A-18 aircraft to include Contractor Engineering Technical Services (CETS), Contractor Maintenance Support (CMS), technical ground support equipment, spare and repair parts, publications and technical data and other related elements of logistics support. The estimated cost is $166 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The Government of Kuwait needs the contractor technical, maintenance, and logistical services to maintain the operational capabilities of the aircraft, previously procured from the United States. These contractor services will provide for a continuation of the required logistics support through CY 2008.

The contractor maintenance and training technical services will not alter the basic military balance in the region.

The principal contractors participating in this proposed sale are the DYNCORP of Fort Worth, Texas; The Boeing Company of St. Louis, Missouri; and Kay and Associates, Incorporated of Arlington Heights, Illinois. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of 50 contractor representatives in Kuwait to maintain continuity in the program support through CY 2008.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 01–24124 Filed 9–26–01; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 01–25]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 01–25 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 19, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

5 September 2001

In reply refer to:
I-01/007605

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 01-25, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $18 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 01-25

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser**: Taipei Economic and Cultural Representative Office in the United States pursuant to P.L. 96-8

(ii) **Total Estimated Value**:

Major Defense Equipment*	$14 million
Other	$ 4 million
TOTAL	$18 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase**: Forty AGM-65G Maverick missiles, 48 LAU-117 launchers, 10 training missiles, containers, adapters, spare and repair parts, support and test equipment, software support, maintenance and pilot training, publications and technical documents, U.S. Government and contractor technical assistance, and other related elements of logistics support

(iv) **Military Department**: Air Force (YPG)

(v) **Prior Related Cases, if any**: FMS case YAD - $34 million - 26Aug79

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: See Annex attached

(viii) **Date Report Delivered to Congress**: 5 September 2001

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States - AGM-65G Maverick Missiles

The Taipei Economic and Cultural Representative Office in the United States has requested a possible sale of 40 AGM-65G Maverick missiles, 48 LAU-117 launchers, 10 training missiles, containers, adapters, spare and repair parts, support and test equipment, software support, maintenance and pilot training, publications and technical documents, U.S. Government and contractor technical assistance, and other related elements of logistics support. The estimated cost is $18 million.

This sale is consistent with United States law and policy as expressed in Public Law 96-8.

These missiles will allow the recipient's F-16 aircraft to protect and defend its territory against amphibious assault. The AGM-65G's increased range relative to the AGM-65B will increase aircraft survivability. The recipient, which already has AGM-65B missiles in its inventory, will have no difficulty absorbing these additional missiles into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractor will be Raytheon Missile Systems Corporation of Tucson, Arizona. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of U.S. Government and contractor representatives for periodic intervals to assist in the training, operation, and maintenance of the missiles.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 01-25

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The AGM-65G Maverick air-to-ground missile has an overall classification of Secret. The Secret aspects of the Maverick system are tactics, information revealing its vulnerability to countermeasures, and counter-countermeasures.

2. Manuals and technical documents which are necessary for operational use and organizational maintenance have portions that are classified Confidential. Performance and operating logic of the countermeasures circuits are Secret.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the recipient can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 01–24125 Filed 9–26–01; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Threat Reduction Agency (DTRA); Membership of the DTRA Performance Review Board (PRB)

AGENCY: Defense Threat Reduction Agency, Department of Defense

ACTION: Notice of PRB membership.

SUMMARY: This notice announces the appointment of DTRA's PRB membership. The publication of the PRB membership is required by 5 U.S.C. 4314 (c)(4). the PRB shall provide fair and impartial review of Senior Executive Service performance appraisals and make recommendations regarding performance ratings and performance awards to the Director, Defense Threat Reduction Agency.

EFFECTIVE DATE: The effective date of service for the appointees of the DTRA PRB is on or about September 27, 2001.

FOR FURTHER INFORMATION CONTACT: Tana Farrell, Workforce Development Branch, (703) 767–5759, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Stop 6201, Ft. Belvoir, Virginia 22060–6201.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the officials appointed to serve as members of the DTRA PRB are set forth below.

PRB Chair: Mr. Robert L. Brittigan
Member: Mr. Myron K. Kunka
Member: Mr Michael K. Evenson

The following DTRA officials will serve as alternate members of the DTRA PRB, as appropriate. Mr. Douglas Englund, Mr. Joe Golden, Mr. Richard Gullickson, Dr. Arthur Hopkins, Dr. Don Linger, Mr. Vayl Oxford, Ms. Joan Ma Pierre, Dr. Michael Shore, Ms. Ann Bridges Steely, Dr. Leon Wittwer.

Dated: September 19, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 01–24121 Filed 9–26–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.170A]

Office of Postsecondary Education: Jacob K. Javits Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: The purpose of the Jacob K. Javits Fellowship (JKJ) Program is to award fellowships to eligible students of superior ability, selected on the basis of demonstrated achievement, financial need, and exceptional promise to undertake graduate study leading to a doctoral degree or a Master of Fine Arts (MFA) at accredited institutions of higher education in selected fields of the arts, humanities, or social sciences. The selected fields in the arts are: Creative writing, music performance, music theory, music composition, music literature, studio arts (including photography), television, film, cinematography, theater arts, playwriting, screenwriting, acting, and dance. The selected fields in the humanities are: art history (including architectural history), archeology, area studies, classics, comparative literature, English language and literature, folklore, folklife, foreign languages and literature, history, linguistics, philosophy, religion, speech, rhetoric, and debate. The selected fields in the social sciences are: anthropology, communications and media, economics, ethnic and cultural studies, geography, political science, psychology but not clinical psychology, public policy and public administration, sociology but not the masters or Ph.D. in social work.

Eligible Applicants: Individuals, who at the time of application, have not yet completed their first full year of doctoral or MFA study; or will be entering graduate school in academic year 2002–2003 are eligible to apply for a Javits Fellowship. Applicants must also qualify to receive Federal student financial assistance pursuant to section 484 of the Higher Education Act, as amended, and plan to attend an accredited U.S. institutions of higher education.

Applications Available: September 28, 2001. 2002 Free Application for Federal Student Aid, January 2, 2001.

Deadline for Transmittal of Applications: November 30, 2001. 2002 Free Application for Federal Student Aid, January 31, 2002.

Estimated Available Funds: The Administration has requested $10,000,000 for this program for FY 2002. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Average Size of Awards: $31,672.

Estimated Number of Awards: 60 individual fellowships.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except as provided in 34 CFR 650.3(b)), 77, 82, 85, 86, 97, 98 and 99; and (b) The regulations for this program in 34 CFR part 650.

Supplementary Information:

Stipend Level: The Secretary will determine the JKJ fellowship stipend for the academic year 2002–2003 based on the level of support provided by the National Science Foundation (NSF) graduate fellowships, except that the amount will be adjusted as necessary so as not to exceed the JKJ fellow's demonstrated level of financial need.

Institutional Payment: The Secretary will determine the institutional payment for the academic year 2002–2003 by adjusting the academic year 2001–2002 institutional payment, which was $10,857 per fellow, by the U.S. Department of Labor's Consumer Price Index for the previous year. The institutional payment will be reduced by the amount an institution charges and collects from a fellowship recipient for tuition and fees.

For Applications Contact: Federal Student Aid Information Center, P.O. Box 84, Washington, DC 20044–0084. Telephone (toll free): 1–800–433–3243, FAX: (319) 358–4316 or via Internet: *SFAMail@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number (toll free) at 1–800–730–8913.

For Further Information Contact: Carolyn Proctor, Jacob K. Javits Fellowship Program, U.S. Department of Education, International Education and Graduate Programs Service, 1990 K St., NW., Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7542. The e-mail address for the JKJ Program is: *ope_javits_program@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Further Information Contact.*

Individuals may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education

documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 1134–1134d.

Dated: September 21, 2001.

Maureen A. McLaughlin,

Deputy Assistant Secretary for Policy, Planning and Innovation, Office of Postsecondary Education.

[FR Doc. 01–24170 Filed 9–26–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act, 5 U.S.C. App. 2 section 10(a)(2) requires that public notice of this meeting be announced in the **Federal Register.**

DATES: Wednesday, October 10, 2001, 6:00 p.m.–9:30 p.m.

ADDRESSES: Garden Plaza Hotel, 215 South Illinois Avenue, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. An overview of the Oak Ridge Reservation's residential well monitoring program will be provided by a Tennessee Department of Environment and Conservation/Oak Ridge Operation's representative.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on September 21, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–24164 Filed 9–26–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management; Site Recommendation Consideration Hearings; Yucca Mountain—Announcement of Changes in Public Hearings

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice of change in public hearing dates and times.

SUMMARY: The Department of Energy (the Department) announces a change in public hearing dates, times and sites for the hearings on the possible recommendation of the Yucca Mountain Site in Nevada for development as a spent nuclear fuel and high-level radioactive waste geologic repository.

DATES: The hearings will take place on October 10, 2001, in Amargosa Valley and on October 12, 2001 in Pahrump, Nevada.

ADDRESSES:

Amargosa Valley: Longstreet Inn and Casino, Highway 373, Amargosa Valley, Nevada 89020; 2:00 p.m.–9:00 p.m.—Poster Session; 3:00 p.m.–9:00 p.m.—Hearing

Pahrump: Bob Ruud Community Center, 150 Highway North #160, Pahrump, Nevada 89048, 2:00 p.m.–9:00 p.m.—Poster Session; 3:00 p.m.–9:00 p.m.—Hearing

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, (M/S #025), P.O. Box 30307, North Las Vegas, Nevada 89036–0307, 1–800–967–3477.

SUPPLEMENTARY INFORMATION: In the August 21, 2001, **Federal Register** Notice (66 FR 43850–43851), the Department announced the scheduling of public hearings in Las Vegas, Nevada on September 5, 2001, in Amargosa Valley on September 12, 2001, and in Pahrump, Nevada on September 13, 2001. The Department decided to postpone the latter two hearings in light of the recent terrorist attacks on the United States.

The public is invited to participate in these hearings in Amargosa Valley and Pahrump, Nevada on October 10 and October 12, 2001, respectively, by presenting oral or written views. These hearings will be informal, and the Department will use a facilitator at each site in an effort to ensure that the hearings are fair and productive. Poster sessions will begin at 2:00 p.m., and end at 9:00 p.m. Receipt of oral comments will begin at 3:00 p.m. and end at 9:00 p.m., or when all present have had the opportunity to be heard. Those citizens wishing to speak are encouraged to call 1–800–967–3477 to reserve a five-minute slot for oral presentations. Slots will be reserved in the order calls are received. Callers will not be permitted to reserve specific time slots. One time-slot will be reserved per caller.

The Department does not currently anticipate further changes in time or location. However, those planning to attend the hearings may want to check the Yucca Mountain web site at *www.ymp.gov* or call 1–800–967–3477 to confirm times and locations.

Issued in Washington, D.C. on September 24, 2001.

Lake H. Barrett,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 01–24247 Filed 9–26–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–154–000]

Virginia Electric and Power Company, dba Dominion North Carolina Power; Notice of Filing

September 21, 2001.

Take notice that on September 12, 2001, Virginia Electric and Power Company doing business in North Carolina as Dominion North Carolina Power (the Applicant) filed an application pursuant to Section 203 of the Federal Power Act for authorization and approval for the Applicant to sell to Tideland Electric Membership Corporation (TEMC) a certain parcel of land located in Beaufort County, North Carolina, and certain personal property currently belonging to the Applicant located on the real property, including a transformer, 115kV bus and structures, and associated equipment.

The Applicant states that copies of this application were served on the North Carolina Utilities Commission and the Virginia State Corporation Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 3, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–24143 Filed 9–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–15–003, RP00–632–004 and CP00–64–002]

Dominion Transmission, Inc.; Notice of In-Service Date of Capstone Project

September 21, 2001.

Take notice that on August 22, 2001, Dominion Transmission, Inc. (DTI), filed with the Federal Energy Regulatory Commission (Commission) a letter notice stating that the in-service date of the Capstone facilities will be on or before November 1, 2001.

DTI states that the purpose of this informational filing is to comply with Section 6.4 of the Offer of Settlement that was filed on June 22, 2001, in Docket Nos. RP00–632–000, RP97–406, et al., and RP00–15 (Settlement). The Settlement is unopposed and is pending Commission action. The Settlement would allow DTI to increase its transportation fuel retention percentage by 0.22 percent on the in-service date of the ''Capstone Project,'' a facility expansion that DTI is constructing in accordance with certificate of public convenience and necessity issued in Docket No. CP00–64. The Settlement calls for DTI to ''notify its customers of the effective date of said increase no less than sixty days prior to the in-service date of the Capstone Project.''

DTI states that the purpose of its informational filing is to serve as the advance notice of the in-service date of the Capstone Project and the increase to DTI's fuel retention percentage. On the date that DTI places the Capstone Project facilities into service, or sixty days after the date of the filing of its letter notice with the FERC, whichever is later, DTI is prepared to place its increased fuel increment into effect, provided that the Settlement has become effective on that date.

DTI states that it has served the letter notice upon all parties of record in the above captioned proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before September 28, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–24145 Filed 9–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–115–000]

Kinder Morgan Power Company; Complainant, v. Southern Company Services, Inc. Respondent; Notice of Complaint

September 21, 2001.

Take notice that on September 20, 2001, Kinder Morgan Power Company (KM) filed a complaint and request for fast track processing under Section 206 of the Federal Power Act, 16 U.S.C. 824e (1994), and Section 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, against Southern Company Services, Inc. requesting that the Commission order Southern to review interconnection requests and inform the interconnection customer whether the application is complete within a reasonable, specified time period, but not later than twenty (20) days after receipt of the request for interconnection.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before October 1, 2001. 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. Answers to the complaint shall also be due on or before October 1, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–24148 Filed 9–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–153–000]

Nevada Sun-Peak Limited Partnership and Nevada Power Holdings II, LLC; Notice of Filing

September 21, 2001.

Take notice that on September 12, 2001, Nevada Sun-Peak Limited Partnership and Nevada Power Holdings II, LLC (Applicants) filed with the Federal Energy Regulatory Commission (Commission), a joint application pursuant to Section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Applicants request approval of the transfer of a 49% general partnership interest and a 1% limited partnership interest in Nevada Sun-Peak Limited Partnership from Quartz-Peak Energy Company to Nevada Power Holdings II, LLC.

Nevada Sun-Peak Limited Partnership is engaged exclusively in the business of owning a 222 MW peaking facility located in Las Vegas, Nevada (the Facility), and selling its capacity at wholesale to Nevada Power Company. The Applicants request privileged treatment by the Commission of the Partnership Interest Purchase Agreement that governs the proposed transfer.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 3, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–24142 Filed 9–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3083–000]

Niagara Mohawk Power Corporation; Notice of Filing

September 21, 2001.

Take notice that on September 19, 2001, Niagara Mohawk Power Corporation (NMPC), pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's regulations, tendered for filing and Commission acceptance the First Revision of the Interconnection Agreement for Nine Mile Point Unit No. 2 nuclear generating station (NMP–2) between NMPC, New York State Electric & Gas Corporation (NYSEG), Long Island Lighting Company d/b/a LIPA (LIPA), and Nuclear LLC, designated Service Agreement No. 309 of the NYISO OATT. On July 6, 2001, the Commission accepted the NMP–2 Interconnection Agreement for filing, effective on the date of closing, and directed NMPC to submit a timely filing, if necessary, to reflect NYSEG's ownership interest in the NMP–2. The filing of First Revision of the NMP–2 Interconnection Agreement complies with that direction.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 5, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–24147 Filed 9–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3084–000]

Nine Mile Point Nuclear Station, LLC; Notice of Filing

September 21, 2001.

Take notice that on September 20, 2001, Nine Mile Point Nuclear Station, LLC (Nine Mile LLC) submitted for filing, pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's regulations, the ''Nine Mile Point Nuclear Station Unit 2 Operating Agreement'' (Operating Agreement) dated January 1, 1993, as amended, by and between Niagara Mohawk Power Corporation (NMPC), Rochester Gas & Electric Corporation (RG&E), Central Hudson Gas & Electric Corporation (CHGEC), Long Island Lighting Company (d/b/a LIPA) (LIPA) and New York State Gas & Electric Corporation (NYSEG). If NYSEG does not sell its undivided ownership interest in the Nine Mile Point Unit No.2 nuclear generating station (NMP–2) to Nine Mile LLC, NMPC, RG&E and CHGEC will transfer their rights and obligations under the Operating Agreement to Nine Mile LLC and Nine Mile LLC will operate and maintain NMP–2 on behalf of LIPA and NYSEG pursuant to the terms and conditions of the Operating Agreement.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 5, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–24146 Filed 9–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of New Docket Prefix PF

September 21, 2001.

Notice is hereby given that a new docket prefix PF has been established for Commission staff involvement in pre-filing National Environmental Policy Act (NEPA) activities for proposed gas pipelines.

The Commission will use this docket prefix when opening a docket after approving a written request from the applicant requesting staff involvement in the pre-filing NEPA process. Commission staff activities under this docket could include: developing information about the proposal; facilitating issue identification, study needs, and issue resolution; attending meetings and visiting sites; preparing preliminary EAs or DEISs; and reviewing draft applications.

The prefix will be PFFY–NNN–000, where ''FY'' stands for the fiscal year in which the request was made, and ''NNN'' is a sequential number.

David P. Boergers,

Secretary.

[FR Doc. 01–24144 Filed 9–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–317–000, et al.]

West Valley Generation, LLC, et al. Electric Rate and Corporate Regulation Filings

September 21 2001.

Take notice that the following filings have been made with the Commission:

1. West Valley Generation LLC

[Docket No. EG01–317–000]

Take notice that on September 19, 2001, West Valley Generation LLC, 830 NE Holladay Street, Suite 250, Portland, Oregon 97232, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. The applicant is a limited liability company organized under the laws of the State of Oregon and a wholly owned direct subsidiary of PacifiCorp Power Marketing, Inc., an Oregon corporation (PPM). PPM is a wholly owned direct subsidiary of PacifiCorp Holdings, Inc., a Delaware corporation with general offices in Portland, Oregon (PHI). PHI is a wholly owned direct subsidiary of NA General Partnership, a Nevada general partnership (NAGP). NAGP's two partners are Scottish Power NA 1 Limited and Scottish Power NA 2 Limited. Scottish Power NA 1 Limited and Scottish Power NA 2 Limited are private limited companies incorporated in Scotland and are wholly owned subsidiaries of ScottishPower plc, a public limited corporation organized under the laws of Scotland.

Applicant will own a gas-fired, simple cycle combustion turbine project located in West Valley City, Utah (the Facility). The initial nominal capacity of the Facility is 80MW and the maximum nominal capacity of the Facility will eventually be 200MW. The point of delivery is PacifiCorp's 138kV Terminal-Oquirrh transmission line. The applicant will be engaged directly and exclusively in the business of owning an eligible facility and selling the electric energy from the Facility to PPM at market-based rates. Copies of the application have been served upon the Public Service Commission of Utah, the ''Affected State commission,'' and the Securities and Exchange Commission.

Comment date: October 12, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Klamath Energy LLC

[Docket No. EG01–318–000]

Take notice that on September 19, 2001, Klamath Energy LLC, 830 NE Holladay Street, Suite 250, Portland, Oregon 97232, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The applicant is a limited liability company organized under the laws of the State of Oregon and a wholly owned direct subsidiary of PacifiCorp Power Marketing, Inc., an Oregon corporation (PPM). PPM is a wholly owned direct subsidiary of PacifiCorp Holdings, Inc., a Delaware corporation with general offices in Portland, Oregon (PHI). PHI is a wholly owned direct subsidiary of NA General Partnership, a Nevada general partnership (NAGP). NAGP's two partners are Scottish Power NA 1 Limited and Scottish Power NA 2 Limited. Scottish Power NA 1 Limited and Scottish Power NA 2 Limited are private limited companies incorporated in Scotland and are wholly owned subsidiaries of ScottishPower plc, a public limited corporation organized under the laws of Scotland.

The Facility consists of a gas-fired, simple cycle combustion turbine project located outside Klamath Falls in Klamath County, Oregon (the Facility). The Facility will have a maximum net electrical capacity of 100 MW. The point of delivery is the point at which the Facility interconnects with PacifiCorp's Meridian-Captain Jack 500kV line.

The applicant will be engaged directly and exclusively in the business of owning an eligible facility and selling the electric energy from the Facility to PPM at market-based rates.

Copies of the application have been served upon the Oregon Public Utility Commission, the ''Affected State commission,'' and the Securities and Exchange Commission.

Comment date: October 12, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Broad River OL–1, LLC

[Docket No. EG01–319–000]

Take notice that on September 19, 2001, Broad River OL–1, LLC (Broad River OL–1) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Broad River OL–1 is a Delaware limited liability company, which will purchase and hold an undivided ownership interest, as owner lessor, in an 850 MW natural gas fired, single cycle generating facility, located in Cherokee County, South Carolina, for the benefit of SBR–OP–1, LLC, as owner participant. Broad River OL–1 proposes to satisfy the requirement of selling electric energy at wholesale by sub-leasing an undivided interest in the facility to Broad River Energy, LLC, which will sell the output of the facility at wholesale.

Comment date: October 12, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. South Point OL–1, LLC

[Docket No. EG01–320–000]

Take notice that on September 19, 2001, South Point OL–1, LLC (South Point OL–1) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

South Point OL–1 is a Delaware limited liability company, which will purchase and hold an undivided ownership interest, as owner lessor, in a 530 MW natural gas fired, combined cycle generating facility, located in Mohave County, Arizona, for the benefit of SBR–OP–1, LLC, as owner participant. South Point OL–1 proposes to satisfy the requirement of selling electric energy at wholesale by leasing an undivided interest in the facility to South Point Energy Center, LLC, which will sell the output of the facility at wholesale.

Comment date: October 12, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. South Point OL–2, LLC

[Docket No. EG01–321–000]

Take notice that on September 19, 2001, South Point OL–2, LLC (South Point OL–2) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

South Point OL–2 is a Delaware limited liability company, which will purchase and hold an undivided ownership interest, as owner lessor, in a 530 MW natural gas fired, combined cycle generating facility, located in Mohave County, Arizona, for the benefit of SBR–OP–2, LLC, as owner participant. South Point OL–2 proposes to satisfy the requirement of selling electric energy at wholesale by leasing an undivided interest in the facility to South Point Energy Center, LLC, which will sell the output of the facility at wholesale.

Comment date: October 12, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. South Point OL–3, LLC

[Docket No. EG01–322–000]

Take notice that on September 19, 2001, South Point OL–3, LLC (South Point OL–3) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

South Point OL–3 is a Delaware limited liability company, which will purchase and hold an undivided ownership interest, as owner lessor, in a 530 MW natural gas fired, combined cycle generating facility, located in Mohave County, Arizona, for the benefit of SBR–OP–3, LLC, as owner participant. South Point OL–3 proposes to satisfy the requirement of selling electric energy at wholesale by leasing an undivided interest in the facility to South Point Energy Center, LLC, which will sell the output of the facility at wholesale.

Comment date: October 12, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. South Point OL–4, LLC

[Docket No. EG01–323–000]

Take notice that on September 19, 2001, South Point OL–4, LLC (South Point OL–4) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

South Point OL–4 is a Delaware limited liability company, which will purchase and hold an undivided ownership interest, as owner lessor, in a 530 MW natural gas fired, combined cycle generating facility, located in Mohave County, Arizona, for the benefit of SBR–OP–4, LLC, as owner participant. South Point OL–4 proposes to satisfy the requirement of selling electric energy at wholesale by leasing an undivided interest in the facility to South Point Energy Center, LLC, which will sell the output of the facility at wholesale.

Comment date: October 12, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. RockGen OL–1, LLC

[Docket No. EG01–324–000]

Take notice that on September 19, 2001, RockGen OL–1, LLC (RockGen OL–1) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

RockGen OL–1 is a Wisconsin limited liability company, which will purchase and hold an undivided ownership interest, as owner lessor, in a 525 MW natural gas fired, single cycle generating facility, located in Christiana, Wisconsin, for the benefit of SBR–OP–1, LLC, as owner participant. RockGen OL–1 proposes to satisfy the requirement of selling electric energy at wholesale by leasing an undivided interest in the facility to RockGen Energy, LLC, which will sell the output of the facility at wholesale.

Comment date: October 12, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

9. RockGen OL–2, LLC

[Docket No. EG01–325–000]

Take notice that on September 19, 2001, RockGen OL–2, LLC (RockGen OL–2) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

RockGen OL–2 is a Wisconsin limited liability company, which will purchase and hold an undivided ownership

interest, as owner lessor, in a 525 MW natural gas fired, single cycle generating facility, located in Christiana, Wisconsin, for the benefit of SBR–OP–2, LLC, as owner participant. RockGen OL–2 proposes to satisfy the requirement of selling electric energy at wholesale by leasing an undivided interest in the facility to RockGen Energy, LLC, which will sell the output of the facility at wholesale.

Comment date: October 12, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

10. RockGen OL–3, LLC

[Docket No. EG01–326–000]

Take notice that on September 19, 2001, RockGen OL–3, LLC (RockGen OL–3) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

RockGen OL–3 is a Wisconsin limited liability company, which will purchase and hold an undivided ownership interest, as owner lessor, in a 525 MW natural gas fired, single cycle generating facility, located in Christiana, Wisconsin, for the benefit of SBR–OP–3, LLC, as owner participant. RockGen OL–3 proposes to satisfy the requirement of selling electric energy at wholesale by leasing an undivided interest in the facility to RockGen Energy, LLC, which will sell the output of the facility at wholesale.

Comment date: October 12, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

11. RockGen OL–4, LLC

[Docket No. EG01–327–000]

Take notice that on September 19, 2001, RockGen OL–4, LLC (RockGen OL–4'') filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

RockGen OL–4 is a Wisconsin limited liability company, which will purchase and hold an undivided ownership interest, as owner lessor, in a 525 MW natural gas fired, single cycle generating facility, located in Christiana, Wisconsin, for the benefit of SBR–OP–4, LLC, as owner participant. RockGen OL–4 proposes to satisfy the requirement of selling electric energy at wholesale by leasing an undivided interest in the facility to RockGen Energy, LLC, which will sell the output of the facility at wholesale.

Comment date: October 12, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

12. Broad River OL–2, LLC

[Docket No. EG01–328–000]

Take notice that on September 19, 2001, Broad River OL–2, LLC (Broad River OL–2) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Broad River OL–2 is a Delaware limited liability company, which will purchase and hold an undivided ownership interest, as owner lessor, in an 850 MW natural gas fired, single cycle generating facility, located in Cherokee County, South Carolina, for the benefit of SBR–OP–2, LLC, as owner participant. Broad River OL–2 proposes to satisfy the requirement of selling electric energy at wholesale by sub-leasing an undivided interest in the facility to Broad River Energy, LLC, which will sell the output of the facility at wholesale.

Comment date: October 12, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

13. Broad River OL–3, LLC

[Docket No. EG01–329–000]

Take notice that on September 19, 2001, Broad River OL–3, LLC (Broad River OL–3) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Broad River OL–3, is a Delaware limited liability company, which will purchase and hold an undivided ownership interest, as owner lessor, in an 850 MW natural gas fired, single cycle generating facility, located in Cherokee County, South Carolina, for the benefit of SBR–OP–3, LLC, as owner participant. Broad River OL–3 proposes to satisfy the requirement of selling electric energy at wholesale by sub-leasing an undivided interest in the facility to Broad River Energy, LLC, which will sell the output of the facility at wholesale.

Comment date: October 12, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

14. Broad River OL–4, LLC

[Docket No. EG01–330–000]

Take notice that on September 19, 2001, Broad River OL–4, LLC (Broad River OL–4) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Broad River OL–4 is a Delaware limited liability company, which will purchase and hold an undivided ownership interest, as owner lessor, in an 850 MW natural gas fired, single cycle generating facility, located in Cherokee County, South Carolina, for the benefit of SBR–OP–4, LLC, as owner participant. Broad River OL–4 proposes to satisfy the requirement of selling electric energy at wholesale by sub-leasing an undivided interest in the facility to Broad River Energy, LLC, which will sell the output of the facility at wholesale.

Comment date: October 12, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

15. Michigan Electric Transmission Company

[Docket Nos. ER01–2126–002 and ER01–2375–002]

Take notice that on September 19, 2001, Consumers Energy Company (Consumers) tendered for filing the following Service Agreements under its FERC Electric Tariff No. 1 in compliance with the August 20, 2001 order issued in these proceedings:

Substitute Service Agreement Nos. 24 and 25.

The Service Agreements are to have effective dates of April 27, 2001, and June 21, 2001, respectively.

Copies of the filing were served upon those on the official service lists in these proceedings.

Comment date: October 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. San Diego Gas & Electric Company

[Docket No. ER01–3074–000]

Take notice that on September 18, 2001, San Diego Gas & Electric Company (SDG&E) tendered for filing its limited section 205 Application for Approval of Supplemental Surcharge

Transmission Rate and Applicable Wholesale Transmission Services. Through this filing, SDG&E seeks the recovery of costs related to the upgrade of its 230kV transmission line connecting SDG&E's Imperial Valley Substation to the system of Mexico's Comision Federal de Electricidad (CFE) at the international border. SDG&E states in its application that it has accelerated this upgrade in order to provide increased reliability to the grid and to relieve existing constraints on its transmission system, and therefore qualifies for the ratemaking incentives outlined in the Commission's Orders dated May 16, 2001 and July 27, 2001 in dockets EL01–47–000 and EL01–47–001.

SDG&E requests an effective date of November 1, 2001 for the Supplemental Surcharge Rate. The rate and revenue impact of this rate will be passed on to California Independent System Operator (ISO) high voltage service and other Participating Transmission Owners based upon the Transmission Access Charges as described in Amendment 27 and 34 of the ISO Tariff. That is, on January 1, 2002 the ISO will incorporate the IV-La Rosita high voltage revenue requirement to adjust its High Voltage Wheeling Access Charge and its Transition Charges, which charges or credits each Participating Transmission Owner High Voltage Transmission revenues.

Comment date: October 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Michigan Electric Transmission Company

[Docket No. ER01–3075–000]

Take notice that on September 17, 2001, Michigan Electric Transmission Company (Michigan Transco) tendered for filing a number of revised and original tariff sheets as part of the *pro forma* Generator Interconnection and Operating Agreement (GIOA) which is part of Attachment J of Michigan Transco's FERC Electric Tariff No. 1. Most of the changes are to increase consistency among Michigan Transco's GIOAs, as encouraged by Michigan Transco, 96 FERC &61,214 (2001). The sheets filed are:

First Revised Sheet Nos. 126, 133, 134, 136, 137, 139, 140, 143, 144, 145, 154, 156, 167 and 168 and Original Sheet Nos. 137A, 140A, and 145A.

The sheets are to have an effective date of September 17, 2001.

Copies of the tariff sheets were served upon the Michigan Public Service Commission.

Comment date: October 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Allegheny Energy Supply Company, LLC

[Docket No. ER01–3076–000]

Take notice that on September 19, 2001, Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 149 to add one new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests an effective date of August 27, 2001 for Central Illinois Light Company.

Copies of the filing have been provided to all parties of record.

Comment date: October 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Consumers Energy Company

[Docket No. ES00–27–001]

Take notice that on September 18, 2001, Consumers Energy Company submitted an amendment to its original application in this proceeding, pursuant to section 204 of the Federal Power Act. The amendment seeks authorization to issue up to an additional $1 billion of short-term securities (up to an additional $500 million outstanding at any one time for general corporate purposes and up to an additional $500 million outstanding at any one time of first mortgage bonds to be issued solely as security for other short-term issuances.)

Comment date: October 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–24169 Filed 9–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–409–000]

Calypso Pipeline, L.L.C.; Notice of new Meeting Date and Site Visit

September 21, 2001.

The Office of Energy Projects (OEP) staff announces that the public scoping meeting for the proposed Calypso Natural Gas Pipeline Project Environmental Impact Statement, originally scheduled for September 12, 2001, has been rescheduled for October 10, 2001. The new date, location, and time for this meeting is listed below.

SCHEDULE FOR THE CALYPSO NATURAL GAS PIPELINE PROJECT ENVIRONMENTAL IMPACT STATEMENT PUBLIC SCOPING MEETING

Date and time	Location	Phone
October 10, 2001 at 7:00 p.m.	I.T. Parker Community Center, 901 N.E. Third Street, Dania Beach, FL 33004.	(954) 924-3698

On the date of the meeting, staff will also be visiting some project areas. Anyone interested in participating in a site visit may contact the Commission's Office of External Affairs for more details and must provide their own transportation.

For additional information, contact the Commission's Office of External Affairs at (202) 208–1088.

David P. Boergers,

Secretary.

[FR Doc. 01–24141 Filed 9–26–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7067–7]

Acid Rain Program: Notice of Annual Adjustment Factors for Excess Emission Penalty

AGENCY: Environmental Protection Agency.

ACTION: Notice of annual adjustment factors for excess emissions penalty.

SUMMARY: Under the Acid Rain Program, affected units must hold enough allowances to cover their sulfur dioxide emissions and meet an emission limit for nitrogen oxides. Under 40 CFR 77.6, units that do not meet these requirements must pay a penalty without demand to the Administrator based on the number of excess tons emitted times $2000 as adjusted by an annual adjustment factor that must be published in the **Federal Register**.

The annual adjustment factor for adjusting the penalty for excess emissions of sulfur dioxide and nitrogen oxides under 40 CFR part 77 for compliance year 2001 is 1.3868. This value is derived from the Consumer Price Index for 1990 and 2001, as defined in 40 CFR part 72, and corresponds to a penalty of $2774 per excess ton of sulfur dioxide or nitrogen oxides emitted.

The annual adjustment factor for adjusting the penalty for excess emissions of sulfur dioxide and nitrogen oxides under 40 CFR part 77 for compliance year 2002 is 1.4246. This value is derived from the Consumer Price Index for 1990 and 2002, as defined in 40 CFR part 72, and corresponds to a penalty of $2849 per excess ton of sulfur dioxide or nitrogen oxides emitted.

FOR FURTHER INFORMATION CONTACT: Robert Miller, Clean Air Markets Division (6204N), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460 at (202) 564–9077.

Dated: September 21, 2001.

Larry F. Kertcher,

Acting Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 01–24212 Filed 9–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7067–8; CWA–HQ–2001–6022]

Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity to Comment Regarding Standard Steel, a Division of Freedom Forge Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has entered into a consent agreement with Standard Steel, a Division of Freedom Forge Corporation, to resolve violations of the Clean Water Act (''CWA''), and its implementing regulations. Standard Steel failed to prepare a complete Spill Prevention Control and Countermeasure (''SPCC'') plan, failed to provide secondary containment, and failed to complete and maintain certification forms for two facilities where they stored oil or oil products in above ground tanks. Standard Steel failed to meet all requirements of its General Permit as required by its National Pollutant Discharge Elimination System (NPDES) permit for one facility. EPA, as authorized by CWA section 311(b)(6), 33 U.S.C. 1321(b)(6), and CWA section 309(g), 33 U.S.C. 1319(g) has assessed a civil penalty for these violations. The Administrator, as required by CWA section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C), and CWA section 309(g)(4)(A), 33 U.S.C. 1319(g)(4)(A), is hereby providing public notice of, and an opportunity for interested persons to comment on, this consent agreement and proposed final order.

DATES: Comments are due on or before October 29, 2001.

ADDRESSES: Mail written comments to the Enforcement & Compliance Docket and Information Center (2201A), Docket Number EC–2001–006, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 2201A, Washington, DC 20460. (Comments may be submitted on disk in WordPerfect 8.0 or earlier versions.) Written comments may be delivered in person to: Enforcement and Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW., Washington, DC. Submit comments electronically to *docket.oeca@epa.gov.* Electronic comments may be filed online at many Federal Depository Libraries.

The consent agreement, the proposed final order, and public comments, if any, may be reviewed at the Enforcement and Compliance Docket Information Center, at the address noted above. Persons interested in reviewing these materials must make arrangements in advance by calling the docket clerk at 202–564–2614. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Beth Cavalier, Multimedia Enforcement Division (2248–A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–3271; fax: (202) 564–9001; e-mail: cavalier.beth@epa.gov.

SUPPLEMENTARY INFORMATION: Electronic Copies: Electronic copies of this document are available from the EPA Home Page under the link ''Laws and Regulations'' at the **Federal Register**—Environmental Documents entry (http://www.epa.gov/fedrgstr).

I. Background

Standard Steel, a Division of Freedom Forge Corporation, an iron and steel minimill incorporated in the State of Delaware, located at 500 North Walnut Street, Burnham, Pennsylvania 17009, and at 107 Gertrude Street, Latrobe, Pennsylvania 15650, disclosed, pursuant to the EPA ''Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations'' (''Audit Policy''), 65 FR 19618 (April 11, 2000), that they failed to prepare complete SPCC plans for two facilities where they stored oil and oil products in above ground storage tanks, in violation of the CWA section 311(b)(3) and 40 CFR part 112. Standard Steel disclosed that it had not completed and maintained at the facility the certification form contained in appendix C to 40 CFR 112.20(e) and failed to have secondary containment, in violation of the CWA section 311(b)(3) and 40 CFR part 112. Standard Steel disclosed that they had failed to meet all requirements of their NPDES General Permit, specifically the requirements to conduct an annual site storm water compliance evaluation, to update documents relating to the facility's method to control storm water discharges, to update the emergency coordinator list, and to maintain a discharge certification and authorization to commit resources, at one facility in violation of CWA sections 301(a), and 402(a) and (p) and 40 CFR part 122.

EPA determined that Standard Steel met the criteria set out in the Audit Policy for a 100% waiver of the gravity component of the penalty. As a result, EPA waived the gravity based penalty

($137,500) and proposed a settlement penalty amount of one thousand, eight hundred and forty-five ($1,845). This is the amount of the economic benefit gained by Standard Steel, attributable to its delayed compliance with the SPCC regulations and NPDES General Permit conditions. Standard Steel has agreed to pay this amount in civil penalties. EPA and Standard Steel negotiated and signed an administrative consent agreement, following the Consolidated Rules of Procedure, 40 CFR 22.13, on September 12, 2001, (*In Re: Standard Steel, a Division of Freedom Forge*, Docket No. CWA–HQ–2001–6022). This consent agreement is subject to public notice and comment under CWA section 311(b)(6), 33 U.S.C. 1321(b)(6) and CWA section 309(g)(4)(A), 33 U.S.C. 1319(g)(4)(A).

Under CWA section 311(b)(6)(A), 33 U.S.C. 1321(b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of the CWA section 311(b)(3), 33 U.S.C. 1321(b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA section 311(j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to $137,500 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR part 22.

Under CWA section 309(g)(1)(A), 33 U.S.C. 1319 (g)(1)(A), any person found in violation of any permit condition or limitation implementing any of such sections in a permit issued under the CWA section 402(a), 33 U.S.C. 1342(a), or the CWA section 301(a), 33 U.S.C. 1311(a), may be assessed an administrative civil penalty of up to $137,500 by EPA. Class II proceedings under CWA section 309(g)(1)(A) are conducted in accordance with 40 CFR part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a Clean Water Act Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is October 29, 2001. All comments will be transferred to the Environmental Appeals Board (''EAB'') of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.04(a).

Pursuant to CWA section 311(b)(6)(C) and CWA section 309(g)(4)(A), EPA will not issue an order in this proceeding prior to the close of the public comment period.

Dated: September 19, 2001.

David A. Nielsen,

Director, Multimedia Enforcement Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 01–24211 Filed 9–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7068–6]

Children's Health Protection Advisory Committee; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

The Charter for the Environmental Protection Agency's Children's Health Protection Advisory Committee (CHPAC); will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appl section 9(c). The purpose of CHPAC is to provide advice and recommendations to the Administrator of EPA on issues associated with development of regulations, guidance and policies to address children's health.

It is determined that CHPAC is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Paula Goode, Designated Federal Officer, CHPAC, U.S. EPA, OCHP MC 1107A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Dated: June 12, 2001.

E. Ramona Trovato,

Director, Office of Children's Health Protection.

[FR Doc. 01–24256 Filed 9–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7068–7]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held October 9–11, 2001 at the Hotel Washington, Washington, DC. The CHPAC was created to advise the Environmental Protection Agency in the development of regulations, guidance and policies to address children's environmental health.

DATES: Tuesday, October 9, 2001, Science Work Group meeting only; plenary sessions Wednesday, October 10 and Thursday, October 11, 2001.

ADDRESSES: Hotel Washington, 515 15th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Contact Joanne Rodman, Office of Children's Health Protection, USEPA, MC 1107A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2188, rodman.joanne@epa.gov.

SUPPLEMENTARY INFORMATION:

Agenda Items: The meetings of the CHPAC are open to the public. The Science and Research Work Group will meet on Tuesday, October 9 from 9:00 a.m. to 3:00 p.m. The plenary CHPAC will meet on Wednesday, October 10 from 9 a.m. to 5:30 p.m., with a public comment period at 5:00 p.m., and on Thursday, October 11 from 9 a.m. to 12:30 p.m. The plenary session will open with introductions and a review of the agenda and objectives for the meeting. Agenda items include highlights of the Office of Children's Health Protection (OCHP) activities and a report from the Science Work Group, the Schools Ad Hoc Group. Other potential agenda items include informational panels on farmworker protection, and indoor air issues.

Dated: September 17, 2001.

Joanne K. Rodman,

Designated Federal Official.

[FR Doc. 01–24255 Filed 9–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7068–3]

Meeting of the Local Government Advisory Committee and the Small Community Advisory Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee (LGAC) and its three subcommittees the Small Community Advisory Subcommittee (SCAS), the Process Subcommittee (Process) and the Issues Subcommittee

(Issues) will meet on October 24–26, 2001, in Dallas, Texas. The Committee and Subcommittees will be discussing issues concerning the relationship between local governments and the U.S. Environmental Protection Agency (EPA). The focus will be the development of recommendations to the EPA Administrator on a range of issues affecting environmental management activities including: Identification of obstacles to effective local government environmental improvement; needs of local governments, financial and otherwise, for improving environmental protection; and measure the success of environmental improvement at the local level over the long term. The LGAC in its plenary sessions will review reports and recommendations from its Subcommittees, receive updates on the implementation of previously approved recommendations, consider development of an annual report, consider work plans, and engage in a discussion on State and local water quality issues.

The SCAS, Process and Issues Subcommittees will meet in separate sessions on Wednesday, October 24th to review the status of their prior LGAC endorsed recommendations to EPA, to consider the topics noted above, and to receive updates on pending actions on Federalism, Total Maximum Daily Load (TMDL's), Public Participation, Chromated Copper Arsenate (a drinking water contaminant), Urban Air Toxics and Communications with EPA. The Subcommittee will also develop work plans for the Federal Fiscal Year 2002.

Each Subcommittee will hear from the public during their meetings on October 24th. SCAS is scheduled to hear comments from the public from 1:00 pm–1:15 pm, and both the Process and Issues Subcommittees will hear public comments from 3:45 pm–4:00 pm.

During its plenary session on Thursday, October 25th, the LGAC will hear comments from the public between 1:45 pm–2 pm. Each individual or organization wishing to address the plenary LGAC meeting or a Subcommittee will be allowed a minimum of three minutes. Please contact the Designated Federal Officers (DFO) at the numbers listed below to schedule agenda time. Time will be allotted on a first come, first served basis.

These are open meetings and all interested persons are invited to attend. LGAC meeting minutes and Subcommittee summary notes will be available after the meetings and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. Seating will be on a first come, first served basis.

DATES: The Small Community Advisory Subcommittee is scheduled to meet from 8:30 am—5 pm and the Issues and Process Subcommittees are scheduled from 2:30 pm–5 pm on Wednesday, October 24th and from 8:30 am–10:15 am, Thursday, October 25, pending unfinished business. The Local Government Advisory Committee plenary session will begin at 10:30 am Thursday, October 25 and conclude at 3:00 pm Friday, October 26.

ADDRESSES: All meetings will be held in Dallas, Texas. The Subcommittees will meet on Wednesday, October 24th at the U.S. EPA Region 6 Office, located at Fountain Place, 1445 Ross Avenue. All persons desiring to attend a Subcommittee meeting must report to the EPA offices on the 7th floor of Fountain Place to sign in and to be directed to Subcommittee meeting rooms. The LGAC meeting on Thursday and Friday, October 25–26, will be held in the Griffin Conference Room at the Magnolia Hotel, located at 1401 Commerce Street.

Additional information can be obtained by writing the DFOs at 1200 Pennsylvania Avenue, NW. (1306A), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The DFO for the Local Government Advisory Committee (LGAC), the Issues and Process Subcommittees is Paul Guthrie (202) 564–3649 and the DFO for the Small Community Advisory Subcommittee (SCAS) is Anne Randolph, (202) 564–3679.

Dated: September 17, 2001.

Paul Guthrie,

Designated Federal Officer, Local Government Advisory Committee.

Dated: September 17, 2001.

Anne Randolph,

Designated Federal Officer, Small Community Advisory Subcommittee.

[FR Doc. 01–24197 Filed 9–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. W–00–16; FRL–7068–4]

Availability of Draft Ballast Water Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability with request for comments.

SUMMARY: This notice announces the availability of a draft Ballast Water Report (Report), which summarizes the results of a study on aquatic nuisance species (ANS) in ballast water discharges, and recommends actions that EPA, working with other agencies, should take to address the issue. We are seeking public comment on this draft Report and its recommendations.

DATES: Submit comments on or before January 11, 2002.

ADDRESSES: The record for this notice is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays at the Water Docket, 401 M Street SW, East Tower Basement (Room EB 57), Washington, DC 20460. The record includes the subject draft Report and supporting documents. For access to the Docket materials, please call (202) 260–3027 to schedule an appointment.

Please send requests for a copy of the draft Report, or written comments on the Report, to: W–00–16 Ballast Water Comment Clerk, Water Docket (MC–4101), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Hand deliveries should be made to the Water Docket at 401 M Street, SW., East Tower Basement (Room EB 57), Washington, DC 20460. Please submit an original and three copies of your comments and enclosures (including references).

The draft Report can also be downloaded from internet address *http://www.epa.gov/owow/invasive_species/petition.html.* Comments on the draft Report may be submitted by electronic mail (e-mail) to *Ballast.Water@epa.gov.* To avoid duplication of comments in the comment record, please do not send the same comments by paper copy and email.

FOR FURTHER INFORMATION CONTACT: John Heisler at (202) 260–8632 or Ruby Cooper-Ford at (202) 564–0757.

SUPPLEMENTARY INFORMATION: In response to a petition received from the Pacific Environmental Advocacy Center to EPA on January 13, 1999, and in support of Executive Order 13112, ''Invasive Species,'' signed on February 3, 1999, EPA undertook a Ballast Water Study (Study) to: (1) Assess the issue of ANS from ballast water discharges, (2) research and report what mechanisms are available under the Clean Water Act (CWA) or other statutes to effectively control the introduction of ANS in ballast water, and (3) recommend actions we should take to address the issue.

As part of this Study, EPA developed the draft Report to generate public discussion on this matter. The draft Report includes the following:

(1) A survey of existing Federal, State and international actions to address ANS.

(2) Options for controlling ballast water through legal, technical and practical mechanisms.

(3) A list of additional non-regulatory and regulatory actions that the EPA and other agencies might take to minimize the spread of invasive ANS in ballast water; and

(4) Other relevant factors and considerations.

As the draft Report states, the Study concluded that the threat of ANS introduction from ballast water discharges is real, and that EPA has an appropriate role in mitigating that threat. The Report recommends against establishing a regulatory program for ballast water discharges under the CWA at this time.

The Report suggests that the greatest barrier to effectively preventing the threat of ANS introductions from ballast water, which has to be resolved, is the lack of effective and affordable technologies for treating ballast water to remove or reduce the ANS threat. Those technologies are rapidly emerging and expected to be widely available in several years.

The Study examined the U.S. Coast Guard's ballast water program under the National Invasive Species Act (NISA) of 1996, the work of the Aquatic Nuisance Species Task Force under NISA, and the interagency efforts established under Executive Order 13112. The Study concluded that although the NISA program in its current form probably does not sufficiently protect against ANS spread from ballast water discharges, the primary impediments to its success (*i.e.*, the lack of ballast water treatment technologies, and the lack of comprehensive mandatory ballast water treatment standards) are waning. The Coast Guard is expected to take several actions in the near future to better incorporate new and more effective ballast water treatment technologies into its ballast water program. EPA believes those actions, coupled with availability of new treatment technologies, provide the most effective approach for preventing ANS introductions from ballast water.

Based on its findings, the draft Report proposes recommendations that EPA work with the Coast Guard and other stakeholders to foster the rapid development of ballast water treatment technologies, and support the Coast Guard regulatory program to ensure that it is as effective as possible against ANS spread.

The Report makes the following specific draft recommendations for addressing the issue:

a. Actively promote research, outreach, and technology development through participation in the ANS Task Force, the Invasive Species Council, and their appropriate committees and working groups on ballast water.

b. Promote technology development, for example through its Environmental Technology Verification (ETV), Small Business Innovative Research, and Green Ships and Green Ports programs.

c. Establish the prevention of ANS introductions as an EPA research priority.

d. Provide technical assistance to ANS research projects initiated or funded by the National Oceanic and Atmospheric Administration (NOAA), the U.S. Fish and Wildlife Service (USFWS), the U.S. Coast Guard, or other government, academic, or non-governmental organizations.

e. Support the U.S. Coast Guard's efforts to evaluate the effectiveness of its regulations and to revise them, if necessary, to enhance their effectiveness in preventing ANS introductions, including the development of domestic ballast water standards and encouraging the development and adoption of new technologies.

f. Continue EPA's participation on the U.S. delegation to the Ballast Water Working Group of the Marine Environmental Protection Committee of the International Maritime Organization, which is working toward an international ballast water agreement, including developing standards.

g. Encourage public participation and education/outreach (e.g., through the National Estuary Programs, Great Waters Programs, Aquatic Nuisance Species Task Force (ANSTF), National Invasive Species Council, Interagency Committee on the Marine Transportation System, and web sites).

h. Work with the U.S. Coast Guard to maximize compliance with the National Invasive Species Act (NISA) regulations at 33 CFR 151 by:

1. Providing technical assistance, coordination, and advocacy support to U.S. Coast Guard outreach, education, and research projects; and

2. Participating actively on the ANSTF, its regional Panels, and its Ballast Water Committees.

i. In cooperation with other Federal agencies, engage the regulated community in a government-shipper partnership emphasizing the use of Environmental Management Systems to address all aspects of ship-borne transfers of ANS, by:

1. Formally recognizing the efforts of shipping interests which commit to real, significant actions that reduce the risk of ANS transfer;

2. Providing technical assistance, coordination, and where appropriate, financial support to shippers projects designed to address ANS; and

3. Where appropriate, providing regulatory flexibility for ANS prevention projects using EPA's Project XL Program.

j. Provide encouragement for national consistency and coordination to State and local governments' efforts to control ANS invasion from ballast water.

k. Develop EPA's Invasive Species Management Plan to identify appropriate EPA-specific activities to implement the Invasive Species Council's National Invasive Species Management Plan.

l. Use EPA's authority to review NEPA documents and other documentation, to promote the adequate consideration of the effects of ANS in Federal actions which involve ballast water.

m. Defer consideration of the application of NPDES permits to ballast water discharges pending these actions. The effectiveness of other programs, including the level of compliance with the Coast Guard's program under NISA, will be a factor in EPA's future consideration of this issue.

The following documents are available from the W–00–16 Water Docket, and are also available at the internet address listed above:

1. Petition to EPA to regulate ballast water under NPDES, dated January 13, 1999.

2. Letter from the Assistant Administrator for Water, to petitioner, dated April 6, 1999.

3. Written comments received on the petition prior to release of the draft Ballast Water Report.

4. Draft Ballast Water Report.

Dated: September 21, 2001.

G. Tracy Mehan, III,

Assistant Administrator, Office of Water.

[FR Doc. 01–24193 Filed 9–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7063–9]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding the California Department of Transportation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Clean Water Act administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed Consent Agreement for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed penalty.

EPA is authorized under section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who has violated the conditions of a National Pollutant Discharge Elimination System permit may be assessed a penalty in a ''Class II'' administrative penalty proceeding. Class II proceedings under section 309(g) are conducted in accordance with the ''Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits,'' 40 CFR part 22 (''Consolidated Rules''), published at 64 FR 40138, 40177 (July 23, 1999).

EPA is providing notice of the following Class II penalty proceeding, filed on September 6, 2001:

In the Matter of the California Department of Transportation, District 11, Docket No. CWA–9–2001–0003; Complainant, Alexis Strauss, Director, Water Division, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105; Respondent, California Department of Transportation, District 11, 2829 Juan St., San Diego, CA 92186. In accordance with the terms of the Consent Agreement, Respondent agrees to pay to the United States a civil penalty of $137,500 (one hundred thirty-seven thousand, five hundred dollars) for various discharges from the ''State Route 56 Construction Project,'' located in San Diego County near the City of Poway, to Deer Creek and Los Penasquitos Creek, in violation of the terms and conditions of the ''National Pollutant Discharge Elimination System Permit for Storm Water Discharges from the State of California, Department of Transportation Properties, Facilities, and Activities,'' NPDES No. CAS000003.

The procedures by which the public may comment on a proposed Class II penalty or participate in a Class II penalty proceeding are set forth in the consolidated rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after publication of this document.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of the consolidated rules, review the complaint or other documents filed in the proceedings, or comment or participate in the proceedings, should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, (415) 744–1391. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. EPA will not issue a final order assessing a penalty in these proceedings prior to forty (40) days after the date of publication of this document.

Dated: September 19, 2001.

Alexis Strauss,

Director, Water Division.

[FR Doc. 01–24216 Filed 9–26–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

September 19, 2001.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0715.

Expiration Date: 09/30/2004.

Title: Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information (CPNI) and Other Customer Information, CC Docket No. 96–115.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 6832 respondents; 89.8 hour per response (avg.); 613,616 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $229,520,000.

Frequency of Response: On occasion; Recordkeeping; Third Party Disclosure.

Description: The following collections implement the statutory obligations of section 222 of the Telecommunications Act of 1996: (a) Customer Approval: If carriers choose to use CPNI to market service offerings outside the customer's existing service, they must obtain customer approval. See 47 CFR 64.2005 and 64.2007. (No. of respondents: 4832; hours per response: 39 hours; total annual burden: 188,448 hours). Customer Approval Documentation and Recordkeeping: Telecommunications carriers must implement a system by which the status of a customer's CPNI approval can be clearly established prior to the use of CPNI. See 47 CFR 64.2007(e) and 64.2009. (No. of respondents: 4832; hours per response: 30 minutes; total annual burden: 2416 hours). c. Notification of CPNI Rights: All telecommunications carriers that choose to solicit customer approval must provide their customers a one-time notification of their CPNI rights prior to any such solicitation. See 47 CFR 64.2007(f). (No. of respondents: 4832; hours per response: 78 hours; total annual burden: 376,896 hours). d. Notification Recordkeeping: Pursuant to the one-time notification requirement, carriers must maintain a record of such notifications. Carriers must maintain such records for a period of at least one year. See 47 CFR 64.2007(e). (No. of respondents: 4832; hours per response: 30 minutes: total annual burden: 2416 hours). e. Event Histories Recordkeeping: Telecommunications carriers must establish a supervisory review process regarding carrier compliance with the rules in 47 CFR part 64 for outbound marketing situations. See 47 CFR 64.2009(c) and (d). (No. of respondents: 4832; hours per response: 15 minutes; total annual burden: 1208 hours). f. Compliance Certification: All telecommunications carriers must obtain on an annual basis a certification signed by a current corporate officer attesting that he or she has personal knowledge that the carrier is in compliance with the Commission's rules, and to create an accompanying statement explaining how the carriers are implementing the rules and safeguards. See 47 CFR 64.2009. (No. of respondents: 4832; hours per response: 1 hours; total annual burden: 4832 hours). g. Aggregate Customer Information Disclosure Requirements for Local Exchange Carriers (LECs): LECs must disclose aggregate customer information to others upon request,

when they use or disclose the aggregate customer information for marketing service to which the customer does not subscribe. (No. of respondents: 1400; hours per response: 1 hour; total annual burden: 1400 hours). h. CPNI Disclosure to Third Parties: Section 222(c)(2) requires carriers, when presented with a customer's affirmative written request, to provide that customer's CPNI to any person designated in the written authorization. (No. of respondents: 500; hours per response: 5 hours; total annual burden; 2500 hours). i. Subscriber List Information Disclosure Requirement for Providers of Telephone Exchange Service: Telecommunications carriers that provide telephone exchange service must provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format. See 47 CFR 64.2309. (No. of respondents; 2000; hours per response: 10 hours; total annual burden: 20,000 hours). j. Notifications: A carrier must provide subscriber list information at the time requested by the directory publisher, provided that the directory publisher has given at least thirty days advance notice and the carrier's internal systems permit the request to be filled with that time frame. See 47 CFR 64.2313, 64.2317, and 64.2329. (No. of respondents: 500; hours per response: 5 hours; total annual hours: 2500 hours). k. Cost Study: In the event a directory publishers files a complaint regarding a carrier's subscriber list information rates, the carrier must present a cost study providing credible and verifiable cost data to justify each challenged rates. (No. of respondents: 100; hours per response: 100 hours; total annual hours: 10,000 hours). l. Certification: A telecommunications carrier may require a person requesting subscriber list information pursuant to section 222(e) of the Communications Act or section 64.2309 to certify that the publisher will use the information only for purposes of publishing a directory. The certification may be either oral or written, at the carrier's option. See 47 CFR 64.2337. (No. of respondents: 2000; hours per response: .5 hours; total annual burden: 1000 hours). m. Disclosure of Contracts, Rates, Terms, and Conditions and Recordkeeping: A telecommunications carrier must retain, for at least one year after its expiration, each written contact that it has executed for the provision of subscriber list information for directory publishing purposes to itself, an affiliate, or an entity that publishes directories on the carrier's behalf. A telecommunications carrier must maintain, for at least one year after the carrier provides subscriber list information for directory publishing purposes to itself, an affiliate, or an entity that publishes directories on the carrier's behalf, records of any of its rates, terms, and conditions for providing that subscriber list information which are not set forth in a written contract. These records and contracts shall be made available to the Commission and to any directory publisher upon request. See 47 CFR 64.2341. (No. of respondents: 2000; hours per response: 1 hour; total annual burden: 2000 hours). All of the collections are used to ensure that telecommunications carriers comply with the requirements the Commission promulgates in its rules and orders and to implement section 222 of the statute. Obligation to respond: Mandatory.

OMB Control No.: 3060–0971.

Expiration Date: 09/30/2004.

Title: Numbering Resource Optimization, Second Report and Order, Order on Reconsideration in CC Docket No. 96–98 and CC Docket No. 99–200, and Second Further Notice of Proposed Rulemaking.

Form No.: N/A.

Respondents: State, Local or Tribal Government; Business or other for-profit.

Estimated Annual Burden: 2050 respondents; 6.82 hour per response (avg.); 14,000 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Third Party Disclosure.

Description: In the Second Report and Order in CC Dockets 96–98 and 99–200, the Commission requires carriers that report forecast and utilization data semi-annually to North American Numbering Plan Administrator (NANPA) or the Pooling Administrator to duplicate such request for state commissions upon request. (No. of respondents: 50; hours per response: 30 hours per state; total annual burden: 1500 burden hours). In addition, to request a ''for cause'' audit of a carrier, the NANPA, the Pooling Administrator or a state commission must draft a request to the auditor stating the reason for the request, such as misleading or inaccurate data, and attach supporting documentation. (No. of respondents: 2000; hours per response: 6.25 hours; total annual burden: 12,500 burden hours). The information collected will be used by the FCC, state commissions, the NANPA and the Pooling Administrator to verify the validity and accuracy of such data and to assist state commissions in carrying out their numbering responsibilities such as area code relief. Obligation to respond: Mandatory.

Public reporting burden for the collections of information are as noted above. Send comments regarding the burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–24135 Filed 9–26–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 22, 2001.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Westfield Mutual Holding Company, Westfield, Massachusetts and Westfield Financial, Inc., Westfield, Massachusetts; to become a bank holding company and acquire 100 percent of the voting shares of Westfield Savings Bank, Westfield, Massachusetts.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Allied First Bancorp, Inc., Naperville, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Allied First Bank, s.b., Naperville, Illinois.

Board of Governors of the Federal Reserve System, September 21, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–24133 Filed 9–26–00; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

[Docket No. R–1111]

Policy Statement on Payments System Risk Potential Longer-Term Policy Direction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Extension of comment deadline.

SUMMARY: The Board has extended the deadline for its request for comment on the potential longer-term direction of its payments system risk (PSR) policy (66 FR 30208, June 6, 2001). The longer-term policy options include the following: (1) Lowering single-day net debit cap levels to approximately the current two-week average cap levels and eliminating the two-week average net debit cap, (2) implementing a two-tiered pricing regime for daylight overdrafts such that institutions pledging collateral to the Reserve Banks pay a lower fee on their collateralized daylight overdrafts than on their uncollateralized daylight overdrafts, and (3) monitoring in real time all payments with settlement-day finality and rejecting those payments that would cause an institution to exceed its net debit cap or daylight overdraft capacity level.

DATES: Comments must be received by November 16, 2001.

ADDRESSES: Comments, which should refer to Docket No. R–1111, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, D.C. 20551 or mailed electronically to *regs.comments@federalreserve.gov.* Comments addressed to Ms. Johnson also may be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 between 9 a.m. and 5 p.m. weekdays, pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Paul Bettge, Associate Director (202/452–3174), Stacy Coleman, Manager (202/452–2934), or John Gibbons, Senior Financial Services Analyst (202/452–6409), Division of Reserve Bank Operations and Payment Systems.

SUPPLEMENTARY INFORMATION: As a result of the terrorist attacks that occurred on September 11, some organizations with an interest in the potential longer-term policy direction of the Board's payments system risk policy have had to devote significant resources to ensuring the continued smooth functioning of the payments systems and financial markets. The Board has extended the comment deadline to provide these organizations with adequate time to analyze the issues raised in the notice and to incorporate their perspectives on recent financial market experiences.

By order of the Board of Governors of the Federal Reserve System, September 21, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–24132 Filed 9–26–01; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—09/04/2001			
20012324	Deutsche Post AG	ING Groep N.V.	BHF (USA) Holdings, Inc.
20012325	Hudson United Bancorp	Vereniging AEGON	Transamerica Retail Financial Services Corporation.
20012327	Mr. and Mrs. Moustafa & Samia Nasr	Brooks Automation, Inc.	Brooks Automation, Inc.
20012331	Clear Channel Communications, Inc.	Mr. Keith Rupert Murdoch	Fox Television Stations, Inc.
20012332	John Wiley & Sons, Inc.	Patrick J. McGovern	Hungry Minds, Inc.
20012335	Alleghany Corporation	Capitol Transamerica Corporation	Capitol Transamerica Corporation.
20012336	Alcoa Inc.	Newco	Newco.
20012339	BHP Billiton Plc	Newco	Newco.
20012341	Long Star Technologies, Inc.	Cargill, Incorporated	North Star Steel Company.
20012348	Charles W. Ergen	StarBand Communications, Inc.	StarBand Communications, Inc.
20012351	Pacific Mutual Holding Company	Scottish Annuity & Life Holdings, Ltd.	Scottish Annuity & Life Holdings, Ltd.
20012352	TranSwitch Corporation	Onex Communications Corporation	Onex Communications Corporation.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—09/06/2001			
20012333	Mr. Keith Rupert Murdoch	Clear Channel Communications, Inc.	Clear Channel Broadcasting Licenses, Inc.
Transactions Granted Early Termination—09/07/2001			
20004606	Metso OYJ	Svedala Industri AB	Svedala Industri AB.
20010263	Chevron Corporation	Texaco Inc.	Texaco Inc.
Transactions Granted Early Termination—09/10/2001			
20012353	Allegiance Telecom, Inc.	Macro Holding, Inc.	Macro Holding, Inc.
20012354	United Rentals, Inc.	Fluor Corporation	S&R Equipment Co., Inc.
20012356	Swiss Reinsurance Company	Lincoln National Corporation	The Lincoln National Life Insurance Company.
20012357	Royal Bank of Canada	Tucker Anthony Sutro	Tucker Anthony Sutro.
20012360	Keane, Inc.	Metro Information Services, Inc.	Metro Information Services, Inc.
20012362	Prestige Brands Holdings, Inc.	Procter & Gamble Company, (The)	Procter & Gamble Company, (The).
20012364	Reed International P.L.C.	Classroom Connect, Inc.	Classroom Connect, Inc.
20012368	Riverdeep Group plc	Alec E. Gores	TLC Education Properties, LLC.
20012377	McCain Foods Group Inc.	Robert & Joan Follett	Ancor Food Products, Inc.
20012380	H.J. Heinz Company	McCain Foods Group Inc.	Anchor Food Products, Inc.
20012389	The Pokemon Company	Nintendo Co Ltd	Nintendo of America Inc.
Transactions Granted Early Termination—09/13/2001			
20012312	B/E Aerospace, Inc.	Paul and Adrianne Mittentag, a married couple.	M&M Aerospace, Inc.
20012350	Longs Drug Stores Corporation	Albertson's, Inc.	Rx America L.L.C.
20012367	Grupo IMSA, S.A. de C.V.	LTV Corporation, Debtor-in-Bankruptcy	VP Buildings, Inc., United Panel, Inc.
Transactions Granted Early Termination—09/14/2001			
20012349	ZF Friedrichshafen AG	Siemens Aktiengesellschaft	Mannesmann Sachs AG.
20012365	Elsevier NV	Classroom Connect, Inc.	Classroom Connect, Inc.
20012374	Dr. Christoph Blocher	Apax Europe V–A LP	Netstal-Maschinen AG.
20012384	Carlyle Partners III, L.P.	DMDA, Inc.	DMDA, Inc.
20012385	Wella AG	Robert R. Taylor	Graham Webb International Limited Partnership.
20012390	Veeco Instruments Inc.	Paul E. Colombo	Applied Epi, Inc.
20012391	Paul E. Colombo	Veeco Instruments Inc.	Veeco Instruments Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–24120 Filed 9–26–01; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

David D. Sanchez, Public Health Foundation Enterprises, Inc. (PHFE): Based on the report of an investigation conducted by PHFE and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Mr. Sanchez, former research assistant for PHFE's California Emerging Infections Program (CEIP), engaged in scientific misconduct in research supported by Centers for Disease Control and Prevention (CDC) cooperative agreement U50 CCU915546–03.

Specifically, PHS finds that Mr. Sanchez engaged in scientific misconduct by falsifying and fabricating data in interview questionnaires involving 21 cases and 27 controls for the ''Campylobacter Ethnicity Case Control Study,'' which he submitted to the CEIP coordinator. As a result of his actions, none of Mr. Sanchez' research could be considered reliable and the research project was terminated. Mr. Sanchez also falsified and fabricated an additional 15 data records relating to PHFE's ''E. coli O157 Case-Control Study,'' which he also submitted to the CEIP coordinator. Mr. Sanchez further engaged in a pattern of dishonest conduct that indicates that he is not presently responsible to be a steward of Federal funds. This pattern of behavior includes falsely claiming hundreds of hours on his time sheets submitted to CEIP for which he had not performed any work and repeatedly refusing to cooperate with the misconduct investigation. These actions adversely and materially affected CEIP's ability to determine risk factors for Campylobacter infections among Latino and Chinese-American children. No publications required correction.

Mr. Sanchez has entered into a Voluntary Exclusion Agreement (Agreement) with PHS in which he has voluntarily agreed for a period of three

(3) years, beginning on September 4, 2001:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 C.F.R. Part 76 (Debarment Regulations);

(2) To exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 01–24157 Filed 9–26–01; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Care Research Training.

Date: September 27–28, 2001 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHRQ, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

2. *Name of Subcommittee:* Health Care Technology and Decision Sciences.

Date: October 4–5, 2001 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHRQ, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

3. *Name of Subcommittee:* Health Systems Research.

Date: October 18–19, 2001 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHRQ, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

4. *Name of Subcommittee:* Health Research Dissemination and Implementation.

Date: October 29–30, 2001 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHRQ, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

5. *Name of Subcommittee:* Health Care Quality and Effectiveness Research.

Date: October 25–26, 2001 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHRQ, Executive Officer Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of the meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

This notice is being published less than 15 days prior to the September 27–28 and October 4–5 meetings due to the time constraints of reviews and funding cycles.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: September 20, 2001.

John M. Eisenberg, M.D.

Director.

[FR Doc. 01–24225 Filed 9–26–01; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–10045]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Durable Medical Equipment and Prosthetics, Orthotics, and Supplies (DMEPOS) Supplier Survey: Texas; *Form No.:* CMS–10045 (OMB# 0938–NEW); *Use:* This survey is necessary to collect information on beneficiary access, quality of services, diversity of product selection, industry competitiveness, and financial performance from DMEPOS suppliers. These key elements of the evaluation of Medicare's competitive bidding demonstration cannot be thoroughly evaluated without a survey of suppliers. The information will be presented to CMS and to Congress, who will use the results to determine whether the demonstration should be extended to other sites. The respondents will be companies who supply DMEPOS to Medicare beneficiaries.; *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 384; *Total Annual Responses:* 384; *Total Annual Hours:* 768.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access CMS's WEB SITE ADDRESS at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 4, 2001.

John P. Burke III,

CMS Reports Clearance Officer, CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 01–24153 Filed 9–26–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0398]

Agency Information Collection Activities; Proposed Collection; Comment Request; Format and Content Requirements for Over-the-Counter (OTC) Drug Product Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the standardized format and content requirements for the labeling of OTC drug products.

DATES: Submit written or electronic comments on the collection of information by November 26, 2001.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Format and Content Requirements for Over-the-Counter (OTC) Drug Product Labeling

In the **Federal Register** of March 17, 1999 (64 FR 13254), FDA amended its regulations governing requirements for human drug products to establish standardized format and content requirements for the labeling of all marketed OTC drug products. The rule requires OTC drug product labeling to include uniform headings and subheadings, presented in a standardized order, with minimum standards for type size and other graphical features. The rule is intended to enable consumers to better read and understand OTC drug product labeling and to apply this information to the safe and effective use of OTC drug products. FDA concludes that the labeling statements required under this rule are not subject to review by the OMB because they are ''originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)) and therefore do not constitute a ''collection of information'' under the PRA (44 U.S.C. 3501 *et seq.*).

Section 201.66 of the labeling requirements (21 CFR 201.66) requires all OTC drug manufacturers to format labeling as set forth in paragraphs (c) and (d). FDA has learned from the industry that OTC drug product manufacturers routinely redesign the labeling of their products as part of their usual and customary business practice. The rule provides varied timeframes for implementing the labeling requirements. Therefore, the majority of respondents will be able to format OTC drug product labeling in accordance with § 201.66 as part of their routine redesign practice, creating no additional paperwork or economic burden.

In discussing the collection of information under the PRA in the final rule (64 FR 13254 at 13274 to 13276), the agency stated that of the 39,310 stock keeping units (SKUs) (individual products, packages, and sizes) currently marketed under a final monograph, approximately 32 percent, or 12,573 products, may necessitate labeling changes sooner than provided under their usual and customary practice of label design. FDA estimated that of the 400 respondents who produce OTC drug products, including the 12,573 products described above, each may be required to respond approximately 31.4 times to this rule outside of their usual and customary practice. Each response was estimated to take, on the average of, 4 hours, for a total of 50,292 hours per year. The burden was expected to be a one-time burden.

The agency stated that although the usual and customary practice of label redesign would minimize the burden for the remaining 68 percent of SKUs currently marketed, or 26,737 products, additional time may be necessary for each company to make the format changes under this rule. FDA estimated that of the 400 respondents who produce OTC drug products, each may be required to respond approximately 66.8 times to bring the 26,737 products into compliance with this rule. FDA estimated that for this group, each response will take an average of 2.5 hours for a total of 66,842 hours. The burden was expected to be a one-time burden.

Finally, the agency estimated that approximately 61 respondents hold new drug applications (NDAs) and abbreviated new drug applications (ANDAs) (41 NDA holders and 20 ANDA holders) for which supplements and amendments will be required. FDA expected that 522 submissions (350 to NDAs and 172 to ANDAs) will be required for labeling changes under

§ 201.66(c) and (d), which averages to 8.5 submissions per respondent. The agency estimated that each submission will take an average of 2 hours to prepare for a total of 1,040 hours annually. The burden was also expected to be a one-time burden.

Since the final rule was issued on March 17, 1999, the agency has extended the May 16, 2001, compliance date by 1 year to May 16, 2002 (with a corresponding extension of the May 16, 2002, compliance date for products with annual sales of less than $25,000 to May 16, 2003) (65 FR 38191, June 20, 2000). During this time, the agency has published only one major final rule (which has had its effective date extended from May 21, 2001, to December 31, 2002) (65 36319, June 8, 2000) and several minor amendments to existing final rules. These monograph amendments have an effective date of May 16, 2002, so that the relabeling required by the amendments may be coordinated with the relabeling required by the OTC drug product labeling final rule. For these reasons, the agency believes that the numbers of affected products in the different categories discussed in the collection of information in the final rule are little changed. Accordingly, the agency is listing the same number of respondents, annual frequency per response, and total annual responses in this notice.

The agency believes the hours per response and total hours may be less than the numbers stated in the final rule for several reasons. First, respondents have made a number of inquiries already since the final rule was issued in 1999. The agency's experience with these inquires made to the agency is that inquiries have been less than 2.5 or 4 hours per response, generally averaging 0.25 to 0.5 hour per inquiry. Second, the agency issued a draft guidance for industry entitled ''Labeling Over-the-Counter Human Drug Products; Updating Labeling in ANDA's'' (66 FR 11174, February 22, 2001), which included a number of labeling examples to assist holders of ANDAs for OTC drug products and manufacturers of reference listed drugs for the ANDAs to implement the new OTC drug product labeling regulation. This guidance should have reduced some of the hours per response and total hours for some NDA and ANDA holders. However, the agency is not currently able to estimate how much the time has been reduced. Accordingly, the agency is listing the same hours per response and total hours in this notice as appeared in the final rule.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
201.66	400	31.43	12,573	4	50,292
201.66	400	66.8	26,737	2.5	66,842
201.66(c) and (d)	61	8.5	522	2	1,044
201.66(e)	25	4	100	24	2,400
Total					120,578

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: September 21, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–24160 Filed 9–26–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0400]

Agency Information Collection Activities; Proposed Collection; Comment Request; Regulations Requiring Manufacturers to Assess the Safety and Effectiveness of New Drugs and Biological Products in Pediatric Patients

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on regulations requiring manufacturers to assess the safety and effectiveness of new drugs and biological products in pediatric patients.

DATES: Submit written or electronic comments on the collection of information by November 26, 2001.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites

comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA'sfunctions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Regulations Requiring Manufacturers to Assess the Safety and Effectiveness of New Drugs and Biological Products in Pediatric Patients (OMB Control No. 0910–0392)—Extension

FDA regulations require pediatric studies of certain new drugs and biological products to ensure that those products that are likely to be commonly used in children or that represent a meaningful therapeutic benefit over existing treatments contain adequate pediatric labeling for the approved indications at the time of, or soon after, approval. (These regulations were issued in the **Federal Register** of December 2, 1998 (63 FR 66632).) Many new drugs and biological products represent treatments that are the best available treatment for children, but most of them have not been adequately tested in the pediatric population. As a result, product labeling frequently fails to provide directions for safe and effective use in pediatric patients. The regulations are intended to increase the number of new drugs and biological products, with clinically significant use in children, that carry adequate labeling for use in that subpopulation. Specifically, the regulations are intended to address the following concerns: (1) Avoidable adverse drug reactions in children—drug reactions that occur because of the use of inadvertent drug overdoses or other drug administration problems that could have been avoided with better information on appropriate pediatric use; and (2) undertreatment of children with a potentially safe and effective drug because the physician either prescribed an inadequate dosage or regimen, prescribed a less effective drug, or did not prescribe a drug, due to the physician's uncertainty about whether the drug or the dose was safe and effective in children.

The regulations contain the following reporting requirements that are subject to the PRA:

21 CFR 201.23(a)—Applicants submit a supplemental application containing data adequate to assess whether the drug product is safe and effective in pediatric populations; applicants develop a pediatric formulation for FDA approval.

21 CFR 201.23(c)(1)—Applicants request a full or partial waiver of § 201.23(a).

21 CFR 312.47(b)(1)(iv)—Sponsors submit background information on the sponsor's plan for Phase 3, including plans for pediatric studies, including a time line for protocol finalization, enrollment, completion, and data analysis, or information to support any planned request for waiver or deferral of pediatric studies.

21 CFR 312.47(b)(2)—Sponsors submit information on the status of needed or ongoing pediatric studies.

21 CFR 314.50(d)(7)—Applicants submit a pediatric use section, describing any investigations of the drug for use in pediatric populations.

21 CFR 314.55(a)—Applications contain data that are adequate to assess the safety and effectiveness of the drug product for the claimed indications in pediatric subpopulations and to support dosing and administration information.

21 CFR 314.55(b)—Applicants request a deferred submission of some or all assessments of safety and effectiveness required under § 314.55(a).

21 CFR 314.55(c)—Applicants request a full or partial waiver of the requirements under § 314.55(a).

21 CFR 314.81(b)(2)(i)—Applicant's annual report includes a brief summary of whether labeling supplements for pediatric use have been submitted and whether new studies in the pediatric population have been initiated.

21 CFR 314.81(b)(2)(vi)(*c*)—Applicant's annual report includes an analysis of available safety and efficacy data in the pediatric population and changes proposed in the labeling based on this information.

21 CFR 314.81(b)(2)(vii)—Applicant's annual report includes a statement whether postmarketing clinical studies in pediatric populations were required or agreed to, and if so, the status of these studies.

21 CFR 601.27(a)—Applications for new biological products contain data that are adequate to assess the safety and effectiveness of the biological product for the claimed indications in pediatric subpopulations, and to support dosing and administration information.

21 CFR 601.27(b)—Applicants request a deferred submission of some or all assessments of safety and effectiveness required under § 601.27(a).

21 CFR 601.27(c)—Applicants request a full or partial waiver of the requirements under § 601.27(a).

21 CFR 601.28(a)—Sponsors submit to FDA a brief summary stating whether labeling supplements for pediatric use have been submitted and whether new studies in the pediatric population to support appropriate labeling for the pediatric population have been initiated.

21 CFR 601.28(b)—Sponsors submit to FDA an analysis of available safety and efficacy data in the pediatric population and changes proposed in the labeling based on this information.

21 CFR 601.28(c)—Sponsors submit to FDA a statement on the current status of any postmarketing studies in the pediatric population performed by, on or behalf of, the applicant.Based on the number of submissions the agency has received as a result of the December 2, 1998, final rule (63 FR 66632), FDA estimates that the PRA burden to comply with the regulations will be as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
201.23(a)	2	1	2	48	96
201.23(c)	0	0	0	0	0
312.47(b)(1)(iv)	103	1.2	122	16	1,952
312.47(b)(2)	102	1.3	130	16	2,080
314.50(d)(7)	47	1	73	50	3,650
314.55(a)	25	1	25	48	1,200
314.55(b)	65	1	65	24	1,560
314.55(c)	90	1	90	8	720

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
314.81(b)(2)(i)	100	1	100	8	800
314.81(b)(2)(vi)(c)	100	1	100	24	2,400
314.81(b)(2)(vii)	100	1	100	1.5	150
601.27(a)	2	1	3	48	144
601.27(b)	5	1	5	24	120
601.27(c)	3	1	4	8	32
601.28(a)	69	1	69	8	552
601.28(b)	69	1	69	24	1,656
601.28(c)	69	1	69	1.5	103.5
Total					17,215.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: September 21, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–24162 Filed 9–26–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0399]

Agency Information Collection Activities; Proposed Collection; Comment Request; Rapid Response Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed continued collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on Rapid Response Surveys to obtain data from health professionals and medical-device-user facilities when FDA must quickly determine whether or not a problem with a medical device impacts the public health.

DATES: Submit written and electronic comments on the collection of information by November 26, 2001.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Rapid Response Surveys (OMB Control Number 0910–0457)—Extension

Under section 519 of the Food, Drug and Cosmetic Act (the act) (21 U.S.C. 360i), FDA is authorized to require manufacturers to report medical device related deaths, serious injuries, and malfunctions, and user facilities to report device-related deaths directly to FDA and to manufacturers, and to report serious injuries to the manufacturer. Section 522 of the act (21 U.S.C. 360l) authorizes FDA to require manufacturers to conduct postmarket surveillance of medical devices. Section 705(b) of the act (21 U.S.C. 375(b)) authorizes FDA to collect and disseminate information regarding medical products or cosmetics in situations involving imminent danger to health, or gross deception of the consumer. Section 903(d)(2) of the act (21 U.S.C. 393(d)(2)) authorizes the Commissioner of Food and Drugs (the Commissioner) to implement general powers (including conducting research) to effectively carry out the mission of FDA. These sections of the act enable FDA to enhance consumer protection from risks associated with medical device usage that are not foreseen or apparent during the premarket notification and review process. FDA monitors medical product related postmarket adverse events via both the mandatory and voluntary MedWatch Reporting Systems using FDA form 3500 and 3500A (OMB control number 0910–0281).

FDA received a 1-year OMB approval on February 5, 2001, to implement Emergency Health Surveys (since that time, renamed ''Rapid Response Surveys''), via a series of surveys, thus implementing section 705(b) of the act and the Commissioner's authority as specified in section 903(d)(2) of the act. To date, FDA has initiated one Rapid

Response Survey, with two more in development. FDA is now seeking OMB clearance to continue collecting this information. Participation in these surveys has been, and will continue to be, voluntary. This request covers Rapid Response Surveys for general type medical facilities and specialized medical facilities (those known for cardiac surgery, obstetric/gynecological services, pediatric services, etc.), and health professionals, but more typically risk managers working in medical facilities.

FDA currently uses the information gathered from these surveys to quickly obtain vital information from the appropriate clinical sources so that FDA may take appropriate public health or regulatory action. FDA projects 10 rapid response surveys per year with a sample of between 50 and 200 respondents per survey.

FDA originally estimated the burden of this collection to be 2 hours per survey. However, FDA is revising the estimated burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency of Respondent	Total Annual Responses	Hours per Responses	Total Hours
200	10 (maximum)	2,000	.5	1,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on the maximum sample size per questionnaire that FDA could analyze in a timely manner. The annual frequency of respondent was determined by the maximum number of questionnaires that will be sent to any individual respondent. Some respondents may be contacted only one time per year, while another respondent may be contacted several times— depending on the medical device under evaluation. Based on the questions developed for the one survey that has been conducted, and for the two under development, it is estimated, given the expected type of issues that will be addressed by the surveys, that at a maximum it will take 30 minutes for a respondent to gather the requested information and fill in the answers.

Dated: September 21, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–24163 Filed 9–26–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0098]

Determination of Regulatory Review Period for Purposes of Patent Extension; TNKase

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for TNKase and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human biological product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets.ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biological product TNKase (tenecteplase). TNKase is indicated for reduction of mortality associated with acute myocardial infarction (AMI). Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for TNKase (U.S. Patent No. 5,385,732) from Genetech, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 11, 2001, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of TNKase represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for TNKase is 1,990 days. Of this time, 1,741 days occurred during the testing phase of the regulatory review period, while 249 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: December 23, 1994. The applicant claims February 22, 1995, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the

IND effective date was December 23, 1994, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 505(b) of the act*: September 28, 1999. FDA has verified the applicant's claim that the product license application (BLA) for TNKase (BLA 99–0903) was initially submitted on September 28, 1999.

3. *The date the application was approved*: June 2, 2000. FDA has verified the applicant's claim that BLA 99–0903 was approved on June 2, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 853 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written comments and ask for a redetermination by November 26, 2001. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by February 26, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 5, 2001.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 01–24126 Filed 9–26–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Biological Response Modifiers Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Biological Response Modifiers Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 24, 2001, from 9 a.m. to 3 p.m., on October 25, 2001, from 8 a.m. to 6 p.m., and on October 26, 2001, from 8 a.m. to 3 p.m.

Location: Holiday Inn, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Gail Dapolito or Rosanna L. Harvey (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12389. Please call the Information Line for up-to-date information on this meeting.

Agenda: On October 24, 2001, the committee will meet to discuss long-term followup of participants in gene transfer clinical trials. On October 25, 2001, the committee will discuss vector design, manufacture, and preclinical studies of lentivirus vectors in gene transfer clinical trials. On October 26, 2001, the committee will discuss development of a lentivirus vector gene transfer product for people with human immunodeficiency virus (HIV).

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 18, 2001. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11 a.m. on October 24, 2001, between approximately 2:45 p.m. and 3 p.m. on October 25, 2001, and between approximately 11:15 a.m. and 11:30 a.m. on October 26, 2001. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 18, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 21, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–24158 Filed 9–26–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Microbiology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Microbiology Devices Panel of the Medical Devices Advisory Committee

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 11, 2001, from 9:30 a.m. to 6:30 p.m., and October 12, 2001, from 8 a.m. to 5 p.m.

Location: Hilton DC North—Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact: Freddie M. Poole, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–2096, ext. 111, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12517. Please call the Information Line for up-to-date information on this meeting.

Agenda: On October 11, 2001, the committee will discuss, make recommendations, and vote on a premarket approval application for an in vitro diagnostic device for the determination of endotoxin activity in human whole blood samples. On the same day, the committee will provide advice and recommendations on a

premarket notification submission for an in vitro diagnostic device for detecting and measuring urinary tract infection by semiquantitative analysis of volatile compounds released from a urine sample.

On October 12, 2001, the committee will discuss, make recommendations, and vote on a premarket approval application for an in vitro diagnostic device for measuring the release of gamma-interferon from sensitized lymphocytes in purified protein derivative (PPD)-stimulated whole blood, as an aid in the diagnosis of latent tuberculosis infection. It is intended to aid in the evaluation of individuals who are suspected of having *Mycobacterium tuberculosis* infection or disease, have close contact with infected individuals, or originate from an area where tuberculosis is prevalent.

Background information for each day's topic, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting, on the Internet at http://www.fda.gov/cdrh/panelmtg.html. Material for the October 11, 2001, session will be posted on October 10, 2001; material for the October 12, 2001, session will be posted on October 11, 2001.

Procedure: On October 11, 2001, from 9:30 a.m. to 6:30 p.m., and on October 12, 2001, from 8:45 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 26, 2001. Oral presentations from the public will be scheduled on October 11, 2001, between approximately 11 a.m. and 11:45 a.m. and 5:30 p.m. and 6 p.m. and on October 12, 2001, between approximately 11 a.m. and 12 noon. and 3 p.m. and 3:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 26, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On October 12, 2001, from 8 a.m. to 8:45 a.m., the meeting will be closed to permit FDA staff to present to the committee trade secret and/or confidential commercial information regarding pending and future device submissions. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 20, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–24159 Filed 9–26–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0318]

Draft ''Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products;'' Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of the comment period.

SUMMARY: The Food and Drug Administration (FDA) previously requested that comments on the draft entitled ''Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products'' dated August 2001 be submitted by September 28, 2001, to ensure their adequate consideration in preparation of the final document (66 FR 45683, August 29, 2001). The agency has determined that it will have adequate time to consider, in preparation of the final guidance, comments received by October 28, 2001. FDA is taking this action in response to a request that the agency allow interested parties additional time to review and to submit comments.

DATES: Submit written or electronic comments on the draft guidance to ensure their adequate consideration in preparation of the final document by October 28, 2001. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 29, 2001 (66 FR 45683), FDA published a notice announcing the availability of a draft guidance document entitled ''Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products.'' The draft guidance document provides comprehensive current recommendations to all registered blood and plasma establishments for deferral of donors with possible exposure to the agent of vCJD. The agency asked interested persons to submit written or electronic comments on the draft guidance to ensure their adequate consideration in preparation of the final document by September 28, 2001.

On September 19, 2001, a comment from America's Blood Centers was submitted to the docket requesting that FDA consider comments received after September 28, 2001. The comment stated that blood establishment obligations related to the recent terrorist attack has delayed the review of the guidance by a number of blood establishments. The agency has determined that it will have adequate time to consider comments received by October 28, 2001.

II. Comments

Interested persons should submit to the Dockets Management Branch (address above) written or electronic comments regarding the draft guidance document by October 28, 2001, to

ensure consideration of comments in FDA's preparation of a final guidance. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cber/guidelines.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: September 21, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–24161 Filed 9–26–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a Telephone Conference Call meeting of the Center for Mental Health Services (CMHS) National Advisory Council in September 2001.

The meeting will include the review, discussion and evaluation of individual grant applications. Therefore the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, Section 10(d).

Substantive program information, a summary of the meeting and a roster of Council members may be obtained from the contact listed below.

Committee Name: Center for Mental Health Services National Advisory Council.

Meeting Date: September 24, 2001 (Closed).

Time: 3 p.m.–4:30 p.m.

Place(s): Parklawn Building, 5600 Fishers Lane, Conference Room 17–94, Rockville, Maryland 20857.

Contact: Eileen S. Pensinger, M.Ed., 5600 Fishers Lane, Parklawn Building, Room 17C–27, Rockville, Maryland 20857, Telephone: (301) 443–4823.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: September 21, 2001.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 01–24257 Filed 9–26–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Monitoring Plan for American Peregrine Falcons in the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), provide notice that the public comment period is reopened for the Proposed Monitoring Plan (Plan) for American peregrine falcons in the United States. We are reopening the comment period for an additional 30 days to provide additional time for interested parties to submit written comments on the Plan.

DATES: The comment period, which originally closed on August 30, 2001, now closes on October 29, 2001.

ADDRESSES: Written comments and other information concerning the proposed American peregrine falcon monitoring plan should be sent to Robert Mesta, Sonoran Joint Venture Coordinator, Office of Migratory Birds, U.S. Fish and Wildlife Service, 12661 E. Broadway Blvd., Tucson, Arizona 85748 (facsimile (520) 258–7238, phone (520) 258–7227). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address. A copy of the proposed Plan is available upon request from Robert Mesta at (520) 258–7227, or the Chief, Division of Consultation, Habitat Conservation Planning, Recovery, and State Grants at (703) 358–2061. The proposed Plan is also available through the internet at (*http://endangered.fws.gov/recovery/docs/peregrine—monitoring.pdf.*

SUPPLEMENTARY INFORMATION:

Background

Section 4(g)(1) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA), requires that we implement a system, in cooperation with the States, to effectively monitor for not less than 5 years, the status of all species that have been recovered and removed from the List of Endangered and Threatened Species. Following its recovery, the American peregrine falcon was removed from the List of Endangered and Threatened Species on August 25, 1999. On July 31, 2001, the Service published a Notice of availability for the proposed monitoring plan that announced a 30-day public comment period (66 FR 39523). In order to meet the ESA's monitoring requirement and to facilitate the efficient collection of data, a sampling method capable of assessing the population status of the American peregrine falcon (*Falco peregrinus anatum*) will be implemented.

The proposed Plan was developed in cooperation with State resource agencies, recovery team members, and interested scientists, and will be carried out in collaboration with Federal, State, and private cooperators. Implementation of the Plan will begin in the spring of 2002. Surveys will be conducted every 3 years for a total of 5 surveys. Monitoring will include the collection of information on the population trend and nesting success. At the end of each triennial monitoring period, we will review all available information to determine the status of the American peregrine falcon.

Pursuant to 50 CFR 424.16(c)(2), the Service may extend or reopen a comment period upon finding that there is good cause to do so. Full participation of the affected public in the review of the Plan is deemed as sufficient cause.

Public Comments Solicited

The previous comment period on this proposal closed on August 30, 2001. With the publication of this notice, we reopen the public comment period. Written comments may now be submitted until October 29, 2001, to the Service office in the **ADDRESSES** section.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 12, 2001.

David B. Allen,

Acting Director.

[FR Doc. 01–24134 Filed 9–26–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–030–01–1610-DO]

Notice of Intent To Prepare Douglas Point, Maryland Land Acquisition Planning Analysis/Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM), Eastern States, will prepare a Planning Analysis and Environmental Assessment (PA/EA) to consider acquisition of approximately 600 acres of land known as the Douglas Point tract, located in Charles County, Maryland. These documents will fulfill the requirements of the Federal Land Policy and Management Act of 1976 and the National Environmental Policy Act of 1969.

The public has 30 days from the date of publication of this notice to send its ideas regarding the proposal described below under **SUPPLEMENTARY INFORMATION.** These comments should be written to help focus the plan on substantive issues and develop appropriate management alternatives. These comments may include specific resource data or information or locations where these data or information may be found.

DATES: The public scoping period commences with the publication of this notice. Comments must be postmarked no later than October 29, 2001 to ensure the issues they raise are considered in the plan.

ADDRESSES: Comments may be mailed to the following addresses: Jim Dryden, Field Manager, Milwaukee Field Office, P.O. Box 631, Milwaukee, Wisconsin 53201–0631 or Ed Ruda, Project Leader, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153.

FOR FURTHER INFORMATION CONTACT: Ed Ruda, (703) 440–1663, or by electronic mail at *ed_ruda@es.blm.gov,* or Howard Levine, Planning and Environmental Coordinator, (414) 297–4463, or by electronic mail at *howard—levine@es.blm.gov.*

SUPPLEMENTARY INFORMATION: BLM proposes to acquire a portion of the Douglas Point tract for recreation and other purposes. The PA/EA addresses only the acquisition of the property. Another on-going planning effort, known as the Lower Potomac River Coordinated Management Plan (CMP), will address long-term management of the property and develop criteria to guide future BLM acquisitions (66 FR 21412–3). Congress appropriated a total of $3 million derived from Land and Water Conservation Funds for the acquisition of lands by the BLM for the Douglas Point project. (Emergency Defense Appropriations Act of 2000 (Public Law No. 106–246) and the Department of the Interior and Related Agencies Appropriations Act, 2001 (Public Law No. 106–291).)

Prior to expending Federal money for acquisition BLM must fulfill the requirements of Sections 202 and 205(b) of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701, *et seq.*). Under these requirements any land acquisitions by BLM must conform with applicable land use plans. Currently, BLM has no land-use plans in the State of Maryland. The Douglas Point PA/EA will fulfill that requirement. This analysis is for acquisition purposes only and does not constitute a comprehensive land-use plan.

The Lower Potomac River CMP will serve as the comprehensive land-use plan and will be prepared with full public participation. It is envisioned the land would eventually be used for low impact recreation, sightseeing and nature tourism. Other possible uses and permanently-excluded uses will be considered in the CMP.

Complete records of all phases of the planning process will be available at the Milwaukee Field Office and are available upon request.

Dated: August 13, 2001.

James W. Dryden,

Milwaukee Field Manager.

[FR Doc. 01–24302 Filed 9–26–01; 8:45 am]

BILLING CODE 4310–GJ–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–204–7]

Wheat Gluten: [1] Evaluation of the Effectiveness of Import Relief

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation and scheduling of a hearing under section 204(d) of the Trade Act of 1974 (19 U.S.C. 2254(d)) (the Act).

SUMMARY: Pursuant to section 204(a) of the Act, the Commission has instituted investigation No. TA–204–7, Wheat Gluten: Evaluation of the Effectiveness of Import Relief, for the purpose evaluating the effectiveness of the relief action imposed by the President on imports of wheat gluten under section 203 of the Act, which terminated on June 1, 2001.

The President imposed the relief action on May 30, 1998, in the form of a quantitative restriction following receipt of an affirmative injury determination and relief recommendation from the Commission on March 18, 1998. The relief was imposed for a period of 3 years and 1 day. See Proclamation 7103 of May 30, 1998 (63 FR 30359), as modified by Proclamation 7202 of May 28, 1999 (64 FR 29773), and Proclamation 7314 of May 26, 2000 (65 FR 34899). Section 204(a) of the Act requires the Commission, following termination of a relief action, to evaluate the effectiveness of the action in facilitating positive adjustment by the domestic industry to import competition, consistent with the reasons set out by the President in the report submitted to the Congress under section 203(b) of the Act. The Commission is required to submit a report on the evaluation made to the President and the Congress no later than 180 days after the day on which the relief action terminated 203(b) of the Act.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, subparts A through and E), and part 206, subparts A and F (19 CFR part 206, subparts A and F).

EFFECTIVE DATE: September 21, 2001.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

SUPPLEMENTARY INFORMATION:

[1] Wheat gluten is provided for in subheadings 1109.00.10 and 1109.00.90 of the Harmonized Tariff Schedule of the United States (HTS).

Participation in the Investigation and Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 14 days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Public Hearing

As required by statute, the Commission has scheduled a hearing in connection with this investigation. The hearing will be held beginning at 9:30 a.m. on October 25, 2001, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 16, 2001. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 18, 2001, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is October 18, 2001. Parties may also file posthearing briefs. The deadline for filing posthearing briefs is November 1, 2001. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement concerning the matters to be addressed in the report on or before November 1, 2001. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under the authority of section 204(d) of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

Issued: September 24, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–24282 Filed 9–26–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request.

ACTION: Notice of Information Collection Under Review; Supplement A to Form I–539 (Filing Instructions for V Nonimmigrant Status).

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 2, 2000 at 66 FR 17576, allowing for emergency OMB review and approval. The notice also allowed for a 60-day public review and comment period. No comments were received by the Immigration and Naturalization Service during that period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 29, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Suite 10102, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Robert Briggs, Department Clearance Officer, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20004. Comments may also be submitted DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Supplement A to Form I–539 (Filing Instructions for V Nonimmigrant Status Applicants).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–539 Supplement A. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by nonimmigrants to apply for extension of stay or change of nonimmigrant status or for obtaining V nonimmigrant classification. The INS will use the date on this form to determine eligibility for the requested benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 427,000 responses at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 213,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or

additional information, please contact Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536.

Dated: September 20, 2001.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–24128 Filed 9–26–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Petition for alien fiance(e).

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 26, 2001 at 66 FR 47518. The notice requested emergency OMB review and processing and allowed for a 60-day public review and comment period. During this period, one public comment was received by the INS. The public comment was addressed and reconciled by the INS in the accompanying supporting statement.

The purpose of this notice is to allow 30 days for public comments. Comments are encouraged and will be accepted until October 29, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Type of the Form/Collection:* Petition for Alien Fiance(e).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–129F. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used by a U.S. citizen to facilitate the entry of his or her fiancé(e) into the United States so that a marriage may be concluded within 90 days of entry between the U.S. citizen and the beneficiary of the petition. This form also allows the spouse or child of a U.S. citizen to enter the United States as a nonimmigrant, in accordance with provisions of section 1103 of the Legal Immigration Family Equity Act of 2000.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 responses at 30 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 10,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20004.

Dated: September 20, 2001.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immmigration and Naturalization Service.

[FR Doc. 01–24129 Filed 9–26–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Fee Remittance Form for certain F–1, J–1 and M–1 nonimmigrants.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 17, 2000 at 65 FR 8207, allowing for a 60-day public comment period. Ten public comments were received on this information collection. The INS has addressed and reconciled the public comments in the accompanying supporting statement for this collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until [October 29, 2001]. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice

Desk Officer, Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Alien Change of Address Card.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–901, Information Services Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by nonimmigrant students and exchange visitors to submit the fee authorized by Pub. L. 104–208, Subtitle D, Section 641. Additionally, this information is required to send receipt to the student or exchange visitor upon payment and to positively identify that a particular student or exchange visitor has paid the fee.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 259,599 responses at 19 minutes (.316 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 93,409 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW, Ste. 1600, Washington, DC 20530.

Dated: September 26, 2001.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–24130 Filed 9–26–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application for benefits under the Family Unity Program.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** in the preamble of an interim rule (INS No. 2115–01), on June 1, 2001 at 66 FR 29661. The notification allowed for a 60-day public review and comment period. The INS received no comments on the proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 29, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725–17th Street, NW., Suite 10102, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Application for Benefits Under the Family Unity Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–817. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected will be used to determine whether the applicant meets the eligibility requirements for benefits under 8 CFR 245A, Subpart C.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 40,000 responses at 2 hours and 30 minutes (2.5) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection

instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20004.

Dated: September 21, 2001.

Richard A. Sloan,

Department Clearance Office, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–24149 Filed 9–26–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP)–1320]

The Young Offender Initiative: Reentry Grant Program; Amendment

AGENCY: Office of Justice Programs, Justice.

ACTION: Amendment to Notice of Funding Availability.

SUMMARY: This document amends the deadline for applications to the Young Offender Initiative: Reentry Grant Program. The deadline for applications to be received by October 1, 2001, by 5:30 p.m. Eastern Standard Time, published in the **Federal Register** on Friday, June 1, 2001, (66 FR 29837) has been extended to Tuesday, October 9, 2001, 5:30 p.m. Eastern Standard Time.

DATES: Applications must be received by October 9, 2001, 5:30 p.m. Eastern Standard Time.

SUPPLEMENTARY INFORMATION: The Young Offender Initiative: Reentry Grant Program is authorized by P.L. 106–553, 114 Stat. 2762A–65. The program is designed to enhance community safety by successfully reintegrating young offenders into the community by helping them:

- Become productive, responsible, and law-abiding citizens;
- Obtain and retain long-term employment;
- Maintain a stable residence; and
- Successfully address their substance abuse issues and mental health needs.

Originally, applications for this program were due on October 1, 2001. The due date is being amended to October 9, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. June Kress, the Corrections Program Office at 1–202–616–2915.

Mary Lou Leary,

Acting Assistant Attorney General, Office of Justice Programs.

[FR Doc. 01–24171 Filed 9–26–01; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10954, et al.]

Proposed Exemptions; Metropolitan Life Insurance Company (Metlife Insurance Company) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No.____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Metropolitan Life Insurance Company, (MetLife Insurance Company) and Its Affiliates (collectively, MetLife), Located in New York, NY

[Application No. D–10954]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part

2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I. Retroactive Exemption for the Acquisition, Holding and Disposition of MetLife, Inc. Common Stock

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D), 406(b)(1) and section 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply, as of December 7, 2000 until the date this proposed exemption is granted, to the acquisition, holding and disposition of the common stock of MetLife, Inc. (the MetLife, Inc. Stock), by Index and Model-Driven Funds (collectively, the Funds) that are managed by MetLife, in which client plans of MetLife invest, provided that the following conditions and the General Conditions of Section III are met:

(a) The acquisition or disposition of MetLife, Inc. Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring MetLife, Inc. Stock which is intended to benefit MetLife or any party in which MetLife may have an interest.

(b) All aggregate daily purchases of MetLife, Inc. Stock by the Funds do not exceed on any particular day the greater of—

(1) 15 percent of the average daily trading volume for the MetLife, Inc. Stock, occurring on the applicable exchange and automated trading system (as described in Section I(c) below) for the previous 5 business days, or

(2) 15 percent of the trading volume for MetLife, Inc. Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades occurring on that date.

(c) All purchases and sales of MetLife, Inc. Stock occur (i) either on a recognized U.S. securities exchange (as defined in Section IV(j) below), so long as the broker is acting on an agency basis; (ii) through an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of MetLife that is registered under the Securities Exchange Act of 1934 (the 1934 Act) and thereby subject to regulation by the Securities and Exchange Commission (SEC), or an automated trading system operated by a recognized U.S. securities exchange, which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) in a direct, arm's length transaction entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of MetLife and is registered under the 1934 Act, and thereby subject to regulation by the SEC.

(d) No transactions by a Fund involve purchases from, or sales to, MetLife (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(e) No more than 5 percent of the total amount of MetLife, Inc. Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by MetLife.

(f) MetLife, Inc. Stock constitutes no more than 5 percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(g) A fiduciary of a plan, which is independent of MetLife, authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds MetLife, Inc. Stock, pursuant to the procedures described herein.

(h) A fiduciary independent of the MetLife directs the voting of MetLife, Inc. Stock held by an Index or Model-Driven Fund on any matter in which shareholders of MetLife, Inc. Stock are required or permitted to vote.

Section II. Prospective Exemption for the Acquisition, Holding and Disposition of MetLife, Inc. Stock and/or the Common Stock of a MetLife Affiliate

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D), 406(b)(1) and section 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply to the acquisition, holding and disposition of MetLife, Inc. Stock and/or common stock issued by a MetLife affiliate (the MetLife Affiliate Stock; together, the MetLife Stock), by Index and Model-Driven Funds that are managed by MetLife, in which client plans of MetLife invest, provided that the following conditions and the General Conditions of Section III are met:

(a) The acquisition or disposition of MetLife Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring MetLife Stock which is intended to benefit MetLife or any party in which MetLife may have an interest.

(b) Whenever MetLife Stock is initially added to an index on which an Index or Model-Driven Fund is based, or initially added to the portfolio of an Index or Model-Driven Fund, all acquisitions of MetLife Stock necessary to bring the Fund's holdings of such stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the model which has been used to transform the index, occur in the following manner:

(1) Purchases are from, or through, only one broker or dealer on a single trading day;

(2) Based on the best available information, purchases are not the opening transaction for the trading day;

(3) Purchases are not effected in the last half hour before the scheduled close of the trading day;

(4) Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(5) Aggregate daily purchases do not exceed 15 percent of the average daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous 5 business days, both based on the best information reasonably available at the time of the transaction;

(6) All purchases and sales of MetLife Stock occur either (i) on a recognized U.S. securities exchange (as defined in Section IV(j) below), (ii) through an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of MetLife that is registered under the 1934 Act, and thereby subject to regulation by the SEC, which provides a mechanism for customer orders to be matched on an

[1] For purposes of this proposed exemption, references to provisions of the Act refer also to corresponding provisions of the Code.

anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section IV(i) below) that is operated by a recognized U.S. securities exchange (as defined in Section IV(j) below), pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(7) If the necessary number of shares of MetLife Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require MetLife Stock, MetLife appoints a fiduciary which is independent of MetLife to design acquisition procedures and monitor compliance with such procedures.

(c) Subsequent to acquisitions necessary to bring a Fund's holdings of MetLife Stock to its specified weighting in the index or model pursuant to the restrictions described in Section II(b) above, all aggregate daily purchases of MetLife Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for MetLife Stock occurring on the applicable exchange and automated trading system (as defined below) for the previous 5 business days, or

(2) 15 percent of the trading volume for MetLife Stock occurring on the applicable exchange and automated trading system (as defined below) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

(d) All transactions in MetLife Stock not otherwise described above in Section II (b) are either—(i) entered into on a principal basis in a direct, arm's length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of MetLife and is registered under the 1934 Act, and thereby subject to regulation by the SEC, (ii) effected on an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of MetLife that is subject to regulation by either the SEC or another applicable regulatory authority, or an automated trading system operated by a recognized U.S. securities exchange (as defined in Section IV(j) below) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized U.S. securities exchange (as defined in Section IV(j) below), so long as the broker is acting on an agency basis.

(e) No transactions by a Fund involve purchases from, or sales to, MetLife (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(f) No more than 5 percent of the total amount of MetLife Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by MetLife.

(g) MetLife Stock constitutes no more than 5 percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(h) A fiduciary of a plan which is independent of MetLife authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds MetLife Stock, pursuant to the procedures described herein.

(i) A fiduciary independent of the MetLife directs the voting of MetLife Stock held by an Index or Model-Driven Fund on any matter in which shareholders of MetLife Stock are required or permitted to vote.

Section III. General Conditions

(a) MetLife maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section III to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of MetLife, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than MetLife shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) of this Section III and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section III are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the SEC,

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or a representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this Section III(b)(1) shall be authorized to examine trade secrets of MetLife or commercial or financial information which is considered confidential.

Section IV. Definitions

(a) The term ''Index Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by MetLife, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile and other characteristics of an independently maintained securities Index, as described in Section IV(c) below, by either (i) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) For which MetLife does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That contains ''plan assets'' subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments); and,

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit MetLife or any party in which MetLife may have an interest.

(b) The term ''Model-Driven Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by MetLife, in which one or more investors invest, and—

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of MetLife, to transform an independently maintained Index, as described in Section IV(c) below;

(2) Which contains ''plan assets'' subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit MetLife or any party in which MetLife may have an interest.

(c) The term ''Index'' means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States, but only if—

(1) The organization creating and maintaining the index is—

(A) Engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) A publisher of financial news or information, or

(C) A public stock exchange or association of securities dealers; and,

(2) The index is created and maintained by an organization independent of MetLife; and,

(3) The index is a generally-accepted standardized index of securities which is not specifically tailored for the use of MetLife.

(d) The term ''opening date'' means the date on which investments in or withdrawals from an Index or Model-Driven Fund may be made.

(e) The term ''Buy-up'' means an acquisition of MetLife Stock by an Index or Model-Driven Fund in connection with the initial addition of such stock to an independently maintained index upon which the Fund is based or the initial investment of a Fund in such stock.

(f) The term ''MetLife'' refers to Metropolitan Life Insurance Company, its parent, MetLife, Inc. and their current or future affiliates, as defined below in paragraph (g).

(g) An ''affiliate'' of MetLife includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(h) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(i) The term ''automated trading system'' means an electronic trading system that functions in a manner intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers, such as an ''alternative trading system'' within the meaning of the SEC's Reg. ATS [17 CFR Part 242.300], as such definition may be amended from time to time, or an ''automated quotation system'' as described in Section 3(a)(51)(A)(ii) of the 1934 Act [15 U.S.C. 8c(a)(51)(A)(ii)].

(j) The term ''recognized U.S. securities exchange'' means a U.S. securities exchange that is registered as a ''national securities exchange'' under Section 6 of the 1934 Act (15 U.S.C. 78f), as such definition may be amended from time to time, which performs with respect to securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable securities laws (e.g., 17 CFR Part 240.3b-16).

Effective Date: If granted, this proposed exemption will be effective as of December 7, 2000 with respect to the transactions described in Section I above, and as of the date grant notice is published in the **Federal Register** for the transactions described in Section II above.

Summary of Facts and Representations

1. MetLife Insurance Company (or the Applicant) is a life insurance company organized under the laws of the State of New York and subject to supervision and examination by the Superintendent of Insurance of the State of New York. MetLife Insurance Company is a wholly owned subsidiary of MetLife, Inc., a publicly-held Delaware corporation. As of December 31, 2000, MetLife Insurance Company, including its insurance company subsidiaries, had total assets under management of approximately $302.3 billion and had approximately $2 trillion of life insurance in force.

2. Among the insurance products and services offered, MetLife Insurance Company and certain of its affiliates provide funding, asset management and other services for thousands of ERISA-covered employee benefit plans. The Applicant also maintains pooled and single plan separate accounts in which ERISA-covered plans invest. Alone or with its affiliates, MetLife Insurance Company may manage all or a portion of the separate account assets. Further, MetLife Insurance Company has a number of subsidiaries and affiliates that provide a variety of financial services, including investment management and brokerage services.

MetLife Insurance Company is also the investment manager, adviser or an affiliate of the investment manager or adviser with respect to various portfolios subject to ERISA that are invested in a strategy which tracks or transforms an index maintained by a third party. The index may include the stock issued by MetLife, Inc. or an affiliate.

3. MetLife acts as investment manager of institutional accounts, including employee benefit plans with assets totaling approximately $28 billion. Additionally, MetLife provides directed trust or investment management services to various employee benefit plans. MetLife is, to the extent of the provision of investment management services, a fiduciary of these plans.

As a fiduciary, MetLife may be either directed by an independent plan fiduciary or plan participants that have the ability to direct investments for their own plan accounts. Alternatively, in those cases in which MetLife manages the investments, the Applicant represents that it does not exercise any discretionary authority over whether an employee benefit plan invests in particular Index or Model-Driven Funds.

4. MetLife manages different collective investment funds, trusts and separate accounts in various ways to enable plan assets to be diversified to reduce risk and to be invested in the types of investments that a particular manager for a plan may determine is appropriate at a particular time. Index Funds and Model-Driven Funds are two examples of MetLife's separate account products which include plan investors.

An Index Fund, as defined above, may be a separately-managed account, an insurance company separate account, a collective investment fund, or collective trust, the objective of which is the replication of the performance of an independently-maintained stock or bond index representing the performance of a specific segment of the public market for equity or debt securities. The Index Funds are passively-managed, in that the choice of stocks or bonds purchased and sold, and the volume purchased and sold, are made according to predetermined third party indexes rather than according to active evaluation of the investments. Since December 7, 2000, there have been 5 Index Funds holding the assets of ERISA-covered plans that have acquired, held and/or disposed of MetLife, Inc. Stock.

A Model-Driven Fund, as defined above, may be a separately-managed

account, an insurance company separate account, a collective trust or a collective investment fund, the performance of which is based on computer models using prescribed objective criteria to transform an independently-maintained stock or bond index representing the performance of a specific segment of the public market for equity or debt securities. The portfolio of a Model-Driven Fund is determined by the details of the computer model, which examines structural aspects of the stock or bond market rather than the underlying values of such securities. An example of a Model-Driven Fund would include a fund which ''transforms'' an index, making investments according to a computer model which uses such data as earnings, dividends and price earnings ratios for common stocks included in the index.

According to the Applicant, the process for the establishment and operation of all Funds, which are model-driven, is disciplined. Objective rules are established for each model. Such Funds operate pursuant to pre-specified computer programs, the rules and programs are changed only infrequently.

5. MetLife currently offers a number of separate account products that are invested according to the criteria of various third party indexes or are model-driven based on such indexes. These indexes are compiled by financial information agencies that are engaged in the provision of financial information or securities brokerage services to institutional investors and/or are publishers of financial information. For example, some Funds track the Russell 2000 Index,[2] while other funds track the Standard & Poor's 500 Composite Stock Price Index (the S&P 500 Index).[3] Most of the Funds track stock indexes, although some Funds track indexes of debt securities, such as the Lehman Brothers Bond Indexes.[4] In each instance, the indexes are compiled by organizations that are independent of MetLife and are generally-accepted standardized indexes of securities that are not tailored for the use of MetLife.

6. In addition to Funds that are separate accounts or collective investment funds, MetLife may have investment responsibility for individual investment funds which are separate portfolios for various client accounts, including employee benefit plans, where the portfolio is invested in accordance with a third party index or a model based on that index. The Applicant represents that the ability of all Funds to invest in MetLife Stock when the stock is included in an index would improve the tracking of such indexes.

7. Accordingly, the Applicant requests an administrative exemption from the Department. If granted, the exemption will permit the Applicant and its current or future affiliates to maintain separate accounts, collective funds or trusts that hold securities issued by MetLife, Inc. and/or the affiliated entities, provided certain conditions enumerated in the operative language of the exemption are met. For purposes of the exemption, the Applicant and its affiliates are collectively referred to as ''MetLife.''

Specifically, the exemption will allow Index and Model-Driven Funds which are managed by the Applicant or its affiliates, in which client plans of MetLife participate, to invest in MetLife Stock if such stock is included among the securities listed in the index utilized by the Fund. The Applicant is not requesting, nor is the Department providing, administrative exemptive relief herein for plans sponsored by MetLife. MetLife believes that investments on behalf of its in house plans in Index and Model-Driven Funds have been made (and will be made) in accordance with the statutory exemption provided under section 408(e) of the Act.[5] Therefore, the subject exemption will apply to client plans of MetLife only. With respect to its client plans, the Applicant states that plan fiduciaries which are independent of MetLife have authorized or will authorize the investment of a plan's assets in an Index or Model-Driven Fund which purchases and/or holds MetLife Stock pursuant to procedures described herein.

The Applicant requests that the proposed exemption be made effective as of December 7, 2000 with respect to investments in MetLife, Inc. Stock by the subject Funds. The Applicant is not requesting retroactive relief for investments by the Funds in MetLife Affiliate Stock inasmuch as these Funds have not held such stock.[6] Further, the Applicant states that any exemptive relief for cross-trades of securities, including MetLife, Inc. Stock, by Index and Model-Driven Funds maintained by it should be considered separately.[7]

8. The Applicant states that the proposed exemption is necessary to allow Funds holding ''plan assets'' to purchase and hold MetLife Stock in order to replicate the capitalization-weighted or other specified composition of MetLife Stock in an independently-maintained, third party index used by an Index Fund or to achieve the desired transformation of an index used to create a portfolio for a Model-Driven Fund.

In addition, the Applicant represents that when MetLife Stock is added to an index on which a Fund is based, or when MetLife Stock is added to the portfolio of a Fund which tracks an index that includes MetLife Stock, all acquisitions necessary, as an initial matter, to bring the Fund's holdings of MetLife Stock to its capitalization or other specified weighting in the applicable index,[8] will comply with conditions (see Section I(b)(1)-(7) above) that are designed to prevent possible market price manipulation and which are based, in part, on the restrictions of SEC Rule 10b–18.[9]

The conditions required for a ''Buy-up'' of MetLife Stock are as follows:

[2] The Russell 2000 Index was established and is maintained by the Frank Russell Company, which is not an affiliate of MetLife. The Russell 2000 Index is a subset of the larger Russell 3000 Index. The Russell 3000 Index consists of the largest 3,000 publicly-traded stocks of U.S. domiciled corporations, identified by the Frank Russell Company, and includes large, medium and small stocks.

[3] The S&P 500 Index is composed of 500 stocks that are traded on the New York Stock Exchange and the NASDAQ National Market System. The S&P 500 Index is a market-weighted index (i.e., shares outstanding times the stock price) in which each company's influence on the Index's performance is directly proportional to its market value.

[4] The indexes of debt securities used for the Funds, such as the Lehman Brothers Bond Index, consist primarily of high quality fixed-income securities representing the U.S. Government, corporate, and mortgage-backed securities sectors of the bond market in the U.S. In this regard, MetLife's fixed income Index Fund portfolios are currently managed against the Lehman Aggregate Bond Index and the Lehman Government/Credit Index. However, MetLife is not represented in either Lehman Brothers Bond Index nor does MetLife hold any of its debt securities in its separate accounts.

[5] The Department is not providing an opinion in this proposed exemption on whether the conditions of section 408(e) of the Act have been or will be met for such transactions.

[6] See 29 CFR 2510.3–101; Definition of ''plan assets''—plan investments.

[7] In this regard, the Department directs interested persons to the Proposed Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds (the Cross-Trading Proposal) which was published in the **Federal Register** on December 15, 1999 (64 FR 70057).

[8] These instances are referred to herein as a ''Buy-up.'' The Applicant anticipates that acquisitions of MetLife Stock by an Index or Model-Driven Fund in a ''Buy-up'' will occur within 10 business days from the date of the event which causes the particular Fund to acquire MetLife Stock. MetLife does not anticipate that the amounts of MetLife Stock acquired by a Fund in a ''Buy-up'' will be significant. In this regard, the Department notes that the conditions required herein are designed to minimize the market impact of purchases made by the Funds in any ''Buy-up'' of MetLife Stock.

[9] SEC Rule 10b–18 provides a ''safe harbor'' for issuers of securities from section 9(a)(2) of the 1934 Act and SEC Rule 10b–5 (which generally prohibits persons from manipulating the price of a security and engaging in fraud in connection with the purchase or sale of a security).

• Purchases will be from, or through, only one broker or dealer on a single trading day;

• Based on the best available information, purchases will not be the opening transaction for the trading day;

• Purchases will not be effected in the last half hour before the scheduled close of the trading day;

• Purchases will be at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

• Aggregate daily purchases will not exceed 15 percent of the average daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous 5 business days, both based on the best information reasonably available at the time of the transaction;

• All purchases and sales of MetLife Stock will occur either (i) on a recognized U.S. securities exchange [as defined in Section IV(j)], (ii) through an automated trading system [as defined in Section IV(i)] operated by a broker-dealer independent of MetLife that is registered under the 1934 Act, and thereby subject to regulation by the SEC, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system [as defined in Section IV(i)] that is operated by a recognized U.S. securities exchange [as defined in Section IV(j)], pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

• If the necessary number of shares of MetLife Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require MetLife Stock, MetLife will appoint an independent fiduciary to design acquisition procedures and monitor compliance with such procedures.

9. MetLife states that the independent fiduciary and its principals must be completely unrelated to MetLife. The independent fiduciary must also be experienced in developing and operating investment strategies for individual and collective investment vehicles that track third party indexes. Furthermore, the independent fiduciary must not act as the broker for any purchases or sales of MetLife Stock and will not receive any consideration as a result of the initial acquisition program.

As its primary goal, the independent fiduciary will develop trading procedures that minimize the market impact of purchases made pursuant to the initial acquisition program by the particular Fund. Thus, the Applicant expects that, under the trading procedures established by the independent fiduciary, the trading activities will be conducted in a low profile, mechanical, non-discretionary manner and would involve a number of small purchases over the course of each day, randomly-timed. The Applicant further expects that such a program will allow it to acquire the necessary shares of MetLife Stock for the Funds with minimum impact on the market and in a manner that will be in the best interests of any employee benefit plans that participate in such Funds.

The independent fiduciary will also be required to monitor compliance with the trading program and procedures developed for the initial acquisition of MetLife Stock. During the course of any initial acquisition program, the independent fiduciary will be required to review the activities weekly to determine compliance with the trading procedures and notify MetLife should any non-compliance be detected. Should the trading procedures need modifications due to unforeseen events or consequences, the independent fiduciary will be required to consult with MetLife and must approve in advance any alteration of the trading procedures.

10. Subsequent to the initial acquisitions necessary to bring a Fund's holdings of MetLife Stock to their specified weightings in the index or model pursuant to the restrictions described above, all aggregate daily purchases of MetLife Stock by the Funds will not exceed on any particular day the greater of—

• 15 percent of the average daily trading volume for MetLife Stock occurring on the applicable exchange and automated trading system for the previous 5 business days, or

• 15 percent of the trading volume for MetLife Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

11. MetLife represents that as of December 7, 2000 until the date this proposed exemption is granted, all purchases and sales of MetLife, Inc. Stock by the Funds, other than acquisition of such stock in a Buy-up have occurred or will continue to occur in one of the following ways: (a) On a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of MetLife and is registered under the 1934 Act, and thereby subject to regulation by the SEC; (b) through an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of MetLife that is subject to regulation by the SEC or another applicable regulatory agency or on an automated trading system operated by a recognized U.S. securities exchange (as defined in Section IV(j)) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (c) through a recognized U.S. securities exchange (as defined in Section IV(j)), so long as the broker is acting on an agency basis.[10]

In addition, MetLife represents that as of the date this proposed exemption is granted, all future transactions by the Funds involving MetLife Stock which do not occur in connection with a Buy-up of such stock by a Fund, as described above, will be either (a) entered into on a principal basis in a direct, arm's length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of MetLife and is registered under the 1934 Act, and thereby subject to regulation by the SEC; (b) effected on an automated trading system (as defined in Section IV(j) above) operated by a broker-dealer independent of MetLife that is either registered under the 1934 Act, and thereby subject to regulation by the SEC, or an automated trading system operated by a recognized U.S. securities exchange (as defined above) which, in either case, provides a mechanism for customer order to be matched on an anonymous basis without the participation of a broker-dealer; or (c) effected through a recognized U.S.

[10] The Department notes that no relief is being provided herein for purchases and sales of securities between a Fund and a broker-dealer acting as principal, which may be considered prohibited transactions as a result of such broker-dealer being a party in interest under section 3(14) of the Act, with respect to any plans that are investors in the Fund. However, such transactions may be covered by one or more of the Department's existing class exemptions. For example, Prohibited Transaction Class Exemption 84–14 (49 FR 9497, March 13, 1984) permits, under certain conditions, parties in interest to engage in various transactions with plans whose assets are invested in an investment fund managed by a ''qualified professional asset manager'' (i.e., a QPAM) who is independent of the parties in interest (with certain limited exceptions) and meets specified financial standards.

securities exchange (as defined in Section IV(j) above) so long as the broker is acting on an agency basis.

12. With respect to all acquisitions and dispositions of MetLife Stock by the Funds since December 7, 2000, the Applicant states that no such transactions have involved purchases from or sales to MetLife (including officers, directors or employees thereof), or any party in interest that is a fiduciary with discretion to invest assets into the Fund. The Applicant represents that all future acquisitions and dispositions of MetLife Stock by any Index or Model-Driven Funds maintained by MetLife will also not involve any purchases from or sales to MetLife (including officers, directors or employees thereof), or any party in interest that is a fiduciary with discretion to invest assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).[11]

13. The Applicant represents that no more than 5 percent of the total outstanding shares of MetLife Stock will be held in the aggregate by the Index or Model-Driven Funds managed by MetLife. In addition, the Applicant states that MetLife Stock will not constitute more than 5 percent of the value of any independent third party index on which investments of an Index or Model-Driven Fund are based.

For purposes of the acquisition and holding of MetLife, Inc. Stock by all of the Funds since December 7, 2000 until the date this proposed exemption is granted, the Applicant states that such stock will constitute no more than 5 percent of any independent third party index on which the investments in Index or Model-Driven Funds are based. For example, the Applicant notes that the current weighting of MetLife, Inc. Stock in the S&P 500 Index is 0.213 percent and its weighting in the Barra Value Index is 0.41 percent. Although some indexes include MetLife, Inc. Stock in percentages that exceed 3 percent of the index, MetLife does not currently utilize such indexes for its Index and Model-Driven Funds with ''plan assets'' subject to the Act.

For purposes of future acquisitions and holdings of MetLife Stock by the Funds once this proposed exemption is granted, neither MetLife, Inc. Stock nor MetLife Affiliate Stock will constitute more than 5 percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based. In this regard, the Applicant has identified 5 indexes which include MetLife, Inc. Stock where the current approximate capitalization weight of the index represented by MetLife, Inc. Stock exceeds 3 percent. Therefore, the Applicant requests that the proposed exemption allow MetLife to design a passive investment strategy for an Index or Model-Driven Fund which seeks to track an index that contains MetLife Stock, or which transforms such an index into a model-prescribed way, as long as the MetLife Stock does not constitute more than 5 percent of the index.

With respect to an index's specified composition of particular stocks in its portfolio, the Applicant states that future Funds may track an index where the weighting for stocks listed in the index is not capitalization-weighted. However, the Applicant notes that Funds maintained by it or its affiliates may track indexes where the selection of a particular stock by the index and the amount of stock to be included in the index is not established based on the market capitalization of the corporation issuing such stock. Therefore, since an independent organization may choose to create an index where there are other index weightings for stocks composing the index, the Applicant requests that the proposed exemption allow for MetLife Stock to be acquired by a Fund in the amounts which are specified by the particular index, subject to the other restrictions imposed under this proposed exemption. In addition, the Applicant represents that, in all instances, acquisitions or dispositions of MetLife Stock by a Fund will be for the sole purpose of maintaining quantitative conformity with the relevant index upon which the Fund is based, or in the case of a Model-Driven Fund, a modified version of such an index as created by a computer model based on prescribed objective criteria and third party data.

14. The Applicant will appoint an independent fiduciary to direct the voting of any MetLife Stock held by the Funds. The independent fiduciary will be a consulting firm specializing in corporate governance issues and proxy voting on behalf of public and private pension funds. The independent fiduciary will be required to develop and follow standard guidelines and procedures for the voting of proxies by institutional fiduciaries.

The Applicant will provide the independent fiduciary with all necessary information regarding the Funds that hold MetLife Stock on the record date for MetLife's shareholder meetings, and all proxy and consent materials with respect to MetLife Stock. The independent fiduciary will maintain records with respect to its activities as an independent fiduciary on behalf of the Funds, including the number of shares of MetLife Stock voted, the manner in which such shares were voted, and the rationale for the vote if the vote was not consistent with the independent fiduciary's procedures and current voting guidelines in effect at the time of the vote. The independent fiduciary will supply MetLife with the information after each shareholder meeting. The independent fiduciary will be required to acknowledge that it will be acting as a fiduciary with respect to the plans which invest in the Funds which own MetLife Stock, when voting such stock.[12]

15. In summary, with respect to all acquisitions, holdings and dispositions of MetLife Stock by the Funds since December 7, 2000, it is represented that the subject transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Each Index or Model-Driven Fund involved is based on an index, as defined in Section IV(c) above;

(b) The acquisition, holding and disposition of MetLife, Inc. Stock by the Index or Model-Driven Fund is for the sole purpose of maintaining strict conformity with the relevant index upon which an Index or Model-Driven Fund is based, and will not involve an agreement, arrangement or understanding regarding the design or operation of the Fund acquiring MetLife, Inc. Stock which is intended to benefit MetLife or any party in which MetLife may have an interest;

(c) All aggregate daily purchases of MetLife, Inc. Stock by the Funds do not exceed, on any particular day, the greater of (i) 15 percent of the average daily trading volume for the MetLife, Inc. Stock occurring on the applicable exchange and automated trading system for the previous 5 business days, or (ii) 15 percent of the trading volume for MetLife, Inc. Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades that occurred on such date;

(d) All purchases and sales of MetLife, Inc. Stock, other than acquisitions of such stock in a Buy-up described above,

[11] In this regard, the Department is providing no opinion herein on whether such principal transactions would be covered by any existing exemption.

[12] Currently, the Applicant is utilizing the Investor Responsibility Research Center to vote proxies related to MetLife, Inc. Stock. However, any independent fiduciary duly appointed by the Applicant has satisfied or will satisfy, in the case of a successor independent fiduciary, the criteria described above.

occur either (i) on a recognized securities exchange, as defined herein, (ii) through an automated trading system (as defined herein) operated by a broker-dealer independent of MetLife that is subject to regulation by either the SEC, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) in a direct, arm's length transaction entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of MetLife and is registered under the 1934 Act, and thereby subject to regulation by the SEC.

(e) No transactions by a Fund involve purchases from or sales to MetLife (including officers, directors or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption);

(f) No more than 5 percent of the total amount of MetLife, Inc. Stock that is issued and outstanding at any time is held, in the aggregate, by Index or Model-Driven Funds managed by MetLife;

(g) MetLife, Inc. Stock constitutes no more than 5 percent of the value of any independent third party index on which investments of an Index or Model-Driven Fund are based;

(h) A plan fiduciary independent of MetLife will authorize the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds MetLife, Inc. Stock; and

(i) A fiduciary independent of MetLife directs the voting of MetLife, Inc. Stock held by an Index or Model-Driven Fund on any matter in which shareholders of MetLife, Inc. Stock are required or permitted to vote.

With respect to all acquisitions, holdings and dispositions of MetLife Stock by the Funds after this proposed exemption is granted, MetLife represents that such transactions will meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Each Index or Model-Driven Fund involved will be based on an index, as defined in Section IV(c) above;

(b) The acquisition, holding and disposition of MetLife Stock by the Index or Model-Driven Fund will be for the sole purpose of maintaining strict conformity with the relevant index upon which an Index or Model-Driven Fund is based, and will not involve an agreement, arrangement or understanding regarding the design or operation of the Fund acquiring MetLife Stock which is intended to benefit MetLife or any party in which MetLife may have an interest;

(c) Whenever MetLife Stock is initially added to an index on which a Fund is based, or initially added to the portfolio of a Fund (i.e., a Buy-up), all acquisitions of MetLife Stock necessary to bring the Fund's holdings of such stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or its correct weighting as determined by the computer model which has been used to transform the index, will be restricted by conditions which are designed to prevent possible market price manipulations;

(d) Subsequent to acquisitions necessary to bring a Fund's holdings of MetLife Stock to its specified weighting in the index or model, pursuant to the restrictions above, all aggregate daily purchases of MetLife Stock by the Funds will not exceed the greater of (i) 15 percent of the average daily trading volume for the MetLife Stock occurring on the applicable exchange and automated trading system for the previous 5 business days, or (ii) 15 percent of the trading volume for MetLife Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades that occurred on such date;

(e) All transactions in MetLife Stock, other than acquisitions of such stock in a Buy-up described above, will be either (i) entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of MetLife and is registered under the 1934 Act, and thereby subject to regulation by the SEC, (ii) effected on an automated trading system operated by a broker-dealer independent of MetLife that is subject to regulation by either the SEC or another applicable regulatory authority, or an automated trading system operated by a recognized U.S. securities exchange which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized U.S. securities exchange (as described herein) so long as the broker is acting on an agency basis;

(f) No transactions by a Fund will involve purchases from or sales to MetLife (including officers, directors or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption);

(g) No more than 5 percent of the total amount of MetLife Stock that is issued and outstanding at any time will be held, in the aggregate, by Index or Model-Driven Funds managed by MetLife;

(h) MetLife Stock will constitute no more than 5 percent of the value of any independent third party index on which investments of an Index or Model-Driven Fund are based;

(i) A plan fiduciary independent of MetLife will authorize the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds MetLife Stock, pursuant to the procedures described herein; and

(j) A fiduciary independent of MetLife will direct the voting of MetLife Stock held by an Index or Model-Driven Fund on any matter in which shareholders of MetLife Stock are required or permitted to vote.

Notice to Interested Persons

Notice of the proposed exemption will be mailed by first-class mail to interested persons, including the appropriate fiduciaries of employee benefit plans currently invested in the Index and/or Model-Driven Funds that acquire and hold MetLife Stock. The notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required under 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment and/or to request a hearing with respect to the proposed exemption. All notices will be sent to interested persons within 30 days of the publication of the proposed exemption in the **Federal Register**. Any written comments and/or requests for a hearing are due within 60 days after the date of publication of the pendency notice in the **Federal Register**.

In addition, MetLife will provide, upon request, a copy of the proposed exemption and, if granted, a copy of the final exemption to all ERISA-covered plans which invest in any Index or Model-Driven Fund containing MetLife Stock in their respective portfolios after the date the final exemption is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Prudential Insurance Company of America; (Prudential Insurance), Located in Newark, NJ

[Application No. D–10984]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[13]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective September 27, 2001, to (1) the receipt of shares of common stock (Common Stock) issued by Prudential Financial, Inc. (Prudential Financial or the Holding Company) or (2) the receipt of cash (Cash) or policy credits (Policy Credits) by any eligible policyholder (the Eligible Policyholder) of Prudential Insurance, which is an employee benefit plan (the Plan), including Plans sponsored by Prudential Insurance and/or its affiliates for the benefit of their own employees (collectively, the Prudential InsurancePlans),[14] in exchange for such Eligible Policyholder's mutual membership interest in Prudential Insurance, pursuant to a plan of conversion (the Plan of Reorganization) adopted by Prudential Insurance and implemented in accordance with section 17:17C–2 of the New Jersey Insurance Law.

In addition, if the exemption is granted, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply, effective September 27, 2001, to the receipt and holding, by the Prudential Welfare Benefits Plan (the Prudential Welfare Plan), of Common Stock, whose fair market value exceeds 10 percent of the value of the total assets held by such Plan.

The proposed exemption is subject to the general conditions set forth below in Section II.

Section II. General Conditions

(a) The Plan of Reorganization is implemented in accordance with procedural and substantive safeguards that are imposed under New Jersey Insurance Law and is subject to review and supervision by the New Jersey Commissioner of Banking and Insurance (the Commissioner).

(b) The Commissioner reviews the terms of any options that are provided to Eligible Policyholders of Prudential Insurance as part of such Commissioner's review of the Plan of Reorganization, and the Commissioner only approves the Plan of Reorganization following a determination that the Plan of Reorganization is fair and equitable to all Eligible Policyholders.

(c) Except as provided below, each Eligible Policyholder has an opportunity to comment on and vote to approve the Plan of Reorganization after full written disclosure of the terms of the Plan of Reorganization is given to such policyholder by Prudential Insurance. As provided under the Plan of Reorganization and approved by the Commissioner,

(1) Eligible Policyholders of policies issued by designated subsidiaries (the Designated Subsidiaries) of Prudential Insurance will not have the opportunity to comment and vote on the Plan of Reorganization, and

(2) Prudential Insurance will be precluded from voting on the Plan of Reorganization where a group policy is issued to Prudential Insurance as trustee for a multiple employer, or similar, trust (the MET) which is not a plan described in section 3(3) of the Act or section 4975(e)(1) of the Code.

(d) Any election by an Eligible Policyholder which is a Plan to receive Common Stock pursuant to the terms of the Plan of Reorganization, or any decision by such Eligible Policyholder to participate in the commission-free purchase and sale program (the Program), is made by one or more fiduciaries of such Plan that are independent of Prudential Insurance and neither Prudential Insurance nor any of its affiliates exercises any discretion or provides ''investment advice,'' within the meaning of 29 CFR 2510.3–21(c) with respect to such election or decision-making.

(e) In the case of the Prudential Insurance Plans, the independent fiduciary—

(1) Conducts a due diligence review of the subject transactions; and

(2) Votes whether to approve or disapprove the Plan of Reorganization, on behalf of such Plan.

(f) In the case of the Prudential Welfare Plan, the independent fiduciary—

(1) Votes shares of Common Stock that are held by such Plan, which exceed the limitation of section 407(a) of the Act;

(2) Disposes of Common Stock in excess of the limitation set forth under section 407(a)(2) of the Act as soon as reasonably practicable, but in no event later than six months after the effective date of the Plan of Reorganization;

(3) Provides the Department with a complete and detailed final report as it relates to such Plan prior to the effective date of the Plan of Reorganization; and

(4) Takes all actions that are necessary and appropriate to safeguard the interests of such Plan.

(g) After each Eligible Policyholder entitled to receive Common Stock is allocated at least 8 shares (or the equivalent value of 10 shares of Common Stock for Eligible Policyholders receiving Cash or Policy Credits), additional consideration is allocated to Eligible Policyholders who own eligible policies based on a methodology that takes into account each eligible policy's contribution to Prudential Insurance's surplus, which methodology has been reviewed by the Commissioner.

(h) All Eligible Policyholders that are Plans participate in the transactions on the same basis within their class groupings as other Eligible Policyholders that are not Plans.

(i) No Eligible Policyholder pays any brokerage commissions or fees in connection with the receipt of Common Stock or in connection with the implementation of the Program.

(j) All of Prudential Insurance's policyholder obligations remain in force and are not affected by the Plan of Reorganization.

(k) The terms of the transactions are at least as favorable to the Plans as an arm's length transaction with an unrelated party.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term ''Prudential Insurance'' means The Prudential Insurance Company of America and any affiliate of Prudential Insurance as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of Prudential Insurance includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Prudential Insurance. (For purposes of this paragraph, the term ''control'' means the

[13] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

[14] Unless otherwise noted, references to the term ''Plan'' are meant to include ''outside'' Plan policyholders of Prudential Insurance as well as the Prudential Welfare Plan.

power to exercise a controlling influence over the management or policies of a person other than an individual.); and

(2) Any officer, director or partner in such person.

(c) The term ''Eligible Policyholder'' means a policyholder who is eligible to receive compensation under Prudential Insurance's Plan of Reorganization. Eligible Policyholders are policyholders of Prudential Insurance on the day the Plan of Reorganization is adopted by the Board of Directors of Prudential Insurance.

(d) The term ''Designated Subsidiary'' means stock life insurance company subsidiaries of Prudential Insurance whose policyholders, pursuant to section 17:17C–1 of New Jersey Insurance Law, have been deemed eligible under the Plan of Reorganization to receive compensation, but which are not qualified to vote on the Plan of Reorganization.

(e) The term ''Holding Company'' refers to a New Jersey stock business corporation which will be named ''Prudential Financial, Inc.'' Under the Plan of Reorganization, Prudential Insurance will become an indirect, wholly owned stock life insurance company subsidiary of the Holding Company.

(f) The term ''Policy Credit'' means a dividend accumulation, an additional dividend, an increase in the policy's account value, an extension of the policy's expiration date, or an additional payment under an annuity contract.

(g) The term ''Plan'' refers to employee benefit plans covered by ERISA or section 4975(e) of the Code.

(h) The term ''demutualization'' refers to the process of an insurance company's reorganizing or converting from a mutual life insurance company to a stock life insurance company.'' As used herein, ''reorganization'' and ''conversion'' also refer to a demutualization.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of September 27, 2001.

Summary of Facts and Representations

Description of the Parties

1. Prudential Insurance is a mutual life insurance company organized under the laws of the state of New Jersey. Its principal place of business is located at Prudential Plaza, Newark, New Jersey. The company is licensed to conduct insurance business in all 50 states and the District of Columbia. As of December 31, 1999, Prudential Insurance and its subsidiaries had total assets of about $285 billion, total liabilities of about $266 billion, and equity of about $19 billion. Also as of December 31, 1999, Prudential Insurance had approximately 1 million individual and group insurance contracts in force which were issued to, or on behalf of, employee benefit plans. Currently, Prudential Insurance's financial strength ratings are as follows: ''A–1,'' Moody's; ''A+,'' Standard & Poor's; and ''A,'' A.M. Best.

Prudential Insurance's principal products include individual and group life insurance contracts, endowment contracts, insurance contracts, annuities, including tax deferred annuities described in section 403(b) of the Code (TDAs), and individual retirement annuities described in section 408(b) of the Code (IRAs), and a variety of pension contracts. Additionally, Prudential Insurance has a number of affiliates and subsidiaries that provide financial services and products, including investment management, brokerage, and mutual funds, as well as real estate services.

As a mutual life insurance company, Prudential Insurance has no authorized, issued, or outstanding stock. Instead, its policyholders are both customers and owners of the company. In this regard, the life insurance, endowment, annuity, and certain other insurance and pension plan contracts issued by Prudential Insurance combine both insurance coverage with proprietary rights, which are referred to as ''membership interests.'' These membership interests entitle Prudential Insurance policyholders to vote for the Board of Directors and on other matters at annual and special meetings, as well as on the conversion of the company from a mutual life insurance company to a stock life insurance company. Further, the membership interests accord most policyholders of Prudential Insurance the right to share in the annual, divisible surplus of the company that is distributed in the form of policyholder dividends. A membership interest cannot be sold separately from the underlying insurance policy and it is extinguished automatically when the policy ends.

2. Prudential Insurance and its affiliates provide fiduciary and other services to Plans described in section 3(3) of ERISA and to other plans described in section 4975(e)(1) of the Code, many of which are Prudential Insurance policyholders. As a result, Prudential Insurance may be considered a party in interest or a disqualified person with respect to such Plans under section 3(14)(A) and (B) of the Act as well as the related derivative provisions of section 3(14) of the Act. At present, approximately 800,000 policyholders of Prudential Insurance are Plans.

3. Although Prudential and its affiliates sponsor a number of in-house Plans (i.e., the Prudential Insurance Plans) for the benefit of their employees, the only Plan that will be covered by the subject exemption is the Prudential Welfare Plan.[15] This Plan provides medical, dental and insurance benefits to its employees. Benefits under the Plan are paid either through a combination of employer and employee contributions, or they consist entirely of employee contributions. As of December 31, 1999, the Prudential Welfare Plan had total assets of $1.97 billion and approximately 63,170 participants.

Benefits under the Prudential Welfare Plan are funded through group insurance policies issued by Prudential Insurance, through insurance contracts issued by unaffiliated insurers, or on a self-insured basis. In addition, Prudential Insurance has established a number of voluntary employee beneficiary associations (VEBAs) to hold assets of the Prudential Welfare Plan, including Prudential Insurance group and individual policies and individual securities, such as equities or bonds. Prudential Insurance or its affiliates generally manage assets held by the VEBAs that are not insurance contracts.

Reasons for the Reorganization

4. Prudential Insurance represents that it has grown from a company primarily focused on selling life insurance to a financial services institution that provides a wide range of insurance, asset management, securities and other financial products and services. Although the mutual company structure has worked well in the past, Prudential Insurance explains that its Board of Directors has had to reexamine retaining this structure in light of changes occurring in the global financial services market, such as increased competition from companies outside the United States and from non-insurance companies, changes in distribution channels for financial services products, and the reorganization into stock companies (through demutualization) of

[15] As discussed later in this proposed exemption, Prudential Insurance states that exemptive relief under section 408(e) of the Act is available with respect to distributions of Common Stock to its in-house, ERISA-covered plans, namely, the Prudential Merged Retirement Plan, the Prudential Employee Savings Plan, the PSI Long Term Care Plan, the PSI Life/Disability Plan and the PSI Dental Plan. Nevertheless, the Department has decided to extend the exemption to cover all Prudential Insurance Plans in order to mitigate inadvertent prohibited transactions that may arise in connection with the demutualization.

many of Prudential Insurance's competitors.

After considering these changes and evaluating other possible courses of action, Prudential Insurance states that its Board of Directors concluded that a stock company structure would have many business and organizational advantages. Accordingly, on February 10, 1998, Prudential Insurance's Board of Directors initiated the process of reorganizing into a stock company by authorizing the officers of Prudential Insurance to study the feasibility of a reorganization and to prepare a Plan of Reorganization for the Board's consideration. On December 15, 2000, the Board of Directors unanimously approved and adopted the Plan of Reorganization (which was subsequently amended and restated as of the December 15, 2000 date) to effect the change in Prudential Insurance's business structure through demutualization. The Board's reasons were as follows:

- First, it was believed that a publicly-traded stock company could compete more effectively in the global financial services industry. Access to capital through sales of Common Stock would facilitate the funding of new products, services and sales channels that are consistent with Prudential Insurance's overall business strategy. Also, in lieu of using cash, Common Stock would be available to acquire other companies for future growth.
- Second, the demutualization would enable Prudential Insurance to distribute the total value of the company to Eligible Policyholders pursuant to the Plan of Reorganization, thereby affording Eligible Policyholders the opportunity to realize economic value, in the form of Common Stock, Cash or Policy Credits, in exchange for such policyholders' illiquid membership interests. Eligible Policyholders receiving Common Stock would be able to retain their shares of Common Stock or sell it for cash at market value.
- Third, the Holding Company would be able to use stock-based compensation programs to recruit and retain high-quality employees and to align their long-term interests with shareholders' interests.
- Fourth, having publicly-traded Common Stock would require that Prudential Insurance report its financial performance to the financial markets periodically and be compared with similar institutions by financial analysts.

5. Accordingly, Prudential Insurance requests an administrative exemption from the Department that will permit certain of its Plan policyholders to engage in transactions related to the implementation of the Plan of Reorganization.[16] Specifically, Prudential Insurance requests a prospective exemption that will cover the receipt of Common Stock issued by the Holding Company, Cash or Policy Credits by Eligible Policyholders that are Plans, including the Prudential Welfare Plan, in exchange for such Eligible Member's membership interest in Prudential Insurance.[17] Prudential Insurance represents that the receipt of Common Stock, Cash, or Policy Credits by the Plan can viewed as a prohibited sale or exchange of property between it and a Plan, or as a transfer or use of the Plan's assets by or for the benefit of Prudential Insurance in violation of section 406(a)(1)(A) and (D) of the Act.

In addition, Prudential Insurance has requested that the exemption apply to distributions of Common Stock to the Prudential Welfare Plan. Prudential Insurance recognizes that there may be an ''excess'' holding problem with respect employer stock that is received and held by this Plan which would be in violation of section 406(a)(1)(E) and (a)(2) of the Act and section 407(a)(2) of the Act, in addition to section 406(a)(1)(A) and (D) of the Act.[18] Prudential Insurance states that, if the Prudential Welfare Plan were to accept Common Stock as demutualization consideration, the fair market value of such stock would cause the aforementioned violations of the Act. To avoid this problem, Prudential Insurance represents that U.S. Trust Company, N.A. (U.S. Trust) will serve on behalf of the Prudential Welfare Plan as the independent fiduciary and it will represent the interests of such Plan with respect to the Plan's acquisition, holding and disposition of shares of Common Stock.[19] Finally, Prudential Insurance has confirmed that the shares of Common Stock that are issued to the Prudential Welfare Plan will not violate the provisions of section 407(f) of the Act.[20] Therefore, no further exemptive relief is required.

Procedural Requirements for Demutualization

6. Prudential Insurance proposes to reorganize under section 17:17C–2 of New Jersey Insurance Law. In this

[16] In connection with its demutualization, it should be noted that Prudential Insurance has received advisory opinions from the Department regarding (a) whether it would be deemed to be a fiduciary when implementing policyholder decisions to allocate compensation among plan participants or among plans where the policy funds more than one plan (ERISA Advisory Opinion 2001–02A (Feb. 15, 2001)); and (b) whether the exercise of certain, limited policyholder duties in connection with the receipt of compensation by TDA and IRA policyholders would affect the availability of the Department's ''safe harbor'' regulations for TDAs and IRAs (ERISA Advisory Opinion 2001–03A (Feb. 15, 2001)). In addition, in a letter dated February 15, 2001, which responded to a request for guidance on behalf of Prudential Insurance, the Department noted that it would not assert a violation of the Act in any enforcement proceeding solely because of a failure to hold demutualization proceeds in trust, provided that the plan fiduciary took specific steps to safeguard that asset. In this regard, (a) such assets would consist solely of proceeds received by the policyholder in connection with the demutualization; (b) such assets, and any earnings thereon would be placed in the name of the plan in an interest-bearing account, in the case of cash, or a custodial account, in the case of stock, as soon as reasonably possible following receipt, and such proceeds would be applied for the payment of participant premiums or applied to plan benefit enhancements or distributed to plan participants as soon as reasonably possible but no later than twelve months following receipt; (c) such assets would be subject to the control of a designated plan fiduciary; (d) the plan would not otherwise be required to maintain a trust under section 403 of the Act; and (e) the designated fiduciary would be required to maintain such documents and records as deemed necessary under the Act with respect to the foregoing.

[17] Prudential Insurance represents that the shares of Common Stock that will be issued to the Prudential Insurance Plans, other than the Prudential Welfare Plan, will constitute ''qualifying employer securities'' within the meaning of section 407(d)(5) of the Act and that section 408(e) of the Act will apply to such distributions. As such, Prudential Insurance explains that there will be no violation of section 407(a) of the Act with respect to the acquisition of Common Stock by these Plans. The Department however, expresses no opinion herein, on whether the Common Stock will constitute qualifying employer securities and whether such distributions will satisfy the terms and conditions of section 408(e) of the Act.

[18] Section 406(a)(1)(E) of the Act prohibits the acquisition by a plan of any employer security which would be in violation section 407(a) of the Act. Section 406(a)(2) of the Act states that no fiduciary who has authority or discretion to control the assets of a plan shall permit the plan to hold any employer security if he [or she] knows that holding such security would violate section 407(a) of the Act. Section 407(a)(1) of the Act prohibits the acquisition by a plan of any employer security which is not a qualifying employer security. Section 407(a)(2) of the Act provides that a plan may not acquire any qualifying employer security, if immediately after such acquisition, the aggregate fair market value of such securities exceeds 10 percent of the fair market value of the plan's assets.

[19] As noted in Representation 18, U.S. Trust has also agreed to serve, in a limited capacity, as independent fiduciary for the Prudential Merged Retirement Plan, the Prudential Employee Savings Plan, the PSI Long Term Care Plan, the PSI Life/Disability Plan and the PSI Dental Plan, which are also Prudential Insurance Plans. In this regard, U.S. Trust is required to conduct a due diligence review of the demutualization and vote whether to approve or disapprove the Plan of Reorganization on behalf of such Plans, including the Prudential Welfare Plan.

[20] Section 407(f) of the Act, which is applicable to the holding of a qualifying employer security by a plan other than an eligible individual account plan, requires that (a) immediately following its acquisition by a plan, no more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan; and (b) at least 50 percent of the stock be held by persons who are independent of the issuer.

regard, Prudential Insurance's Board of Directors adopted the Plan of Reorganization on December 15, 2000 under which Prudential Insurance will, subject to the approval of its policyholders and the Commissioner (who was provided with a copy of the Plan of Reorganization on March 14, 2001), and after satisfying certain other conditions set forth in the Plan of Reorganization, be reorganized as a stock life insurance company. Simultaneously with this corporate reorganization, the shares of Prudential Insurance will be issued to the Holding Company, in exchange for Holding Company Common Stock, thereby making Prudential Insurance an indirect, wholly owned subsidiary of the Holding Company. The Common Stock will be distributed to Eligible Policyholders of Prudential Insurance and such stock will be offered to the public through a concurrent Initial Public Offering (IPO). The Common Stock will also be listed on the New York Stock Exchange (the NYSE).

New Jersey Insurance Law establishes an approval process for the conversion of a mutual life insurance company to a stock life insurance company. Such conversion must be initiated by the board of directors of the mutual company, which must adopt a plan of reorganization by a vote of at least three-fourths of the members of the insurer's entire board of directors upon an express finding that the plan is fair and equitable to policyholders. Once adopted by the company's board of directors, the plan of reorganization must be submitted to the Commissioner for review and approval. In reviewing the plan of reorganization, the Commissioner is required to appoint one or more qualified and independent actuaries to provide a certification regarding the reasonableness of the allocation methodology. The Commissioner is also permitted to engage the services of other advisors to advise him or her on matters relating to the reorganization. In the Prudential Insurance demutualization, the Commissioner has retained the law firm of Saul Ewing LLP to provide legal services; Fox-Pitt, Kelton, Inc. and Townsend & Shupp Co. to provide investment banking services; and Ernst & Young and Arthur Andersen to provide actuarial and accounting services.

7. Under New Jersey Insurance Law, the Commissioner is required to hold a public hearing on a plan of reorganization no later than 90 days after the Commissioner determines the application for reorganization is complete. Notice of the public hearing must be provided to each policyholder of the insurance company within 45 days of the hearing. The notice must be in the form, and provided in the manner, that was submitted in the company's application materials and approved by the Commissioner. The purpose of a public hearing is to allow interested persons to comment on the fairness of the terms of the plan of reorganization, and to consider whether the reorganization is in the best interest of the insurer and its policyholders.

The policyholders of the mutual life insurance company generally must also approve the plan of reorganization. New Jersey Insurance Law provides that the policyholders who may qualify to vote on the plan are the ''qualified voters'' of the mutual life insurance company.[21] Each qualified voter is entitled to one vote and the plan must be approved by a vote of not less than two-thirds of all the votes cast by the mutual insurer's qualified voters. The qualified voters of the mutual life insurance company must be provided with notice of their opportunity to vote on the plan of reorganization, which notice must be approved by the Commissioner and accompanied by a copy of the plan of reorganization or a summary thereof. Such notice may also be combined with a notice of the hearing.

8. Once a plan of reorganization has been adopted by the company's board of directors, and after any public hearing and policyholder vote on the plan of reorganization, the Commissioner is required to approve the plan if he or she finds that: (a) the plan is fair and equitable to policyholders; (b) the plan promotes the best interest of the mutual insurer and its policyholders; (c) the plan provides for the enhancement of the operations of the reorganized insurer; (d) the plan is not contrary to law; (e) the plan is not detrimental to the public; and (f) after giving effect to the reorganization, the reorganized insurer will have an amount of capital and surplus the Commissioner deems to be reasonably necessary for its future solvency. A decision by the Commissioner to approve a reorganization plan is subject to judicial review in the New Jersey courts.

The Reorganization

9. Prudential Insurance anticipates that the Plan of Reorganization will be approved or disapproved by the Commissioner and Prudential Insurance's policyholders by the end of 2001. However, the main features of the Plan of Reorganization require the formation of the Holding Company, i.e., Prudential Financial, which has been organized initially as a subsidiary of Prudential Insurance with Prudential Insurance owning all of the formation shares of the Holding Company. On the effective date of the reorganization, Prudential Insurance will be become a stock life insurance company, and issue common stock to the Holding Company in exchange for the Common Stock, which will be distributed by Prudential Insurance in accordance with the Plan of Reorganization. At that time, Prudential Insurance will surrender to the Holding Company, which will cancel, all of the formation shares of the Holding Company initially held by Prudential Insurance. A second holding company, Prudential Holdings, LLC (Prudential Holdings), has been formed as a subsidiary of the Holding Company. As part of the reorganization, the Holding Company will contribute shares of Prudential Insurance to Prudential Holdings and Prudential Insurance will become an indirect wholly owned subsidiary of the Holding Company.

As a result of the reorganization, Prudential Insurance will, by operation of New Jersey Insurance Law, become a stock life insurance company. Prudential Insurance's charter and by-laws will be amended and restated, and all membership interests in Prudential Insurance will be extinguished in accordance with New Jersey Insurance Law. Following the reorganization, none of Prudential Insurance's insurance policies will be terminated. All policies then in force will remain in force, and all policyholders will be entitled to receive all of the benefits under their policies and contracts to which they would have been entitled if the Plan of Reorganization had not been adopted. In this regard, no actual exchange of contracts will take place as a result of the reorganization. The contractual terms and benefits of Prudential Insurance's life insurance, endowment, annuity, pension plan, and other insurance contracts, including the face values, insurance in force, borrowing terms, amount or pattern of death benefit, premium pattern, dividend eligibility, interest rate or rates guaranteed on issuance of the contract,

[21] As further described herein, New Jersey Insurance Law provides that certain policyholders who otherwise may not be eligible to receive compensation in connection with Prudential Insurance's reorganization may be ''deemed'' eligible to receive such compensation. However, the New Jersey demutualization statute does not grant Prudential Insurance or the Commissioner similar authority to ''deem'' certain policyholders qualified to vote on the Plan of Reorganization. As such, ''deemed'' eligible policyholders will be eligible to receive compensation but will not be qualified to vote on the Plan of Reorganization. The ''deemed'' eligible policyholders represent a small percentage of all eligible policyholders.

and guaranteed mortality and expense charges, will be unchanged by the reorganization.

Allocation and Distribution of Consideration to Eligible Policyholders

10. Prudential Insurance's Plan of Reorganization provides for ''Eligible Policyholders'' to receive compensation in exchange for the surrender of membership interests in the mutual life insurance company. Under the Plan of Reorganization, Eligible Policyholders are those policyholders whose Prudential Insurance policies were in force on the date of adoption of the Plan of Reorganization by Prudential Insurance's Board of Directors, i.e., December 15, 2000.[22] Prudential Insurance's Plan of Reorganization generally provides that the Eligible Policyholder is the person whose name is on the insurer's record as owner of the policy.[23]

Prudential Insurance anticipates that it will distribute compensation to Eligible Policyholders within 45 days after the effective date of the reorganization (or within 45 days after the expiration of the top-up period for Eligible Policyholders receiving cash or policy credits). (The effective date is the date of the closing of the planned IPO, which will occur after the Plan of Reorganization is approved by the Commissioner and Prudential Insurance's policyholders, and the other conditions set forth in the Plan of Reorganization are satisfied.)

11. Under the Plan of Reorganization, the total value of Prudential Insurance (currently estimated to be between $18 and $20 billion) will be allocated among Eligible Policyholders as follows:

• First, each Eligible Policyholder that holds one or more policies in the same legal capacity will receive one basic fixed component of compensation that is equal to 8 shares of Common Stock (or the equivalent of 10 shares of Common Stock to Eligible Policyholders receiving Cash or Policy Credits). Each Eligible Policyholder will be allocated this basic fixed component, and only one basic fixed component, regardless of the number of eligible policies the Eligible Policyholder owns (in the same legal capacity) or their value.

• Second, each Eligible Policyholder may receive a basic variable component of compensation that will be allocated to Eligible Policyholders to reflect their policy's or policies' contribution to Prudential Insurance's surplus, in the past, compared to all other eligible policies, and how much their policy or policies are expected to contribute to Prudential Insurance's surplus in the future, compared to all other eligible policies. (If the policy or policies have made, and are expected to make, no contribution to Prudential Insurance's surplus, then the basic variable component will be zero).

As noted above, the allocation methodology developed by Prudential Insurance's actuaries must be fair and equitable, a finding that the Commissioner is also required to make before approving the Plan of Reorganization. To assist in making this finding, the Commissioner has retained Ernst & Young to evaluate and provide an opinion on the fairness of the allocation methodology developed by Prudential Insurance. In addition, Prudential Insurance has retained the actuarial firm of Milliman & Robertson, Inc. to assist it in developing an equitable allocation methodology.

12. Under the Plan of Reorganization, Eligible Policyholders, except for certain Eligible Policyholders, who may elect, or are required to receive Cash or Policy Credits, will receive Common Stock as compensation for their membership interests in the mutual life insurance company, which interests will be extinguished.[24] Any election by a plan policyholder to choose stock pursuant to the terms of the Plan of Reorganization will be made by one or more independent fiduciaries of the plan policyholder, and neither Prudential Insurance nor any of its affiliates will exercise any discretion with respect to a plan policyholder's election or provide ''investment advice,'' as that term is defined in 29 CFR 2510.3–21(c), with respect to the election.

In addition to shares issued to Eligible Policyholders, the Holding Company will offer to the public its Common Stock in an IPO. At such time that the Holding Company sells shares in the IPO, the Common Stock will be listed on the NYSE. Under the Plan of Reorganization, Eligible Policyholders will not pay any brokerage commissions or similar fees in connection with their receipt of Common Stock.

13. Under the Plan of Reorganization, certain policyholders who are otherwise Eligible Policyholders, will receive Cash or Policy credits in lieu of Common Stock. Eligible Policyholders who may or must receive Cash or Policy Credits typically are policyholders who have been allocated 50 or fewer[25] shares of Common Stock, whose mailing address is outside the United States or unknown, whose policies are subject to a judgment lien, creditor lien (other than a policy loan made by Prudential Insurance) or bankruptcy proceedings; or who hold TDA or IRA contracts.

Eligible Policyholders who hold TDA or IRA contracts will receive Policy Credits in exchange for their mutual membership interests because such policyholders usually are not able to hold Common Stock under the applicable tax laws. In addition, certain individual life insurance or annuity contracts held in connection with qualified plans (*i.e.,* section 401(a) or 403(a) of the Code) will receive Policy Credits.

Eligible Policyholders who are allocated 50 or fewer shares of Common Stock (the specific number of which will be determined by Prudential Insurance's Board of Directors on or

[22] Certain policyholders are ''deemed'' eligible under the Plan of Reorganization as provided under New Jersey Insurance Law.

[23] Under the Plan of Reorganization and New Jersey Insurance Law, the general rule is that the group contract holder or group insurance policy owner of an Eligible Policy, and not the individuals or entities covered under the eligible contract or policy, is entitled to vote on the Plan of Reorganization and to receive any demutualization compensation payable with respect to that contract or policy. However, there are special rules under the Plan of Reorganization concerning Prudential Insurance's ability to vote on the Plan of Reorganization and to receive demutualization compensation on contracts or policies that it, or an affiliate, may hold. In this regard, where Prudential Insurance or an affiliate is the trustee of a MET, it is precluded under New Jersey Insurance Law from actually voting on the Plan of Reorganization. Similarly, New Jersey Insurance Law precludes voting on the Plan of Reorganization by employers and individuals participating in the MET. However, the statute requires that the demutualization consideration received on behalf of the MET by Prudential Insurance be passed through to such participating employers and individuals.

[24] ''The proceeds of the demutualization will belong to the plan if they would be deemed to be owned by the plan under ordinary notions of property rights. See ERISA Advisory Opinion 92–02A, Jan. 17, 1992 (assets of plan generally are to be identified on the basis of ordinary notions of property rights under non-ERISA law). It is the view of the Department that, in the case of an employee welfare benefit plan with respect to which participants pay a portion of the premiums, the appropriate plan fiduciary must treat as plan assets the portion of the demutualization proceeds attributable to participant contributions. In determining what portion of the proceeds are attributable to participant contributions, the plan fiduciary should give appropriate consideration to those facts and circumstances that the fiduciary knows or should know are relevant to the determination, including the documents and instruments governing the plan and the proportion of total participant contributions to the total premiums paid over an appropriate time period. In the case of an employee pension benefit plan, or where any type of plan or trust is the policyholder, or where the policy is paid for out of trust assets, it is the view of the Department that all of the proceeds received by the policyholder in connection with a demutualization would constitute plan assets.'' See ERISA Advisory Opinion 2001–02A, Feb. 15, 2001.

[25] Prudential Insurance represents that its Board of Directors may adjust this number downward on or before the effective date.

prior to the effective date) will receive Cash unless the policyholder elects to receive Common Stock. Such election must be indicated on a form provided by Prudential Insurance to the policyholder and returned to Prudential Insurance prior to a date established by the Board of Directors and approved by the Commissioner. The election can also be made by telephonically or over the Internet.

14. Eligible Policyholders who receive all of their compensation with respect to one or more policies held in the same legal capacity in the form of Cash and/or Policy Credits will receive one additional fixed component that is equal to two shares of Common Stock and an additional variable component if the sum of their basic fixed and basic variable components is equal to 26 or more shares of Common Stock. The amount of the additional variable component is based on the sum of the policyholder's basic fixed and basic variable component. As a result, Eligible Policyholders receiving the additional fixed and additional variable component will be provided approximately a 10 percent increase in the number of shares of Common Stock allocated to them. The purpose of the additional components is to distribute to Eligible Policyholders that do not receive Common Stock the value that Prudential Insurance anticipates will result from additional savings inherent in having a smaller shareholder base.

15. The Plan of Reorganization also includes a ''top-up'' provision. The top-up is designed to provide Eligible Policyholders who will receive any portion of their compensation in the form of Cash and/or Policy Credits with a possible upward adjustment to their compensation depending on the performance of Common Stock during the top-up period. If the average of the closing prices of the Common Stock during the first 20 trading days that the stock is traded on the NYSE exceeds 110 percent of the IPO price, the excess, up to 120 percent of the IPO share price, will be added to the IPO price and reflected in the Cash and/or Policy Credits provided to Eligible Policyholders. The top-up feature provides Eligible Policyholders who are receiving any portion of their demutualization compensation in Cash or Policy Credits with their full share of the aggregate value that is being distributed to all Eligible Policyholders.

16. In addition to the owners of mutual insurance policies it has issued, Prudential Insurance has determined that persons who owned in force policies on December 15, 2000 that have been issued by certain of its stock life insurance company subsidiaries (*i.e.,* the Designated Subsidiaries), namely, Pruco Life Insurance Company, Pruco Life Insurance Company of New Jersey and Prudential Select Life Insurance Company of America, will be ''deemed'' Eligible Policyholders under the Plan of Reorganization for purposes of receiving compensation in the reorganization.[26] Prudential Insurance has concluded that ''special circumstances'' exist with respect to these policyholders and has determined that it would be fair and equitable to its policyholders and in the best interest of Prudential Insurance and its policyholders to include these policyholders as Eligible Policyholders.

As required under New Jersey Insurance Law, the Commissioner will have to find that inclusion of the Designated Subsidiary policyholders is fair and equitable to all Prudential Insurance policyholders as a whole. Moreover, all of the Eligible Policyholders of the Designated Subsidiaries which are Plans will be treated in the same manner as any other Eligible Policyholder that is not a Plan under the Plan of Reorganization.

Although the policyholders of the Designated Subsidiaries will receive compensation in connection with Prudential Insurance's reorganization, none will be permitted to vote on the Plan of Reorganization.[27] Nevertheless, Prudential Insurance believes the interests of the policyholders of the Designated Subsidiaries will be protected because the Commissioner, with the assistance of outside consultants, is required to find that the Plan of Reorganization is fair and equitable. Any Plan policyholder of a Designated Subsidiary will be treated the same under the Plan of Reorganization as any other Designated Subsidiary policyholder. Moreover, as a condition of the reorganization, a qualified and independent actuary appointed by Prudential Insurance must certify that the methodology and underlying assumptions used to allocate compensation among Eligible Policyholders are fair and equitable to all policyholders.

17. The Plan of Reorganization also provides for the establishment of a commission-free sales and purchase program under which Eligible Policyholders who receive 99 or fewer shares of Common Stock will be permitted to sell, on a commission-free basis, all of the stock they have received pursuant to the Plan of Reorganization, or purchase the additional amount of shares necessary to increase their holdings to 100 shares. The Program will commence prior to the second anniversary of the effective date of the Plan of Reorganization. Neither Prudential Insurance nor its affiliates will provide ''investment advice,'' as described in 29 CFR 2510.3–21(c), or exercise investment discretion with respect to those policyholders eligible to participate in the Program.

Role of the Independent Fiduciary

18. Pursuant to an agreement dated January 22, 2001 (the Agreement), Prudential Insurance appointed U.S. Trust to conduct a due diligence review of the proposed demutualization of Prudential Insurance and to vote on whether to approve or disapprove of the Plan of Reorganization on behalf of all of the Prudential Insurance Plans. Under the Agreement, U.S. Trust has acknowledged and accepted the duties, responsibilities and liabilities of an independent fiduciary and has agreed to act on behalf of such Prudential Insurance Plans. In return for services rendered, Prudential Insurance will compensate U.S. Trust. The Agreement further provides that if Prudential Insurance requests U.S. Trust to manage the compensation received by the Prudential Insurance Plans, such responsibilities will be the subject of a separate engagement letter (the Supplemental Agreement).

Under the Supplemental Agreement dated July 30, 2001, Prudential Insurance has engaged U.S. Trust as an independent fiduciary specifically for the Prudential Welfare Plan, to take all actions that are necessary and appropriate to safeguard the interests of this Plan, including the management and disposition of Common Stock to be received by the Plan as demutualization consideration, to the extent such

[26] New Jersey Insurance Law provides, in pertinent part, that an ''eligible policyholder'' is a ''policyholder who owns, or is deemed by the plan of reorganization to own, a policy that is, or that is deemed by the plan of reorganization to be, in force on the adoption date, or a policyholder who is deemed eligible by the plan of reorganization, including as a result of reinstatement in accordance with the terms of the policy or the plan of reorganization, or otherwise.'' (emphasis added)

[27] Although New Jersey Insurance Law permits these policyholders to be ''deemed'' eligible for compensation pursuant to the Plan of Reorganization, there is no similar flexibility to ''deem'' such policyholders to be qualified to vote on the Plan of Reorganization. In this regard, the New Jersey demutualization statute provides that only ''qualified voters'' may vote on a plan of reorganization, and makes no provision for ''deemed'' qualified voters. A ''qualified voter'' is defined as ''every policyholder who is 18 years of age or more and whose policy has been in force for at least 1 year.'' Because the owners of policies issued by Designated Subsidiaries do not qualify as ''policyholders'' of Prudential Insurance, they do not meet the statutory definition of ''qualified voter'' and are not, therefore, entitled to vote on the Plan of Reorganization, according to Prudential Insurance.

securities exceed the 10 percent limitation of section 407(a)(2) of the Act.[28] In addition to its previous commitments set forth under the Agreement, U.S. Trust agrees: (a) To serve as an independent fiduciary for the Prudential Welfare Plan (including, but not limited to, being custodian of the compensation received on behalf of such Plan and/or serving as investment manager of any one of the VEBAs holding Common Stock on behalf of the Prudential Welfare Plan); and (b) to be represented as such under any prohibited transaction filing made by Prudential Insurance with respect to the Prudential Welfare Plan. As independent fiduciary for the Prudential Welfare Plan, U.S. Trust will also be required dispose of any shares of Common Stock that are in excess of the 10 percent limitation set forth under section 407(a)(2) of the Act as soon as reasonably practicable, but in no event later than 6 months from the effective date of the Plan of the Reorganization. Further, U.S. Trust will be required to prepare reports and documentation for the Department that may be required for purposes of the examination process, including, but not limited to, reports evaluating the Plan of Reorganization as it relates to the Prudential Welfare Plan's holding and disposition of Common Stock in a timely fashion. Finally, U.S. Trust will be required to vote on shares of Common Stock that are held by the Prudential Welfare Plan which exceed the limitation of section 407(a)(2) of the Act.

U.S. Trust represents that it is qualified to act as an independent fiduciary for the Prudential Welfare Plan in connection with the Plan of Reorganization. Its parent, U.S. Trust Corporation, was founded in 1853 and is subject to regulation as a trust company by the State of New York. U.S. Trust is the principal subsidiary of U.S. Trust Corporation, a member of the Federal Reserve System and the Federal Deposit Insurance Corporation, and an entity having approximately $5 billion in assets as December 31, 1999. In addition, U.S. Trust Corporation is a wholly-owned subsidiary of the Charles Schwab Corporation and has over $73 billion in assets under management, a significant percentage of which consists of ERISA retirement plan assets. U.S. Trust has served as an independent fiduciary for numerous employee benefit plans that acquire or hold employer securities and has managed, at various times, over $18 billion in employer securities held by various such plans. In managing such investments, U.S. Trust has exercised discretionary authority over many transactions involving the acquisition, retention and disposition of employer securities.

U.S. Trust represents that it is independent of Prudential Insurance and its affiliates and has no business ownership or control relationship, nor is it otherwise affiliated with Prudential Insurance. U.S. Trust further represents that it derives less than one percent of its annual income from Prudential Insurance or its affiliates.

U.S. Trust has conducted a preliminary review of the Plan and has determined that nothing in the Plan of Reorganization should preclude the Department from proposing the requested exemption. As noted above, U.S. Trust will provide the Department with a final report evaluating the Plan of Reorganization prior to its effective date.

19. In summary, it is represented that the transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plan of Reorganization will be implemented pursuant to stringent procedural and substantive safeguards imposed under New Jersey Insurance Law and supervised by the Commissioner.

(b) The Commissioner will only approve the Plan of Reorganization following a determination that, among other things, such Plan is fair and equitable to all Eligible Policyholders.

(c) One or more independent fiduciaries of each Plan, including the Prudential Insurance Plans, will have an opportunity to determine whether to vote to approve and comment on the terms of the Plan of Reorganization, and will also be solely responsible for any decisions that may be permitted under the Plan of Reorganization regarding the form of consideration to be received in return for their respective membership interests.

(d) Because of all of the protections afforded to Plans under New Jersey law, no ongoing involvement by the Department will be required in order to safeguard the interests of Plan policyholders.

(e) The Plan of Reorganization will enable Plans to convert their illiquid membership interests in Prudential Insurance into shares of Common Stock, Cash, or Policy Credits.

(f) The insurance and annuity contracts affected by the Plan of Reorganization will remain in force and there will be no changing of premiums or compromising any of the benefits, values, guarantees, or other policy obligations of Prudential Insurance to its policyholders and contractholders.

Notice to Interested Persons

Pursuant to the requirements of New Jersey Insurance Law, during May 2001, Prudential Insurance provided policyholders, including Plan policyholders, with an advance disclosure document relating to its conversion to a stock company. The document, known as ''The Policyholder Information Booklet'' (or PIB) included, among other things, (a) a notice of the date, time, and place for voting on the Plan of Reorganization; (b) a notice of the time, place, and purpose of a public hearing on the Plan of Reorganization, at which policyholders could express their views on the Plan of Reorganization; and (c) general information regarding Prudential Insurance's Plan of Reorganization. The PIB was provided in a form and manner approved by the Commissioner and was sent to over 11 million Prudential Insurance policyholders, of which approximately 800,000 policyholders were Plans. Prudential Insurance has deemed these Plan policyholders to be ''interested persons'' for purposes of this exemption.

In connection with the exemption request, Prudential Insurance wishes to provide notice of the proposed exemption in a manner which takes into account (a) the costs and administrative burden of providing copies of the proposed exemption to 800,000 Plan policyholders; (b) the notices required, and policyholder protections accorded, under state law, and (c) the limited scope of exemptive relief that it has requested. In this regard, Prudential Insurance has incorporated the Department's required supplemental statement describing the exemption proceeding (see 29 CFR 2570.43) in a slightly modified form in the PIB under the special heading ''Notice of Application by The Prudential Insurance Company of America for Prohibited Transaction Exemption'' (hereinafter, the ''PIB Notice''). The PIB Notice is intended to inform Plan policyholders of the anticipated publication the proposed exemption in the **Federal Register** and their right to

[28] It is anticipated that the Prudential Welfare Plan will receive between 6.4 million to 7.2 million shares of Common Stock, having an initial value of ranging from $22 and $38 per share. It is expected that such consideration will be passed on to eligible participants in the Prudential Welfare Plan, except for a small portion that will be used by the Plan to defray expenses attributable to distributing compensation to participants. Prudential Insurance states that the price at which the shares of Common Stock will actually trade, or for that matter, whether the Prudential Welfare Plan has exceeded the 10 percent limitation of section 407(a) of the Act will be known at the time of the IPO.

comment on the proposal. The PIB Notice states that a Plan policyholder may call a toll-free number maintained by Prudential Insurance (1–877–264–1163) or write to Prudential Insurance if such policyholder wishes to be provided with a copy of the proposed exemption when it is published in the **Federal Register**. In addition, the PIB Notice indicates that the proposed exemption will be posted on Prudential Insurance's Web site (*www.prudential.com*) after publication.

Any Plan policyholder requesting that Prudential Insurance provide a copy of the proposed exemption will be sent such copy within 30 days of its publication in the **Federal Register**. The copy of the proposed exemption will be accompanied by another version of the supplemental statement, as required under the Department's regulations. In addition, the proposed exemption, together with a copy of the supplemental statement, will be posted on Prudential Insurance's website within 15 days of publication.

Prudential Insurance will give Plan policyholders 90 days to file comments with the Department. The 90 day comment period will commence on the date the proposed exemption is published in the **Federal Register**. During the comment period, Prudential Insurance will send copies of the proposed exemption to interested persons who have requested receiving such copies, no later than 30 days after the publication date of the proposal in the **Federal Register**. Interested persons will then have no less than 60 days from the proposal's dissemination date in which to file comments with the Department.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Ford Motor Company (Ford), Located in Dearborn, Michigan

[Application No. L–10937]

Proposed Exemption

If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Employee Retirement Income Security Act of 1974 (ERISA) shall not apply, effective August 4, 2000, to: (1) The receipt by the Ford-UAW Benefits Trust (the VEBA) of approximately $2.9 billion of certain securities (the Partnership Securities) pursuant to the redemption (the Redemption) by the VEBA of its interest in the Ford Enhanced Investment Partnership and the Ford Super-Enhanced Investment Partnership (collectively, the Partnerships); and (2) the transfer of the Partnership Securities by the VEBA to Ford in exchange for the transfer of approximately $2.9 billion of certain securities (the Ford-Owned Securities) to the VEBA (the Exchange), provided that the following conditions were met:

(a) The terms of the Redemption and the terms of the Exchange were at least as favorable to the VEBA as the terms that would have been available in arm's-length transactions between unrelated parties;

(b) The total value of the Partnership Securities received by the VEBA pursuant to the Redemption equaled the value of the VEBA's pro rata interest in the Partnerships on the date of the Redemption;

(c) The net asset value of the VEBA's interest in the Partnerships and each Partnership Security received by the VEBA pursuant to the Redemption were valued in the same manner using August 4, 2000 close-of-market bid prices as determined by an independent, recognized pricing service;

(d) In the case of the Exchange, the VEBA received Ford-Owned Securities equal in value to the Partnership Securities transferred to Ford;

(e) Each Partnership Security transferred to Ford by the VEBA pursuant to the Exchange was valued according to its August 4, 2000 close-of-market bid price as determined by an independent, recognized pricing service;

(f) Each Ford-Owned Security transferred to the VEBA by Ford pursuant to the Exchange was valued according to its August 4, 2000 close-of-market bid price as determined by an independent, recognized pricing service, or to the extent that a price could not be obtained in this manner, such security was priced according to the average of three (or a minimum of two) August 4, 2000 close-of-market bid prices obtained from independent market-makers;

(g) The Ford-Owned Securities transferred to the VEBA pursuant to the Exchange were not issued by Ford and were comprised solely of cash and marketable short-term debt securities under the management of unrelated, independent investment managers;

(h) The Partnership Securities transferred to Ford pursuant to the Exchange were comprised solely of cash and marketable short-term debt securities;

(i) Upon the completion of the Exchange, no single issue of Ford-Owned Securities accounted for more than 25% of the assets of the VEBA;

(j) State Street Bank and Trust Company (SSBT), acting as an independent fiduciary on behalf the VEBA, monitored the Redemption and the Exchange; and

(k) SSBT, as independent fiduciary, approved the Redemption and the Exchange upon determining that the Redemption and the Exchange were in the best interests of the VEBA and its participants.

Effective Date: The exemption is effective August 4, 2000.

Summary of Facts and Representations

1. Ford is the named fiduciary and the plan administrator of the Ford-UAW Health Care Plan (the Health Care Plan). The Health Care Plan had approximately 265,562 participants and beneficiaries as of January 1, 2000, and is funded through the VEBA, a voluntary employees' beneficiary association described in section 501(c)(9) the Internal Revenue Code of 1986 (the Code). The VEBA was established by Ford in June of 1997 and, as of August 1, 2000, had assets totaling approximately $3.1 billion.[29]

2. The applicant states that Ford customarily administers cash investments on behalf of the employee benefit plans it maintains. Such administration, the applicant represents, is typically accomplished in one of two ways: (1) through the use of Ford investment managers (the Ford Managers); [30] or (2) through the use of certain external investment managers (the External Managers).[31] Prior to August 4, 2000, the applicant states, the assets of the VEBA were managed by the Ford Managers. At the direction of the Ford Managers, the assets of the VEBA were invested through the Partnerships. The Partnerships are two short-term investment vehicles maintained on

[29] The applicant states that, prior to the Redemption and Exchange, the assets of the VEBA included approximately $800 million in cash. This was the result, the applicant represents, of an investment strategy implemented by the Ford Managers (*see* Footnote 2) in the second half of 2000 aimed at shortening the duration of the VEBA's investments. As part of this strategy, the VEBA invested in the Partnerships, whose assets included large holdings of cash invested on a daily basis in euro time deposits, commercial paper, agency discount notes, or repurchase agreements all of which earned interest at approximately the federal funds rate.

[30] The applicant states that, pursuant to the terms of the VEBA trust, Ford may direct the trustee to establish investment accounts, and Ford may also direct the trustee to segregate all or a portion of the VEBA trust into an account with respect to which Ford has investment discretion.

[31] Specifically, the External Managers are State Street Research, Blackrock Financial Management, Inc., and Pacific Investment Management Company. The applicant represents that the External Managers are each independent of, and unrelated to, SSBT.

behalf of the Health Care Plan and certain other investors. At the time of the Redemption and Exchange, the other investors were Ford, Ford Global Technologies, Ford Fund and Ford Holdings. The applicant states that the Health Care Plan was the only employee benefit plan participating in the Partnerships at the time of the Redemption and Exchange. In addition, the applicant represents that, during the period in which the Health Care Plan invested in the Partnerships, the Partnerships were managed in accordance with ERISA.

3. The applicant states that, in addition to administering investments on behalf of the employee benefit plans it maintains, Ford also administers investments on its own behalf. In this regard, the applicant represents that Ford maintains an investment portfolio (the Ford Portfolio) to meet the needs of its automobile manufacturing business. Prior to August 4, 2000, the Ford Portfolio was managed by the External Managers. At the direction of the External Managers, the Ford Portfolio held the Ford-Owned Securities, which were marketable short-term debt securities (none of which were issued by Ford) and cash.[32]

4. The applicant represents that by July of 2000, Ford decided to shift certain investment management responsibilities with respect to approximately $2.9 billion of the VEBA's assets. The shift involved reassigning investment management duties from the Ford Managers to the External Managers and was based, in part, on certain characteristics of the VEBA. In this regard, Ford believed that given certain liquidity characteristics historically exhibited by the VEBA, the investment strategy implemented by the External Managers would likely provide a greater rate of return to the VEBA than the rate of return achieved by the Ford Managers. Specifically, Ford estimated that, to the extent the External Managers managed $2.9 billion of the VEBA's assets, the VEBA would receive, over time, an increased return on such assets amounting to an incremental 30 to 50 basis points.[33]

5. The applicant represents that, contemporaneous with Ford's decision to have the External Managers manage the assets of the VEBA, Ford decided to reduce the amount of Ford Portfolio assets managed by the External Managers. This decision was based, the applicant states, on Ford's determination that the high-yield investment strategy implemented by the External Managers was inappropriate as applied to the Ford Portfolio. In this regard, Ford determined that given the unpredictable nature of its automobile business, the investment strategy implemented by the Ford Managers was better suited for the Ford Portfolio's liquidity needs than the investment strategy implemented by the External Managers. According to the applicant, Ford thus decided to shift investment management responsibilities with respect to the assets of the Ford Portfolio from the External Managers to the Ford Managers.[34]

6. The applicant represents that, upon deciding to shift investment responsibilities with respect to the assets of the VEBA from the Ford Managers to the External Managers, Ford considered the costs associated with reallocating the assets of the VEBA. In this regard, the applicant represents that, typically, transferring the assets of a portfolio to a different investment manager involves: (1) The liquidation of certain assets in a portfolio's asset selection; and (2) the acquisition of new assets which are consistent with the investment strategies of the new investment manager. The External Managers and SSBT, therefore, investigated the cost of: (1) Liquidating the Partnership Securities on the open market; and (2) acquiring securities similar to the Ford-Owned Securities on the open market. Upon doing so, the applicant represents, the External Managers determined that reallocating the VEBA's assets to the External Managers through open-market transactions would result in approximately $3.5 million in aggregate transaction costs. Of this amount, the applicant represents, $1.75 million would have been incurred by the VEBA and $1.75 million would have been incurred by Ford. SSBT, meanwhile, determined that such transaction costs approximated $2.5 million. Of this amount, the applicant represents, $1.25 million would have been incurred by the VEBA and $1.25 million would have been incurred by Ford.

The applicant represents that Ford, in consideration of these estimated transaction costs, determined that transferring investment management responsibilities with respect to the assets of the VEBA from the Ford Managers to the External Managers through the Exchange would benefit the VEBA. In this regard, the applicant represents that the Exchange would enable the VEBA to avoid the substantial transaction costs associated with such a transfer of responsibilities. The applicant represents further that although certain transfer costs and legal fees did arise with respect to the Redemption and Exchange, such costs and fees were paid for solely by Ford.

7. Prior to effectuating the Exchange, Ford initiated the Redemption. In this regard, after August 4, 2000, the VEBA received the Partnership Securities and cash in return for the redemption by the VEBA of a proportional interest in the Partnerships. The applicant represents that the Partnership Securities received by the VEBA pursuant to the Redemption were comprised solely of readily marketable short-term debt securities.

The applicant represents that SSBT, acting on behalf of the VEBA, monitored the pricing of the Partnership Securities for purposes of the Redemption. The applicant represents that SSBT received less than 1% of its annual revenue from any of the relevant parties to the transactions described herein. SSBT, in turn, represents that it manages over $220 billion in fixed income assets, primarily for ERISA plans, and has acted as an independent fiduciary in a wide variety of transactions including those which are the subject of this proposal.

For purposes of the Redemption, the Partnership Securities were priced as follows: (1) Wherever possible, a preselected recognized, independent pricing service[35] provided the August 4, 2000 close-of-market bid price for each Partnership Security; (2) to the extent the bid price could not be determined by the initial pricing service, a second preselected recognized, independent pricing service provided the August 4, 2000 close-of-market bid price for each such Partnership Security. SSBT represents that this pricing methodology was fair to the participants of the VEBA. In this regard, SSBT represents that the assets received by the VEBA pursuant to the Redemption were equal in value to the proportional interest the VEBA had

[32] The applicant represents that although certain Ford-Owned Securities have nominal terms of up to 30 years, Ford views such securities as being ''short-term'' since the weighted average life of such securities is much shorter than their nominal term. In this regard, Ford represents that the weighted average duration of these types of securities is approximately one year or less.

[33] SSBT, the independent fiduciary, has represented that from April, 1998 until February 13, 2001, the Ford Portfolio outperformed the VEBA portfolio by eight basis points annually.

[34] The applicant represents that the Redemption and Exchange were unrelated to Ford's decision to replace certain Firestone tires on Ford-manufactured vehicles.

[35] For purposes of both the Redemption and Exchange, the services that provided the relevant prices for the Partnership Securities and the Ford-Owned Securities were chosen by SSBT.

in the net asset value of the Partnerships.

8. The applicant represents that upon the completion of the Redemption, Ford initiated the Exchange. In so doing, on August 7, 2000, Ford caused the VEBA to transfer to Ford the cash and Partnership Securities the VEBA received from the Redemption. The applicant represents that each such Partnership Security was transferred at a price equal to its respective Redemption price.

In return for the receipt by Ford of the cash and Partnership Securities provided pursuant to the Exchange, Ford transferred approximately $2.9 billion in Ford-Owned Securities to the VEBA.[36] The applicant represents that SSBT, acting on behalf of the VEBA, monitored the pricing of the Partnership Securities for purposes of the Exchange. The applicant represents that, with respect to the Ford-Owned Securities transferred to the VEBA by Ford, each of the Ford-Owned Securities was priced as follows: (1) Wherever possible, an initial preselected independent, recognized pricing service provided the August 4, 2000 close-of-market bid price for each Ford-Owned Security; (2) to the extent that the bid price could not be determined by the initial pricing service, a second preselected recognized, independent pricing service provided the August 4, 2000 close-of-market bid price with respect to each such security; (3) to the extent a Ford-Owned Security could not be priced according to the initial or secondary pricing services, such security was priced according to the average of three August 4, 2000 close-of-market bid prices (if available, but in any event not less than two such prices were used) as provided by independent market-makers (to the extent such securities were under their respective management).[37]

9. In a letter dated October 3, 2000, SSBT stated that, prior to the Redemption and Exchange, certain SSBT analysis regarding the Redemption and Exchange was presented to a SSBT fiduciary committee (the Committee). This analysis included the following findings: (1) The management style of the External Managers was likely to add value to the VEBA in terms of enhanced performance and that the Ford Portfolio holdings were suitable for the VEBA; (2) the bid side pricing convention used by all parties to the Exchange was fair to the participants in the VEBA; and (3) the off-market nature of the Exchange would result in significant cost savings to the VEBA relative to a similar open market exchange. Based on such analysis and findings, the Committee determined that: (1) The in-kind exchange was consistent with the VEBA's investment guidelines; (2) the VEBA's investment guidelines were reasonable; (3) the pricing mechanisms used with respect to the Redemption and Exchange were appropriate for establishing the fair market value of the Ford-Owned Securities and the Partnership Securities; and (4) the Exchange was in the best interests of the participants and beneficiaries of the VEBA.

Additionally, in a letter dated February 13, 2001, SSBT stated that, at the time of the Redemption and Exchange, the investment guidelines for the VEBA portfolio (the VEBA Portfolio) and the Ford portfolio were essentially the same. In this letter, SSBT also stated that the VEBA Portfolio and the Ford Portfolio: (1) Were comprised of fixed income investments; (2) overlapped in many Treasury and higher rated issues; and (3) were both subject to a loss provision which mandated that no more than one percent (1%) of asset value may be reduced in any one quarter.[38] SSBT stated that the securities acquired by the VEBA pursuant to the Exchange were high quality assets comprised primarily of government and government agency bonds, along with investment grade corporate bonds, and would serve to position the VEBA favorably in relation to its investment objectives.

10. SSBT represents that since the Exchange was to be executed at the bid side price for both the VEBA Portfolio and the Ford Portfolio, SSBT determined that the pricing mechanism implemented with respect to the Exchange was fair and represented the fair market value of the affected securities. In addition, SSBT represents that the terms of the Redemption and Exchange were no less favorable to the VEBA than the terms of similar arm's-length transactions between unrelated parties. SSBT represents that, prior to the Exchange, SSBT approved the Exchange, and determined that the Exchange was in the best interests of the participants of the VEBA.

11. In summary, the applicant contends that the transaction met the statutory criteria set forth in section 408(a) of ERISA since:

(a) The terms of the Redemption and the terms of the Exchange were at least as favorable to the VEBA as the terms that would have been available in arm's-length transactions between unrelated parties;

(b) The total value of the Partnership Securities received by the VEBA pursuant to the Redemption equaled the value of the VEBA's pro rata interest in the net asset value of the Partnerships on the date of the Redemption;

(c) The net asset value of the VEBA's interest in the Partnerships and each Partnership Security received by the VEBA pursuant to the Redemption were valued in the same manner using August 4, 2000 close-of-market bid prices as determined by an independent, recognized pricing service;

(d) In the case of the Exchange, the VEBA received Ford-Owned Securities equal in value to the Partnership Securities transferred to Ford;

(e) Each Partnership Security transferred to Ford by the VEBA pursuant to the Exchange was valued according to its August 4, 2000 close-of-market bid price as determined by an independent, recognized pricing service;

(f) Each Ford-Owned Security transferred to the VEBA by Ford pursuant to the Exchange was valued according to its August 4, 2000 close-of-market bid price as determined by an independent, recognized pricing service, or to the extent that a price could not be obtained in this manner, such security was priced according to the average of three (or a minimum of two) August 4, 2000 close-of-market bid prices obtained from independent market-makers;

(g) The Ford-Owned Securities transferred to the VEBA pursuant to the Exchange were not issued by Ford and were comprised solely of cash and marketable short-term debt securities under the management of unrelated, independent investment managers;

(h) The Partnership Securities transferred to Ford pursuant to the Exchange were comprised solely of cash and marketable short-term debt securities;

[36] Immediately thereafter, the applicant states, the assets of the VEBA were managed by the External Managers and the assets of the Ford Portfolio were managed by the Ford Managers.

[37] The applicant represents that approximately three percent (3%) of the Ford-owned Securities were provided according to bid prices provided by independent market-makers.

[38] The applicant represents that the investment guideline for portfolio managers is based on a level of risk tolerance rather than managing the total return to a specific benchmark. This risk tolerance, the applicant states, is defined as one percent of the portfolio value per quarter. Capital losses (including net realized and unrealized mark-to-market losses) during any rolling three-month period, the applicant states further, should therefore not exceed one percent of the portfolio market value. The applicant represents that risk tolerance is used to ensure that portfolios are being managed consistent with their guidelines and objectives.

(i) Upon the completion of the Exchange, no single issue of Ford-Owned Securities accounted for more than 25% of the assets of the VEBA;

(j) SSBT, acting as an independent fiduciary on behalf of the VEBA, monitored the Redemption and the Exchange; and

(k) SSBT, as independent fiduciary, approved the Redemption and the Exchange upon determining that the Redemption and the Exchange were in the best interests of the VEBA and its participants.

Notice to Interested Persons

The applicant represents that notice to interested persons will be made within twenty (20) business days following publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than sixty (60) days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Motta of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 24th day of September, 2001.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 01–24151 Filed 9–26–01; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2001–34; Exemption Application No. D–10911, et al.]

Grant of Individual Exemptions; Derrerred Profit Sharing Plan of the Penske Corporation (the Plan) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Deferred Profit Sharing Plan of the Penske Corporation (the Plan) Located in Charlotte, North Carolina

[Prohibited Transaction Exemption No. 2001–34; Exemption Application No. D–10911]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) and section 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, (1) effective June 15, 2000, to the acquisition and holding by the Plan of interests (the Interests) in the Penske Company, LLC (the LLC), a wholly owned subsidiary of the Plan sponsor, the Penske Corporation (Penske), which were distributed (the Distribution) as dividends to the Plan as a shareholder of Penske common stock (Penske Stock); and (2) the proposed redemption, by the LLC, of the Interests held by the Plan for the greater of $3.37 per-unit or their fair market value at the date of the redemption, provided that the following conditions were or will be met:

(a) The Interests were acquired by the Plan pursuant to Plan provisions for individually-directed investment of participant accounts;

(b) The Plan's receipt and holding of the Interests occurred in connection with the Distribution;

(c) The Plan's acquisition of the Interests as a dividend paid to all holders of Penske Stock resulted from an independent act of Penske as a corporate entity, such that all holders of the Penske Stock, including the Plan, were treated in the same manner;

(d) Within 15 business days after the date the notice granting the final exemption is published in the **Federal Register**, the LLC will redeem the Interests held by the Plan for not less than $3.37 per unit;

(e) The price received by the Plan for the Interests is not less than the fair market value of the Interests on the date that the redemption occurs; and

(f) The Plan paid no fees or commissions in connection with the acquisition and holding of the Interests nor will it pay any fees or commissions in connection with the redemption of the Interests.

EFFECTIVE DATE: This exemption is effective as of June 15, 2000 with respect to the acquisition and holding by the Plan of the Interests. In addition, this exemption is effective as of the date the final exemption is granted with respect to the LLC's redemption of the Interests held by the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption (the Notice) published on July 10, 2001 at 66 FR 36002.

Written Comments

The only written comments received by the Department were submitted by the applicant, Penske. These comments sought several changes to the Notice, each of which is discussed below.

In Representation 1 of the Summary of Facts and Representations (the Summary), the applicant requests that the first two sentences of the second paragraph be revised to read as follows for technical accuracy:

> As of December 31, 2000, the Plan had a total of 1,174 participants. The Plan had assets, as of March 31, 2000, with an approximate aggregate fair market value of $35,477,000. Also as of March 31, 2000, 49.8% (or $17,674,629) of the fair market value of the total assets of the Plan was invested in Penske Stock.

In addition, the applicant requests that the phrase ''qualifying employer security'' as used in footnote 2 of the Summary be revised to read ''employer security''. Further, in Representation 5 of the Summary, the applicant represents that the word ''Code'' in the next to the last line of the first paragraph should be revised to the word ''Act''. The Department concurs in these changes submitted by the applicant.

Finally, the applicant requests that Representation 11(a) of the Notice and its corresponding condition (a) be revised to read as follows: ''The Interests were acquired by the Plan as the result of a dividend paid to all holders of Penske Stock'' to remove any implication that the Plan participants directed their accounts to invest in the Interests. In response to this comment, the Department notes the suggested modification to Representation 11(a) but has determined to leave the language in condition (a) unchanged and to modify condition (c) to read as the follows: ''The Plan's acquisition of the Interests as a dividend paid to all holders of Penske Stock resulted from an independent act of Penske as a corporate entity, such that all holders of the Penske Stock, including the Plan, were treated in the same manner''.

Accordingly, after giving full consideration to the entire record, including the comments by the applicant, the Department has determined to grant the exemption as modified. In this regard, the comments submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue. NW, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Riggs Bank N.A., Located in Washington, DC

[Prohibited Transaction Exemption 2001–35; Exemption Application No. D–10928]

Exemption

Section I—Transactions

The restrictions of section 406(a) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: (a) the extension of credit (the Advance or Advances) by Riggs Bank N.A. (Riggs) to a participant-directed individual account plan (Plan); and (b) the Plan's repayment of an Advance or Advances, plus accrued interest.

Section II—Conditions

The relief provided under Section I is available only if the following conditions are met:

(a) Each Advance is made in connection with the administration of a portion of the Plan's assets by Riggs as a unitized fund (Unitized Fund) in order to facilitate redemptions from the Unitized Fund.

(b) Each Advance is made in accordance with the terms of a written agreement (the Agreement) that describes terms and procedures for the Advances, including standing instructions addressing the initiation, amount, repayment and formula or method for determining the interest rate payable with respect to each Advance and is approved in writing by a fiduciary of the Plan who is independent of and not an affiliate of Riggs (Independent Plan Fiduciary).

(c) Interest payable by the Plan on each Advance is determined in accordance with an objective formula or method described in the Agreement.

(d) The Plan repays each Advance and accrued interest in accordance with the terms of the Agreement within ten (10) business days after the initiation of the Advance.

(e) Each Advance is unsecured.

(f) The aggregate amount advanced on any business day that an Advance is initiated does not, after the Advance is made, exceed 25% of the total market value of the Unitized Fund.

(g) On the date that an Advance is initiated, Riggs provides the Independent Plan Fiduciary with notice of the amount of the Advance and the actual interest rate to be applied.

(h) Within ten (10) days after an Advance is fully repaid, Riggs provides the Independent Plan Fiduciary with a confirmation statement which includes the date of repayment, the amount of the Advance, the actual interest rate applied, and the total amount of interest paid by the Plan.

(i) The Agreement may be terminated by the Independent Plan Fiduciary at any time, subject to the Plan's repayment of any outstanding Advances.

(j) The Advances are made on terms at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated party.

(k) Neither Riggs nor its affiliate has or exercises any discretionary authority or control with respect to the initiation of an Advance, the amount of an Advance, the interest rate payable on an Advance, or the repayment of the Advance.

(l) The fair market value of the assets in the Unitized Fund is determined by

an objective method specified in the Agreement. In the case of employer stock, such stock must be stock for which market quotations are readily available from independent sources.

(m) Riggs or its affiliate is not (i) a trustee of the Plan (other than a nondiscretionary trustee who does not render investment advice with respect to the assets of the Unitized Fund), (ii) a plan administrator (within the meaning of section 3(16)(A) of the Act and Code section 414(g)), (iii) a fiduciary who is expressly authorized in writing to manage, acquire or dispose of on a discretionary basis any assets of the Unitized Fund, or (iv) an employer any of whose employees are covered by the Plan.

(n) (a) Riggs will maintain or cause to be maintained for a period of six years from the date of the granting of the exemption the records necessary to enable the persons described in paragraph (b) to determine whether the conditions of this exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Riggs, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest, other than Riggs, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (b); and

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (a) are unconditionally available at their customary location for examination during normal business hours by: (A) Any duly authorized employee or representative of the Department or the Internal Revenue Service; (B) Any fiduciary of the Plan, or any duly authorized employee or representative of such fiduciary; and (C) Any participant or beneficiary of the Plan or duly authorized representative of such participant or beneficiary.

(2) None of the persons described in paragraph (b)(1)(B) and (b)(1)(C) shall be authorized to examine trade secrets of Riggs or commercial or financial information which is privileged or confidential.

Section III—Definitions

(a) The term ''affiliate'' means (i) any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (ii) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (iii) any corporation or partnership of which such other person is an officer, director or partner.

(b) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

EFFECTIVE DATE: The exemption is effective as of September 11, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption published on July 30, 2001, at 66 FR 39351.

FOR FURTHER INFORMATION CONTACT: Karen Lloyd of the Department, telephone (202) 219–8194. (This is not a toll-free number).

Principal Mutual Holding Company (PMHC), Located in Des Moines, IA

[Prohibited Transaction Exemption 2001–36; Exemption Application No. D–10940]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the receipt of shares of common stock (Common Stock) issued by Principal Financial Group, Inc. (PFG), the successor entity to PMHC,[1] or (2) the receipt of cash (Cash) or policy credits (Policy Credits) by any eligible policyholder (the Eligible Policyholder) of Principal Life Insurance Company (Principal), a subsidiary of PMHC, which is an employee benefit plan (the Plan), including a Plan sponsored by Principal and its affiliates (the Principal Plan), in exchange for such Eligible Policyholder's mutual membership interest in PMHC, pursuant to a plan of conversion (the Plan of Conversion) adopted by PMHC and implemented in accordance with Iowa Insurance Law.

In addition, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply to the receipt and holding, by a Principal Plan, of Common Stock, whose fair market value exceeds 10 percent of the value of the total assets held by such Plan.

[1] For purposes of this exemption, references to PMHC will generally include references to PFG unless noted, or unless the context requires otherwise.

This exemption is subject to the general conditions set forth below in Section II.

Section II. General Conditions

(a) The Plan of Conversion is implemented in accordance with procedural and substantive safeguards that are imposed under Iowa Insurance Law and is subject to review and approval by the Iowa Commissioner of Insurance (the Commissioner).

(b) The Commissioner reviews the terms of the options that are provided to Eligible Policyholders of PMHC as part of such Commissioner's review of the Plan of Conversion, and only approves the Plan following a determination that such Plan is fair and equitable to all Eligible Policyholders. The New York Superintendent of Insurance (the Superintendent) may object to the Plan of Conversion if he or she finds that such Plan of Conversion is not fair and equitable to New York policyholders.

(c) As part of their separate determinations, both the Commissioner and the Superintendent concur on the terms of the Plan of Conversion.

(d) Each Eligible Policyholder has an opportunity to vote at a special meeting to approve the Plan of Conversion after receiving full written disclosure from PMHC and/or Principal.

(e) One or more independent fiduciaries of a Plan that is an Eligible Policyholder elects to receive Common Stock, Cash or Policy Credits pursuant to the terms of the Plan of Conversion and neither PMHC nor any of its affiliates exercises any discretion or provides ''investment advice,'' within the meaning of 29 CFR 2510.3–21(c) with respect to such acquisition.

(f) If Policy Credits are elected by a Plan policyholder holding a group annuity contract, the policyholder may elect to have the policy value increased by the amount of compensation allocated or to have the policy enhanced with an interest in a separate account (the Separate Account), which is maintained by Principal.

(1) If no election is made by a Plan policyholder, the ''default'' consideration for the policyholder is Policy Credits (in the form of an interest in the Separate Account), unless the contract or regulatory concerns preclude this form of compensation.

(2) Where applicable, Principal allocates the Policy Credit compensation received, on a *pro rata* basis, among the participants of the Plan

that is invested in the Separate Account, in accordance with their account balances, unless the policyholder directs otherwise, and neither PMHC nor its affiliates provides investment advice or recommendations to the policyholder on which option to choose or with respect to the default consideration, in the event no choice is made.

(3) No purchases or sales of assets are made between Principal or its affiliates and the Separate Account.

(4) Upon receiving a notice of withdrawal from a Plan policyholder, Northern Trust Company (NTC), the custodian for shares of Common Stock that are held in the Separate Account, may sell such shares of Common Stock on the open market at fair market value.

(5) The shares of Common Stock held in the Separate Account are voted in accordance with the procedures contained in Section 8.9 of the Plan of Conversion.

(g) In the case of a Principal Plan, U.S. Trust, N.A., the independent fiduciary appointed to represent the Principal Plans,

(1) Votes on whether to approve or not to approve the proposed demutualization;

(2) Elects between consideration in the form of Common Stock, Cash or Policy Credits on behalf of such Plans;

(3) Determines how to apply the Common Stock, Cash or Policy Credits received for the benefit of the participants and beneficiaries of the Principal Plans;

(4) Votes on shares of Common Stock that are held by the Principal Plans and disposes of such stock held by a Plan exceeding the limitation of section 407(a)(2) of the Act as soon as it is reasonably practicable, but in no event later than six months after the Effective Date of the Plan of Conversion;

(5) Provides the Department with a complete and detailed final report as it relates to the Principal Plans prior to the Effective Date of the demutualization; and

(6) Takes all actions that are necessary and appropriate to safeguard the interests of the Principal Plans and their participants and beneficiaries.

(h) Each Eligible Policyholder entitled to receive Common Stock is allocated at least 100 shares and additional consideration is allocated to Eligible Policyholders based on actuarial formulas that take into account each policy's contribution to the surplus of Principal, which formulas have been reviewed by the Commissioner.

(i) All Eligible Policyholders that are Plans participate in the demutualization on the same basis and within their class groupings as other Eligible Policyholders that are not Plans.

(j) No Eligible Policyholder pays any brokerage commissions or fees in connection with the receipt of the demutualization consideration.

(k) All of Principal's policyholder obligations remain in force and are not affected by the Plan of Conversion.

(l) The terms of the transactions are at least as favorable to the Plans as an arm's length transaction with an unrelated party.

Section III. Definitions

For purposes of this exemption:

(a) The term ''PMHC'' means Principal Mutual Holding Company, its successor in interest, Principal Financial Group, Inc. and any of their affiliates as defined in paragraph (b) of this Section III, unless noted, or unless the context requires otherwise.

(b) An ''affiliate'' of PMHC includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with PMHC (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.); and

(2) Any officer, director or partner in such person.

(c) The ''Effective Date'' refers to the date on which the closing of the initial public offering (the IPO) occurs, which will be a date occurring after the approval of the Plan of Conversion by voting policyholders and the Commissioner, provided that in no event will the Effective Date be more than 12 months after the date on which the Commissioner has approved or has conditionally approved the Plan of Conversion, unless such period is extended by the Commissioner. The Plan of Conversion will be deemed to become effective at 12:01 a.m., Central Time, on the Effective Date.

(d) The term ''Record Date'' means the date that is one year prior to the Adoption Date.

(e) The ''Adoption Date'' refers to the date that PMHC's Board of Directors adopted the Plan of Conversion. This date was March 31, 2001.

(f) The term ''Eligible Policyholder'' means a person who, on the Record Date, is the owner of one or more policies and who, as reflected in PMHC's or Principal's records, has a continuous membership interest in PMHC through ownership of one or more policies from the Record Date until and on the Effective Date. Members of PMHC who were issued policies on or before April 8, 1980 and transferred ownership rights of such policies on or before April 8, 1980 are Eligible Policyholders so long as such policies remain in force through the Effective Date.

(g) The term ''Policy Credit'' means consideration to be paid in the form of an increase in cash value, account value, dividend accumulations, face amount, extended term period or benefit payment, as appropriate, depending upon the policy. If the policy is owned by a qualified plan customer (the Qualified Plan Customer) [i.e., an owner of a group annuity contract issued by Principal, which contract is designed to fund benefits under a retirement plan which is qualified under section 401(a) and section 403(a) of the Code (including a plan covering employees described in section 401(c) of the Code, provided such plan meets the requirements of Rule 180 promulgated under the Securities Exchange Act of 1933, as amended) or which is a governmental plan described in section 414(d) of the Code, excluding (1) group annuity contracts that fund only guaranteed deferred annuities or annuities in the course of payments and (2) group annuity contracts for which Principal does not perform retirement plan recordkeeping services and whose group annuity contracts do not provide for investments in Principal's pooled unregistered separate accounts], the Policy Credit may take the form of a Separate Account Policy Credit or an Account Value Policy Credit. If the policy is owned by a Non-Rule 180 Qualified Plan Customer, the Policy Credit will take the form of an Account Value Policy Credit.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 3, 2001 at 66 FR 40736.

Written Comments

The Department received five written comments with respect to the proposed exemption. Four comments were submitted by Plan policyholders of Principal while the fifth comment was submitted by PMHC. Of the policyholder comments received, three expressed opposition to the exemption for various reasons and were forwarded to PMHC for response. The fourth policyholder comment raised issues that were not relevant to PMHC's demutualization so it was not forwarded to PMHC for response.

PMHC's comment letter expressed concerns in a number of areas. PMHC also requested that the Department make certain changes to the proposed

exemption and the Summary of Facts and Representations.

Following is a discussion of the comments received.

Plan Policyholder Comments

The first commenter states that he is opposed to PMHC's demutualization because he believes money invested in a Plan should be taken after the participant reaches retirement age and any dividends received thereunder should be reinvested in the Plan. Otherwise, the commenter explains that he would look for a different type of company in order to purchase stock.

The second commenter indicates that he is opposed to the demutualization because it will expose the insurer to the ''abuse of stock options.'' The commenter also notes that there are ''millions of pensions (i.e., plans) relying on Principal'' which will be adversely affected by such abuse.

The third commenter states that he is generally opposed to the demutualization process because he believes it will allow an insurer to ''play the mergers and acquisitions game'' to the detriment of policyholders but to the benefit of the insurer's officers and directors. The commenter also explains that he cannot help but think that the prohibited transaction provisions of the Act from which PMHC has requested exemptive relief will protect the American public from the activities of such officers and directors.

PMHC states that it has reviewed the aforementioned comments and has concluded that the issues raised therein are not germane to the requested exemption but merely reflect the commenters' opposition to the demutualization transaction. Therefore, PMHC has declined to respond specifically to each of the comment letters. In PMHC's view, the comment letters do not request additional information but instead express the opinions of the commenters. However, PMHC observes that the commenters had a sufficient opportunity to express their opposition to the demutualization at the public hearing held on July 25, 2001. On July 24, 2001, PMHC explains that approximately 92 percent of the Principal policyholders who voted, voted to approve the Plan of Conversion.

PMHC's Comment

In its comment letter, PMHC has attempted to clarify the proposed exemption and the Summary of Facts and Representations in the following areas of specific concern:

1. *Superintendent's Findings.* In pertinent part, Section II(b) of the proposed exemption states that the Superintendent may object to the Plan of Conversion if he or she finds that such Plan of Conversion is ''not fair or equitable to all Eligible Policyholders.'' For purposes of clarification, PMHC states that the last sentence of this paragraph should end with the phrase ''not fair or equitable to New York policyholders.'' Accordingly, the Department has made the requested change in the final exemption.

2. *Allocation of Policy Credits by Principal.* Section II(f)(2) of the proposed exemption states that Principal will allocate Policy Credit compensation received on a *pro rata* basis, among the participants of the Plan that is invested in the Separate Account, in accordance with their account balances, unless the policyholder directs otherwise and that neither PMHC nor its affiliates will provide investment advice or recommendations to the policyholder on which option to choose or with respect to the default consideration, in the event no choice is made. PMHC states that this paragraph should begin with the words ''Where applicable'' to reflect the fact that Principal only allocates with respect to those defined contribution plan customers for whom Principal is the recordkeeper.

In response to this comment, the Department has made the requested change in the final exemption.

3. *Sale of Common Stock Held by the Separate Account.* Section II(f)(4) of the proposed exemption states that upon receiving a notice of withdrawal from a Plan policyholder, NTC, the custodian for shares of Common Stock that are held in the Separate Account will sell such shares on the open market at fair market value. PMHC explains that the word ''sells'' should be replaced with the words ''may sell'' because there will be a small percentage of liquid assets held in the Separate Account in addition to the Common Stock. If a withdrawal request can be accommodated by using the liquid assets, PMHC further explains that a sale may not be necessary. In all cases, PMHC notes that distributions will be based on the fair market value of the Common Stock, and no sales or purchases will be made to or from PMHC.

In response to this comment, the Department has made the requested change in the final exemption.

4. *Separate Account Voting Process.* Section II(f)(5) of the proposed exemption describes, in part, the voting to be utilized for the Separate Account. PMHC states that the mechanics of the voting process would be clearer if section II(f)(5) were revised to read as follows:

(5) The shares of Common Stock held in the Separate Account are voted in accordance with the procedures contained in Section 8.9 of the Plan of Conversion.

The Department does not object to PMHC's revisions to this comment and has made the requested modification. The Department, however, notes that Section 8.9 of the Plan of Conversion, emphasizes the roles to be undertaken by Principal, its agent or Northern Trust Investments, Inc. (NTI), the independent trustee for the Separate Account in voting shares of Common Stock that are held in the Separate Account. Specifically, Section 8.9 of the Plan of Reorganization currently requires that Principal or its agent obtain specific instruction from a Qualified Plan Customer as to how such Qualified Plan Customer wishes to vote shares of Common Stock representing such Qualified Plan Customer's interest in the Separate Account. If specific instruction is not given to Principal or its agent by the Qualified Plan Customer, Principal (or, if applicable, its agent) will vote on routine matters (e.g., the appointment of accountants), shares of Common Stock held in the Separate Account representing the interest of the Qualified Plan Customer, in the same ratio as those shares of Common Stock that are held in the Separate Account for which instructions have been given by Qualified Plan Customers.

In the event of a shareholder vote on a non-routine matter (e.g., proxies), Section 8.9 of the Plan of Conversion provides that shares of Common Stock held in the Separate Account will be voted in accordance with instructions provided by NTI. In this regard, NTI will instruct Principal or its agent that shares of Common Stock should be voted in a way that, in NTI's judgment, is in the best interest of the participants and beneficiaries of the Plans of Qualified Plan Customers in whose interest such Common Stock is held. In performing its fiduciary duties, as independent trustee of the Separate Account, NTI will act solely in the interest of the participants and beneficiaries of the Plans that have invested directly or indirectly in the Separate Account in accordance with section 404 of the Act and the provisions of Part 4 of Title I of the Act, and pursuant to an investment policy that seeks to maximize the long-term investment returns of the Separate Account.

5. *Common Stock Allocation.* Section II(h) of the proposed exemption states that each Eligible Policyholder entitled

to receive Common Stock will be allocated at least 100 shares and that additional consideration will be allocated to such Eligible Policyholders who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of Principal. In the first sentence of Section II(h), PMHC requests that the phrases, ''who own participating policies'' and the word, ''participating'' in the next line be deleted. The Department has made the suggested revisions in the grant notice.

6. *Eligible Policyholder Definition.* Section III(f) of the proposed exemption defines the term ''Eligible Policyholder.'' The last sentence of Section III(f) states that ''Members of PMHC who were issued policies before April 8, 1980 and transferred ownership rights of such policies on or before April 8, 1980 are Eligible Policyholders so long as such policies remain in force on the Record Date.'' For purposes of clarification, PMHC suggests that this sentence be revised to read as follows: ''Members of PMHC who were issued policies on or before April 8, 1980 and transferred ownership rights of such policies on or before April 8, 1980 are Eligible Policyholders so long as such policies remain in force through the Effective Date.''

In response to this comment, the Department has made the requested change in the final exemption.

7. *PMHC's Restructuring Process.* Representation 6 of the Summary of Facts and Representations describes PMHC's restructuring process. To reflect the steps that are entailed in its demutualization, PMHC suggests that the second, third and fourth sentences of Representation 6 be replaced with the following text:

> Currently, PMHC owns Principal Financial Group, Inc., an Iowa business corporation (PFG Iowa), which owns all of the stock of Principal Financial Services, Inc., an Iowa business corporation, which, in turn, owns all of the stock of Principal. PMHC also currently owns Principal Financial Group, Inc. (PFG), a Delaware corporation, which owns all of the stock of Principal Iowa Newco, Inc. (PIN), an Iowa business corporation. PFG is a holding company the shares of which will be distributed to Eligible Policyholders and listed on the New York Stock Exchange. After PMHC is converted into a stock company, it will be merged with and into PIN. PFG Iowa will then merge with and into PIN. Principal Financial Services, Inc., will then merge with and into PIN and PIN will change its name to Principal Financial Services, Inc.

The Department notes the aforementioned revisions to Representation 6.

8. *Sale of Common Stock/Voting Process.* Representation 13 of the Summary of Facts and Representations restates the provisions of Sections II(f)(4) and (5) of the proposed exemption. As noted above, these conditions relate to the sale of Common Stock in the Separate Account by NTC, the custodian, and the voting procedures that are currently established for the Separate Account. In referring to its two previous comments, PMHC states that a request for a withdrawal from the Separate Account may not require a sale of Common Stock if the withdrawal can be accommodated using available liquid assets held by the Separate Account. Also, PMHC points out that the fifth paragraph in Representation 13, attributes some mechanical tasks regarding the voting of shares of Common Stock to NTI, whereas such tasks should be attributed to Principal or its agent under Section 8.9 of the Plan of Conversion, as explained above. PMHC asserts that Principal or its agent will cause the undirected shares to be voted under the ''mirror voting'' procedure and it states that such action will not involve any discretionary act on the part of Principal.

In response to this comment, the Department notes these clarifications made by PMHC.

For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10940) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption subject to the modifications and clarifications described above.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Miller International, Inc. Profit Sharing Plan (the Plan), Located in Denver, Colorado

[Prohibited Transaction Exemption 2001–37; Exemption Application No. D–10980]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of a certain three-acre parcel of vacant land (the Property) by the Plan to Miller International, Inc., the sponsor of the Plan and a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The sale is a one-time cash transaction;

(b) The Plan receives the current fair market value for the Property, as established by an independent qualified appraiser at the time of the sale; and

(c) The Plan pays no commissions or other expenses associated with the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 30, 2001 at 66 FR 39371.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the

fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 24th day of September, 2001.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor

[FR Doc. 01–24150 Filed 9–26–01; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Submission for OMB Review: Comment Request

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval as required by the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13,44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling Susan G. Daisey, Acting Director, Office of Grant Management, the National Endowment for the Humanities (202–606–8494) or may be requested by email to sdaisey@neh.gov. Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Humanities, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: National Endowment for the Humanities.

Title of Proposal: Generic Clearance Authority to Develop Evaluation Instruments for the National Endowment for the Humanities.

OMB Number: N/A.

Affected Public: NEH grantees.

Total Respondents: 1,224 per year.

Frequency of Collection: On occasion.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 612 hours per year.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The NEH is seeking a general clearance authority to develop evaluation instruments for its grant programs. These evaluation instruments will be used to collect information from NEH grantees from one to three years after the grantee has submitted the final performance report.

FOR FURTHER INFORMATION CONTACT: Ms. Susan G. Daisey, Acting Director, Office of Grant Management, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 311, Washington, DC 20506, or by email to: sdaisey@neh.gov. Telephone: 202–606–8494.

John W. Roberts,

Deputy Chairman.

[FR Doc. 01–24228 Filed 9–26–01; 8:45 am]

BILLING CODE 7536–01–M

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of special meeting.

SUMMARY: The Compact Commission will hold a special meeting to consider matters relating to expiration of Congressional consent to the Northeast Dairy Compact. This meeting will be held in Concord, New Hampshire.

DATES: The meeting will begin at 10:30 a.m. on Friday, September 28, 2001.

ADDRESSES: The meeting will be held at the Legislative Office Building, 33 North State Street, Room 301–303, Concord, NH.

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission, 64 Main Street, Room 21, Montpelier, VT 05602. Telephone (802) 229–1941.

Authority: 7 U.S.C. 7256.

Dated: September 20, 2001.

Daniel Smith,

Executive Director.

[FR Doc. 01–24154 Filed 9–26–01; 8:45 am]

BILLING CODE 1650–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458]

Entergy Operations, Inc. River Bend Station, Unit 1; Exemption

1.0 Background

Entergy Operations, Inc. (the licensee) is the holder of Facility Operating License No. NPF–47 which authorizes operation of the River Bend Station, Unit 1 (RBS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The facility consists of a boiling water reactor located in West Felciana Parish in Louisiana.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) part 50, appendix G requires that pressure-temperature (P–T or P/T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR part 50, appendix G, section IV.2.a states that ''* * *[t]he appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions.'' Pursuant to 10 CFR part 50, appendix G, section IV.2.b, the requirements for these limits are the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code), section XI, appendix G Limits.

To address provisions of amendments to Technical Specification (TS) 3.4.11, ''RCS [Reactor Coolant System] Pressure and Temperature (P/T) Limits,'' and the RCS P/T limits in TS Figure 3.4–11, ''Minimum Temperature Required Vs. RCS Pressure,'' in the submittal dated January 24, 2001, as supplemented by

letters dated July 2, and August 6 and 20, 2001, the licensee requested that the staff exempt RBS from application of specific requirements of 10 CFR part 50, Section 50.60(a) and appendix G, and substitute use of ASME Code Case N–640. Code Case N–640 permits the use of an alternate reference fracture toughness (K_{Ic} fracture toughness curve instead of K_{Ia} fracture toughness curve) for reactor vessel materials in determining the P–T limits. Since the K_{Ic} fracture toughness curve shown in ASME Code Section XI, appendix A, Figure A–2200–1 provides greater allowable fracture toughness than the corresponding K_{Ia} fracture toughness curve of ASME Code Section XI, appendix G, Figure G–2210–1, using the K_{Ic} fracture toughness, as permitted by Code Case N–640, in establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR part 50, appendix G. Considering this, an exemption to apply the Code Case would be required by 10 CFR 50.60.

The licensee has proposed to revise the P–T limits for RBS using the K_{Ic} fracture toughness curve, in lieu of the K_{Ia} fracture toughness curve, as the lower bound for fracture toughness.

Use of the K_{Ic} curve in determining the lower bound fracture toughness in the development of P–T operating limits curve is more technically correct than the K_{Ia} curve since the rate of loading during a heatup or cooldown is slow and is more representative of a static condition than a dynamic condition. The K_{Ic} curve appropriately implements the use of static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a reactor vessel. The staff has required use of the initial conservatism of the K_{Ia} curve since 1974 when the curve was codified. This initial conservatism was necessary due to the limited knowledge of RPV materials. Since 1974, additional knowledge has been gained about RPV materials, which demonstrates that the lower bound on fracture toughness provided by the K_{Ia} curve is well beyond the margin of safety required to protect the public health and safety from potential RPV failure.

In summary, the ASME Code Section XI, appendix G, procedure was conservatively developed based on the level of knowledge existing in 1974 concerning RPV materials and the estimated effects of operation. Since 1974, the level of knowledge about these topics has been greatly expanded. The NRC staff concludes that this increased knowledge permits relaxation of the ASME Code Section XI, appendix G requirements by applying the K_{Ic} fracture toughness, as permitted by Code Case N–640, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The staff accepts the licensee's determination that an exemption would be required to approve the use of Code Case N–640.

The staff examined the licensee's rationale to support the exemption request and concluded that the use of the Code Case would meet the underlying purpose of 10 CFR part 50. Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of 10 CFR part 50, appendix G; appendix G of the Code; and Regulatory Guide 1.99, Revision 2, the staff concluded that application of Code Case N–640 as described would provide an adequate margin of safety against brittle failure of the RPV. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations.

The safety evaluation may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC website, *http://www.nrc.gov* (the Electronic Reading Room).

Therefore, the staff concludes that requesting exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the methodology of Code Case N–640 may be used to revise the P–T limits for RBS, subject to the limitation of 16 EFPYs.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also, special circumstances are present. Therefore, the Commission hereby grants Entergy Operations, Inc., an exemption from the requirements of 10 CFR part 50, Section 50.60(a) and 10 CFR part 50, appendix G, for River Bend Station, Unit 1.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (66 FR 48069, published on September 17, 2001).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 20th day of September, 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–24175 Filed 9–26–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331]

Nuclear Management Company, LLC; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. to Facility Operating License No. DPR–49 issued to Nuclear Management Company, LLC (the licensee), which revised the license for operation of the Duane Arnold Energy Center located in Linn County, Iowa. The amendment is effective as of the date of issuance.

The amendment modified the license to allow refueling activities in accordance with a revised thermal-hydraulic analysis based upon use of advanced core designs employing advanced fuel, increased fuel burnup, increased cycle length, and increased reload batch size. The revised analysis also corrects several input parameter discrepancies in the existing analysis.

The application for the amendment 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 Opportunity for a Hearing in connection with this action was published in the **Federal Register** on March 7, 2001 (66 FR 13793). No

request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (66 FR 38442).

For further details with respect to the action see (1) the application for amendment dated November 17, 2000, and supplemented February 16, and April 9, 2001, (2) Amendment No. 242 to License No. DPR–49, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

Dated at Rockville, Maryland, this 21st day of September 2001.

For the Nuclear Regulatory Commission.

Brenda L. Mozafari,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–24173 Filed 9–26–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331]

Nuclear Management Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–49, held by Nuclear Management Company, LLC (the licensee), for operation of the Duane Arnold Energy Center (the facility) located in Linn County, Iowa.

By letter dated November 16, 2000, as supplemented April 16 (2 letters), April 17, May 8 (2 letters), May 10, May 11 (2 letters), May 22, May 29, June 5, June 11, June 18, June 21, June 28, July 11, July 19, July 25, August 1 (2 letters), August 10, August 16, and August 21, 2001, the licensee proposed an amendment to change the operating license. Specifically, the proposed amendment would allow an increase of the operating power level authorized by Section 2.C.(1) of the operating license from 1658 megawatts thermal (MWt) to 1912 MWt at the facility. The request includes supporting technical specification (TS) changes and a revision of license condition, 2.C.(2)(a) to Operating License No. DPR–49, which are necessary to implement this increase in licensed power level. The change represents an increase of 15.3 percent above the current rated thermal power and is considered an extended power uprate. The proposed changes include:

Operating License DPR–49, Section 2.C.(1): Revise the Maximum Power Level to be 1912 MWt.

Operating License DPR–49, Section 2.C.(2)(a): Modify existing license condition 2.C.(2)(a) to allow existing Surveillance Requirements (SRs) whose acceptance criteria is affected by this increase in authorized power level, to be considered to be performed per TS SR 3.0.1, upon implementation of the license amendment approving this application, until their next scheduled performance, in accordance with TS SR 3.0.2.

Section 1.1, Definitions: Revise the definition of *Rated Thermal Power* to be the extended power uprate maximum licensed power level of 1912 MWt.

SL 2.1.1.1: Revise the safety limit (SL) for fuel cladding integrity at low core flow and reactor pressure from the current 25 percent rated thermal power (RTP) to 21.7 percent RTP (25 percent x 1658/1912).

LCO 3.2.1: Applicability, Required Action B.1, and SR 3.2.1.1: Revise the percentage of RTP value related to thermal limits monitoring from 25 percent RTP to 21.7 percent RTP.

LCO 3.2.2: Applicability, Required Action B.1, and SR 3.2.2.1: Revise the percentage of RTP value related to thermal limits monitoring from 25 percent RTP to 21.7 percent RTP.

LCO 3.3.1.1: SR 3.3.1.1.2: Revise the percentage of RTP value related to deferral of the SR until 12 hours after reaching 25 percent RTP during plant startup, from 25 percent RTP value to 21.7 percent. The RTP value being changed is contained in the SR and the associated NOTE.

LCO 3.3.1.1: Required Action E.1, SR 3.3.1.1.16, and Table 3.3.1.1–1 Functions 8 and 9: Revise the percentage of RTP value corresponding to the power level where the direct reactor protection system (RPS) trips, *i.e.*, scram, on turbine stop valve (TSV) or turbine control valve (TCV) fast closure are automatically bypassed from 30 percent RTP to 26 percent RTP.

LCO 3.3.4.1: Applicability, Required Action C.2, and SR 3.3.4.1.4: Revise the percentage of RTP value corresponding to the power level where the end-of-cycle recirculation pump trip on TSV or TCV fast closure is automatically bypassed from 30 percent RTP to 26 percent RTP.

LCO 3.3.1.1: Table 3.3.1.1–1 Function 2b: Description of Change: Replace the current allowable values (AVs) for the two-loop operation average power range monitor (APRM) flow-biased, high RPS trip with the equation for the AV to implement the maximum extended load line limit analysis (MELLLA). A new footnote (c) is being added to define the term ''W'' used in the AV equation.

LCO 3.3.1.1: Table 3.3.1.1–1 Footnote (b): Replace the current AVs for the single-loop operation APRM flow biased-high RPS trip with the equation for the AV to implement the MELLLA. The new footnote (c) identified above is used to define the term ''W'' used in the AV equation.

LCO 3.4.1: SR 3.4.1.1 a & b: Revise the percentage of RTP value corresponding to the power level where a recirculation pump speed mismatch surveillance is performed from 80 percent RTP to 69.4 percent RTP.

LCO 3.4.2: SR 3.4.2.1: Revise the percentage of RTP value contained in NOTE 2 corresponding to the power level where the evaluation of jet pump performance can be deferred for up to 24 hours from 25 percent RTP to 21.7 percent RTP.

LCO 3.6.3.1: SR 3.6.3.1.1: Revise the volume requirement for nitrogen storage for the containment atmospheric dilution (CAD) system from 50,000 scf to 67,000 scf.

LCO 3.6.3.1: SR 3.6.3.1.2: Add a comma to clearly delineate the requirement for performing the SR for both manual and power-operated valves in the CAD system.

LCO 3.7.7: Applicability and Required Action B.1: Revise the percentage of rated thermal power value where the main turbine bypass valve system is required to be OPERABLE from 25 percent RTP to 21.7 percent RTP.

Section 5.5.12, Primary Containment Leakage Testing Program: Revise the peak calculate containment pressure (P_a) from 43 psig to 45.7 psig.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 29, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2.

Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20855–2738, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20855–2738, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Al Gutterman, Morgan, Lewis, & Bockius LLP, 1800 M Street, NW., Washington, DC 20036–5869, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated November 16, 2000, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20855–2738, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 21st day of September 2001.

For the Nuclear Regulatory Commission.

Brenda L. Mozafari,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–24174 Filed 9–26–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305, License No. DPR–43]

In the Matter of Wisconsin Public Service Corporation, et al. (Kewaunee Nuclear Power Plant); Order Approving Transfer of License and Conforming Amendment

I.

Wisconsin Public Service Corporation (WPSC), Madison Gas & Electric Company (MG&E), and Wisconsin Power & Light Company (WP&L) are the licensed owners and Nuclear Management Company, LLC (NMC), is the exclusive licensed operator of the Kewaunee Nuclear Power Plant (KNPP), and in regard thereto, hold Facility Operating License No. DPR–43. KNPP (the facility) is located in Kewaunee County, Wisconsin.

II.

By application dated April 30, 2001, as supplemented June 27 and August 3, 2001, NMC, on behalf of WPSC, MG&E, and WP&L, requested the consent of the U.S. Nuclear Regulatory Commission (NRC or Commission) to a proposed transfer of the license for KNPP, to the extent held by MG&E, to WPSC. The application and supplements are collectively herein referred to as ''the application,'' unless otherwise indicated. The application also requested the approval of a conforming license amendment to reflect the transfer of the license.

In connection with the transfer, WPSC, presently the holder of a 41.2-percent ownership interest in KNPP, would assume the 17.2-percent ownership interest in KNPP currently held by MG&E, resulting in WPSC holding a 59-percent ownership interest in KNPP. WP&L is not involved in the transfer of MG&E's interest and will remain a licensee with respect to its 41-percent ownership interest in KNPP. NMC will maintain its responsibility for the operation of KNPP. The application states that WPSC would assume the decommissioning funding assurance obligation that is currently the responsibility of MG&E, in addition to remaining responsible for such costs associated with WPSC's current ownership interest in KNPP.

The proposed conforming license amendment would delete references to MG&E in the license, as appropriate, to reflect the proposed transfer.

The application requested approval of the transfer of the license and the conforming license amendment pursuant to 10 CFR 50.80 and 10 CFR 50.90. The NRC staff published a notice of the request for approval of the transfer of the license and conforming amendment, and an opportunity for a hearing in the **Federal Register** on July 27, 2001 (66 FR 39214). The Commission received no requests for hearing or written comments pursuant to the notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that WPSC is qualified to hold the license to the extent proposed in the application, and that the transfer of the license, to the extent held by MG&E, to WPSC, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendment will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by a safety evaluation dated September 20, 2001.

III.

Accordingly, pursuant to sections 161b, 161i, 161o and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o) and 2234; and 10 CFR 50.80, it is hereby ordered that the transfer of the license, as described herein, to WPSC is approved, subject to the following conditions:

(1) WPSC shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the license transfer application regarding the transfer of MG&E's ownership interest in KNPP to WPSC and the requirements of this Order approving the transfer, and consistent with the safety evaluation supporting this Order. Additionally, if the MG&E Nonqualified Fund is not transferred to WPSC, WPSC, or NMC acting on WPSC's behalf, shall explicitly include the status of the MG&E Nonqualified Fund in all future decommissioning funding status reports that WPSC, or NMC, submit in accordance with 10 CFR 50.75(f)(1).

(2) On the closing date of the transfer of MG&E's interest in KNPP to WPSC, MG&E shall transfer to WPSC all of MG&E's accumulated qualified decommissioning trust funds for KNPP. Immediately following such transfer, the amounts for radiological decommissioning of KNPP in WPSC's decommissioning trusts must, with respect to the interests in KNPP that WPSC would then hold, be at a level no less than the formula amounts under 10 CFR 50.75.

(3) After receipt of all required regulatory approvals of the transfer of MG&E's interest in KNPP to WPSC, WPSC or NMC shall inform the Director of the Office of Nuclear Reactor Regulation, in writing, of such receipt within 5 business days, and of the date of the closing of the transfer no later than 7 business days prior to the date of the closing.

(4) If the transfer of the license is not completed by September 30, 2002, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. The amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated April 30, 2001, the supplemental submittals dated June 27 and August 3, 2001, and the safety evaluation dated September 20, 2001, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site *(http://www.nrc.gov).*

Dated at Rockville, Maryland this 20th day of September 2001.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 01–24176 Filed 9–26–01; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collections for OMB Review; Comment Request; Multiemployer Plan Regulations

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of collections of information in the PBGC's regulations

on multiemployer plans under the Employee Retirement Income Security Act of 1974 (ERISA). This notice informs the public of the PBGC's request and solicits public comment on the collections of information.

DATES: Comments must be submitted by October 29, 2001.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. Copies of the request for extension (including the collections of information) may be obtained without charge by writing to or visiting the PBGC's Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005–4026,or calling 202–326–4040. (TTY and TDD users may call 800–877–8339 and request connection to 202–326–4040). The regulations on multiemployer plans can be accessed on the PBGC's Web site at http://www.pbgc.gov.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved and issued control numbers for the collections of information, described below, in the PBGC's regulations relating to multiemployer plans. The PBGC is requesting that OMB extend its approval of these collections of information for three years. Comments should identify the specific part number(s) of the regulation(s) they relate to.

The collections of information for which the PBGC is requesting extension of OMB approval are as follows:

1. Termination of Multiemployer Plans (29 CFR part 4041A) (OMB control number 1212–0020)

Section 4041A(f)(2) of ERISA authorizes the PBGC to prescribe reporting requirements for and other ''rules and standards for the administration of'' terminated multiemployer plans. Section 4041A(c) and (f)(1) of ERISA prohibit the payment by a mass-withdrawal-terminated plan of lump sums greater than $1,750 or of nonvested plan benefits unless authorized by the PBGC.

The regulation requires the plan sponsor of a terminated plan to submit a notice of termination to the PBGC. It also requires the plan sponsor of a mass-withdrawal-terminated plan that is closing out to give notices to participants regarding the election of alternative forms of benefit distribution and to obtain PBGC approval to pay lump sums greater than $1,750 or to pay nonvested plan benefits.

The PBGC uses the information in a notice of termination to assess the likelihood that PBGC financial assistance will be needed. Plan participants and beneficiaries use the information on alternative forms of benefit to make personal financial decisions. The PBGC uses the information in an application for approval to pay lump sums greater than $1,750 or to pay nonvested plan benefits to determine whether such payments should be permitted.

The PBGC estimates that plan sponsors each year (1) submit notices of termination for 10 plans, (2) distribute election notices to participants in 7 of those plans, and (3) submit requests to pay benefits or benefit forms not otherwise permitted for 1 of those plans. The estimated annual burden of the collection of information is 22.75 hours and $9,031.

2. Extension of Special Withdrawal Liability Rules (29 CFR part 4203) (OMB control number 1212–0023)

Sections 4203(f) and 4208(e)(3) of ERISA allow the PBGC to permit a multiemployer plan to adopt special rules for determining whether a withdrawal from the plan has occurred, subject to PBGC approval.

The regulation specifies the information that a plan that adopts special rules must submit to the PBGC about the rules, the plan, and the industry in which the plan operates. The PBGC uses the information to determine whether the rules are appropriate for the industry in which the plan functions and do not pose a significant risk to the insurance system.

The PBGC estimates that at most 1 plan sponsor submits a request each year under this regulation. The estimated annual burden of the collection of information is 1 hour and $3,200.

3. Variances for Sale of Assets (29 CFR part 4204) (OMB control number 1212–0021)

If an employer's covered operations or contribution obligation under a plan ceases, the employer must generally pay withdrawal liability to the plan. Section 4204 of ERISA provides an exception, under certain conditions, where the cessation results from a sale of assets. Among other things, the buyer must furnish a bond or escrow, and the sale contract must provide for secondary liability of the seller.

The regulation establishes general variances (rules for avoiding the bond/escrow and sale-contract requirements) and authorizes plans to determine whether the variances apply in particular cases. It also allows buyers and sellers to request individual variances from the PBGC. Plans and the PBGC use the information to determine whether employers qualify for variances.

The PBGC estimates that each year, 11 employers submit, and 11 plans respond to, variance requests under the regulation, and 2 employers submit variance requests to the PBGC. The estimated annual burden of the collection of information is 1 hour and $3,550.

4. Reduction or Waiver of Complete Withdrawal Liability (29 CFR part 4207) (OMB control number 1212–0044)

Section 4207 of ERISA allows the PBGC to provide for abatement of an employer's complete withdrawal liability, and for plan adoption of alternative abatement rules, where appropriate.

Under the regulation, an employer applies to a plan for an abatement determination, providing information the plan needs to determine whether withdrawal liability should be abated, and the plan notifies the employer of its determination. The employer may, pending plan action, furnish a bond or escrow instead of making withdrawal liability payments, and must notify the plan if it does so. When the plan then makes its determination, it must so notify the bonding or escrow agent.

The regulation also permits plans to adopt their own abatement rules and request PBGC approval. The PBGC uses the information in such a request to determine whether the amendment should be approved.

The PBGC estimates that each year, 100 employers submit, and 100 plans respond to, applications for abatement of complete withdrawal liability, and 1 plan sponsor requests approval of plan abatement rules from the PBGC. The estimated annual burden of the collection of information is 25.5 hours and $20,000.

5. Reduction or Waiver of Partial Withdrawal Liability (29 CFR Part 4208) (OMB control number 1212–0039)

Section 4208 of ERISA provides for abatement, in certain circumstances, of an employer's partial withdrawal liability and authorizes the PBGC to issue additional partial withdrawal liability abatement rules.

Under the regulation, an employer applies to a plan for an abatement determination, providing information the plan needs to determine whether withdrawal liability should be abated, and the plan notifies the employer of its determination. The employer may, pending plan action, furnish a bond or escrow instead of making withdrawal liability payments, and must notify the plan if it does so. When the plan then makes its determination, it must so notify the bonding or escrow agent.

The regulation also permits plans to adopt their own abatement rules and request PBGC approval. The PBGC uses the information in such a request to determine whether the amendment should be approved.

The PBGC estimates that each year, 1,000 employers submit, and 1,000 plans respond to, applications for abatement of partial withdrawal liability and 1 plan sponsor requests approval of plan abatement rules from the PBGC. The estimated annual burden of the collection of information is 250.5 hours and $200,000.

6. Allocating Unfunded Vested Benefits to Withdrawing Employers (29 CFR Part 4211) (OMB control number 1212–0035)

Section 4211(c)(5)(A) of ERISA requires the PBGC to prescribe how plans can, with PBGC approval, change the way they allocate unfunded vested benefits to withdrawing employers for purposes of calculating withdrawal liability.

The regulation prescribes the information that must be submitted to the PBGC by a plan seeking such approval. The PBGC uses the information to determine how the amendment changes the way the plan allocates unfunded vested benefits and how it will affect the risk of loss to plan participants and the PBGC.

The PBGC estimates that 5 plan sponsors submit approval requests each year under this regulation. The estimated annual burden of the collection of information is 10 hours.

7. Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) (OMB control number 1212–0034)

Section 4219(c)(1)(D) of ERISA requires that the PBGC prescribe regulations for the allocation of a plan's total unfunded vested benefits in the event of a ''mass withdrawal.'' ERISA section 4209(c) deals with an employer's liability for de minimis amounts if the employer withdraws in a ''substantial withdrawal.''

The reporting requirements in the regulation give employers notice of a mass withdrawal or substantial withdrawal and advise them of their rights and liabilities. They also provide notice to the PBGC so that it can monitor the plan, and they help the PBGC assess the possible impact of a withdrawal event on participants and the multiemployer plan insurance program.

The PBGC estimates that there is at most 1 mass withdrawal and 1 substantial withdrawal per year. The plan sponsor of a plan subject to a withdrawal covered by the regulation provides notices of the withdrawal to the PBGC and to employers covered by the plan, liability assessments to the employers, and a certification to the PBGC that assessments have been made. (For a mass withdrawal, there are 2 assessments and 2 certifications that deal with 2 different types of liability. For a substantial withdrawal, there is 1 assessment and 1 certification (combined with the withdrawal notice to the PBGC).) The estimated annual burden of the collection of information is 4 hours and $5,220.

8. Procedures for PBGC Approval of Plan Amendments (29 CFR part 4220) (OMB control number 1212–0031)

Under section 4220 of ERISA, a plan may within certain limits adopt special plan rules regarding when a withdrawal from the plan occurs and how the withdrawing employer's withdrawal liability is determined. Any such special rule is effective only if, within 90 days after receiving notice and a copy of the rule, the PBGC either approves or fails to disapprove the rule.

The regulation provides rules for requesting the PBGC's approval of an amendment. The PBGC needs the required information to identify the plan, evaluate the risk of loss, if any, posed by the plan amendment, and determine whether to approve or disapprove the amendment.

The PBGC estimates that 3 plan sponsors submit approval requests per year under this regulation. The estimated annual burden of the collection of information is 1.5 hours.

9. Mergers and Transfers Between Multiemployer Plans (29 CFR part 4231) (OMB control number 1212–0022)

Section 4231(a) and (b) of ERISA requires plans that are involved in a merger or transfer to give the PBGC 120 days' notice of the transaction and provides that if the PBGC determines that specified requirements are satisfied, the transaction will be deemed not to be in violation of ERISA section 406(a) or (b)(2) (dealing with prohibited transactions).

This regulation sets forth the procedures for giving notice of a merger or transfer under section 4231 and for requesting a determination that a transaction complies with section 4231.

The PBGC uses information submitted by plan sponsors under the regulation to determine whether mergers and transfers conform to the requirements of ERISA section 4231 and the regulation.

The PBGC estimates that there are 35 transactions each year for which plan sponsors submit notices and approval requests under this regulation. The estimated annual burden of the collection of information is 8.75 hours and $5,569.

10. Notice of Insolvency (29 CFR part 4245) (OMB control number 1212–0033)

If the plan sponsor of a plan in reorganization under ERISA section 4241 determines that the plan may become insolvent, ERISA section 4245(e) requires the plan sponsor to give a ''notice of insolvency'' to the PBGC, contributing employers, and plan participants and their unions in accordance with PBGC rules.

For each insolvency year under ERISA section 4245(b)(4), ERISA section 4245(e) also requires the plan sponsor to give a ''notice of insolvency benefit level'' to the same parties.

This regulation establishes the procedure for giving these notices. The PBGC uses the information submitted to estimate cash needs for financial assistance to troubled plans. Employers and unions use the information to decide whether additional plan contributions will be made to avoid the insolvency and consequent benefit suspensions. Plan participants and beneficiaries use the information in personal financial decisions.

The PBGC estimates that 1 plan sponsor gives a notice each year under this regulation. The estimated annual burden of the collection of information is 1 hour and $1,171.

11. Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) (OMB control number 1212–0032)

Section 4281 of ERISA provides rules for plans that have terminated by mass withdrawal. Under section 4281, if nonforfeitable benefits exceed plan assets, the plan sponsor must amend the plan to reduce benefits. If the plan nevertheless becomes insolvent, the plan sponsor must suspend certain benefits that cannot be paid. If available resources are inadequate to pay guaranteed benefits, the plan sponsor must request financial assistance from the PBGC.

The regulation requires a plan sponsor to give notices of benefit reduction, notices of insolvency and annual updates, and notices of insolvency benefit level to the PBGC and to participants and beneficiaries and, if necessary, to apply to the PBGC for financial assistance.

The PBGC uses the information it receives to make determinations required by ERISA, to identify and estimate the cash needed for financial assistance to terminated plans, and to verify the appropriateness of financial assistance payments. Plan participants and beneficiaries use the information to make personal financial decisions.

The PBGC estimates that plan sponsors each year give benefit reduction notices for 1 plan and give notices of insolvency benefit level and annual updates, and submit requests for financial assistance, for 25 plans. Of those 25 plans, the PBGC estimates that plan sponsors each year give notices of insolvency for 3 plans. The estimated annual burden of the collection of information is 1 hour and $115,856.

Issued in Washington, DC, this 21st day of September, 2001.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 01–24251 Filed 9–26–01; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration on the Pacific Exchange, Inc. (Pharmaceutical Resources, Inc., Common Stock, of $.01 Par Value, and Common Stock Purchase Rights) File No. 1–10827

September 24, 2001.

Pharmaceutical Resources, Inc., a New Jersey corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value, and Common Stock Purchase Rights (''Securities'') from listing and registration on the Pacific Exchange, Inc. (''PCX'').

The Board of Directors (''Board'') of the Issuer approved a resolution on July 9, 2001 to withdraw its Securities from listing on the Exchange. The Board believes that it is in its best interest to reduce its listing expenses and corporate oversight by limiting the number of exchanges on which the securities are listed. The Issuer will continue to list its Common Stock on the New York Stock Exchange, Inc. (''NYSE'').

The Issuer states in its application that it has met the requirements of the PCX by complying with all applicable laws in effect in the state of New Jersey, in which it is incorporated, and with the PCX's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application related solely to the withdrawal of the Securities from the PCX and shall have no affect upon its listing on the NYSE or its registration under Section 12(b) of the Act.[3]

Any interested person may, on or before October 12, 2001, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–24178 Filed 9–26–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27441]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

September 21, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 16, 2001, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 16, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Corp., et al. (70–9893)

Entergy Corporation (''Entergy''), a registered holding company, 639 Loyola Avenue, New Orleans, Louisiana 70113, and its public utility subsidiary companies, Entergy Arkansas, Inc. (''Arkansas''), 425 West Capitol Avenue, Little Rock, Arkansas 72201, Entergy Gulf States, Inc. (''Gulf States''), 350 Pine Street, Beaumont, Texas 77701, Entergy Louisiana, Inc (''Louisiana''), 4809 Jefferson Highway, New Orleans, Louisiana 70121, Entergy Mississippi Inc. (''Mississippi''), 308 East Pearl Street, Jackson, Mississippi 39201, and Entergy New Orleans, Inc. (''New Orleans''), 1600 Perdido Building, New Orleans, Louisiana 70112 (collectively, ''Operating Companies''); System Energy Resources, Inc. (''System Energy''), a generating public utility subsidiary company of Entergy, Entergy Operations, Inc. (''EOI''), a nuclear

management public utility subsidiary of Entergy, both located at 1340 Echelon Parkway, Jackson, Mississippi 39213; Entergy Services, Inc. (''ESI''), Entergy's service company subsidiary, 639 Loyola Avenue, New Orleans, Louisiana 70113; and Entergy's indirect subsidiary, System Fuels, Inc. (''SFI''), 350 Pine Street, Beaumont, Texas 77701 (collectively, ''Applicants''), have filed an application-declaration under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 43, 45, and 54 under the Act.

By order dated November 27, 1996 (HCAR No. 26617) (''1996 Order''), the Commission authorized the Operating Companies and System Energy, through November 30, 2001, to issue short-term securities through the Entergy System Money Pool (''Money Pool'') and to issue and sell unsecured short-term notes and commercial paper to commercial banks and dealers in this paper. The Money Pool consists of available funds invested in by the participating Entergy system companies. Under the 1996 Order and the Commission's supplemental order dated March 30, 2001 (HCAR No. 27369) (''Supplemental Order''), the maximum amounts of the loans, notes and commercial paper that the following companies could issue were: Arkansas, $235 million; Gulf Stats, $340 million; Louisiana, $225 million; Mississippi, $160 million; New Orleans, $100 million; and System Energy, $140 million in order to meet their interim financing requirements.

The Commission in the 1996 Order also authorized Entergy, through November 30, 2001, to guarantee bank loans for EOI, ESI and SFI, up to the maximum amount each is authorized to borrow. According to the 1996 Order and the Supplemental Order, the aggregate principal amount of borrowings outstanding at any one time from the Money Pool, Entergy, and banks would be limited to: EOI, $20 million; ESI, $200 million; and SFI, $200 million.

Applicants now proposed to extend the time period for these authorizations through November 30, 2004 (''Authorization Period''). Applicants represent that the terms of the Money Pool borrowings, bank borrowings, and commercial paper borrowings will remain unchanged from the 1996 Order and Supplemental Order, except that, in the case of bank borrowings, each borrower may agree to pay each bank a one time closing fee, consisting of up front fees, arrangement fees, administrative agency fees or similar closing fees.

The Operating Companies and System Energy propose to use the proceeds from borrowings from the Money Pool and through borrowings from banks and the issuance and sale of commercial paper to provide interim financing for construction expenditures, to meet long-term debt maturities and satisfy sinking fund requirements, as well as for the possible refunding, redemption, purchase or other acquisition of all or a portion of certain outstanding series of debt and preferred stock and for general corporate purposes. EOI proposes to use the proceeds to finance its interim capital needs. ESI proposes to use the proceeds for the repayment of other borrowings and to fund its service company activities. SFI proposes to use the proceeds to repay other borrowings and to finance its fuel supply activities, including acquiring, owning and financing nuclear materials, related services, and the acquisition and ownership of fuel oil inventory. None of the proceeds to be received from the Applicants will be used to invest directly or indirectly in an exempt wholesale generator or foreign utility company.

Wisconsin Power & Light Company (70–9927)

Wisconsin Power & Light Company (''WPL''), an electric utility company subsidiary of Alliant Energy Corporation, a registered holding company, both located at 222 West Washington Avenue, Madison, Wisconsin 53703, has filed an application under sections 9 and 10 of the Act. WPL seeks authorization to acquire 15,800 shares of common stock of Wisconsin River Power Company (''Wisconsin River'') that are currently owned by Wisconsin Public Service Corporation (''WPS''), a wholly owned subsidiary under section 3(a)(1) of the Act (''Acquisition'').[1]

WPL is engaged principally in the generation, transmission, transportation, distribution, and sale of electric energy; the purchase, distribution, transportation, and sale of natural gas; and the provision of water service in selective markets. Wisconsin River owns and operate hydroelectric generation facilities at two dam sites on the Wisconsin River and engages in certain related activities. Wisconsin River also has a 13.71% interest in Wisconsin Valley Improvement Company, which operates a system of dams and water reservoirs on the Wisconsin River and tributary streams but does not generate electric energy.

Wisconsin River was incorporated under the laws of Wisconsin and is authorized to issue 95,000 shares of common stock having a par value of $100 per share. As of December 31, 2000, there were 93,600 shares of common stock issued and outstanding, of which WPL and WPS each owned 31,000 shares (33.12%), and Consolidated Water Power Company (''Consolidated'') owned 31,600 shares (33.76%). As a result of changes in its corporate strategies, Consolidated expressed a desire to sell and divest the stock it owned in Wisconsin River to reduce the scope of electric generating operations. In an agreement dated December 22, 2000 (''Purchase Agreement''), WPS agreed to purchase the shares of Wisconsin River owned by Consolidated. The transaction closed on January 1, 2001.

As a result of the Acquisition, WPL will purchase one-half of the shares in Wisconsin River that were recently acquired by WPS from Consolidated (''Option Stock''). WPL has the right to purchase the Option Stock from WPS at the same price per share as that paid by WPS to acquire the stock in Wisconsin River from Consolidated, subject to the same payment terms as those applicable to the purchase of the stock by WPS. Under the terms of the Purchase Agreement, WPS paid Consolidated $4,848,072 (i.e., $153.42 per share) in cash at closing for the stock in Wisconsin River. The Purchase Agreement provides that the price paid by WPS to Consolidated at the time of closing of its purchase of additional stock in Wisconsin River is to be adjusted to reflect changes in Wisconsin River pension assets and liabilities and retiree health assets and liabilities between August 31, 2000 and March 31, 2001. This true up is expected to be completed during the third quarter of 2001. Any adjustment will be reflected in the payments ultimately made by WPL to WPS in order to purchase the Option Stock.

The Purchase Agreement also provides for Wisconsin River to undertake commercially reasonable efforts to sell real estate that it owns in the area of its hydroelectric generating facilities as soon as practicable and to maximize its return from the sale of standing timber from all such real estate for a period of 12 years from the date of closing of the stock purchase. WPS is obligated to Consolidated quarterly an amount equal to 33.76% of the net proceeds realized by Wisconsin River with respect to such sales during this period, as determined in accordance with the Purchase Agreement.

[1] WPS Resources Corp., Holding Co. Act Release No. 26101 (Aug. 10, 1994).

American Electric Power Company, Inc., et al. (70–9937)

American Electric Power Company, Inc. (''AEP''), at registered holding company and its public utility subsidiary companies, Central Power and Light Company (''CP&L''), Southwestern Electric Power Company (''SWEPCO''), West Texas Utilities Company (''WTU''), Columbus Southern Power Company (''CSPC'') and Ohio Power Company (''OPC''), all located at 1 Riverside Plaza, Columbus, Ohio 43215 (collectively, ''Applicants''), have filed an application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and rules 43, 45, and 54 under the Act.

By order dated June 14, 2000 (HCAR No. 27186) (''Merger Order''), the Commission approved the merger of AEP and Central and South West Corporation (''CSW''), authorized AEP to continue CSW's system money pool (''Money Pool''), added AEP's public utility subsidiaries as Money Pool participants, and established borrowing limits for the Money Pool.[2] Applicants propose to increase their respective borrowing limits through December 31, 2002 (''Authorization Period'') as follows: (1) AEP's external borrowing limit[3] would increase from $5 billion to $6.910 billion (''Aggregate Short-Term Debt Limit''); (2) CP&L's borrowing limit would increase from $600 million to $1.2 billion; (3) CSPC's borrowing limit would increase from $350 million to $800 million; (4) OPC's borrowing limit would increase from $450 million to $1 billion; (5) SWEPCO's borrowing limit would increase from $250 million to $350 million; and (6) WTU's borrowing limit would increase from $165 million to $375 million. The aggregate amount outstanding at any one time for all Applicants will not exceed the Aggregate Short-Term Debt Limit.

Applicants represent that the increase in AEP's borrowing authority would ensure that AEP has sufficient borrowing authority in order to loan funds through the Money Pool during the Authorization Period. CP&L, CSPC, OPC, SWEPC, and WTU will use the proceeds from the borrowings from the Money Pool to replace a portion of respective long-term securities with short-term debt as part of a restructuring of their debt portfolios (''Restructuring''). Applicants represent that the Restructuring is mandated by the states of Ohio and Texas which require the separate ownership of generating and other power supply assets from transmission and distribution assets no later than January 1, 2002.

AEP further represents that it will maintain common equity as a percentage of its consolidated capitalization (inclusive of short-term debt) at 30% or above during the Authorization Period, and will also maintain common equity as a percentage of capitalization of AEP's utility subsidiaries that are Applicants at 30% or above during the Authorization Period.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–24181 Filed 9–26–01; 8:45 am]

BILLING CODE 8010–01–M

[2] The Merger Order permitted AEP to continue CSW's Money Pool program authorized by the Commission by order dated April 5, 1989 (HCAR No. 24855). The Commission by order dated March 28, 1997 (HCAR No. 26697) authorized the Money Pool to continue through March 31, 2002.

[3] AEP's external borrowing would be from commercial paper and bank loans.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25167; 812–12500]

ING Pilgrim Investments, LLC, et al.; Notice of Application

September 21, 2001.

AGENCY: Securities and Exchange Commission (''Commission'')

ACTION: Notice of application for an order under sections 6(c) and 23(c)(3) of the Investment Company Act of 1940 (the ''Act'') for an exemption from rule 23c–3 under the Act.

SUMMARY OF APPLICATION: Applicants request an order under sections 6(c) and 23(c) of the Act for an exemption from certain provisions of rule 23c–3 to permit a registered closed-end investment company to make repurchase offers on a monthly basis.

APPLICANTS: ING Pilgrim Investments, LLC (''ING Pilgrim Investments''), ING Pilgrim Securities, Inc. (''ING Pilgrim Securities''), and Pilgrim Senior Income Fund (''Fund'').

FILING DATES: The application was filed on April 18, 2001, and amended on August 31, 2001, September 18, 2001 and September 20, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 16, 2001, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609.

Applicants: William H. Rivoir III, Esq., Senior Vice President and Secretary, ING Pilgrim Investments, LLC, 7337 East Doubletree Ranch Road, Scottsdale, AZ 85258.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942–0614, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Fund is a closed-end management investment company registered under the Act and organized as a Delaware business trust. ING Pilgrim Investments, an investment adviser registered under the Investment Advisers Act of 1940 (the ''Advisers Act''), serves as investment adviser to the Fund. ING Pilgrim Securities, a broker-dealer registered under the Securities Exchange Act of 1934, distributes the Fund's shares. ING Pilgrim Investments and ING Pilgrim Securities are both indirect, wholly owned subsidiaries of ING Groep N.V.

2. The Fund's investment objective is to provide a high level of monthly income. The Fund invests primarily in U.S. dollar denominated, floating rate secured senior loans made only to corporations or other business entities organized under U.S. laws or located in the U.S. (''Loans''). Under normal market conditions, the Fund will invest at least 80% its total assets in Loans. The Fund may also invest up to 20% of its total assets in unsecured loans, subordinated loans, corporate debt securities, loans made to, or debt securities issued by, corporations or other business entities organized or located outside the U.S., equity securities incidental to investment in loans, and other investment companies

such as money market funds. Under normal circumstances, the Fund may also invest up to 10% of its total assets in cash and short-term instruments.

3. The Fund continuously offers four classes of share to the public at net asset value. The Fund operates as an ''interval fund'' pursuant to rule 23c–3 under the Act, and currently makes quarterly tender offers to repurchase its shares. Applicants propose that the Fund offer to repurchase a portion of its shares at one-month intervals, rather than the three, six, or twelve-month intervals specified by rule 23c–3. The Fund's shares are offered without any initial sales charges, but certain classes of shares carry deferred sales charges and asset-based distribution fees.[1] The Fund may in the future offer additional classes of shares with a front-end sales charge, an EWC and/or asset-based service or distribution fees. The Fund's shares are not offered or traded in the secondary market and are not listed on any exchange or quoted on any quotation medium.

4. The Fund will disclose in its prospectus its fundamental policy to make monthly offers to repurchase a portion of its securities at net asset value, less deduction of a repurchase fee, if any, as permitted by rule 23c–3(b)(1) and the imposition of EWCs as permitted pursuant to exemptive relief previously granted by the Commission. The policy will be changeable only by a majority vote of the holders of the Fund's outstanding voting securities. Under the fundamental policy, the repurchase offer amount will be determined by the Fund's board of trustees (the ''Board'') prior to each repurchase offer. A majority of the Board will consist of persons who are not interested persons of the Fund. Under its fundamental policy, the Fund will make monthly offers to repurchase not less than 5% of its outstanding shares at the time of the repurchase request deadline. The Fund will not repurchase more than 25% in the aggregate of its outstanding shares in any one-quarter period.

5. The Fund's prospectus will state the monthly repurchase request deadline, which will be the tenth business day of every month and the maximum number of days between each repurchase request deadline and the repurchase pricing date. The Fund's repurchase pricing date will normally be the same date as the repurchase request deadline and pricing will be determined after close of business on that date.

6. The Fund will make payment for the repurchased shares in cash on or before the repurchase payment deadline, which will be no later than five business days or seven calendar days (whichever period is shorter) after the repurchase pricing date. The Fund expects to make payment on the first business day following the repurchase pricing date. The Fund will make payment for shares repurchased in the previous month's repurchase offer at least five business days before sending notification of the next repurchase offer. The Fund does not presently intend to deduct any repurchase fees from the repurchase proceeds payable to tendering shareholders.

7. The Fund will provide shareholders with notification of each repurchase offer no less than seven days and no more than fourteen days prior to the repurchase request deadline. The notification will include all information required by rule 23c–3(b)(4). The Fund will file the notification and the Form N–23c–3 with the Commission within 3 business days after the sending the notification to the Fund's shareholders.

8. The Fund will not suspend or postpone a repurchase offer except pursuant to the vote of a majority of its disinterested trustees, and only under limited circumstances, as provided in rule 23c–3(b)(3)(i). the Fund will not condition a repurchase offer upon tender of any minimum amount of shares. In addition, the Fund will comply with the pro rata and other allocation requirements of rule 23c–3(b)(5) if shareholders tender more than the repurchase offer amount. Further, the Fund will permit tenders to be withdrawn or modified at any time until the repurchase request deadline, but will not permit tenders to be withdrawn or modified thereafter.

9. From the time the Fund sends its notification to shareholders of the repurchase offer until the repurchase pricing date, a percentage of the Fund's asset equal to at least 100% of the repurchase offer amount will consist of: (a) Assets, which may include Loans, that can be sold or disposed of in the ordinary course of business at approximately the price at which the Fund has valued such investment within a period equal to the period between the repurchase request deadline and the repurchase payment deadline; or (b) assets, including Loans, that mature by the next repurchase payment deadline. In the event the Fund's assets fail to comply with this requirement, the Board will cause the Fund to take such action as it deems appropriate to ensure compliance.

10. In compliance with the asset coverage requirements of section 18 of the Act, any senior security issued by the Fund or other indebtedness of the Fund will either mature by the next repurchase pricing date or provide for the Fund's ability to call or repay such indebtedness by the next repurchase pricing date, either in whole or in part, without penalty or premium, as necessary to permit the Fund to complete the repurchase offer in an amount determined by the Board.

11. The Fund's Board has adopted written procedures to ensure that the fund's portfolio assets are sufficiently liquid so that the Fund can comply with its fundamental policy on repurchases and the liquidity requirements of rule 23c–3(b)(10)(i). the Board will review the overall composition of the portfolio and make and approve such changes to the procedures as it deems necessary.

Applicants' Legal Analysis

1. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act or rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Section 23(c) of the Act provides in relevant part that no registered closed-end investment company shall purchase any securities of any class of which it is the issuer except: (a) On securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

3. Rule 23c–3 under the Act permits a registered closed-end investment company to make repurchase offers at net asset value to its shareholders at periodic intervals pursuant to a fundamental policy of the investment company. ''Periodic interval'' is defined in rule 23c–3(a)(1) as an interval of three, six, or twelve months. An interval fund may not suspend or postpone a repurchase offer except by vote of the fund's directors/trustees, and then only under limited circumstances. Rule 23c–3(b)(4) requires that notification of each repurchase offer be sent to shareholders no less than 21 days and no more than

[1] The Fund currently offers Class A, B, C and Q shares. Each class of shares is subject to annual asset-based service fees. Class B and C shares are subject to early withdrawal charges (''EWCs'') and an annual distribution fee. The Fund previously obtained exemptive relief from the Commission as it relates to the imposition of EWCs. *See* In the Matter of ING Pilgrim Investments, LLC, et al., Rel. No. IC–24881 (Feb. 28, 2001) (notice), Rel. No. IC–24916 (Mar. 27, 2001) (order).

42 days before the repurchase request deadline. Rule 23c–3(a)(3) provides that a repurchase offer amount may be between 5% and 25% of the common stock outstanding on the repurchase request deadline.

4. Applicants request an order pursuant to sections 6(c) and 23(c) of the Act exempting them from rule 23c–3(a)(1) to the extent necessary to permit the Fund to make monthly repurchase offers. Applicants also request an exemption from the notice provisions of rule 23c–3(b)(4) to the extent necessary to permit the Fund to send notification of an upcoming repurchase offer to shareholders at least seven days but no more than fourteen days in advance of the repurchase request deadline.

5. Applicants contend that monthly repurchase offers are in the shareholders' best interests and consistent with the policies underlying rule 23c–3. Applicants assert that monthly repurchase offers will provide investors with more liquidity than quarterly repurchase offers. Applicants assert that shareholders will be better able to manage their investments and plan transactions, because if they decide to forego a repurchase offer, they will only need to wait one month for the next offer. Applicants also contend that the Fund's management will be able to better manage the Fund's Loan portfolio, because repurchase offers will become part of a routine that is expected to provide management with more regular and predictable liquidity requirement.

6. Applicants propose to send notification to shareholders at least seven days, but no more than fourteen days, in advance of a repurchase request deadline. Applicants assert that, because the Fund intends to price on the repurchase request deadline and pay on the next business day, the entire procedure can be completed before the next notification is sent out to shareholders; thus avoiding any overlap. Applicants believe that these procedures will eliminate any possibility of investor confusion. Applicants also state that monthly repurchase offers will be accepted as a fundamental feature of the Fund, and the Fund's prospectus will provide a clear explanation of the repurchase program.

7. Applicants believe that both the primary and secondary markets for Loans have experience sufficient growth in recent years that the Fund will have adequate liquidity to support monthly repurchases. Applicants state that over the past decade, the Loan market has expanded significantly, with greater volumes and a significantly larger number of buyers and sellers. Applicants contend that the depth and efficiency of these markets, together with the portfolio manager's experience and judgment, will enable the Fund to maintain fully liquid assets at levels that will meet or exceed the requirements of rule 23c–3.

8. Applicants submit that for the reasons given above the requested relief is necessary and appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. The Fund will not make a repurchase offer pursuant to rule 23c–3(b) for a repurchase offer amount of more than 5% in any one-month period, and not more than 25% in the aggregate in any one-quarter period of its outstanding shares. The Fund may repurchase additional tendered shares pursuant to rule 23c–3(b)(5) only to the extent the aggregate of the percentages of additional shares so repurchased does not exceed 2% in any given one-quarter period.

2. Payment for repurchased shares will occur at least five business days before notification of the next repurchase offer is sent to shareholders of the Fund.

3. The Fund will maintain an investment policy that requires, under normal conditions, that at least 80% of the value of its total assets will be invested in Loans.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–24180 Filed 9–26–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25166; File No. 812–12588]

Met Investors Series Trust and Metropolitan Life Insurance Company

September 21, 2001.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of Application under 176(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY: Applicants request an order to allow certain series of a registered open-end investment company to acquire all of the assets and liabilities of certain other series of the same registered open-end investment company. Because of certain affiliations; applicants may not rely on Rule 17a–8 under the Act.

APPLICANTS: Met Investors Series Trust (''MIT'') and Metropolitan Life Insurance Company (''MetLife'').

FILING DATES The applicants was filed on August 3, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 12, 2001 and should be accompanied by proof of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: Met Investors Series Trust, 22 Corporate Plaza Drive, Newport Beach, California 92660,and Metropolitan Life Insurance Company, One Madison Avenue, New York, New York 10010.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, or Keith Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (Tel. 202–942–9080).

Applicants' Representations

1. Met Investors Series Trust (''MIT'') is a recently organized Delaware business trust registered under the Act as an open-end management investment company and is presently comprised of twenty-three separate series. Shares of each series of MIT are sold only to certain accounts of MetLife and its affiliates to fund benefits under certain individual flexible premium and modified single premium variable life insurance policies and certain individual and group variable annuity contracts (''Contracts'') issued by

MetLife and its affiliates and to qualified pension and retirement plans. As of the date of this application, MetLife and its affiliates are the shareholders of record of the series of MIT.[1] Only four series are involved in the proposed transactions. These series are BlackRock Equity Portfolio, BlackRock U.S. Government Portfolio, Met/Putnam Research Portfolio and PIMCO Total Return Portfolio. MIT, along with its series, are referred to herein collectively, as the ''Met Portfolios''.

2. MetLife, a New York life insurance company, is a leading provider of insurance and financial products and services to individual and group customers. MetLife provided the initial seed money for the Met/Putnam Research and the PIMCO Total Return Portfolios. MetLife (as a result of its investment of seed capital) and the separate accounts of certain of MetLife's affiliates are the shareholders of record of Met/Putnam Research and PIMCO Total Return Portfolios.

3. MetLife Investors USA Insurance Company (''MLI USA'') is a stock life insurance company organized under the laws of the State of Delaware. MLI USA is a wholly-owned subsidiary of MetLife Investors Group, Inc. (''MetLife Investors''). MetLife Investors is a wholly-owned subsidiary of MetLife. MLI USA, through its separate account, is the record shareholder for the BlackRock Equity and BlackRock U.S. Government Income Portfolios.

4. Met Investors Advisory Corp. (formerly known as Security First Investment Management Corporation) (''Met Advisory'') serves as investment adviser to MIT but has delegated responsibility for the day-to-day management of the series to various unaffialiated sub-advisers. Met Advisory is a wholly-owned subsidiary of MetLife Investors. Met Advisory is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the ''Advisers Act'').

5. On June 5, 2001, the Board of Trustees of MIT (''MIT Board''), including a majority of the Trustees who are not interested persons under section 2(a)(19) of the Act (the ''Disinterested Trustees''), authorized agreements and plans of reorganization (with respect to the Fund Reorganizations as defined below) (the 'Plans'') pursuant to which certain of the Met Portfolios (the ''Acquiring Portfolios'') will acquire all of the assets and stated liabilities of certain other Met Portfolios (the ''Acquired Portfolios''). Pursuant to the terms of the Plans, the Acquired Portfolios have agreed to sell all of their assets (subject to the assumption of certain stated liabilities) to certain corresponding Acquiring Portfolios in exchange for shares of the Acquiring Portfolios (the ''Fund reorganizations''). the exchange will take place at the respective net asset values calculated as of the close of business on the business day immediately prior to the date on which the Fund Reorganizations will occur. Shareholders of the Acquired Portfolios will exchange their shares for Class A shares of the Acquiring Portfolios.[2] As a result of the Fund Reorganizations, each Acquired Portfolio shareholder will receive Class A shares of the Acquiring Portfolios shares having an aggregate net asset value equal to the aggregate net asset value of the corresponding Acquired Portfolio's shares held by that shareholder. After the distribution of the Acquiring Portfolio's shares and the winding up of the Acquired Portfolio's business, the Acquired Portfolio will be liquidated.

6. No sales change will be imposed in connection with Class A shares of the Acquiring Portfolios received by the Acquired Portfolios' shareholders. Accordingly, no sales charges will be incurred by shareholders of the Acquired Portfolios in connection with their acquisition of shares of the Acquiring Portfolios in the Fund Reorganizations. Upon consummation of the transactions described above, each Acquired Portfolio will distribute its full and fractional shares of the Acquiring Portfolio pro rata to its shareholders of record, determined as of the exchange date.

7. Prior to the Fund Reorganizations, the shareholders of the Acquired Portfolio and the Class A shareholders of the Acquiring Portfolio will hold shares with identical characteristics. Class A shares of the Met Portfolios are sold without a front-end sales charge or a contingent deferred sales charge and are not subject to any Rule 12b–1 fees.

8. The investment objectives of each of the Acquired Portfolios is similar to that of the corresponding Acquiring Portfolios. The investment strategies of each Acquired Portfolio and its corresponding Acquiring Portfolio are also similar.

9. There is a Plan for the Fund Reorganizations. Each Plan may be terminated by the mutual agreement of the Acquiring Portfolio and the Acquired Portfolio.

10. The Board, on behalf of each of the Acquired and Acquiring Portfolios, including in each case a majority of Disinterested Trustees, approved the Fund Reorganizations as in the best interests of shareholders and determined that the interests of existing shareholders will not be diluted as a result of the Fund Reorganizations. The MIT Board on behalf of each Portfolio considered, among other things, (a) the terms and conditions of each Fund Reorganization; (b) whether the Fund Reorganization would result in the dilution of shareholders' interests; (c) the effect of the Fund Reorganization on the Contract owners and the value of their Contracts; (d) the comparative performance records of the Acquired Portfolio and the Acquiring Portfolio, and the case of the Acquiring Portfolio, the prior performance of a comparable fund; (e) the expense ratios, fees and expenses of the Acquired Portfolio and of the Acquiring Portfolio; (f) comparability of the Acquiring and Acquired Portfolio's investment objectives and policies; (g) the fact that the costs estimated to be incurred by the Portfolios as a result of the Fund Reorganizations will not be borne by the Portfolios but will be borne by MetLife or an affiliate; (h) the benefits to shareholders, including operating efficiencies, to be achieved from participating in the restructuring of the investment portfolios to be offered in connection with MLI USA's insurance products and to employee benefit plans; (i) the fact that the Acquiring Portfolio will assume the identified liabilities of the Acquired Portfolio; (j) alternatives available to shareholders of the Acquired Portfolios, including the liability to redeem their shares, and (k) the expected federal income tax consequences of the Fund Reorganizations.

11. Each Fund Reorganization is subject to the approval of the Acquired Portfolios' shareholders. A Special Meeting of the Shareholders of each Acquired Portfolio is scheduled to be held on or about October 5, 2001. As stated above, the shareholder of record of the Acquired Portfolios, at the date of this Application, is MLI USA through its registered separate account. MLI USA will vote all shares of the Acquired Portfolios in accordance with and in proportion to timely voting instructions received from Contract owners participating in the separate account registered under the Act, the value of which is invested in shares of the Acquired Portfolio through such

[1] For ease of reference, the term ''shareholder'' is generally used hereinafter to refer to Contract owners that are unit holders of a registered separate account that invests in a respective Met Portfolio.

[2] The Acquired Portfolios offer only Class A shares. The Acquiring Portfolios offer Class A, Class B and Class E shares. Class B and Class E shares are not involved in the Fund Reorganizations.

separate account at the record date. Shares of each Acquired Portfolio for which properly executed voting instructions are not received will be voted in the same proportion as that of shares of such Acquired Portfolio for which instructions are received.

12. MetLife or an affiliate will be responsible for the expenses incurred in connection with the Fund Reorganizations.

13. The Plans are subject to a number of conditions precedent, including requirements that (a) the Plans shall have been approved by the Boards on behalf of each of the Acquiring Portfolios and the Acquired Portfolios and approved by the requisite votes of the holders of the outstanding shares of each of the Acquired Portfolios in accordance with the provisions of MIT's Agreement and Declaration of Trust and By-laws; (b) the Acquired Portfolio and the Acquiring Portfolio have received opinions of counsel stating, among other things, that (i) each Fund Reorganization will constitute a ''fund reorganization'' under Section 368 of the Internal Revenue Code of 1986, as amended (the ''Code''), (ii) the Acquiring Portfolio and the Acquired Portfolio is a ''party to a fund reorganization'' within the meaning of Section 368 of the Code, (iii) no gain or loss will be recognized by the Acquiring Portfolio upon the receipt of the assets of the Acquired Portfolio solely in exchange for the Acquiring Portfolio shares and the assumption by the Acquiring Portfolio of the identified liabilities of the Acquired Portfolio and (iv) no gain or loss will be recognized by the Acquired Portfolio upon the transfer of the Acquired Portfolio's assets to the Acquiring Portfolio in exchange for the Acquiring Portfolio shares and the assumption by the Acquiring Portfolio of the identified liabilities of the Acquired Portfolio or upon the distribution of the Acquiring Portfolio shares to Acquired Portfolio shareholders in exchange for their shares of the Acquired Portfolio; and (c) the Acquired Portfolio and the Acquiring Portfolio shall have received from the Commission an order exempting the Fund Reorganizations from the provisions of section 17(a) of the Act.

Applicant's Legal Analysis

1. Section 17(a) of the Act provides, in pertinent part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such a person, ''(1) knowingly to sell any security or other property to such registered company * * * [or] (2) knowingly to purchase from such registered company * * * any security or other property * * *.'' Section 2(a)(3) of the Act defines the term ''affiliated person'' of another person to include, in pertinent part, ''(A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person * * *; and (E) if such other person is an investment company, any investment adviser thereof * * *.''

2. Rule 17a–8 may not be available to exempt the proposed transactions described herein. The premise of Rule 17a–8 is that the investment companies involved in mergers or consolidations are under common control by virtue of having a common investment adviser, directors and/or officers and no other affiliation exists. In this case, the Portfolios may be deemed to be affiliated persons or affiliated persons of each other because MetLife beneficially owns 5% or more of the outstanding voting securities of the Acquiring Portfolios through its investment of initial seed capital.

3. Section 17(b) of the Act provides that, notwithstanding Section 17(a), any person may file with the Commission an application for an order exempting a proposed transaction from one or more provisions of that subsection and that the Commission shall grant such application and issue such order of exemption if evidence establishes that ''(1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under [the Act]; and (3) the proposed transaction is consistent with the general purposes of [the Act] * * *.''

4. Applicants submit that the terms of the Fund Reorganizations satisfy the standards set forth in section 17(b), in that the terms are fair and reasonable and do not involve overreaching on the part of any person concerned. Applicants note that the MIT Board, including the Disinterested Trustees, found that participation in the Fund Reorganization is in the best interests of each Portfolio based on the following factors: (a) The interests of shareholders will not be diluted; (b) the Portfolios' investment objectives and policies are similar; (c) the benefits to shareholders, including operating efficiencies and potential economies of scale, to be achieved from participating in the restructuring of the investment portfolios to be offered in connection with MLI USA's insurance products and to employee benefit plans; (d) no sales charges will be imposed in connection with the Fund Reorganizations; (e) the service and distribution resources available to MIT and the anticipated increased array of investment alternatives available to the shareholders of MIT; (f) the transactions will be free from federal income taxes; (g) the conditions and policies of Rule 17a–8 will be followed; (h) the Fund Reorganizations have been submitted to shareholders of the Acquired Series pursuant to registration statements on Form N–14 under the 1933 Act; (i) the transfer of securities in exchange for shares will be at relative net asset value; (j) MetLife or an affiliate will pay the expenses incurred by the Portfolios in connection with the Fund Reorganizations; and (k) no overreaching by any person concerned with the transactions is occurring.

Conclusion

For the reasons and upon the factors set forth above, Applicants state that the requested order meets the standards set forth in section 17(b) of the Act and should, therefore, be granted.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–24183 Filed 9–26–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 25165/September 21, 2001]

Investment Company Act of 1940; Order Extending Prior Order Under Sections 6(c), 17(b) and 38(a) of the Investment Company Act of 1940 Granting Exemptions from Certain Provisions of the Act and Certain Rules Thereunder

In light of the recent events affecting the financial markets, the Commission finds that an order extending the exemptions granted in its order of September 14, 2001, Investment Company Act Release No. 25156 (''September 14 Order''): Is necessary and appropriate to the exercise of the

powers conferred on it by the Act; is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act; and permits transactions the terms of which, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned.

The necessity for immediate action of the Commission does not permit prior notice of the Commission's action. Accordingly, IT IS ORDERED:

I. The Ability of Certain Registered Investment Companies To Borrow

The exemptions from sections 12(d)(3), 13(a)(2), 13(a)(3), 17(a) and 18(f)(1) granted in the September 14 Order are extended through September 28, 2001 subject to the terms and conditions set forth in the September 14 Order.

II. Interfund Lending Arrangements

Until September 28, 2001, any registered investment company currently able to rely on a Commission order permitting an interfund lending and borrowing facility (''IFL Order'') may make loans through the facility in an aggregate amount that does not exceed 25 per cent of its current net assets at the time of the loan notwithstanding any lower limitation in the IFL Order, as long as the loan otherwise is made in accordance with the terms and conditions of the IFL Order.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–24189 Filed 9–26–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To be published Monday, September 24, 2001].

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

TIME AND DATE OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, September 25, 2001 at 1:00 p.m.

CHANGE IN THE MEETING: Additional Item.

The following item has been added to the open meeting scheduled for Tuesday, September 25, 2001:

The Commission will consider whether to extend the compliance date for certain amendments to Rule 482 under the Securities Act of 1993 and Rule 34b–1 under the Investment Company Act of 1940. These rule amendments require that fund advertisements and sales literature include standardized after-tax returns if the sales material either (i) includes after-tax performance information; or (ii) includes any performance information together with representations that the fund is managed to limit taxes. The compliance date for the rule amendments is October 1, 2001.

For further information contact Katy Mobedshahi, Staff Attorney, Division of Investment Management at (202) 942–0699.

Commissioner Unger, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: September 24, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–24279 Filed 9–24–01; 4:08 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 44828/September 21, 2001]

Securities Exchange Act of 1934; Order Extending Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action to Respond to Market Developments Concerning the American Stock Exchange, LLC

The Commission is extending the Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action to Respond to Market Developments Concerning the American Stock Exchange LLC, Securities Exchange Act Release No. 44797 (September 16, 2001) (''Emergency Order'') for five additional business days. Based on all available information, the Commission has determined that extending the Emergency Order is necessary in the public interest and for the protection of investors to maintain fair and orderly securities markets in the wake of their reopening following the attacks of September 11, 2001.

Therefore, it is Ordered, pursuant to section 12(k)(2) of the Securities Exchange Act of 1934, that the Emergency Order is extended for another five business days, beginning on September 24, 2001, and ending on September 28, 2001.[1]

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–24186 Filed 9–26–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 44827/September 21, 2001]

Securities Exchange Act of 1934; Order Extending Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange of Act of 1934 Taking Temporary Action to Respond to Market Developments

The Commission is extending the Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action to Respond to Market Developments, Securities Exchange Act Release No. 44791 (September 14, 2001) (''Emergency Order'') for five additional business days. Based on all available information, the Commission has determined that extending the Emergency Order is necessary in the public interest and for the protection of investors to maintain fair and orderly markets in the wake of their reopening following the attacks of September 11, 2001.

Therefore, it is Ordered, pursuant to section 12(k)(2) of the Securities Exchange Act of 1934, that the Emergency Order is extended for another five business days, beginning on September 24, 2001, and ending on September 28, 2001.[1] The Commission also notes that the week of September 10, 2001 should continue to be excluded for purposes of calculating average daily trading volume (''ADTV'') under Rule 10b–18.

[1] This Order extends the relief of the Emergency Order for the additional five business days allowed in Section 12(k)(2) of the Exchange Act. If the Commission believes that circumstances warrant further relief of this nature, it will consider whether it should take additional action, such as issuing orders under Section 12(k)(2) of the Exchange Act, Section 36 of the Exchange Act, or other provisions of the securities laws.

[1] This Order extends the relief of the Emergency Order for the additional five business days allowed in Section 12(k)(2) of the Exchange Act. If the Commission believes that circumstances warrant further relief of this nature, it will consider whether it should take additional action, such as issuing orders under Section 12(k)(2) of the Exchange Act, Section 36 of the Exchange Act, or other provisions of the securities laws.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–24188 Filed 9–26–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44823; File No. SR–NFA–2001–01]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Futures Association Relating to Security Futures Products

September 20, 2001.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–7 under the Exchange Act,[2] notice is hereby given that on August 21, 2001, the National Futures Association (''NFA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items I, II, III below, which Items have been prepared by NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

On July 20, 2001, the NFA submitted the proposed rule change to the Commodity Futures Trading Commission (''CFTC'') for approval. The CFTC approved the proposed rule change on August 20, 2001.[3]

I. Self-Regulatory Organization's Description of the Proposed Rule Change

The Commodity Futures Modernization Act of 2000 (''CFMA'') amended Section 15A of the Exchange Act to add new subsection (k),[4] which makes NFA a national securities association for the limited purpose of regulating the activities of NFA Members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Exchange Act.[5] The most significant provisions of the proposed rule change would make the requirements that apply to the security futures activities of these NFA Members reasonably comparable to those that apply to NASD members,[6] as required by Section 15(k)(2) of the Exchange Act.[7]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below. The text of the proposed rule change is available at the Office of the Secretary, NFA, and on the Commission's web site (*http://www.sec.gov*).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CFMA lifted the 18-year ban on single stock futures and narrow-based security indices (security futures products) and regulates these products as both securities and futures. The CFMA amended Section 15A of the Exchange Act to add new subsection (k),[8] which makes NFA a national securities association for the limited purpose of regulating the activities of NFA Members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Exchange Act,[9] which was also added by the CFMA. Section 15A(k)(2)[10] requires NFA to have anti-fraud, anti-manipulation, and customer protection rules reasonably comparable to those of the National Association of Securities Dealers, Inc. (''NASD'') for the purpose of governing the security futures activities of these Section 15(b)(11)[11] broker-dealers.

NFA represents that it already has anti-fraud, anti-manipulation, and customer protection rules that have proven effective in governing the futures activities of NFA Members. However, NFA's rules sometimes take a different approach than NASD's rules and, as a result, they do not correspond in every instance. Therefore, NFA has adopted the proposed rule change in order to ensure that NFA meets the standards imposed by Section 15A(k)(2) of the Exchange Act.[12]

In NFA staff's discussions with SEC staff, SEC staff suggested that NFA's rules should be comparable to those NASD rules that apply to options since both are derivative instruments. SEC staff also told NFA in include those rules that apply to writing options since the risks of futures transactions are more similar to the risks of writing options than to the risks of purchasing them. These principles guided NFA in developing the proposed rule change. A more detailed discussion of the rule change follows.

a. Bylaw 1101 (Doing Business With Non-Members)

Bylaw 1101 prohibits NFA Members from doing business with non-Members who are required to be registered with the CFTC as futures commission merchants (''FCMs''), introducing brokers (''IBs''), commodity pool operators (''CPOs''), or commodity trading advisors (''CTAs''). Section 4f(a)(4)(C) of the Commodity Exchange Act (''CEA'')[13] provides that registered futures associations may not prohibit their members from doing security futures business with FCMs and IBs registered under Section 4f(a)(2) of the CEA.[14] Bylaw 1101 has been amended accordingly.

b. Bylaw 1507, Compliance Rule 1–1, and Code of Arbitration Section 1 (Definitions)

The definition of futures has been amended to include security futures products. The amendments make it clear that NFA has both compliance and arbitration jurisdiction over security futures transactions involving its NFA Members.

Compliance Rule 1–1 has also been amended to add a definition of ''Exchange Act,'' since the Exchange Act

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] On August 29, 2001, the NFA submitted a proposed rule change to the CFTC to amend the ''Interpretive Notice on Obligation to Customers and Other Market Participants'' (''Interpretive Notice'') that is included in the instant proposed rule change. On September 7, 2001, pursuant to Section 17(j) of the Commodity Exchange Act, 7 U.S.C. 21(j), the CFTC deemed the proposed rule change to amend the aforementioned Interpretive Notice to be effective. Telephone conversation with Kathryn Camp, Associate General Counsel, NFA, and Marc McKayle and Andrew Shipe, Special Counsel, Division of Market Regulation (''Division''), Commission, on September 13, 2001. On September 18, 2001, the NFA filed a proposed rule change (SR–NFA–2001–02) with the Commission that incorporates the amendment to the Interpretive Notice.

[4] 15 U.S.C. 78o–3(k).

[5] 15 U.S.C. 78o(b)(11)

[6] For purposes of clarity, references to ''NASDR,'' ''NASDR members'' and ''NASDR Conduct Rules'' in this notice have been changed to ''NASD,'' ''NASD members'' and ''NASD Rules,'' respectively. Telephone conversation with Kathryn Camp, Associate General Counsel, NFA, and Nancy Sanow, Assistant Director, and Marc McKayle, Special Counsel, Division, Commission, on September 19, 2001.

[7] 15 U.S.C. 78o–3(k)(2).

[8] 15 U.S.C. 78o–3(k).

[9] 15 U.S.C. 78o(b)(11)

[10] 15 U.S.C. 78o–3(k)(2).

[11] 15 U.S.C. 78o(b)(11).

[12] 15 U.S.C. 78o–3(k)(2).

[13] 7 U.S.C. 6f(a)(4)(C).

[14] 7 U.S.C. 6f(a)(2).

is now referred to in a number of places in the Compliance Rules.

c. Compliance Rule 2–7 (Designated Security Futures Principals)

Proposed Compliance Rule 2–7(b) requires NFA Members who register as broker-dealers under Section 15(b)(11) of the Exchange Act [15] (''passported Members'') to designate one or more security futures principals and requires the principal to take the Series 30 examination (for futures branch office managers), which will be updated to include questions regarding supervision of activities involving security futures products.[16] This is comparable to NASD Rule 1022(f), which requires NASD members who engage in options transactions to have at least one registered options principal.

Corresponding changes to Compliance Rules 2–8, 2–29, and 2–30 require a designated security futures principal to review discretionary trades, approve promotional material, and approve customer accounts for security futures transactions.

d. Compliance Rules 2–22 and 2–26

Compliance Rule 2–22 has been amended to prohibit NFA Members from implying that they have been sponsored, recommended, or approved by any federal or state regulatory body. This makes it comparable to NASD Rule 2210(d)(2)(J).

CFTC Regulations 155.3[17] and 155.4[18] dictate the terms under which an associated person (''AP'') of one Member can open and trade an account with another Member. Compliance Rule 2–26 has been amended to incorporate these regulations in order to make it comparable to NASD Rule 3050.

e. Compliance Rule 2–29 (Promotional Material)

NFA's and NASD's promotional material rules are comparable for the most part. NASD's rules do, however, contain several requirements that are either not included or not explicitly stated in NFA's rules. The amendments to Compliance Rule 2–29 are intended to make it more like NASD's promotional material rules in the way it applies to promotional material for security futures products.

The amendment to Compliance Rule 2–29(b) adds new subsection (6) regarding testimonials. This requirement is actually stricter than NASD Rule 2210(d)(2)(D), which is the comparable NASD requirement, since the proposed NFA requirement actually prohibits the use of any testimonial that is not representative of all reasonably comparable accounts.

A new section (j) has been added to be comparable with various requirements in NASD Rules 2210 and 2220. This section applies only to the promotional material of passported NFA Members (and their Associates) that specifically refers to security futures products. Among other things, Compliance Rules 2–29(j):

- Requires promotional material that solicits for a trading program to be managed by an FCM or IB Member to include the cumulative performance history of the Member's customers who have used the trading program or to state that the program is unproven;
- Requires NFA Members to provide customers with supporting documentation, upon request, for any claims, comparisons, recommendations, statistics, and other technical data made in the promotional material;
- Prohibits promotional material from referring to past trading recommendations in security futures products, the underlying securities, or derivatives thereof unless it describes all other recommendations made for similar products over the last year;
- Prohibits promotional material for security futures products from making specific trading recommendations unless the material discloses conflicts of interest based on activities in the underlying security and offers to provide information on all recommendations made for similar products over the last year;
- Provides that promotional material that is not accompanied or preceded by the disclosure statement for security futures products can only contain a general description of security futures products, the name of the NFA Member, and the person to contact for a current disclosure statement; and
- Requires NFA Members to pre-file all mass media advertising that relates to security futures products (unless it merely mentions them as one of the services it offers).

f. Compliance Rule 2–30 (Suitability)

Two statutory provisions effectively require NFA to have suitability rules comparable to those of NASD. First, the suitability requirements are customer protection rules that are included in the requirements for qualification under Section 15A(k) of the Exchange Act.[19] Second, the listing requirements in Section 2(a)(1)(D)(i)(V) of the CEA [20] essentially bar transactions by FCMs, IBs, CTAs, CPOs, and APs that are not subject to suitability requirements comparable to those of NASD.

NFA Compliance Rule 2–30 requires NFA Members (and their Associates) to obtain information about each customer's experience, income, net worth and age before opening a futures account. It also requires NFA Members to give risk disclosure, with the risk disclosures required by the CFTC as the minimum. Compliance Rule 2–30 requires NFA Members to provide additional risk disclosure if the customer needs it to make an informed judgment about whether he or she should be involved in the futures markets. In fact, if the Member believes that futures are simply too risky for that customer, the Member must tell the customer that he has no business trading futures. This is true even if the Member makes no recommendations whatsoever to the customer. If the customer still decides to trade futures, however, the Member may open the account.

Like NASD requirements, Compliance Rule 2–30 is designed to keep customers from trading futures if they are unsuitable. Unlike NFA Compliance Rule 2–30, however, NASD Rules 2310, 2860(16), 2860(19), and IM–2860–2: (1) require members to obtain more extensive information from natural person customers; (2) require members to specifically approve of disapprove security options accounts based on an evaluation of the customer' suitability to trade those products; and (3) explicitly prohibit members from making unsuitable recommendations. Therefore. NFA has added a new section (j) to Compliance Rule 2–30 to include these requirements for security futures and apply them to NFA Members who are not also NASD members and therefore are not subject to the NASD's suitability requirements).

NFA and a number of other self-regulatory organizations are currently drafting a standardized disclosure statement that must be given to all security futures customers. Compliance Rule 2–30(b) has been revised to required NFA Members to provide this statement when or before and account is approved to trade security futures products.

g. Compliance Rule 2–37 (Security Futures Products)

Compliance Rule 2–37 is an entirely new rule that applies only to the

[15] 15 U.S.C. 78o(b)(11).

[16] Current registrants will not have to take the Series 30 examination if they take an appropriate training course.

[17] 17 CFR 155.3

[18] 18 CFR 155.4

[19] 15 U.S.C. 78o–3(k).

[20] 7 U.S.C. 4(a)(1)(D)(i)(V).

security futures activities of passported NFA Members and their Associates.

• Section 15A(k)(2)(A) of the Exchange Act [21] requires NFA to enforce relevant provisions of the securities laws. Compliance Rule 2–37(a) requires passported NFA Members and their Associates to comply with Sections 9(a), 9(b), and 10(b) of the Exchange Act,[22] and Compliance Rule 2–37(b) requires passported NFA Members to have procedures reasonably designed to achieve compliance with applicable securities laws.

• Compliance Rule 2–37(c) requires passported NFA Members that carry accounts to provide security futures customers with annual information of NFA's BASIC system, which discloses disciplinary information regarding NFA Members and their Associates. This requirement is similar to NASD Rule 2280.

• Compliance Rule 2–37(d)–(f) requires Associate of passported NFA Members to report certain information (*e.g.,* significant customer complaints) to their sponsors and requires those NFA Members to report similar information to NFA. NFA Members also be required to file quarterly reports with NFA containing statistical information about customer complaints received during the quarter. These requirements are comparable to NASD Rule 3070.

h. Interpretive Notice Regarding Enhanced Supervisory Requirements

This notice, found at Paragraph 9021 of the National Futures Association Manual, requires enhanced supervisory procedures for firms that have a significant number of Associates who were previously employed at firms closed down for sales practice fraud. Although the notice is generally stricter than NASD Rule 3010(b)(2), which is the comparable NASD requirement, it has been amended to provide that firms must have written supervisory procedures for complying with the requirements for the notice and all applicable provisions of the securities laws and must file quarterly reports with NFA concerning their compliance with the requirements of the notice.

i. Interpretive Notice Regarding Obligations to Customers and Other Market Participants

Both NFA and NASD have rules prohibiting their respective members from engaging in conduct inconsistent with just and equitable principles of trade as well as manipulative or fraudulent practices. *See* NFA Compliance Rules 2–2 and 2–4 and NASD Rules 2110 and 2120. Nonetheless, several NASD interpretive memoranda explicitly prohibit some specific conduct that has not been explicitly prohibited by NFA rules or interpretive notices. NFA's new interpretive notice explicitly prohibits this conduct.

One of the linchpins of the futures industry is the concept that registrants may not trade ahead of customer orders. Most, if not all, the futures exchanges have rules prohibiting their members from engaging in this conduct, and CFTC Regulations 155.3(a) [23] and 155.4(a) [24] require FCMs and IBs to have and enforce procedures to insure that they and their employees do not trade ahead of customer orders. Although NFA does not have a specific requirement prohibiting NFA Members and Associates from trading ahead of customer orders, NFA has always considered it a violation of Compliance Rule 2–4. However, in order to make NFA rules more comparable to NASD IM–2110–2, NFA has specifically prohibited that conduct in this new interpretive notice. As noted previously, CFTC Regulation 155.3 [25] and 155.4 [26] have also been incorporated by reference into NFA Compliance Rule 2–26.

This interpretive notice also contains several provisions that apply only to passported NFA Members and their Associates when they engage in security futures activities. These provisions: (1) prohibit trading ahead of research reports (comparable to NASD IM–2110–4); (2) prohibit trading based on knowledge or an imminent block transaction (generally comparable to NASD IM–2110–3), with an exception for hedging counterpart risk under approved exchange block rules; and (3) require a sound basis for evaluating the facts regarding a particular security futures product (comparable to NASD Rule 2210(d)(1)(A)).

j. Interpretive Notice Regarding Special Supervisory Requirements for NFA Members Registered as Broker-Dealers Under Section 15(b)(11) of the Exchange Act

Both the NFA and the NASD have extensive requirements regarding supervision. In some areas, however, the NASD's requirements are more detailed than NFA's. Therefore, NFA has adopted a new interpretive notice to NFA Compliance Rule 2–9 (Supervision) regarding Special Supervisory Requirements for Security Futures Products. The interpretive notice, which applies only to security futures activities by passported NFA Members, is intended to be comparable to various supervisory requirements in NASD Rules 2210(f), 2860(18), 2860(20), and 3010.

Among other things, this interpretive notice requires that:

• A designated security futures principal approves all policies and procedures relating to security futures products;

• Each security futures sales office has a designated security futures principal;

• NFA Members adopt and enforce procedures requiring a designated security futures principal to review correspondence relating to security futures products;

• A designated security futures principal oversees reviews of branch offices and guaranteed IBs that engage in security futures activities, including a yearly on-site audit of each office that engages in security futures activities; and

• NFA Members check securities records as well as futures records when deciding whether to hire an employee or guarantee an IB.

k. Interpretive Notice on Use of Past or Projected Performance and Disclosing Conflicts of Interest for Security Futures Products

NFA has also adopted a new interpretive notice to NFA Compliance Rule 2–29 on Use of Past or Project Performance and Disclosing Conflicts of Interest for Security Futures Products. The notice mostly describes positions taken by NFA's Business Conduct Committee and Hearing Panels regarding past and projected performance and is intended to be comparable to some of the specific provisions of NASD Rules 2210 and 2220. It also explains the responsibilities of passported NFA Members under new section (j) of Compliance Rule 2–29.

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Exchange Act.[27] The proposed amendments are designed to make NFA's rules correspond more closely to NASD's rules, as is contemplated by Section 15A(k) of the Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The rule change will not impose any burden on competition that is not

[21] 15 U.S.C. 78o–3(k)(2)(A).

[22] 15 U.S.C. 78i(a), 78i(b), and 78j(b).

[23] 17 CFR 155.3(a).

[24] 17 CFR 155.4(a).

[25] 17 CFR 155.3.

[26] 17 CFR 155.4.

[27] 15 U.S.C. 78o–3(k).

necessary or appropriate in furtherance of the purposes of the Exchange Act and the CEA, as they were amended by the CFMA. In fact, the CFMA is designed to promote an even regulatory playing field among securities and futures registrants—and among NFA members and NASD members—so that neither group has a competitive advantage over the other. NFA's rule change achieves that objective.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

NFA worked with Member committees and industry trade associations in developing the rule change. NFA did not, however, publish the rule change for comment by its membership. NFA received one written comment letter from an industry trade association, which generally supported the rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective on August 20, 2001, which is the date of approval of the proposed rule change by the CFTC.

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Exchange Act.[28]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Exchange Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings also will be available for inspection and copying at the principal office of NFA. Electronically submitted comments will be posted on the Commission's Internet website (*http://www.sec.gov.).* All submissions should refer to File No. SR–NFA–2001–01 and should be submitted by October 18, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–24184 Filed 9–26–01; 8:45 am]

BILLING CODE 8010–01–M

[28] 15 U.S.C. 78s(b)(1).

[29] 17 CFR 200.30–3(a)(75).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44825; File No. SR–NYSE–2001–29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Eliminating the Exchange's Discretion To Exempt Relief Specialists From Registration and Approval

September 20, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 21, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend NYSE Rule 103 (Registration of Specialists) to delete the provision that grants the Exchange the discretion to exempt relief specialists from registration and approval requirements.

II. Self-Regulatory Organization's Statement of the Purpose of, and statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend NYSE Rule 103 (Registration of Specialists) to delete the provision that grants the Exchange the discretion of exempt relief specialists from registration and approval requirements.

NYSE Rule 103 requires that members acting as specialists be registered with and approved by the Exchange as such. NYSE Rule 103 provides for exempting relief specialists under conditions that the Exchange may prescribe. However, the Exchange has required and will continue to require the registration and approval of relief specialists in order to help insure that the role of specialist is entrusted to qualified individuals. The Exchange, therefore, proposes to remove the exemptive provision from NYSE Rule 103.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Section 6(b)(5),[4] in particular, because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 178f(b).

[4] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2001–29 and should be submitted by October 18, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–24185 Filed 9–26–01; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

SELECTIVE SERVICE SYSTEM

Form Submitted to the Office of Management and Budget for Clearance

The following form has been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS FORM—404

Title: Potential Board Member Information.

Need And/Or Use: Is used to identify individuals willing to serve as members of local, appeal or review boards in the Selective Service system.

Respondents: Potential board members.

Burden: A burden of 15 minutes or less on the individual respondent.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of publication of this notice to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, D.C. 20503.

Alfred Rascon,

Director.

[FR Doc. 01–24152 Filed 9–26–01; 8:45 am]

BILLING CODE 8015–01–M

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority that covers the Social Security Administration (SSA). Chapter S4 covers the Deputy Commissioner for Systems. Notice is given that Chapter S4 is being amended to reflect the addition of a new subordinate staff office to subchapter S4N, the Office of Information Technology Architecture. The new material and changes are as follows:

Section S4.10 The Office of the Deputy Commissioner, Systems—(Organization):

Establish:

H. The Data Administration Staff (S4NF)

Section S4N.20 Office of Information Technology Architecture—(Functions):

Establish:

H. Data Administration Staff (S4NF)

1. Responsible for all SSA-wide data administration.
2. Directs the development of Systems-wide policies, procedures and standards for the specific phases of the life cycle development process and development of methods to assure the quality of systems products.
3. Directs the integration of data and process models, as well as software designs.
4. Directs the development of requirements for standardizing data collection across application areas.
5. Provides program expertise and process management direction and oversight for crosscutting segments for all SSA systems initiatives, legislative initiatives or projects involving the initiation, interpretation and/or the implementation of administrative and programmatic systems.
6. Provides a variety of high level coordinate, analytical, consultative and advisory services to SSA as a whole relative to very visible and complex systems initiatives.

Dated: September 18, 2001.

Larry G. Massanari,

Acting Commissioner of Social Security.

[FR Doc. 01–24119 Filed 9–26–01; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice No. 3746]

Shipping Coordinating Committee; Subcommittee on Ocean Dumping; Notice of Meeting

The Shipping Coordinating Committee will hold an open meeting on October 16, 2001, from 1:30 p.m. to 3:30 p.m. to obtain public comment on the issues to be addressed at the October 22–26, 2001, Twenty-third Consultative Meeting of Contracting Parties to the London Convention, which is the global international treaty regulating ocean dumping. The meeting will also review the results of the Twenty-fourth Scientific Group Meeting of the London Convention held in May 2001.

The meeting will be held at the Environmental Protection Agency

offices located at the Fairchild Building, 499 South Capitol Street SW., Washington, DC 20003, Room 809. Interested members of the public are invited to attend, up to the capacity of the room. For further information, please contact Mr. David Redford, Chief, Marine Pollution Control Branch, telephone (202) 260–1952.

Dated: September 19, 2001.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee, U.S. Department of State.

[FR Doc. 01–24190 Filed 9–26–01; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Rapid Response Teams on Airport Security and Aircraft Security

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C., App.), the Secretary of Transportation is establishing two Rapid Response Teams on Airport Security and Aircraft Security. Each team shall conduct a comprehensive study of and make recommendations concerning, improvements in airport security and aircraft security, respectively. Each team shall submit a report to the Secretary of Transportation by October 1, 2001, and shall terminate 30 days after submitting its final report.

The membership shall consist of employees of the Department of Transportation and experts from the private sector. Due to national security considerations, under Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c), the meetings of each team will be closed to the public, and matters discussed are exempt from mandatory disclosure under 49 U.S.C. 40119(b).

For further information, contact David Tochen, Deputy Assistant General Counsel, U.S. Department of Transportation, 400 7th St., SW., Washington, DC 20590, phone number (202) 366–9161.

Issued on September 20, 2001.

Rosalind A. Knapp,

Acting General Counsel.

[FR Doc. 01–24250 Filed 9–26–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2001–10031]

Information Collections Under Review by the Office of Management and Budget (OMB): 2115–0043 and 2115–0076

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the two Information Collection Reports (ICRs) abstracted below to OMB for review and comment. Our ICRs describe the information we seek to collect from the public. Review and comment by OMB ensure that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before October 29, 2001.

ADDRESSES: Please send comments to (1) the Docket Management System (DMS), U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001; and (2) the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the USCG.

Copies of the complete ICRs are available for inspection and copying in public docket USCG 2001–10031 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street, SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Regulatory History

This request constitutes the 30-day notice required by OMB. The Coast Guard has already published (66 FR 36028 (July 10, 2001)) the 60-day notice required by OMB. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Numbers of all ICRs addressed. Comments to DMS must contain the docket number of this request, USCG 2001–10031. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Requests

1. *Title:* Plan Approval and Records for Load Lines.

OMB Control Number: 2115–0043.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of vessels.

Forms: LL 13–C, LL–14–A, LL 18–E, LL 19, LL 40–A, 88 USA LL, and A21 HSSC LL–EXEMPT.

Abstract: Collecting this information helps the Coast Guard ensure that certain vessels are not loaded deeper than appropriate for safety. Vessels over 150 gross tons or 79 feet in length engaged in commerce on international or coastwise voyages by sea must obtain Load Line Certificates.

Annual Estimated Burden Hours: The estimated burden is 1,916 hours a year.

2. *Title:* Security Zones, Regulated Navigation Areas, and Safety Zones.

OMB Control Number: 2115–0076.

Type of Request: Extension of a currently approved collection.

Affected Public: Federal, State, and local government agencies, vessels, and facilities.

Form: This collection of information does not require the public to fill out Coast Guard forms, but does require the public to request, in writing, to the Coast Guard that a security zone, safety zone or regulated navigation area be established to ensure public safety.

Abstract: The Coast Guard collects this information only when someone seeks a security zone, regulated navigation area, or safety zone. It uses

the information to assess the need to establish one of these areas.

Annual Estimated Burden Hours: The estimated burden is 417 hours a year.

Dated: September 21, 2001.

V.S. Crea,

Director of Information and Technology.

[FR Doc. 01–24233 Filed 9–26–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2001–9764]

Information Collection Under Review by the Office of Management and Budget (OMB): 2115–0633

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded one Information Collection Report (ICR), abstracted below, to OMB for review and comment. Our ICRs describe the information we seek to collect from the public. Review and comment by OMB ensure that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before October 29, 2001.

ADDRESSES: Please send comments to (1) the Docket Management System (DMS), U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001; and (2) the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the USCG.

Copies of complete ICRs are available for inspection and copying in public dockets. A copy of this complete ICR is available in docket USCG 2001–9764 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION

Regulatory History

This request constitutes the 30-day notice required by OMB. The Coast Guard has already published (66 FR 30040 (June 4, 2001)) the 60-day notice required by OMB. That request elicited the comment treated in the next two paragraphs:

The comment stated that, after the company had spent considerable resources to implement the Streamlined Inspection Program (SIP) in 1998, the Coast Guard changed the program and made it more burdensome. The comment further stated that the program had changed so far that the company would withdraw from it.

The SIP is a voluntary program with the goal of providing owners and operators of vessels registered or documented in the United States an alternative method of complying with requirements of the Coast Guard for inspection. The Coast Guard initiated the SIP as a series of local pilot programs, but soon recognized the need for standardized, national guidelines. To ease the burden of converting from local to national guidelines, the Coast Guard provided a three-year period for conversion. The guidelines aim at establishing the baseline to properly maintain a national program. Because the SIP is voluntary, each owner or operator of a vessel must decide whether continued participation is cost-effective for it. On September 10, 2001, we sent a reply to the submitter and sent a copy of it to OMB.

Request for Comments

The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR. Comments to DMS must contain the docket number of this request, USCG 2000–7821. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Requests

1. *Title:* Streamlined Inspection Program.

OMB Control Number: 2115–0633.

Type of Request: Extension of a currently approved collection.

Affected Public: Operators and owners of vessels registered or documented in the United States.

Forms: This collection of information does not require the public to fill out Coast Guard forms, but operators or owners of vessels that choose to participate in the SIP will maintain their covered vessels in compliance with Company Action Plans (CAPs) and Vessel Action Plans (VAPs) and have their own personnel periodically perform many of the tests and examinations normally conducted by marine inspectors of the Coast Guard.

Abstract: The Coast Guard established the SIP to provide owners and operators of vessels registered or documented in the United States an alternative method of complying with requirements of the Coast Guard for inspection. Participation in the SIP was and is voluntary.

Annual Estimated Burden Hours: The estimated burden is 32,244 hours a year.

Dated: September 20, 2001.

V.S. Crea,

Director of Information and Technology.

[FR Doc. 01–24234 Filed 9–26–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–10675]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) and its subcommittees on boat occupant protection and prevention through people will meet to discuss various issues relating to recreational boating safety. All meetings will be open to the public.

DATES: NBSAC will meet on Monday, October 29, 2001, from 8:30 a.m. to 5 p.m. and Tuesday, October 30 from 8:30 a.m. to noon. The Prevention Through People Subcommittee will meet on Saturday, October 27, 2001, from 1:30 p.m. to 4:30 p.m. The Boat Occupant

Protection Subcommittee will meet on Sunday, October 28, 2001, from 9 a.m. to noon. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before October 12, 2001. Requests to have a copy of your material distributed to each member of the committee or subcommittees should reach the Coast Guard on or before October 5, 2001.

ADDRESSES: NBSAC will meet at the Boston Marriott Quincy, 1000 Marriott Drive, Quincy, Massachusetts. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Mr. Albert J. Marmo, Commandant (G–OPB–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647. This notice is available on the Internet at http://dms.dot.gov or at the Web Site for the Office of Boating Safety at URL address www.uscgboating.org.

FOR FURTHER INFORMATION CONTACT: Albert J. Marmo, Executive Director of NBSAC, telephone 202–267–0950, fax 202–267–4285.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of Meetings

National Boating Safety Advisory Council (NBSAC). The agenda includes the following:

(1) Executive Director's report.
(2) Chairman's session.
(3) Prevention Through People Subcommittee report.
(4) Boat Occupant Protection Subcommittee report.
(5) Recreational Boating Safety Program report.
(6) Coast Guard Auxiliary report.
(7) Canadian Coast Guard report.
(8) National Association of State Boating Law Administrators Report.
(9) Report on boating safety education in Quincy, Massachusetts public schools.
(10) Discussion on boating under the influence enforcement.
(11) Discussion on waterways management issues associated with high speed recreational vessels.
(12) Discussion on houseboat carbon monoxide issues.
(13) Discussion on proposed rulemaking on wearing of personal flotation devices by children under 13 years of age. (A summary of public comments received in response to the notice of proposed rulemaking will be provided at the NBSAC meeting and will also be available in the docket for this rulemaking [USCG–2000–8589] along with a summary of NBSAC discussion.)
(14) Report on boating injury data capture in hospital emergency departments grant project.
(15) Update on personal flotation device issues.
(16) Update on the boat factory visit program.

Prevention Through People Subcommittee. The agenda includes the following:

(1) Discuss canoe, kayak and other human-powered craft safety issues.
(2) Discuss partnering with retailers to get boating safety information to boat owners and operators.
(3) Discuss status of mandatory education.
(4) Update on navigation light projects, rulemaking and other issues.
(5) Update on current regulatory projects, grants and contracts dealing with personal flotation devices.
(6) Update on ''Operation BoatSmart'' and other boating safety outreach initiatives.

Boat Occupant Protection Subcommittee. The agenda includes the following:

(1) Discuss weight and horsepower compliance issues related to 4-stroke engines.
(2) Discuss industry standard warning label for boats.
(3) Discuss comparative safety of certified boats.
(4) Update on current regulatory projects, grants and contracts impacting boat occupant protection.

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than October 12, 2001. Written material for distribution at a meeting should reach the Coast Guard no later than October 12, 2001. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than October 5, 2001.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: September 20, 2001.

Kenneth T. Venuto,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 01–24235 Filed 9–26–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program Phoenix Sky Harbor International Airport, Phoenix, Arizona

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program Submitted by the city of Phoenix, Phoenix, Arizona, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and Title 14, Code of Federal Regulations, part 150 (FAR part 150). These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On October 10, 2000, the FAA determined that the noise exposure maps submitted by the city of Phoenix under FAR Part 150 were in compliance with applicable requirements. On September 7, 2001, the Acting Associate Administrator for Airports approved the Phoenix Sky Harbor International Airport Noise Compatibility Program. All thirty-two program measures have been approved. Nine measures were approved as voluntary measures and twenty-three measures were approved outright.

EFFECTIVE DATES: The effective date of the FAA's approval of the Phoenix Sky Harbor International airport Noise Compatibility Program is September 7, 2001.

FOR FURTHER INFORMATION CONTACT: Brian Armstrong, Airport Planner, Airports Division, AWP–611.1, Federal Aviation Administration, Western-Pacific Region. Mailing address: P.O. Box 92007, Los Angeles, California 90009–2007. Telephone: (310) 725–3614. Street address: 15000 Aviation Boulevard, Hawthorne, California 90261. Documents reflecting this FAA action may be reviewed at this location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise

Compatibility Program for the Phoenix Sky Harbor International Airport, effective September 7, 2001. Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a Noise Exposure Map, may submit to the FAA, a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport Noise Compatibility Program developed in accordance with FAR Part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in FAR part 150 and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport Noise Compatibility Program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and a FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division office in Hawthorne, California.

The city of Phoenix submitted the Noise Exposure Maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from November 1998 through October 2000 to the FAA on October 2, 2001. The Phoenix Sky Harbor International Airport Noise Exposure maps were determined by FAA to be in compliance with applicable requirements on october 10, 2000. Notice of this determination was published in the **Federal Register** on October 25, 2000.

The Phoenix Sky Harbor International Airport study contains a proposed Noise Compatibility Program comprised of actions designed for implementation by airport management and adjacent jurisdictions. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in section 104(b) of the Act. The FAA began its review of the program on March 12, 2001, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted programs contained thirty-two proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The Acting Associate Administrator for Airports approved the overall program effective September 7, 2001.

All thirty-two program measures have been approved. The following nine measures were approved as voluntary measures: Continue the runway use program calling for the equalization of departure operations to the east and west for both daytime and nighttime; Continue promoting use of AC 91–53A Noise Abatement Departure Procedures by air carrier jets; Continue promoting use of NBAA Noise Abatement Procedures or equivalent manufacturer procedures, by general aviation jet aircraft; Continue DP (departure) procedure for Runway 26L (now 25R) requiring a turn to a 240-degree heading; Continue the 4–DME departure route procedure which overflies the Salt River by all jets and large propeller aircraft departing Runway 8L/R (now 8 and 7L); Implement the 4–DME departure route procedure for all jet and large propeller aircraft departing Runway 7 (now 7R); Direct propeller aircraft departing Runway 7 (now 7R) to turn to a 120-degree heading upon reaching the end of the runway; Direct aircraft departing Runway 25 (now 25L) to turn to a 240-degree heading upon reaching the end of the runway; and, Establish a side-step approach to Runway 25 (now 25L) for noise abatement.

The following twenty-three measures were approved outright: Continue requiring compliance with the Airport Engine Test Run-up Policy; Encourage the use of DGPS, RNAV, and FMS equipment to enhance noise abatement navigation; Build engine maintenance run-up enclosure; Support 161st Air Refueling Wing of the Arizona Air National Guard's efforts to re-engine KC–135 Aircraft; Sound insulate single family homes within the 1992 65 DNL contour and single family homes outside the 1992 65 DNL contour but inside the 1999 65 DNL Contour; Sound Insulate approximately ten schools within the 1999 65 DNL Contour; Acoustical Treatment of Community Center and place of worship classrooms/meeting rooms within the 1999 65 DNL Contour; Voluntary Acquisition and Redevelopment: Acquire dwellings north and west (to 7th street) of the airport within the 1999 [65 and] 70 DNL Contour; Exchange dwellings impacted within the 70 DNL noise contour with a dwelling outside the 65 DNL noise contour; Update General Plans to reflect the 1999 noise contour planning boundary from Part 150 Study as basis for noise compatibility planning; Amend General Plan designations to reflect existing compatible and existing lower density land uses within the Noise Contour Planning Boundary (NCPB); General Plan Amendment: Amend Mixed Use designations within the 1999 65 DNL contour to exclude residential; Enact guidelines specifying noise compatibility criteria for the review of development projects within the Noise Contour Planning Boundary (NCPB); Retain compatible land use zoning within the Noise Contour Planning Boundary (NCPB); Amend

Zoning Map to reflect General Plan and existing compatibile land uses within the Noise Contour Planning Boundary (NCPB); Encourage rezoning several large tracts of land currently developed with low density residential but zoned for higher density non-compatible land uses within the 1999 65 DNL noise exposure contour; Enact overlay zoning to provide noise compatibility land use standards near Airport; Subdivision Regulation Amendment: Require recording of fair disclosure agreements and covenants and over flights within the Noise Contour Planning Boundary (NCPB); Building Code Amendment: Enact construction standards within the Noise Contour Planning Boundary (NCPB); Continue noise abatement information program; Monitor implementation of updated Noise Compatibility Program; Update Noise Exposure Maps and Noise Compatibility Program; and, Expand flight track monitoring coverage.

These determinations are set forth in-detail in a Record of Approval endorsed by the Acting Associate Administrator for Airports on September 7, 2001. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal are available for review at the FAA office listed above and at the administrative offices of the city of Phoenix, Phoenix, Arizona.

Issued in Hawthorne, California on September 18, 2001.

Herman C. Bliss,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 01–24218 Filed 9–26–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use Revenue From a Passenger Facility Charge (PFC) at Nashville International Airport, Nashville, Tennessee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use revenue from a PFC at Nashville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 29, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Memphis Airports District Office, 3385 Airways Boulevard, Suite 302, Memphis, Tennessee 38116–3841.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Paul Regalado, President of the Metropolitan Nashville Airport Authority at the following address:

One Terminal Drive, Suite 501, Nashville, Tennessee, 37214.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Nashville Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Cynthia K. Wills, Program Manager, Memphis Airports District Office, 3385 Airways Boulevard, Suite 302, Memphis, Tennessee 38116–3841, (901) 544–3495, extension 16. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use revenue from a PFC at Nashville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 20, 2001, the FAA determined that the application to impose and use revenue from a PFC submitted by Metropolitan Nashville Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 4, 2002.

The following is a brief overview of the application.

PFC Application No.: 01–09–C–00–BNA.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 2002.

Proposed charge expiration date: August 31, 2004.

Total estimated net PFC revenue: $26,005,000.

Brief description of proposed project(s): Donelson Pike and Terminal Drive Relocation; Inbound Baggage Carousel Security Cages; Elevator on ''A'' Concourse; Airfield Pavement Rehabilitation; Airfield Hold Bar Modifications; PAPI Lights on RW's 2L & 31; ARFF Vehicle; Cargo Area Infrastructure and Utility Improvements; Live Scan Fingerprint Equipment.

Class of classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 Air Taxi's.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Nashville Airport Authority.

Issued in Memphis, Tennessee on September 20, 2001.

LaVerne F. Reid,

Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 01–24220 Filed 9–26–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Assessment(s) or Environmental Impact Statement(s): Cuyahoga County, City of Cleveland, Ohio

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental assessment(s) or environmental impact statement(s) will be prepared for a proposed project in the City of Cleveland in Cuyahoga County, Ohio.

FOR FURTHER INFORMATION CONTACT: Michael B. Armstrong, Urban Programs Engineer, Federal Highway Administration, 200 N. High Street, Room 328, Columbus, Ohio 43215, Telephone: (614) 280–6855.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Ohio Department of Transportation (ODOT), will prepare an environmental assessment (EA) or environmental impact statement (EIS) on a proposal to reconstruct a portion of the Interstate Highway System, known as the Innerbelt, which travels through the City of Cleveland's CBD. Specifically, the proposed action is being considered from Interstate 71 and W. 25th Street, on the west, through the Interstate 90/490

interchange (where the existing alignment changes to Interstate 90) to Interstate 90 and Martin Luther King, Jr. Boulevard, on the East.

Reconstruction of this alignment is considered necessary to: provide for the infrastructure which is approaching the end of its useful life especially the 5,000 foot Interstate 90 Central Viaduct bridge; reduce congestion on the facility; improve substandard geometrics which result in high accident rates and operating inefficiencies; and improve access into and out of the Cleveland CBD, the Cuyahoga River Valley and the adjoining neighborhoods.

A wide range of alternatives will be considered including: (1) taking no action; (2) reconstruction within the existing right-of-way; (3) relocating portions of the facility on new alignment; and (4) multi-modal options. Alternatives 2, 3 and 4 have sub-alternatives that may involve (1) the redesign, closure or construction of new ramps or (2) construction of mitigating measures.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in the project area with a series already held during the Summer of 2001, a series currently scheduled the Fall of 2001, another series in the Winter/Spring of 2002 and an additional meeting in the Fall of 2002. In addition, a Public Hearing will be held. Public notice will be given of the time and place of the meetings and hearing. Project reports will be available throughout the study time frame and the EA(S) or Draft EIS(S) will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EA(S) or EIS(S) should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 18, 2001.

Michael B. Armstrong,

Urban Programs Engineer, Federal Highway Administration, Columbus, Ohio.

[FR Doc. 01–24156 Filed 9–26–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

The Burlington Northern and Santa Fe Railway Company

[Docket Number FRA–2001–10653]

The Burlington Northern and Santa Fe Railway Company (BNSF) seeks a waiver of compliance from the provisions of the *Track Safety Standards,* 49 CFR 213.121(b), regarding cracked or broken joint bars in Classes 3 through 5 track.

The BNSF is petitioning for a waiver which would provide relief from cracks which can develop between the outermost bolt holes of a specified six-hole skirted joint bar in use on 115-pound rail. The petitioner states that the cracks develop from spike notches on the skirted portion of the bar and in some cases penetrate the entire bar, producing a complete end failure.

The petitioner states that these six-hole bars which develop cracks between the outermost bolt holes are comparable in strength and stability to their conventional 115-pound, four-hole unskirted joint bars and present no additional safety hazards. BNSF has submitted laboratory test results to support their request for a waiver.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communication concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number 2001–10653) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, DC on September 21, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–24244 Filed 9–26–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket Number FRA–2001–10594

Applicant: Pioneer Valley Railroad, Mr. Jonathan S. Lasko, General Manager, PO Box 995, Westfield, Massachusetts 01086.

The Pioneer Valley Railroad seeks approval of the proposed discontinuance of the manual block system on the entire Pioneer Valley Railroad system, encompassing the stations of Westfield and Holyoke, Massachusetts, and governed train operations by yard limit rules.

The reason given for the proposed changes is the railroad's decision to return to a true yard limit operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and

contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on September 21, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–24245 Filed 9–26–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34095]

Allegheny Valley Railroad Company-Lease and Operation Exemption-Line of CSX Transportation, Inc.

Allegheny Valley Railroad Company (AVR), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to lease and operate, pursuant to an agreement with CSX Transportation, Inc. (CSXT), approximately 0.75 miles of rail line. The subject line (known as CSXT's River Branch) extends between approximately milepost 0.75 near 33rd Street and approximately milepost 0.00 near 43rd Street in the City of Pittsburgh, Allegheny County, PA. AVR certifies that its projected revenues as a result of this transaction will not result in its becoming a Class I or a Class II rail carrier.

The transaction was scheduled to be consummated on or after September 14, 2001, the effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34095, must be filed with the Surface Transportation Board, Office of Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Kevin M. Sheys, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, 2nd Floor, Washington, DC 20036.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: September 19, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–23964 Filed 9–26–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34096]

Union Pacific Railroad Co.—Trackage Rights Exemption—Illinois Central Railroad Co.

Illinois Central Railroad Company (IC) has agreed to grant temporary overhead trackage rights to Union Pacific Railroad Company (UP) over IC's line between a connection with The Indiana Harbor Belt Railroad Company (IHB) near IC milepost 17.9 (Highlawn) and Moyers Intermodal Terminal near IC milepost 20.9 in Harvey, IL, a distance of approximately 3 miles.

The transaction was scheduled to be consummated on or after September 17, 2001, the effective date of the exemption.

The purpose of the trackage rights is to permit UP to operate over IC's trackage for delivering or receiving intermodal cars, trailers, and containers at the Moyers Intermodal Terminal.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease & Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34096, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Robert T. Opal, 1416 Dodge Street, Room 830, Omaha, NE 68179.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: September 19, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–24112 Filed 9–26–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 19, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 29, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1341.

Regulation Project Number: EE–43–92 Final.

Type of Review: Extension.

Title: Direct Rollovers and 20-Percent Withholding Upon Eligible Rollover Distributions From Qualified Plans.

Description: These regulations provide rules implementing the

provisions of the Unemployment Compensation Amendments (Public Law 102–318) requiring 20 percent income tax withholding upon certain distributions from qualified pension plans or tax-sheltered annuities.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 10,323,926.

Estimated Burden Hours Per Respondent: 13 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 2,129,669 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 01–24140 Filed 9–26–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Customs Service

Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of due date for receipt of certifications.

SUMMARY: Pursuant to the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA), this document gives further notice of the time within which affected domestic producers must file certifications to obtain a distribution of assessed antidumping duties or countervailing duties that were collected in Fiscal Year 2001 in connection with antidumping duty orders or findings or countervailing duty orders. This distribution under the CDSOA is known as the continued dumping and subsidy offset.

DATES: Written certifications to obtain a continued dumping and subsidy offset under a particular order or finding must be received no later than October 2, 2001.

ADDRESSES: Written certifications should be addressed to: Assistant Commissioner, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229 (ATTN: Jeffrey J. Laxague).

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Laxague, Office of Regulations and Rulings (202–927–0505).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA) (19 U.S.C. 1675c), Customs published in the **Federal Register** (66 FR 40782) on August 3, 2001, a notice of intention to distribute assessed antidumping or countervailing duties that were collected in Fiscal Year 2001 in connection with antidumping duty orders or findings or countervailing duty orders. The August 3, 2001, notice listed the individual antidumping duty orders or findings and countervailing duty orders, together with the affected domestic producers associated with each order or finding, who were potentially eligible to receive a distribution (known as a continued dumping and subsidy offset).

In the August 3, 2001, notice, Customs provided alternative due dates within which written certifications to claim an offset had to be filed by affected domestic producers. Specifically, it was stated that Customs would have to receive certifications to claim an offset by the later of October 2, 2001, or 10 days after the effective date of the final regulations implementing the provisions of the CDSOA. The purpose of the alternative due date was to ensure that the submission of certifications could be withheld until after a final rule document was issued which would resolve certain matters that could affect the filing of the certifications. These matters involved the public disclosure of particular information contained in the certifications and the adoption of procedures that would cover the filing of certifications both by successor companies to those listed on an order or finding and by associations on behalf of their members.

The August 3, 2001, notice further stated that the specific alternative date for the receipt of certifications would be published in the **Federal Register**. To this end, because the final regulations implementing the CDSOA were published in the **Federal Register** (66 FR 48546) as T.D. 01–68 on, and were effective as of, September 21, 2001, the operative date in this latter respect is October 1, 2001.

Accordingly, certifications submitted by affected domestic producers to claim an offset under the CDSOA must be received by Customs no later than October 2, 2001.

Dated: September 24, 2001.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 01–24168 Filed 9–26–01; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Midwest District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: Cancellation of the Midwest Citizen Advocacy Panel meeting

DATES: Wednesday, September 26, 2001.

FOR FURTHER INFORMATION CONTACT: Sandra McQuin at 1–888–912–1227 (in Wisconsin, Iowa, Nebraska and Illinois), or 414–297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that the open meeting of the Citizen Advocacy Panel (CAP) scheduled for Wednesday, September 26, 2001, from 8:00 a.m. to Noon at the Hyatt Regency Hotel, 333 West Kilbourn Avenue, Milwaukee, Wisconsin, has been cancelled.

Dated: September 19, 2001.

Cindy Vanderpool,

Detailed Director, CAP, Communication and, Liaison.

[FR Doc. 01–24118 Filed 9–26–01; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
September 27, 2001

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

Medicare Program; Hospice Wage Index Fiscal Year 2002; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1175–N]

RIN 0938–ZA08

Medicare Program; Hospice Wage Index Fiscal Year 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the annual update to the hospice wage index as required by statute. This update is effective October 1, 2001 through September 30, 2002. The wage index is used to reflect local differences in wage levels. The hospice wage index methodology and values are based on recommendations of a negotiated rulemaking advisory committee and were originally published in the **Federal Register** on August 8, 1997.

EFFECTIVE DATE: October 1, 2001.

FOR FURTHER INFORMATION CONTACT:
Lynn Riley, (410) 786–1286
Carol Blackford, (410) 786–5909

SUPPLEMENTARY INFORMATION

I. Background

A. Statute and Regulations

Hospice Care is an approach to treatment that recognizes that the impending death of an individual warrants a change in the focus from curative care to palliative care (relief of pain and other uncomfortable symptoms). The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, social, psychological, emotional, and spiritual services through use of a broad spectrum of professional and other caregivers, with the goal of making the individual as physically and emotionally comfortable as possible. Counseling and inpatient respite services are available to the family of the hospice patient. Hospice programs consider both the patient and the family as a unit of care.

Section 1861(dd) of the Social Security Act (the Act) provides for coverage of hospice care for terminally ill Medicare beneficiaries who elect to receive care from a participating hospice. The statutory authority for payment to hospices participating in the Medicare program is contained in section 1814(i) of the Act.

Our existing regulations under 42 CFR Part 418 establish eligibility requirements and payment standards and procedures, define covered services, and delineate the conditions a hospice must meet to be approved for participation in the Medicare program. Subpart G of Part 418 provides for payment to hospices based on one of four prospectively determined rates for each day in which a qualified Medicare beneficiary is under the care of a hospice. The four rate categories are routine home care, continuous home care, inpatient respite care, and general inpatient care. Payment rates are established for each category.

The regulations at § 418.306(c), which require the rates to be adjusted by a wage index, were revised in the August 8, 1997 final rule published in the **Federal Register** (62 FR 42860). This rule implemented a new methodology for calculating the hospice wage index based on the recommendations of a negotiated rulemaking committee. The committee reached consensus on the methodology. We included the resulting committee statement, describing that consensus, as an appendix to the August 8, 1997 final rule (62 FR 42883). The provisions of the final hospice wage index rule are as follows:

- The revised hospice wage index will be calculated using the most current available hospital wage data.
- The revised hospice wage index was phased in over a 3-year transition period. For the first year of the transition period, October 1, 1997 through September 30, 1998, a blended index was calculated by adding two-thirds of the 1983 index value for an area to one-third of the revised wage index value for that area. During the second year of the transition period, October 1, 1998 through September 30, 1999, the calculation was similar, except that the blend was one-third of the 1983 index value and two-thirds of the revised wage index value for that area. We fully implemented the revised wage index during the third transition period, October 1, 1999 throughSeptember 30, 2000.
- All hospice wage index values of 0.8 or greater are subject to a budget-neutrality adjustment to ensure that we do not pay more in the aggregate than we would have paid under the original 1983 wage index. The budget-neutrality adjustment is calculated by multiplying the hospice wage index for a given area by the budget-neutrality adjustment factor. The budget-neutrality adjustment is to be applied annually, both during and after the transition period.
- All hospice wage index values below 0.8 receive the greater of the following adjustments: the wage index floor, a 15 percent increase, subject to a maximum wage index value of 0.8; or, the budget-neutrality adjustment.
- The wage index is to be updated annually, in the **Federal Register**, based on the most current available hospital wage data. These data will include any changes to the definitions of Metropolitan Statistical Areas (MSA).

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) amended section 1814(i)(1)(C)(ii) of the Act to establish updates to hospice rates for fiscal years (FYs) 1998 through 2002. Hospice rates were to be updated by a factor equal to the market basket index, minus 1 percentage point. However, section 131(a) of the Balanced Budget Refinement Act of 1999 (BBRA) changed the payment rates for FYs 2001 and 2002 by increasing the FY 2001 rate by 0.5 percent and the FY 2002 rate by 0.75 percent. Section 131(b) of the BBRA states that any additional payments made under section 131(a) of the BBRA shall not be included in updating the hospice rates after those 2 years.

Section 321(a) of the Medicare, Medicaid and State Child Health Insurance Program (SCHIP) Benefits Improvement and Protection Act (BIPA) amended section 814(i)(1)(C)(ii)(VI) of the Act by increasing Medicare hospice rates for FY 2001 by 5 percentage points. This amendment was applicable to hospice care furnished on or after April 1, 2001. Section 321(b) of BIPA further stipulated that the 5 percent increase in Medicare hospice rates during the period beginning on April 1, 2001 through September 30, 2001 will be treated as the payment rates in effect during the FY 2001. This means that the 5 percent increase was made to the base that is updated annually according to a statutorily dictated percentage of the market basket update, as provided in section 1814(i) of the Act. The new Medicare rates for this time period were announced through HCFA Program Memorandum A–01–04 on January 16, 2001.

Also, section 321(d) of BIPA specified that the Secretary of Health and Human Services use 1.0043 as the hospice wage index value for the Wichita, Kansas MSA in calculating payments for a hospice program providing hospice care in this MSA during FY 2000. CMS's Regional Home Health Intermediaries were instructed, through HCFA Program Memorandum A–01–07, to re-calculate the payment for Medicare hospice services provided during FY 2000 by Medicare hospice providers in the Wichita, Kansas MSA using the new wage index value of 1.0043, and to disburse a lump sum payment reflecting

the difference in the two values that fiscal year.

B. Update to the Hospice Wage Index

This annual update is effective October 1, 2001 through September 30, 2002. In accordance with the agreement signed by the Centers for Medicaid & Medicare Services (CMS) and all other members of the Hospice Wage Index Negotiated Rulemaking Committee, we are using the most current CMS hospital data available, including any changes to the definitions of MSAs. The FY 2001 hospital wage index was the most current hospital wage data available when the FY 2002 wage index values were calculated. We used the pre-reclassified and pre-floor hospital area wage index data.

All wage index values are adjusted by a budget-neutrality factor of 1.064726 and are subject to the wage index floor adjustment, if applicable. We have completed all of the calculations described above and included them in the wage index values reflected in both Tables A and B below. A detailed description of the method used to compute the hospice wage index is contained in both the September 4, 1996 proposed rule published in the **Federal Register** (61 FR 46579) and the August 8, 1997 final rule published in the **Federal Register** (62 FR 42860).

1. Metropolitan Statistical Areas

As explained in the September 4, 1996 hospice wage index proposed rule, each hospice's labor market area would be established by the MSA definitions issued by the Office of Management and Budget (OMB) on December 28, 1992 based on the 1990 census, and updated periodically by OMB. Any changes to the MSA definitions would be effective annually and announced in the final rule updating the hospice wage index.

2. MSA Wage Index Values Lower than Rural Values

As explained above, any area not included in an MSA is considered to be nonurban and receives the statewide rural rate. We are aware that in the past, a number of MSAs have had wage index values that were lower than their rural statewide value. This difference is due to variations in local wage data as compared to national wage data. The hospice wage index is computed by dividing the hourly wage rate for an MSA or nonurban area by a national hourly wage rate. Nonurban areas could receive a higher wage index value than urban areas in the same State if the hourly wage rate in the nonurban area increased at a greater rate.

C. Tables

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
0040	Abilene, TX	0.8773
	Taylor, TX	
0060	Aguadilla, PR	0.5050
	Aguada, PR	
	Aguadilla, PR	
	Moca, PR	
0080	Akron, OH	1.0366
	Portage, OH	
	Summit, OH	
0120	Albany, GA	1.0576
	Dougherty, GA	
	Lee, GA	
0160	Albany-Schenectady-Troy, NY	0.9102
	Albany, NY	
	Montgomery, NY	
	Rensselaer, NY	
	Saratoga, NY	
	Schenectady, NY	
	Schoharie, NY	
0200	Albuquerque, NM	0.9727
	Bernalillo, NM	
	Sandoval, NM	
	Valencia, NM	
0220	Alexandria, LA	0.8649
	Rapides, LA	
0240	Allentown-Bethlehem-Easton, PA	1.0567
	Carbon, PA	
	Lehigh, PA	
	Northampton, PA	
0280	Altoona, PA	0.9951
	Blair, PA	
0320	Amarillo, TX	0.9279
	Potter, TX	
	Randall, TX	
0380	Anchorage, AK	1.3621
	Anchorage, AK	
0440	Ann Arbor, MI	1.1982
	Lenawee, MI	
	Livingston, MI	
	Washtenaw, MI	
0450	Anniston, AL	0.8820
	Calhoun, AL	
0460	Appleton-Oshkosh-Neenah, WI	0.9638
	Calumet, WI	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Outagamie, WI	
	Winnebago, WI	
0470	Arecibo, PR	0.8518
	Arecibo, PR	
	Camuy, PR	
	Hatillo, PR	
0480	Asheville, NC	1.0132
	Buncombe, NC	
	Madison, NC	
0500	Athens, GA	1.0369
	Clarke, GA	
	Madison, GA	
	Oconee, GA	
0520	Atlanta, GA	1.0749
	Barrow, GA	
	Bartow, GA	
	Carroll, GA	
	Cherokee, GA	
	Clayton, GA	
	Cobb, GA	
	Coweta, GA	
	DeKalb, GA	
	Douglas, GA	
	Fayette, GA	
	Forsyth, GA	
	Fulton, GA	
	Gwinnett, GA	
	Henry, GA	
	Newton, GA	
	Paulding, GA	
	Pickens, GA	
	Rockdale, GA	
	Spalding, GA	
	Walton, GA	
0560	Atlantic-Cape May, NJ	1.1906
	Atlantic, NJ	
	Cape May, NJ	
0580	Aubrn-Opelika, AL	0.8631
	Lee, AL	
0600	Augusta-Aiken, GA-SC	0.9753
	Columbia, GA	
	McDuffie, GA	
	Richmond, GA	
	Aiken, SC	
	Edgefield, SC	
0640	Austin-San Marcos, TX	1.0197
	Bastrop, TX	
	Caldwell, TX	
	Hays, TX	
	Travis, TX	
	Williamson, TX	
0680	Bakersfield, CA	1.0304
	Kern, CA	
0720	Baltimore, MD	0.9971
	Anne Arundel, MD	
	Baltimore, MD	
	Baltimore City, MD	
	Carroll, MD	
	Harford, MD	
	Howard, MD	
	Queen Anne's, MD	
0733	Bangor, ME	1.0180
	Penobscot, ME	
0743	Barnstable-Yarmouth, MA	1.4735
	Barnstable, MA	
0760	Baton Rouge, LA	0.9414
	Ascension, LA	
	East Baton Rouge, LA	
	Livingston, LA	
	West Baton Rouge, LA	
0840	Beaumont-Port Arthur, TX	0.9310

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Hardin, TX	
	Jefferson, TX	
	Orange, TX	
0860	Bellingham, WA	1.2179
	Whatcom, WA	
0870	Benton Harbor, MI	0.9232
	Berrien, MI	
0875	Bergen-Passaic, NJ	1.2615
	Bergen, NJ	
	Passaic, NJ	
0880	Billings, MT	1.0205
	Yellowstone, MT	
0920	Biloxi-Gulfport-Pascagoula, MS	0.8769
	Hancock, MS	
	Harrison, MS	
	Jackson, MS	
0960	Binghamton, NY	0.9252
	Broome, NY	
	Tioga, NY	
1000	Birmingham, AL	0.8999
	Blount, AL	
	Jefferson, AL	
	St. Clair, AL	
	Shelby, AL	
1010	Bismarck, ND	0.8204
	Burleigh, ND	
	Morton, ND	
1020	Bloomington, IN	0.9298
	Monroe, IN	
1040	Bloomington-Normal, IL	0.9684
	McLean, IL	
1080	Boise City, ID	0.9589
	Ada, ID	
	Canyon, ID	
1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	1.1882
	Bristol, MA	
	Essex, MA	
	Middlesex, MA	
	Norfolk, MA	
	Plymouth, MA	
	Suffolk, MA	
	Worcester, MA	
	Hillsborough, NH	
	Merrimack, NH	
	Rockingham, NH	
	Strafford, NH	
1125	Boulder-Longmont, CO	1.0361
	Boulder, CO	
1145	Brazoria, TX	0.9218
	Brazoria, TX	
1150	Bremerton, WA	1.1685
	Kitsap, WA	
1240	Brownsville-Harlingen-San Benito, TX	0.9287
	Cameron, TX	
1260	Bryan-College Station, TX	0.8770
	Brazos, TX	
1280	Buffalo-Niagara Falls, NY	1.0200
	Erie, NY	
	Niagara, NY	
1303	Burlington, VT	1.1430
	Chittenden, VT	
	Franklin, VT	
	Grand Isle, VT	
1310	Caguas, PR	0.5246
	Caguas, PR	
	Cayey, PR	
	Cidra, PR	
	Gurabo, PR	
	San Lorenzo, PR	
1320	Canton-Massillon, OH	0.9140
	Carroll, OH	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Stark, OH	
1350	Casper, WY	0.9289
	Natrona, WY	
1360	Cedar Rapids, IA	0.9301
	Linn, IA	
1400	Champaign-Urbana, IL	0.9793
	Champaign, IL	
1440	Charleston-North Charleston, SC	0.9623
	Berkeley, SC	
	Charleston, SC	
	Dorchester, SC	
1480	Charleston, WV	0.9838
	Kanawha, WV	
	Putnam, WV	
1520	Charlotte-Gastonia-Rock Hill, NC–SC	0.9999
	Cabarrus, NC	
	Gaston, NC	
	Lincoln, NC	
	Mecklenburg, NC	
	Rowan, NC	
	Stanly, NC	
	Union, NC	
	York, SC	
1540	Charlottesville, VA	1.1487
	Albemarle, VA	
	Charlottesville City, VA	
	Fluvanna, VA	
	Greene, VA	
1560	Chattanooga, TN-GA	1.0469
	Catoosa, GA	
	Dade, GA	
	Walker, GA	
	Hamilton, TN	
	Marion, TN	
1580	Cheyenne, WY	0.8846
	Laramie, WY	
1600	Chicago, IL	1.1867
	Cook, IL	
	DeKalb, IL	
	Du Page, IL	
	Grundy, IL	
	Kane, IL	
	Kendall, IL	
	Lake, IL	
	McHenry, IL	
	Will, IL	
1620	Chico-Paradise, CA	1.0560
	Butte, CA	
1640	Cincinnati, OH-KY-IN	1.0024
	Brown, OH	
	Clermont, OH	
	Hamilton, OH	
	Warren, OH	
	Boone, KY	
	Campbell, KY	
	Gallatin, KY	
	Grant, KY	
	Kenton, KY	
	Pendleton, KY	
	Dearborn, IN	
	Ohio, IN	
1660	Clarksville-Hopkinsville, TN-KY	0.8735
	Christian, KY	
	Montgomery, TN	
1680	Cleveland-Lorain-Elyria, OH	1.0218
	Ashtabula, OH	
	Cuyahoga, OH	
	Geauga, OH	
	Lake, OH	
	Lorain, OH	
	Medina, OH	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
1720	Colorado Springs, CO	1.0325
	El Paso, CO	
1740	Columbia, MO	0.9541
	Boone, MO	
1760	Columbia, SC	1.0172
	Lexington, SC	
	Richland, SC	
1800	Columbus, GA-AL	0.9123
	Chattahochee, GA	
	Harris, GA	
	Muscogee, GA	
	Russell, AL	
1840	Columbus, OH	1.0242
	Delaware, OH	
	Fairfield, OH	
	Franklin, OH	
	Licking, OH	
	Madison, OH	
	Pickaway, OH	
1880	Corpus Christi, TX	0.9291
	Nueces, TX	
	San Patricio, TX	
1890	Corvallis, Oregon	1.2059
	Benton, OR	
1900	Cumberland, MD-WV	0.8911
	Allegany, MD	
	Mineral, WV	
1920	Dallas, TX	1.0555
	Collin, TX	
	Dallas, TX	
	Denton, TX	
	Ellis, TX	
	Henderson, TX	
	Hunt, TX	
	Kaufman, TX	
	Rockwall, TX	
1950	Danville, VA	0.9145
	Danville City, VA	
	Pittsylvania, VA	
1960	Davenport-Moline-Rock Island, IA-IL	0.9474
	Scott, IA	
	Henry, IL	
	Rock Island, IL	
2000	Dayton-Springfield, OH	1.0053
	Clark, OH	
	Greene, OH	
	Miami, OH	
	Montgomery, OH	
2020	Daytona Beach, FL	0.9795
	Flagler, FL	
	Volusia, FL	
2030	Decatur, AL	0.9086
	Lawrence, AL	
	Morgan, AL	
2040	Decatur, IL	0.8651
	Macon, IL	
2080	Denver, CO	1.0840
	Adams, CO	
	Arapahoe, CO	
	Denver, CO	
	Douglas, CO	
	Jefferson, CO	
2120	Des Moines, IA	0.9708
	Dallas, IA	
	Polk, IA	
	Warren, IA	
2160	Detroit, MI	1.1190
	Lapeer, MI	
	Macomb, MI	
	Monroe, MI	
	Oakland, MI	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	St. Clair, MI	
	Wayne, MI	
2180	Dothan, AL	0.8457
	Dale, AL	
	Houston, AL	
2190	Dover, DE	1.0730
	Kent, DE	
2200	Dubuque, IA	0.9312
	Dubuque, IA	
2240	Duluth-Superior, MN-WI	1.0681
	St. Louis, MN	
	Douglas, WI	
2281	Dutchess County, NY	1.0912
	Dutchess, NY	
2290	Eau Claire, WI	0.9359
	Chippewa, WI	
	Eau Claire, WI	
2320	El Paso, TX	0.9951
	El Paso, TX	
2330	Elkhart-Goshen, IN	0.9737
	Elkhart, IN	
2335	Elmira, NY	0.9099
	Chemung, NY	
2340	Enid, OK	0.9167
	Garfield, OK	
2360	Erie, PA	0.9567
	Erie, PA	
2400	Eugene-Springfield, OR	1.1675
	Lane, OR	
2440	Evansville-Henderson, IN-KY	0.8702
	Posey, IN	
	Vanderburgh, IN	
	Warrick, IN	
	Henderson, KY	
2520	Fargo-Moorhead, ND-MN	0.9315
	Clay, MN	
	Cass, ND	
2560	Fayetteville, NC	0.9215
	Cumberland, NC	
2580	Fayetteville-Springdale-Rogers, AR	0.8422
	Benton, AR	
	Washington, AR	
2620	Flagstaff, AZ-UT	1.1378
	Coconino, AZ	
	Kane, UT	
2640	Flint, MI	1.1930
	Genesee, MI	
2650	Florence, AL	0.8109
	Colbert, AL	
	Lauderdale, AL	
2655	Florence, SC	0.9345
	Florence, SC	
2670	Fort Collins-Loveland, CO	1.1336
	Larimer, CO	
2680	Ft. Lauderdale, FL	1.0776
	Broward, FL	
2700	Fort Myers-Cape Coral, FL	0.9846
	Lee, FL	
2710	Fort Pierce-Port St. Lucie, FL	1.0155
	Martin, FL	
	St. Lucie, FL	
2720	Fort Smith, AR-OK	0.8573
	Crawford, AR	
	Sebastian, AR	
	Sequoyah, OK	
2750	Fort Walton Beach, FL	1.0229
	Okaloosa, FL	
2760	Fort Wayne, IN	0.9226
	Adams, IN	
	Allen, IN	
	De Kalb, IN	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Huntington, IN	
	Wells, IN	
	Whitley, IN	
2800	Forth Worth-Arlington, TX	1.0144
	Hood, TX	
	Johnson, TX	
	Parker, TX	
	Tarrant, TX	
2840	Fresno, CA	1.0758
	Fresno, CA	
	Madera, CA	
2880	Gadsden, AL	0.8968
	Etowah, AL	
2900	Gainesville, FL	1.0726
	Alachua, FL	
2920	Galveston-Texas City, TX	1.0560
	Galveston, TX	
2960	Gary, IN	1.0066
	Lake, IN	
	Porter, IN	
2975	Glens Falls, NY	0.8902
	Warren, NY	
	Washington, NY	
2980	Goldsboro, NC	0.8968
	Wayne, NC	
2985	Grand Forks, ND-MN	0.9387
	Grand Forks, ND	
	Polk, MN	
2995	Grand Junction, CO	0.9699
	Mesa, CO	
3000	Grand Rapids-Muskegon-Holland, MI	1.0911
	Allegan, MI	
	Kent, MI	
	Muskegon, MI	
	Ottawa, MI	
3040	Great Falls, MT	0.9652
	Cascade, MT	
3060	Greeley, CO	1.0449
	Weld, CO	
3080	Green Bay, WI	0.9822
	Brown, WI	
3120	Greensboro-Winston-Salem-High Point, NC	0.9722
	Alamance, NC	
	Davidson, NC	
	Davie, NC	
	Forsyth, NC	
	Guilford, NC	
	Randolph, NC	
	Stokes, NC	
	Yadkin, NC	
3150	Greenville, NC	0.9991
	Pitt, NC	
3160	Greenville-Spartanburg-Anderson, SC	0.9586
	Anderson, SC	
	Cherokee, SC	
	Greenville, SC	
	Pickens, SC	
	Spartanburg, SC	
3180	Hagerstown, MD	1.0018
	Washington, MD	
3200	Hamilton-Middletown, OH	0.9648
	Butler, OH	
3240	Harrisburg-Lebanon-Carlisle, PA	0.9994
	Cumberland, PA	
	Dauphin, PA	
	Lebanon, PA	
	Perry, PA	
3283	Hartford, CT	1.2109
	Hartford, CT	
	Litchfield, CT	
	Middlesex, CT	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Tolland, CT	
3285	Hattiesburg, MS	0.8000
	Forrest, MS	
	Lamar, MS	
3290	Hickory-Morganton-Lenoir, NC	0.9591
	Alexander, NC	
	Burke, NC	
	Caldwell, NC	
	Catawba, NC	
3320	Honolulu, HI	1.2631
	Honolulu, HI	
3350	Houma, LA	0.8609
	Lafourche, LA	
	Terrebonne, LA	
3360	Houston, TX	1.0362
	Chambers, TX	
	Fort Bend, TX	
	Harris, TX	
	Liberty, TX	
	Montgomery, TX	
	Waller, TX	
3400	Huntington-Ashland, WV-KY-OH	1.0515
	Boyd, KY	
	Carter, KY	
	Greenup, KY	
	Lawrence, OH	
	Cabell, WV	
	Wayne, WV	
3440	Huntsville, AL	0.9510
	Limestone, AL	
	Madison, AL	
3480	Indianapolis, IN	1.0420
	Boone, IN	
	Hamilton, IN	
	Hancock, IN	
	Hendricks, IN	
	Johnson, IN	
	Madison, IN	
	Marion, IN	
	Morgan, IN	
	Shelby, IN	
3500	Iowa City, IA	1.0282
	Johnson, IA	
3520	Jackson, MI	0.9725
	Jackson, MI	
3560	Jackson, MS	0.9382
	Hinds, MS	
	Madison, MS	
	Rankin, MS	
3580	Jackson, TN	0.9365
	Madison, TN	
	Chester, TN	
3600	Jacksonville, FL	0.9804
	Clay, FL	
	Duval, FL	
	Nassau, FL	
	St. Johns, FL	
3605	Jacksonville, NC	0.8280
	Onslow, NC	
3610	Jamestown, NY	0.8324
	Chautauqua, NY	
3620	Janesville-Beloit, WI	1.0205
	Rock, WI	
3640	Jersey City, NJ	1.2246
	Hudson, NJ	
3660	Johnson City-Kingsport-Bristol, TN-VA	0.8807
	Carter, TN	
	Hawkins, TN	
	Sullivan, TN	
	Unicoi, TN	
	Washington, TN	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Bristol City, VA	
	Scott, VA	
	Washington, VA	
3680	Johnstown, PA	0.9419
	Cambria, PA	
	Somerset, PA	
3700	Jonesboro, AR	0.8339
	Craighead, AR	
3710	Joplin, MO	0.8675
	Jasper, MO	
	Newton, MO	
3720	Kalamazoo-Battlecreek, MI	1.1130
	Calhoun, MI	
	Kalamazoo, MI	
	Van Buren, MI	
3740	Kankakee, IL	1.05423
	Kankakee, IL	
3760	Kansas City, KS-MO	1.0144
	Johnson, KS	
	Leavenworth, KS	
	Miami, KS	
	Wyandotte, KS	
	Cass, MO	
	Clay, MO	
	Clinton, MO	
	Jackson, MO	
	LaFayette, MO	
	Platte, MO	
	Ray, MO	
3800	Kenosha, WI	1.0233
	Kenosha, WI	
3810	Kileen-Temple, TX	1.0774
	Bell, TX	
	Coryell, TX	
3840	Knoxville, TN	0.8880
	Anderson, TN	
	Blount, TN	
	Loudon, TN	
	Sevier, TN	
	Union, TN	
3850	Kokomo, IN	1.0134
	Howard, IN	
	Tipton, IN	
3870	La Crosse, WI-MN	0.9807
	Houston, MN	
	La Crosse, WI	
3880	Lafayette, LA	0.9040
	Acadia, LA	
	Lafayette, LA	
	St. Landry, LA	
	St. Martin, LA	
3920	Lafayette, IN	0.9406
	Clinton, IN	
	Tippecanoe, IN	
3960	Lake Charles, LA	0.8000
	Calcasieu, LA	
3980	Lakeland-Winter Haven, FL	0.9837
	Polk, FL	
4000	Lancater, PA	0.9858
	Lancaster, PA	
4040	Lansing-East Lansing, MI	1.0577
	Clinton, MI	
	Eaton, MI	
	Ingham, MI	
4080	Laredo, TX	0.8697
	Webb, TX	
4100	Las Cruces, NM	0.9218
	Dona Ana, NM	
4120	Las Vegas, NV-AZ	1.1495
	Mohave, AZ	
	Clarke, NV	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Nye, NV	
4150	Lawrence, KS	0.8720
	Douglas, KS	
4200	Lawton, OK	0.9578
	Comanche, OK	
4243	Lewiston-Auburn, ME	0.9621
	Androscoggin, ME	
4280	Lexington, KY	0.9440
	Bourbon, KY	
	Clark, KY	
	Fayette, KY	
	Jessamine, KY	
	Madison, KY	
	Scott, KY	
	Woodford, KY	
4320	Lima, OH	0.9923
	Allen, OH	
	Auglaize, OH	
4360	Lincoln, NE	1.0249
	Lancaster, NE	
4400	Little Rock-North Little Rock, AR	0.9482
	Faulkner, AR	
	Lonoke, AR	
	Pulaski, AR	
	Saline, AR	
4420	Longview-Marshall, TX	0.9499
	Gregg, TX	
	Harrison, TX	
	Upshur, TX	
4480	Los Angeles-Long Beach, CA	1.2772
	Los Angeles, CA	
4520	Louisville, KY-IN	0.9955
	Clark, IN	
	Floyd, IN	
	Harrison, IN	
	Scott, IN	
	Bullitt, KY	
	Jefferson, KY	
	Oldham, KY	
4600	Lubbock, TX	0.9410
	Lubbock, TX	
4640	Lynchburg, VA	0.9441
	Amherst, VA	
	Bedford, VA	
	Bedford City, VA	
	Campbell, VA	
	Lynchburg City, VA	
4680	Macon, GA	0.9555
	Bibb, GA	
	Houston, GA	
	Jones, GA	
	Peach, GA	
	Twiggs, GA	
4720	Madison, WI	1.0936
	Dane, WI	
4800	Mansfield, OH	0.9252
	Crawford, OH	
	Richland, OH	
4840	Mayaguez, PR	0.5277
	Anasco, PR	
	Cabo Rojo, PR	
	Hormigueros, PR	
	Mayaguez, PR	
	Sabana Grande, PR	
	San German, PR	
4880	McAllen-Edinburg-Mission, TX	0.9120
	Hidalgo, TX	
4890	Medford-Ashland, OR	1.1014
	Jackson, OR	
4900	Melbourne-Titusville-Palm Bay, FL	1.0315
	Brevard, FL	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
4920	Memphis, TN-AR-MS	0.9288
	Crittenden, AR	
	DeSoto, MS	
	Fayette, TN	
	Shelby, TN	
	Tipton, TN	
4940	Merced, CA	1.0270
	Merced, CA	
5000	Miami, FL	1.0710
	Dade, FL	
5015	Middlesex-Somerset-Hunterdon, NJ	1.1792
	Hunterdon, NJ	
	Middlesex, NJ	
	Somerset, NJ	
5080	Milwaukee-Waukesha, WI	1.0399
	Milwaukee, WI	
	Ozaukee, WI	
	Washington, WI	
	Waukesha, WI	
5120	Minneapolis-St. Paul, MN-WI	1.1730
	Anoka, MN	
	Carver, MN	
	Chisago, MN	
	Dakota, MN	
	Hennepin, MN	
	Isanti, MN	
	Ramsey, MN	
	Scott, MN	
	Sherbune, MN	
	Washington, MN	
	Wright, MN	
	Pierce, WI	
	St. Croix, WI	
5140	Missoula, MT	0.9874
	Missoula, MT	
5160	Mobile, AL	0.8691
	Baldwin, AL	
	Mobile, AL	
5170	Modesto, CA	1.1069
	Stanislaus, CA	
5190	Monmouth-Ocean, NJ	1.2008
	Monmouth, NJ	
	Ocean, NJ	
5200	Monroe, LA	0.8939
	Ouachita, LA	
5240	Montgomery, AL	0.8148
	Autauga, AL	
	Elmore, AL	
	Montgomery, AL	
5280	Muncie, IN	1.1679
	Delaware, IN	
5330	Myrtle Beach, SC	0.8986
	Horry, SC	
5345	Naples, FL	1.0286
	Collier, FL	
5360	Nashville, TN	1.0104
	Cheatham, TN	
	Davidson, TN	
	Dickson, TN	
	Robertson, TN	
	Rutherford, TN	
	Sumner, TN	
	Williamson, TN	
	Wilson, TN	
5380	Nassau-Suffolk, NY	1.4834
	Nassau, NY	
	Suffolk, NY	
5483	New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.3093
	Fairfield, CT	
	New Haven, CT	
5523	New London-Norwich, CT	1.2844

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	New London, CT	
5560	New Orleans, LA	0.9897
	Jefferson, LA	
	Orleans, LA	
	Plaquemines, LA	
	St. Bernard, LA	
	St. Charles, LA	
	St. James, LA	
	St. John The Baptist, LA	
	St. Tammany, LA	
5600	New York, NY	1.5599
	Bronx, NY	
	Kings, NY	
	New York, NY	
	Putnam, NY	
	Queens, NY	
	Richmond, NY	
	Rockland, NY	
	Westchester, NY	
5640	Newark, NJ	1.2603
	Essex, NJ	
	Morris, NJ	
	Sussex, NJ	
	Union, NJ	
	Warren, NJ	
5660	Newburgh, NY–PA	1.1549
	Orange, NY	
	Pike, PA	
5720	Norfolk-Virginia Beach-Newport News, VA-NC	0.8956
	Currituck, NC	
	Chesapeake City, VA	
	Gloucester, VA	
	Hampton City, VA	
	James City, VA	
	Isle of Wight, VA	
	Mathews, VA	
	Newport News City, VA	
	Norfolk City, VA	
	Poquoson City, VA	
	Portsmouth City, VA	
	Suffolk City, VA	
	Virginia Beach City, VA	
	Williamsburg City, VA	
	York, VA	
5775	Oakland, CA	1.5953
	Alameda, CA	
	Contra Costa, CA	
5790	Ocala, FL	0.9841
	Marion, FL	
5800	Odessa-Midland, TX	0.9801
	Ector, TX	
	Midland, TX	
5880	Oklahoma City, OK	0.9393
	Canadian, OK	
	Cleveland, OK	
	Logan, OK	
	McClain, OK	
	Oklahoma, OK	
	Pottawatomie, OK	
5910	Olympia, WA	1.1368
	Thurston, WA	
5920	Omaha, NE-IA	1.0192
	Pottawattamie, IA	
	Cass, NE	
	Douglas, NE	
	Sarpy, NE	
	Washington, NE	
5945	Orange County, CA	1.2209
	Orange, CA	
5960	Orlando, FL	1.0232
	Lake, FL	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Orange, FL	
	Osceola, FL	
	Seminole, FL	
5990	Owensboro, KY	0.8687
	Daviess, KY	
6015	Panama City, FL	0.9593
	Bay, FL	
6020	Parkersburg-Marietta, WV-OH	0.8810
	Washington, OH	
	Wood, WV	
6080	Pensacola, FL	0.8705
	Escambia, FL	
	Santa Rosa, FL	
6120	Peoria-Pekin, IL	0.9205
	Peoria, IL	
	Tazewell, IL	
	Woodford, IL	
6160	Philadelphia, PA-NJ	1.1645
	Burlington, NJ	
	Camden, NJ	
	Gloucester, NJ	
	Salem, NJ	
	Bucks, PA	
	Chester, PA	
	Delaware, PA	
	Montgomery, PA	
	Philadelphia, PA	
6200	Phoenix-Mesa, AZ	1.0295
	Maricopa, AZ	
	Pinal, AZ	
6240	Pine Bluff, AR	0.8295
	Jefferson, AR	
6280	Pittsburgh, PA	1.0371
	Allegheny, PA	
	Beaver, PA	
	Butler, PA	
	Fayette, PA	
	Washington, PA	
	Westmoreland, PA	
6323	Pittsfield, MA	1.0954
	Berkshire, MA	
6340	Pocatello, ID	0.9663
	Bannock, ID	
6360	Ponce, PR	0.5757
	Guayanilla, PR	
	Juana Diaz, PR	
	Penuelas, PR	
	Ponce, PR	
	Villalba, PR	
	Yauco, PR	
6403	Portland, ME	1.0379
	Cumberland, ME	
	Sagadahoc, ME	
	York, ME	
6440	Portland-Vancouver, OR-WA	1.1616
	Clackamas, OR	
	Columbia, OR	
	Multnomah, OR	
	Washington, OR	
	Yamhill, OR	
	Clark, WA	
6483	Providence-Warwick-Pawtucket, RI	1.1567
	Bristol, RI	
	Kent, RI	
	Newport, RI	
	Providence, RI	
	Washington, RI	
6520	Provo-Orem, UT	1.0678
	Utah, UT	
6560	Pueblo, CO	0.9386
	Pueblo, CO	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
6580	Punta Gorda, FL	1.0235
	Charlotte, FL	
6600	Racine, WI	0.9845
6640	Raleigh-Durham-Chapel Hill, NC	1.0270
	Chatham, NC	
	Durham, NC	
	Franklin, NC	
	Johnston, NC	
	Orange, NC	
	Wake, NC	
6660	Rapid City, SD	0.9439
	Pennington, SD	
6680	Reading, PA	0.9744
	Berks, PA	
6690	Redding, CA	1.2419
	Shasta, CA	
6720	Reno, NV	1.1233
	Washoe, NV	
6740	Richland-Kennewick-Pasco, WA	1.2202
	Benton, WA	
	Franklin, WA	
6760	Richmond-Petersburg, VA	1.0239
	Charles City County, VA	
	Chesterfield, VA	
	Colonial Heights City, VA	
	Dinwiddie, VA	
	Goochland, VA	
	Hanover, VA	
	Henrico, VA	
	Hopewell City, VA	
	New Kent, VA	
	Petersburg City, VA	
	Powhatan, VA	
	Prince George, VA	
	Richmond City, VA	
6780	Riverside-San Bernardino, CA	1.1966
	Riverside, CA	
	San Bernardino, CA	
6800	Roanoke, VA	0.9316
	Botetourt, VA	
	Roanoke, VA	
	Roanoke City, VA	
	Salem City, VA	
6820	Rochester, MN	1.2047
	Olmsted, MN	
6840	Rochester, NY	0.9776
	Genesee, NY	
	Livingston, NY	
	Monroe, NY	
	Ontario, NY	
	Orleans, NY	
	Wayne, NY	
6880	Rockford, IL	0.9390
	Boone, IL	
	Ogle, IL	
	Winnebago, IL	
6895	Rocky Mount, NC	0.9422
	Edgecombe, NC	
	Nash, NC	
6920	Sacramento, CA	1.2723
	El Dorado, CA	
	Placer, CA	
	Sacramento, CA	
6960	Saginaw-Bay City-Midland, MI	1.0195
	Bay, MI	
	Midland, MI	
	Saginaw, MI	
6980	St. Cloud, MN	1.0664
	Benton, MN	
	Stearns, MN	
7000	St. Joseph, MO	0.9658

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Andrew, MO	
	Buchanan, MO	
7040	St. Louis, MO–IL	0.9635
	Franklin, MO	
	Jefferson, MO	
	Lincoln, MO	
	St. Charles, MO	
	St. Louis, MO	
	St. Louis City, MO	
	Warren, MO	
	Clinton, IL	
	Jersey, IL	
	Madison, IL	
	Monroe, IL	
	St. Clair, IL	
7080	Salem, OR	1.0848
	Marion, OR	
	Polk, OR	
7120	Salinas, CA	1.5441
	Monterey, CA	
7160	Salt Lake City-Ogden, UT	1.0442
	Davis, UT	
	Salt Lake, UT	
	Weber, UT	
7200	San Angelo, TX	0.8606
	Tom Green, TX	
7240	San Antonio, TX	0.9135
	Bexar, TX	
	Comal, TX	
	Guadalupe, TX	
	Wilson, TX	
7320	San Diego, CA	1.2547
	San Diego, CA	
7360	San Francisco, CA	1.5072
	Marin, CA	
	San Francisco, CA	
	San Mateo, CA	
7400	San Jose, CA	1.4536
	Santa Clara, CA	
7440	San Juan-Bayamon, PR	0.5394
	Aguas Buenas, PR	
	Barceloneta, PR	
	Bayamon, PR	
	Canovanas, PR	
	Carolina, PR	
	Catano, PR	
	Ceiba, PR	
	Comerio, PR	
	Corozal, PR	
	Dorado, PR	
	Fajardo, PR	
	Florida, PR	
	Guaynabo, PR	
	Humacao, PR	
	Juncos, PR	
	Los Piedras, PR	
	Loiza, PR	
	Luguillo, PR	
	Manati, PR	
	Morovis, PR	
	Naguabo, PR	
	Naranjito, PR	
	Rio Grande, PR	
	San Juan, PR	
	Toa Alta, PR	
	Toa Baja, PR	
	Trujillo Alto, PR	
	Vega Alta, PR	
	Vega Baja, PR	
	Yabucoa, PR.	
7460	San Luis Obispo-Atascadero-Paso Robles, CA	1.1364

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	San Luis Obispo, CA	
7480	Santa Barbara-Santa Maria-Lompoc, CA	1.1283
	Santa Barbara, CA	
7485	Santa Cruz-Watsonville, CA	1.4949
	Santa Cruz, CA	
7490	Santa Fe, NM	1.1219
	Los Alamos, NM	
	Santa Fe, NM	
7500	Santa Rosa, CA	1.3465
	Sonoma, CA	
7510	Sarasota-Bradenton, FL	1.0444
	Manatee, FL	
	Sarasota, FL	
7520	Savannah, GA	1.0325
	Bryan, GA	
	Chatham, GA	
	Effingham, GA	
7560	Scranton-Wilkes-Barre-Hazleton, PA	0.8966
	Columbia, PA	
	Lackawanna, PA	
	Luzerne, PA	
	Wyoming, PA	
7600	Seattle-Bellevue-Everett, WA	1.1708
	Island, WA	
	King, WA	
	Snohomish, WA	
7610	Sharon, PA	0.8441
	Mercer, PA	
7620	Sheboygan, WI	0.8921
	Sheboygan, WI	
7640	Sherman-Denison, TX	0.9257
	Grayson, TX	
7680	Shreveport-Bossier City, LA	0.9316
	Bossier, LA	
	Caddo, LA	
	Webster, LA	
7720	Sioux City, IA–NE	0.9021
	Woodbury, IA	
	Dakota, NE	
7760	Sioux Falls, SD	0.9359
	Lincoln, SD	
	Minnehaha, SD	
7800	South Bend, IN	1.0647
	St. Joseph, IN	
7840	Spokane, WA	1.1193
	Spokane, WA	
7880	Springfield, IL	0.9247
	Menard, IL	
	Sangamon, IL	
7920	Springfield, MO	0.9037
	Christian, MO	
	Greene, MO	
	Webster, MO	
8003	Springfield, MA	1.1325
	Hampden, MA	
	Hampshire, MA	
8050	State College, PA	0.9623
	Centre, PA	
8080	Steubenville-Weirton, OH-WV	0.9101
	Jefferson, OH	
	Brooke, WV	
	Hancock, WV	
8120	Stockton-Lodi, CA	1.1317
	San Joaquin, CA	
8140	Sumter, SC	0.8806
	Sumter, SC	
8160	Syracuse, NY	1.0167
	Cayuga, NY	
	Madison, NY	
	Onondaga, NY	
	Oswego, NY	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
8200	Tacoma, WA	1.2312
	Pierce, WA	
8240	Tallahassee, FL	0.9098
	Gadsden, FL	
	Leon, FL	
8280	Tampa-St. Petersburg-Clearwater, FL	0.9563
	Hernando, FL	
	Hillsborough, FL	
	Pasco, FL	
	Pinellas, FL	
8320	Terre Haute, IN	0.8841
	Clay, IN	
	Vermillion, IN	
	Vigo, IN	
8360	Texarkana, AR-Texarkana, TX	0.8904
	Miller, AR	
	Bowie, TX	
8400	Toledo, OH	1.0468
	Fulton, OH	
	Lucas, OH	
	Wood, OH	
8440	Topeka, KS	0.9707
	Shawnee, KS	
8480	Trenton, NJ	1.0793
	Mercer, NJ	
8520	Tucson, AZ	0.9363
	Pima, AZ	
8560	Tulsa, OK	0.9001
	Creek, OK	
	Osage, OK	
	Rogers, OK	
	Tulsa, OK	
	Wagoner, OK	
8600	Tuscaloosa, AL	0.8586
	Tuscaloosa, AL	
8640	Tyler, TX	1.0013
	Smith, TX	
8680	Utica-Rome, NY	0.9114
	Herkimer, NY	
	Oneida, NY	
8720	Vallejo-Fairfield-Napa, CA	1.3679
	Napa, CA	
	Solano, CA	
8735	Ventura, CA	1.1744
	Ventura, CA	
8750	Victoria, TX	0.8682
	Victoria, TX	
8760	Vineland-Millville-Bridgeton, NJ	1.1181
	Cumberland, NJ	
8780	Visalia-Tulare-Porterville, CA	1.0169
	Tulare, CA	
8800	Waco, TX	0.8852
	McLennan, TX	
8840	Washington, DC-MD-VA-WV	1.1451
	District of Columbia, DC	
	Calvert, MD	
	Charles, MD	
	Frederick, MD	
	Montgomery, MD	
	Prince Georges, MD	
	Alexandria City, VA	
	Arlington, VA	
	Clarke, VA	
	Culpeper, VA	
	Fairfax, VA	
	Fairfax City, VA	
	Falls Church City, VA	
	Fauquier, VA	
	Fredericksburg City, VA	
	King George, VA	
	Loudoun, VA	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Manassas City, VA	
	Manassas Park City, VA	
	Prince William, VA	
	Spotsylvania, VA	
	Stafford, VA	
	Warren, VA	
	Berkeley, WV	
	Jefferson, WV	
8920	Waterloo-Cedar Falls, IA	0.8948
	Black Hawk, IA	
8940	Wausau, WI	1.0028
	Marathon, WI	
8960	West Palm Beach-Boca Raton, FL	1.0309
	Palm Beach, FL	
9000	Wheeling, WV-OH	0.8234
	Belmont, OH	
	Marshall, WV	
	Ohio, WV	
9040	Wichita, KS	1.0162
	Butler, KS	
	Harvey, KS	
	Sedgwick, KS	
9080	Wichita Falls, TX	0.8164
	Archer, TX	
	Wichita, TX	
9140	Williamsport, PA	0.8935
	Lycoming, PA	
9160	Wilmington-Newark, DE-MD	1.1915
	New Castle, DE	
	Cecil, MD	
9200	Wilmington, NC	1.0011
	Brunswick, NC	
	New Hanover, NC	
9260	Yakima, WA	1.0548
	Yakima, WA	
9270	Yolo, CA	1.0859
	Yolo, CA	
9280	York, PA	0.9864
	York, PA	
9320	Youngstown-Warren, OH	1.0161
	Columbiana, OH	
	Mahoning, OH	
	Trumbull, OH	
9340	Yuba City, CA	1.1399
	Sutter, CA	
	Yuba, CA	
9360	Yuma, AZ	1.0146
	Yuma, AZ	

[1] This column lists each MSA area name and each county, or county equivalent, in the MSA area. Counties not listed in this Table are considered to be Rural Areas. Wage Index values for these areas are found in Table B.

[2] Wage index values are based on FY 1997 hospital cost report data before reclassification. This wage index is further adjusted. Wage index values greater than 0.8 are subject to a budget-neutrality adjustment of 1.064726. Wage index values below 0.8 are adjusted to be the greater of a 15-percent increase, subject to a maximum wage index value of 0.8, or an adjustment by multiplying the hospital wage index value for a given area by the budget-neutrality adjustment. We have completed all of these adjustments and included them in the wage index values reflected in this table.

TABLE B.—WAGE INDEX FOR RURAL AREAS

MSA Code No.	Nonurban area	Wage index [3]
9901	Alabama	0.8000
9902	Alaska	1.3194
9903	Arizona	0.8855
9904	Arkansas	0.8000
9905	California	1.0499
9906	Colorado	0.9548
9907	Connecticut	1.2473
9908	Delaware	0.9661
9910	Florida	0.9496
9911	Georgia	0.8868

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

MSA Code No.	Nonurban area	Wage index [3]
9912	Hawaii	1.1775
9913	Idaho	0.9240
9914	Illinois	0.8688
9915	Indiana	0.9159
9916	Iowa	0.8550
9917	Kansas	0.8097
9918	Kentucky	0.8444
9919	Louisiana	0.8178
9920	Maine	0.9333
9921	Maryland	0.9211
9922	Massachusetts	1.1929
9923	Michigan	0.9569
9924	Minnesota	0.9456
9925	Mississippi	0.8000
9926	Missouri	0.8196
9927	Montana	0.9250
9928	Nebraska	0.8634
9929	Nevada	0.9830
9930	New Hampshire	1.0482
9931	New Jersey [4]	.....
9932	New Mexico	0.9047
9933	New York	0.9049
9934	North Carolina	0.8987
9935	North Dakota	0.8215
9936	Ohio	0.9231
9937	Oklahoma	0.8000
9938	Oregon	1.0788
9939	Pennsylvania	0.9133
9940	Puerto Rico	0.4904
9941	Rhode Island [4]	.....
9942	South Carolina	0.8912
9943	South Dakota	0.8060
9944	Tennessee	0.8345
9945	Texas	0.8000
9946	Utah	0.9622
9947	Vermont	0.9874
9948	Virgin Islands	0.7252
9949	Virginia	0.8719
9950	Washington	1.1109
9951	West Virginia	0.8764
9952	Wisconsin	0.9455
9953	Wyoming	0.9388
9965	Guam	1.0233

[3] Wage index values are based on FY 1997 hospital cost report data before reclassification. This wage index is further adjusted. Wage index values greater than 0.8 are subject to a budget-neutrality adjustment of 1.064726. Wage index values below 0.8 are adjusted to be the greater of a 15-percent increase, subject to a maximum wage index value of 0.8, or an adjustment by multiplying the hospital wage index value for a given area by the budget-neutrality adjustment. We have completed all of these adjustments and have included them in the wage index values reflected in this table.

[4] All counties within the State are classified as urban.

II. Regulatory Impact Statement

A. Overall Impact

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning & Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96–354). In this notice, we identified an impact on hospices as a result of changes in the way we compute the hospice wage index. The change in the methodology for computing the wage index was determined through a negotiated rulemaking committee and implemented in the August 8, 1997 final rule (62 FR 42860). We recognize that the BIPA adjusted hospice payments upward by 5 percent; however, we did not do a separate analysis of the impact of this payment adjustment. We used the new rates adjusted by the BIPA when estimating the payments to be made under the new wage index and when calculating the budget-neutrality adjustment factor. Overall, we believe the changes included in this notice to be insignificant.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We have determined that this notice is not an economically significant rule under this Executive Order.

The RFA requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies.

Most hospital and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. For purposes of the RFA, most hospices are small entities. Approximately 73 percent of Medicare certified hospices are identified as voluntary, government, or other agencies, and, therefore, are considered small entities. Because the National Hospice and Palliative Care Organization estimates that approximately 70 percent of hospice patients are Medicare beneficiaries, we have not considered other sources of revenue in this analysis.

As discussed below, the estimated decreases in payment to hospices overall are very slight. The effects of this notice indicate that on a regional basis, urban hospices in the New England, Middle Atlantic, South Atlantic, East South Central and Pacific regions will experience a slight decrease in payments. The payment decreases range from a minimum of 0.2 percent (East South Central region) to a maximum of 0.7 percent (New England region). The mid-range of the decrease in estimated payments for urban hospices falls within the Middle Atlantic urban region with a 0.4 percent decrease. Rural hospices in the New England and Middle Atlantic regions will also experience a slight decrease in payments, 0.9 and 0.3 percent respectively. Therefore, based on an analysis of the wage index changes for FY 2002, hospices in the urban and rural areas of the New England and Middle Atlantic regions will be impacted the most. This payment decrease to these small entities indicates that this notice will have a significant impact on a substantial number of small entities. However, nationwide, hospices will receive an overall slight increase in estimated payments. We estimate that total hospice payments will increase by 0.5 percent, or $13,632,000. Urban hospices will receive an increase in estimated payments of 0.3 percent and rural hospices will receive an increase in estimated payments of 1.3 percent.

We would like to emphasize that the methodology for the hospice wage index was previously determined by consensus through a negotiated rulemaking committee that included representatives of national hospice associations; rural, urban, large and small hospices; multi-site hospices; and consumer groups. Based on the options considered, the committee agreed on the methodology described in the committee statement, and adopted it into regulation in the August 8, 1997 final rule. The committee also agreed that this was favorable for the hospice community as well as for beneficiaries. Therefore, we believe that mitigating any negative effects on small entities has been taken into consideration.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside an MSA and has fewer than 100 beds.

Section 202 of the Unfunded Mandate Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, in any 1 year of $110 million or more. This notice has no consequential effect on State, local, or tribal governments. We believe the private sector costs of this notice fall below the threshold as well.

We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism, and have determined that this notice will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

B. Anticipated Effects

We have compared estimated payments using the FY 1983 hospice wage index to estimated payments using the FY 2002 wage index and determined the current hospice rates to be budget-neutral. This impact analysis compares hospice payments using the FY 2001 hospice wage index to the estimated payments using the FY 2002 wage index. The data used in developing the quantitative analysis for this notice were obtained from the March 2001 update of the national claims history file of all bills submitted during FY 2000. We deleted bills from hospices that have since closed.

Table C demonstrates the results of our analysis. In Column 2 of Table C, we indicate the number of routine home care days that were included in our analysis, although the analysis was performed on all types of hospice care. Column 3 of Table C indicates payments that were made using the FY 2001 wage index. Column 4 of Table C is based on FY 2000 claims and estimates payments to be made to hospices using the FY 2002 wage index. The final column, which compares Columns 3 and 4, shows the percent change in estimated hospice payments made based on the category of the hospice.

Table C categorizes hospices by various geographic and provider characteristics. The first row displays the results of the impact analysis for all Medicare certified hospices. The second and third rows of the table categorize hospices according to their geographic location (urban and rural). Our analysis indicated that there are 1,319 hospices located in urban areas and 824 hospices located in rural areas. The next two groupings in the table indicate the number of hospices by census region, also broken down by urban and rural hospices. The sixth grouping shows the impact on hospices based on the size of the hospice's program. We determined that the majority of hospice payments are made at the routine home care rate. Therefore, we based the size of each individual hospice's program on the number of routine home care days provided in 2000. The next grouping shows the impact on hospices by type of ownership. The final grouping shows the impact on hospices defined by whether they are provider-based or freestanding.

The results of our analysis shows that the greatest increases in payment are for urban areas in the East North Central and West South Central Regions, with a 1.8 percent and 1.9 percent increase, respectively. The greatest decreases in payment are for urban and rural areas in the New England and Middle Atlantic regions.

The breakdown by size, type of ownership, and facility base showed an increase in payments to all hospice programs. Small hospice programs showed significant increases of about 5 percent, while larger programs experienced only a negligible increase. In terms of hospice base, freestanding hospices showed the greatest estimated payment increase while hospices affiliated with home health agencies and skilled nursing facilities showed the smallest amount of payment increase.

TABLE C.—IMPACT OF HOSPICE WAGE INDEX CHANGE

	Number of hospices (1)	Number of routine home care days in thousands (2)	Payments using FY 2001 wage index in thousands (3)	Estimated payments using FY 2002 wage index in thousands (4)	Percent change in hospice payments (5)
(By Geographic Location)					
All Hospices	2,143	23,765	2,995,014	3,008,646	0.5
Urban Hospices	1,319	20,078	2,616,198	2,624,874	0.3
Rural Hospices	824	3,687	378,816	383,772	1.3
By Region—Urban:					
New England	89	662	98,780	98,045	-0.7
Middle Atlantic	169	2,302	321,614	320,170	-0.4
South Atlantic	184	4,402	618,316	616,008	-0.4
East North Central	225	3,246	408,377	415,850	1.8
East South Central	95	1,312	148,758	148,457	-0.2
West North Central	94	1,220	139,067	139,550	0.3
West South Central	178	2,752	324,985	331,103	1.9
Mountain	87	1,358	186,025	187,093	0.6
Pacific	171	2,553	350,437	348,589	-0.5
Puerto Rico	27	270	19,840	20,010	0.9
By Region—Rural:					
New England	26	67	7,825	7,752	-0.9
Middle Atlantic	35	182	19,862	19,798	-0.3
South Atlantic	122	763	78,343	80,149	2.3
East North Central	138	595	61,827	62,535	1.1
East South Central	82	649	63,742	64,465	1.1
West North Central	178	439	45,187	45,577	0.9
West South Central	98	479	45,051	45,793	1.6
Mountain	86	240	25,762	26,223	1.8
Pacific	56	251	29,687	29,946	0.9
Puerto Rico	3	22	1,530	1,533	0.2
(Skilled)					
Routine Home Care Days:					
0–1,754 Days	386	347	37,277	39,056	4.8
1,754–4,373 Days	480	1,429	154,353	156,256	1.2
4,373–9,681 Days	540	3,600	412,953	414,477	0.4
9,681 + Days	736	18,044	2,348,755	2,357,398	0.4
Type of Ownership:					
Voluntary	1,336	15,108	1,904,983	1,913,143	0.4
Proprietary	590	7,958	1,011,373	1,016,757	0.5
Government	183	594	66,782	66,840	0.1
Other	34	105	11,877	11,906	0.2
Hospice Base:					
Freestanding	910	14,401	1,826,242	1,840,289	0.8
Home Health Agency	680	5,446	688,646	687,239	-0.2
Hospital	536	3,789	460,963	461,980	0.2
Skilled Nursing Facility	17	129	19,163	19,138	-0.1

C. Conclusion

We have determined, and we certify, that this rule will have a significant economic impact on a substantial number of small entities. However, we are not preparing analyses for either the RFA or Section 1102(b) of the Act because the methodology for the hospice wage index was previously determined by consensus through a negotiated rulemaking committee. Based on the options considered, the committee agreed on the methodology described in the committee statement, and adopted it into regulation in the August 8, 1997 final rule. The committee, which included representatives of national hospice associates, rural, urban, large and small hospice, multi-site hospice, and consumer groups, agreed that this was favorable for the hospice community as well as for beneficiaries. Therefore, we believe that mitigating any negative effects on small entities has been taken into consideration.

OMB Review

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget reviewed this regulation.

Authority: Section 1814(i) of the Social Security Act (42 U.S.C. 1395f (i)(1))(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 10, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: August 31, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–23820 Filed 9–20–01; 9:51 am]

BILLING CODE 4210–01–P

Federal Register

Thursday,
September 27, 2001

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AH79

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service or we) prescribes final late-season frameworks from which States may select season dates, limits, and other options for the 2001–02 migratory bird hunting seasons. These late seasons include most waterfowl seasons, the earliest of which commences on or about October 1, 2001. The effect of this final rule is to facilitate the States' selection of hunting seasons and to further the annual establishment of the late-season migratory bird hunting regulations.

DATES: This rule takes effect on September 27, 2001.

ADDRESSES: States should send their season selections to: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jonathan Andrew, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2001

On April 30, 2001, we published in the **Federal Register** (66 FR 21298) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 14, 2001, we published in the **Federal Register** (66 FR 32297) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 2001–02 duck hunting season. The June 14 supplement also provided detailed information on the 2001–02 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

On June 20–21, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2001–02 hunting regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it related to the development and selection of the 2001–02 duck season regulatory packages. On July 24, we published in the **Federal Register** (66 FR 38494) a supplemental proposed rule specifically dealing with the proposed frameworks for these early-season regulations and the final regulatory alternatives for the 2001–02 duck hunting season. In the August 21, 2001, **Federal Register** (66 FR 44010), we published final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected 2001–02 early-season hunting dates, hours, areas, and limits. Finally, on August 29, 2001, we published a final rule in the **Federal Register** (66 FR 45730) amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

On August 1–2, 2001, we held meetings, as announced in the April 30 and June 14 **Federal Register**s, to review the status of waterfowl. On August 28, 2001, we published in the **Federal Register** (66 FR 45516) the proposed frameworks for the 2001–02 late-season migratory bird hunting regulations. This document establishes final frameworks for late-season migratory bird hunting regulations for the 2001–02 season. We will publish State selections in the **Federal Register** as amendments to §§ 20.101 through 20.107, and § 20.109 of title 50 CFR part 20.

Population Status and Harvest

A brief summary of information on the status and harvest of waterfowl excerpted from various reports was included in the August 28 supplemental proposed rule. For more detailed information on methodologies and results, complete copies of the various reports are available at the address indicated under the caption **ADDRESSES** or from our website at http://migratorybirds.fws.gov.

Review of Public Comments and Flyway Council Recommendations

The preliminary proposed rulemaking, which appeared in the April 30 **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the June 14 **Federal Register**, defined the public comment period for the proposed regulatory alternatives for the 2001–02 duck hunting season. The public comment period for the proposed regulatory alternatives ended July 6, 2001, and the public comment period for late-season issues ended on September 7, 2001. Written comments relating to the proposed late-season frameworks are summarized and discussed below in the order used in the April 30 proposed rule. Only the numbered items pertaining to late seasons for which written comments were received are included. Consequently, the issues do not follow in direct numerical or alphabetical order. We also received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

General

Written Comments: The Wildlife Management Institute supported the proposed late season migratory bird hunting regulations.

The Biodiversity Legal Foundation (BLF), The Fund for Animals (FFA), the Humane Society of the United States (HSUS), and other interests, in a joint letter, questioned the legality and substantive usefulness of the shortened public comment periods and requested that, at a minimum, the Service should provide a 30-day comment period on late season frameworks. Further, they expressed concern that the general public was not well represented in the regulations-development process and that the entire Flyway and framework process is seriously flawed and largely meaningless while allowing the Service to claim it is permitting public involvement in the process. They also questioned the legal ability of the States to establish their individual State hunting regulations before the Service

publishes final frameworks. Lastly, they question the Service's claims that the environmental impacts of migratory bird hunting were evaluated in the 1988 Supplemental Environmental Impact Statement (SEIS 88). They claim SEIS 88 only evaluated the impacts associated with the framework process and did not provide a comprehensive analysis of the environmental impacts of migratory bird hunting.

Service Response: As we have stated previously, when the preliminary proposed rulemaking document was published in the April 30, 2001, **Federal Register**, we announced the comment periods for the early-season and late-season proposals and gave notice that the process of promulgating hunting regulations ''must, by its nature, operate under time constraints.'' Ample time must be given to gather and interpret survey data, consider recommendations and develop proposals, and to receive public comment. Scheduled dates are set to give the greatest possible opportunity for public input, while also meeting the legal obligations of the Administrative Procedures Act. We are obligated to, and do give serious consideration to all information received as public comment. We have long recognized the problems associated with the length of time necessary to establish the frameworks, and in conjunction with States, Flyway Councils, and the public, continue to seek new ways to streamline and improve the process.

Regarding the question of the legal ability of the States to establish their individual State hunting regulations before the Service publishes final frameworks, we do not have the authority or inclination to mandate the State process for establishing their annual migratory bird hunting regulations. Because each State has its own regulatory establishment process, time is of the essence once we propose frameworks. States waiting for the final frameworks before beginning their regulatory process would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. The States do not ''violate'' the Migratory Bird Treaty Act or Service regulations or policies by utilizing this type of process. All States understand that their regulations, based on our proposed frameworks, are subject to change pending the issuance of the final frameworks.

We disagree with the assertion that SEIS 88 only evaluated the impacts associated with the framework process and did not provide a comprehensive analysis of the environmental impacts of migratory bird hunting. SEIS 88 provides a programmatic analysis of the general effects of hunting regulations on migratory birds. Further, we annually assess populations status, harvest rates, harvest, and survivability of migratory game birds to determine the year-specific hunting regulations. This assessment is annually covered in an Environmental Assessment (EA).

Our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Having taken into account the zones of temperature and the distribution, abundance, economic value, breeding habits and times and lines of flight of migratory birds, we believe that the hunting seasons provided herein are protective of migratory bird populations and long-term population goals and there is no evidence to suggest the frameworks provided are not appropriate.

We plan to initiate public scoping for the preparation of a supplemental programmatic EIS in the spring of 2002. The supplemental EIS will update the current EIS and will address the cumulative impacts of the issuance of annual hunting regulations permitting the sport hunting of migratory birds.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

B. Regulatory Alternatives

Council Recommendations: The Atlantic, Mississippi, Central, and Pacific Flyway Councils recommended adoption of the ''liberal'' regulations package for duck hunting seasons in 2001–02.

Service Response: The original Adaptive Harvest Management (AHM) protocol was based solely on the dynamics of midcontinent mallards, but efforts to account for eastern and western mallard stocks are progressing. For the 2001 hunting season, we recommend the consideration of a regulatory alternative for the Atlantic Flyway that depends exclusively on the status of eastern mallards. This arrangement should remain provisional, however, until the management implications of this approach are better understood. The recommended regulatory alternative for the western three flyways should continue to depend exclusively on the status of midcontinent mallards. The set of regulatory alternatives for this year, including specification of season lengths, bag limits, and framework dates, was finalized in the July 24 **Federal Register**, with the finalization of the 2001–02 regulatory alternatives. For the 2001–02 hunting season, we will utilize the ''liberal'' regulatory alternative (as described in the July 24 **Federal Register**) for all Flyways, based on 8.7 million mallards, and 2.7 million ponds in Prairie Canada, and 1.0 million eastern mallards.

D. Special Seasons/Species Management

i. Black Ducks

Council Recommendations: The Atlantic Flyway Council recommended allowing States to increase the daily bag limit on black ducks to 2 per day for 10 consecutive hunting days, provided the black duck season is closed for an equivalent number of days. During the remainder of the season, the black duck daily bag limit would be 1 bird per day.

Written Comments: The Massachusetts Division of Fisheries and Wildlife expressed disappointment in the Service's decision not to allow an option for a daily bag limit of two black ducks for 10 days. They urged reconsideration of the option.

The Wildlife Management Institute agreed with the Service's position on the importance of an international harvest strategy for black ducks and urged its completion.

Service Response: We remain concerned about the current status of black duck populations and believe the best approach is to focus on the International Harvest strategy that has not yet been completed. We encourage the Atlantic and Mississippi Flyway Councils to work cooperatively with the Service and Canada to develop and implement an international harvest strategy as soon as possible so that recommendations such as this may be evaluated in a broader context. In the absence of this strategy, significant changes in harvest regulations likely would complicate negotiations with Canada. Further, we are concerned that the proposed changes might increase harvest. We believe that the current level of harvest reduction on black ducks, achieved since the 1983 EA, must be maintained.

ii. Canvasbacks

Council Recommendations: The Atlantic Flyway Council recommended that the Canvasback Harvest Strategy be modified to allow for a limited canvasback hunting season of 20 days in the Atlantic and Mississippi Flyways, 25 days in the Central Flyway, and 39 days in the Pacific Flyway during the 2001–02 season, with a daily bag limit of one bird per day. States can select these days during any time period within their regular duck season.

The Mississippi and Pacific Flyway Councils recommended an open canvasback season with a 1-bird daily bag limit for the entire duck season in all four flyways for the 2001–02 season.

The Central Flyway Council recommended modifying the current strategy and recommended two options for individual State selections. First, allow a within-season closure for canvasbacks during the regular duck hunting season. Season length (daily bag of 1, either sex) would be determined by the AHM regulatory alternative when the harvest predicted by the canvasback model is less than the allowable harvest. For the 2001–2002 duck hunting season, the season length for canvasbacks would be 39 days in the Central Flyway, 30 days in the Atlantic and Mississippi Flyways, and 60 days in the Pacific Flyway. States would be allowed to select days during any time period of the regular duck hunting season within established criteria for zones and splits. Second, offer an aggregate daily bag of 1 canvasback or 1 redhead for the entire length of the duck hunting season.

Service Response: Since 1994, the Service has followed a canvasback harvest strategy such that, if population status and production are sufficient to permit a harvest of one canvasback per day nationwide for the entire length of the regular duck season, while attaining a spring population objective of 500,000 birds, the season on canvasbacks should be opened. Otherwise, the season on canvasbacks should be closed nationwide. This spring, the estimate of canvasback abundance was 580,000 birds and the number of ponds in Prairie Canada in May (2.7 million) was 20% below the long-term average. The size of the spring population, together with natural mortality and below-average expected production due to the relatively dry conditions, is insufficient to offset expected mortality associated with a canvasback season lasting the entire length of the ''liberal'' regulatory alternative and still attain the population objective of 500,000 canvasbacks in the spring of 2002.

We continue to support the harvest strategy and the model adopted in 1994. However, despite reduced numbers and below-average production forecast this year, we believe there is still some opportunity to allow a limited harvest this fall without compromising the population's ability to reach 500,000 canvasbacks next spring. Thus, we will allow a very restrictive, shortened canvasback season for 2001–02. In the Atlantic and Mississippi Flyways, the season length would be 20 days, in the Central Flyway, 25 days, and in the Pacific Flyway, 38 days. The days for this limited season must be used consecutively. Our objective is to provide some hunting opportunity while still maintaining the spring population above the 500,000 objective level. Over the next year, we are willing to discuss the possibility of revising the strategy. Any proposed changes should have broad-based support and reflect the interests of all stakeholders. However, we emphasize that discontent with the canvasback strategy this year is symptomatic of difficulties associated with the larger issue of multi-stock management in the existing AHM framework. For example, how should hunting seasons be designed to accommodate species' varying abilities to support harvest, when all species are subjected to a common sport harvest? We urge the Flyway Councils to begin internal discussions toward a strategic, long-term view regarding approaches to this and other critical harvest-management issues. Such discussions, complemented by ongoing work by the AHM working group, will be useful as we begin the development of a new Environmental Impact Statement for the sport hunting of migratory birds.

Due to the relative lateness of this development, the generally earlier opening of duck seasons in Alaska (September 1), and the very low anticipated level of harvest in Alaska, we have exempted Alaska from the shorter season length. However, we believe that Alaska should fully engage in any review of the harvest strategy and remain a part of the overall strategy for this species.

iii. Pintails

Council Recommendations: All four Flyway Councils recommended a daily bag limit of one pintail in the 2001–02 hunting season as prescribed by the Interim Pintail Harvest Strategy.

Service Response: We will continue use of the interim harvest strategy for a fifth year. Considering the current status of the population (3.3 million breeding birds) and the expected recruitment rate (1.01), the strategy prescribes a bag limit of 1 pintail for all Flyways under the ''liberal'' alternative. Further, we propose that the interim strategy be revised for future years by adjusting the equations used to predict pintail harvest to more accurately reflect realized harvest based on the experience gained during the past 4 years. The proposed method of adjustment, as well as a brief review of the first 4 years of interim strategy, will be provided to the Flyway Council Technical Sections for their review and comment. The interim strategy would be used until the development and adoption of a direct methodology for incorporation of pintails into the formal AHM process. We believe that such an action may be possible by the 2002–03 hunting season, but several issues remain to be resolved as described in this year's AHM report. Recognizing that some of these issues may not be resolved by next year, we believe that adjustment to the existing interim strategy is a prudent step, and intend to employ the interim strategy until formal incorporation of pintail harvest into the existing AHM process is accomplished.

iv. Scaup

Council Recommendations: The Atlantic, Mississippi, and Central Flyway Councils recommended a daily bag limit of three scaup for the 2001–02 hunting season. The Pacific Flyway Council recommended a daily bag limit of four scaup in the Pacific Flyway for the 2001–02 hunting season.

Service Response: In 1999, we restricted the scaup bag limit to three in the Atlantic, Mississippi, and Central Flyways and four in the Pacific Flyway. It is still too early to judge the effects of the harvest restriction with only 2 years' data. This year, we will continue use of the restrictions put in place 2 years ago, and note that last year, the lesser scaup immature/adult ratio, a measure of annual production, was the lowest on record. We remain concerned about scaup status and ask the Flyway Councils to continue to work with us to develop a strategy to guide scaup harvest management.

4. Canada Geese

Council Recommendations: The Atlantic Flyway Council made a number of recommendations regarding Canada geese. For Atlantic Population (AP) Canada geese, the Council recommended expansion of regular seasons to move toward a 10 percent harvest rate on adult AP geese over the 2001–2002 season. This would allow for a 30-day season with a 2-bird daily bag limit in AP areas of New York, New Jersey, Pennsylvania, and New England

and for 30-day seasons with a 1-bird daily limit in AP areas of Maryland, Delaware, and Virginia except for Back Bay. The regular season would remain closed in Back Bay, Virginia, and the Northeast Hunt Unit in North Carolina. Recommended framework dates in New York, New Jersey, Pennsylvania, and New England would be the last Saturday in October to January 20; while in Maryland, Delaware and Virginia, they would be November 15 to January 20.

In North Carolina, the Council recommended allowing modification of the boundary of the Northeast Hunt Unit and that North Carolina be allowed to select a 50-day season with a 2-bird daily bag limit with framework dates of October 1 to December 31 in its Southern James Bay Population (SJBP) zone. In North Atlantic Population (NAP) hunt areas, the Council recommended a 45-day season with a 2-bird daily bag limit between October 1 and January 20.

For resident populations, the Council recommended allowing regular seasons designed to maximize harvest of Resident Population (RP) Canada geese in designated areas of the Flyway beginning in 2001. The Council defined designated areas as accounting for no more than 10 percent of migrant geese (AP, NAP, SJBP) band recoveries during 1950–1999 in any State, and collectively accounting for less than 5 percent of all Flyway recoveries of any migrant population. Regular seasons in designated RP harvest areas of Maryland, Pennsylvania, and Virginia would be 70 days between November 15 and February 15. In North Carolina, Massachusetts, and New York, the framework would be 70 days between the last Saturday in October and February 15. Daily bag limits would be 5 birds in all RP areas. These seasons would be in lieu of any special late seasons and subject to annual evaluation of band recovery and harvest data.

The Mississippi Flyway Council recommended a number of changes in season lengths, bag limits, zones, and quotas for Canada geese. All of these changes are based on current population status and management plans. The Council also recommended that Mississippi Valley Population (MVP) and SJBP harvest zones be established in Michigan.

Written Comments: In response to concerns expressed by the Service during the late season meetings regarding the proposal for a regular Resident Canada Goose season in portions of the Atlantic Flyway, the Atlantic Flyway Council prepared a revised proposal, dated August 30, 2001, for further consideration. Further, in a September 7, 2001, letter from the Council Chairman, they indicated that neither North Carolina nor Massachusetts qualified under the revised selection criteria, but that the Council continues to support implementation of the expanded season this year for those States that meet the proposed criteria (i.e., Maryland, New York, Pennsylvania, and Virginia).

The Maryland Department of Natural Resources, the New York Division of Fish, Wildlife, and Marine Resources (New York), and the Pennsylvania Game Commission (Pennsylvania) expressed disappointment in our decision not to allow new regular seasons specifically designed to maximize harvest of RP Canada geese in designated areas of the Atlantic Flyway beginning in 2001 and urged reconsideration of this proposal. Additionally, a sportsmen's group from New Jersey and several individuals from New York requested reconsideration of the Council's resident goose proposal.

Pennsylvania requested approval of a 45-day season with a 2-bird daily bag limit for AP areas in New York, New Jersey, Pennsylvania, and New England for the 2001–02 season, while New York requested an opening framework date of the last Saturday in October for their SJBP zone rather than November 1.

The Utah Environmental Congress expressed concern with the removal of Aleutian Canada goose restrictions in the Pacific Flyway.

Service Response: This spring, the estimated number of AP goose breeding pairs in northern Quebec increased by more than 50 percent overall from 93,200 to 147,000 pairs. In addition, production prospects this year appear to be very good and a larger fall flight is expected. In view of this strong recovery, we believe it is appropriate this year to increase harvests within the AP zones of the Atlantic Flyway. Thus, we concur with the Atlantic Flyway Council's recommendation and believe this expanded framework continues the responsible approach the Council has taken in previous years. Given past history, we encourage the States to closely monitor harvest rates in the next few years.

We also support the boundary modifications and framework date changes in North Carolina, the recommendation for NAP geese, and New York's requested SJBP framework change.

Regarding the Atlantic Flyway Council's recommendation for resident goose areas, we recognize the problems associated with an overabundance of resident Canada geese and appreciate the Atlantic Flyway Council's effort to develop a strategy to increase harvest pressure in areas where few migrant geese occur. Further, we appreciate the Council's effort to submit a revised proposal containing more specific criteria for selecting these areas and a strategy for evaluation and discontinuance if necessary. However, based on the criteria that these areas contain not more than 10 percent of the historic band recoveries of any migrant population, several States included in the August 30 revised proposal (Massachusetts, New York, and North Carolina) do not qualify. In addition, we believe that the number of band recoveries available for the Atlantic and North Atlantic Populations is too limited to be useful in delineating these largely migrant-free zones. Also, the Atlantic Population has not been hunted in its major wintering areas since 1995 and only on a very restrictive basis elsewhere since 1999. Although significant areas of the Flyway under SJBP harvest management appear to have few migrant band recoveries, we suggest that the available neck-collar database should be examined.

In view of all these factors, we believe that approval of this proposal at this time would be premature, and request that the Council continue to improve it. Further, while we recognize that the States of Massachusetts and North Carolina were dropped from consideration and New York's band recovery data were modified in the Council's September 7 letter, we do not support a piece meal approach to approval of this proposal this year. Rather, we believe the proposal should be reworked to improve the criteria. We fully support efforts to increase harvests of resident Canada geese in areas where migrant geese do not occur in any appreciable numbers. However, we also must ensure that our scale of management is commensurate with our monitoring capability to detect changes and inform future regulatory decisions.

We concur with the recommended changes in the Mississippi Flyway. Most of these changes are based on the current population status of geese and are consistent with current management plans.

Regarding Aleutian geese, we have acted based on the management plan was prepared by the Pacific Flyway in cooperation with the Aleutian Canada goose recovery team. The actions taken are consistent with this plan and monitoring continues as described in the management plan.

C. Special Late Seasons

Council Recommendations: The Mississippi Flyway Council recommended that the experimental late season in the Central Michigan Goose Management Unit be made operational.

Service Response: We concur with the recommended change.

6. Brant

Council Recommendations: The Pacific Flyway Council recommended allowing Washington's brant season to be split into two segments.

Service Response: We concur with the recommended change.

8. Swans

Council Recommendations: The Pacific Flyway Council recommended swan frameworks as outlined in the Service's 2001 EA ''Proposals to establish operational/experimental general swan hunting seasons in the Pacific Flyway.''

Written Comments: The Trumpeter Swan Society (TSS) requested reconsideration of the recent decision regarding tundra and trumpeter swan hunting seasons and to close all areas south of the Idaho-Utah State border to the take of all trumpeter swans and further to close Bear River Migratory Bird Refuge to all swan hunting. The Biodiversity Legal Foundation (BLF), the Fund for Animals (FFA), the Humane Society of the United States (HSUS), and other interests, in a joint letter, offered specific comments on the proposed regulations for hunting swans in the Pacific Flyway. The Utah Environmental Congress wrote to express concerns regarding the proposal to continue swan hunts in the Pacific Flyway.

Service Response: The Service has authorized the take of a limited number of trumpeter swans in the previously existing tundra swan seasons in the Pacific Flyway (excluding Alaska) since the 1995–96 hunting season. The regulations establishing this limited take were first based on a 1995 EA (Bartonek *et al.* 1995) and Finding of No Significant Impact (FONSI). Last year, we issued a supplemental EA (Trost et al. 2000) and new FONSI. The supplemental EA reviewed the first 5 years of the experimental swan season and made modifications to the existing season in an attempt to reconcile potentially conflicting management strategies for tundra and trumpeter swans in the Pacific Flyway.

During the past year since the release of the supplemental EA, actions occurred that have contributed to the Service's revising and reissuing both a draft and final EA on this issue. First, the Service and cooperators (Canadian Wildlife Service, numerous States and Provinces, and private conservation groups) conducted a comprehensive survey of the number and distribution of breeding trumpeter swans throughout their known North American breeding range during the summer of 2000, providing new information on the status and population trends of trumpeter swans (Caithamer 2001). This new comprehensive survey information documents the continued increase of the three recognized Trumpeter swan populations in North America, both in numerical abundance and in geographic range since the last comprehensive survey in 1995. Second, we were challenged in a lawsuit directed at our decision last year to allow a limited take of trumpeter swans in the 2000–01 swan hunting season, and as part of settling that lawsuit, we agreed to re-initiate the NEPA process in 2001.

A swan season that also permitted the take of a limited number of trumpeter swans in the Pacific Flyway was instituted in 1995. Prior to that time, and beginning in 1962, a tundra swan-only season had been in effect. During the tundra swan seasons, it was known that some number of trumpeter swans were taken by swan hunters who mistook them for tundra swans. We looked at this very small take and concluded that any impact on trumpeter swan populations would be minor. Because of that conclusion, we decided to authorize a limited take incidental to the hunting of tundra swans. This limited take was authorized in an attempt to reconcile potentially conflicting strategies for managing two swan species in the Pacific Flyway. The potentially conflicting strategies are: (1) to enhance the winter range distribution of the less abundant RMP of trumpeter swans by severely restricting or eliminating swan hunting in portions of the Pacific Flyway currently open to hunting these species, and (2) to optimize hunting of the more numerous and widely distributed Western Population (WP) of tundra swans in the Pacific Flyway.

We issued a FONSI in August of 1995 and again in July of 2000 after assessing impacts in two previous EAs on this issue. The proposed actions in these EAs represented a balance between the two competing management strategies by establishing a general swan season in portions of Montana, Utah, and Nevada that allowed the taking of any species of swan (*Cygnus* sp.) subject to the following conditions:

(1) A limited quota on the take of trumpeter swans, which, upon being reached, would trigger the cessation of all swan hunting in the designated area,

(2) Modification of the already-limited take and restricted seasons on tundra swans to enhance the likelihood that trumpeter swans would be successful in expanding their winter range, and,

(3) The development and implementation of a program to monitor the effectiveness of this action.

Under the new action, identified in the 2001 EA (Trost et al. 2001), we would continue to establish a hunting season for tundra swans with an authorization of a small take of trumpeter swans in designated portions of Montana, Utah, and Nevada, within the Pacific Flyway. Constraints imposed upon swan hunting seasons implemented last year would be continued. Additionally, specific areas open to swan hunting in Montana, Utah, and Nevada would remain as defined in the 2000–01 regulations. Further, included is a new requirement for the development of a Memorandum of Agreement (MOA) between the State of Utah and the Service detailing monitoring, hunter training, and season closure procedures for the experimental swan hunt in Utah.

A notice of availability of the draft EA was published in the **Federal Register** on April 25, 2001 (66 FR 20828). In addition, the draft EA was posted on the Service's web page and mailed to all organizations and private individuals who requested copies. We carefully reviewed all public comments. The comments were considered in light of the analysis in the EA. The EA addressed all substantive comments received during the 30-day comment period. Copies of the EA and the Finding of No Significant Impact are available at the address indicated under the caption **ADDRESSES** or from our website at *http://migratorybirds.fws.gov*.

Additionally, although not directly related to the issue of hunting seasons, we have continued to provide a leadership role in attempting to enhance trumpeter swan status and breeding distribution within the Pacific Flyway through increased efforts directed at establishment of breeding trumpeter swans in suitable habitats throughout the Pacific Flyway. We have recently provided funding for production of cygnets for later reintroduction into suitable habitat. We also continue to support cooperative efforts to address the winter distribution issues by working with States, non-governmental organizations (NGO), and individual partners. We support limited winter capture and translocation on a case-by-case basis when circumstances develop that warrant such activity. We do not

plan to employ winter translocations as the primary method to address the winter distribution problem of RMP trumpeter swans. Rather, translocation will be employed as a method to limit risk to swans from direct over-winter mortality, on an as-needed basis.

Continued progress toward development of the implementation plan (Bouffard *et al.* 2001) has occurred. We believe the actions outlined in the plan will help address concerns regarding the number of swans nesting in the Tristate area and help establish new winter distribution patterns. Evidence suggests current and past management activities have made progress toward improving the winter distribution situation (Bouffard 2000). We expect that further actions will continue to improve the status and distribution of RMP trumpeter swans. We will continue implementation efforts to the greatest extent possible.

We appreciate the continued support of the TSS in the development of a more comprehensive implementation plan to achieve the goals and objectives of the 1998 Pacific Flyway Management Plan for the RMP of trumpeter swans. We remain committed to the goals and objectives of this plan and will continue to work with all partners to achieve these objectives. We have carefully considered all the input received from the TSS and other concerned agencies, organizations, and individuals. In particular, we reconsidered the request to close all areas in Utah and Nevada to any legal take of trumpeter swans and to close the Bear River Refuge in Utah to all swan hunting. After a review of the situation, we continue to support the conclusions in our most recent EA regarding the need to implement the specific recommendations of the TSS (Trost *et al.* 2001: pages 31–32 and 41–45). We acknowledge a wide disparity of opinion regarding the potential impact of a limited take of trumpeter swans in Utah and Nevada on achieving the goals and objectives of the 1998 plan. However, we believe that the limited take allowed in these seasons will not adversely impact management intended to achieve these objectives and we conclude that the existing seasons should be maintained as described in the Final EA on this issue.

In response to the concerns expressed by BLF, FFA, and HSUS, the comments are largely the same as those addressed previously with regard to this issue over the past several years and are addressed in the current Environmental Assessment (EA) (Trost et al. 2001). We provide the following answers and also refer to the 2001 EA where these issues are also addressed:

(1) The letter raises concerns regarding the population status of trumpeter swans (*i.e.,* ''The precarious and, indeed, endangered status of the U.S. resident breeding population of trumpeter swans''). The 2001 EA (pgs 10–12, 27) discusses the number of trumpeter swans in the three recognized populations of trumpeter swans in North America and then describes the various components of the RMP, the group at issue with regard to swan seasons in Montana, Utah, and Nevada. In general, trumpeter swans in the United States have been increasing steadily during the past 30 plus years (Caithamer 2001). The general increase is also true of the RMP, and although trends in the various geographic components recognized in this population have not been consistent, all but the Nevada and Oregon restoration groups have shown increases during the experimental harvest period. This section also details the status of the petition to list a segment of the RMP as a distinct population segment under the Endangered Species Act. Based on these population estimates, we do not agree with the contention that the U.S. breeding population trumpeter swans is ''precarious, and indeed endangered''. Whether or not there is merit to the contention that those trumpeter swans breeding in the Tristate area require protection under the Endangered Species Act as a distinct population segment is currently awaiting evaluation.

(2) The letter also questions the potential impacts of drought conditions on trumpeter swans. We recognize that severe drought conditions currently prevail in the Tristate primary wintering area of the RMP of trumpeter swans. Similar conditions existed last year and similar concerns were also offered last year by the same groups in response to our proposal for the swan season in the Pacific Flyway. Our response of last year is still applicable: ''With regard to the current drought situation in the West, we recognize once more that waterfowl distributions and migratory behavior are often impacted by weather events. Migratory birds are among the most resilient group of animals in their ability to react to such changing conditions. We see no imminent threat in this year's situation that would lead us to view this situation as more serious than in previous years. The controls put in place on the seasons will result in season closure if 10 trumpeter swans are harvested in Utah. Should weather events result in an unexpected mass movement of trumpeter swans into the open hunt area, we believe the 10 bird closure limit will ensure that no harm will be suffered by the population as a whole'' **Federal Register**, 65 FR 58158). This aspect is also addressed on pages 12–13 of the 2001 EA.

(3) The letter contends that restoration requires safe and secure habitat along traditional migration routes. In addition, the letter suggests that human activities beyond swan hunting must be terminated or severely restricted to provide safe and secure habitats to promote trumpeter swan migration from the Tristate region. There are a number of complex issues contained in these statements that we address as follows:

(3.a.) This comment implies that the commenter believes that the Service is obligated to restore migratory birds to all former habitats. Neither the conventions nor the MBTA impose a requirement that the Service (1) actively manage distributions of migratory birds or, (2) restore migratory birds to all former habitats. The MBTA authorizes and directs the Secretary to determine whether and to what extent to allow hunting, taking, etc., of migratory birds. This is to be done subject to the conventions and having due regard for the zones of temperature and distribution, abundance, economic value, breeding habitats and times and lines of flight of migratory birds. This having been said, we have cooperated in attempts to restore many species and will continue to do so acknowledging that there is authority to conduct such activities, where appropriate. We wish to make clear, however, that there is a fundamental difference between a management objective for a species and a statutory requirement for restoration. The letter also refers to ''traditional migratory routes''. We note the discussion of this question in the 2001 EA (pages 29–32). In brief, we do not feel that traditional migratory routes are well known and requests for actions at specific locations are without strong biological foundation.

(3.b) The letter further contends that safe and secure habitats are not presently available to dispersing trumpeter swans. We note that the vast majority of both Utah and Nevada have been closed to all swan hunting (in Utah beginning with the 1995 EA), and that significant portions of the available swan habitat in each State are included in these closed areas. Further, portions of the available habitat on National Wildlife Refuges are closed to all waterfowl hunting. We do not agree that all swan hunting must be prohibited in order to provide safe and secure habitats for dispersing trumpeter swans. The contention that we should prohibit other human activities (power boating,

fishing, etc.) is well beyond the purpose and intent of the rule to establish a swan hunting season. We do not have such authority under the MBTA and would note that migratory behavior and tradition are maintained in waterfowl throughout North America without such regulatory prohibitions, and we are aware of no scientific evidence to support the contention that such an action would be an effective method to alter wintering or migrational waterfowl distributions. Pages 29–32 of the 2001 EA also address this comment.

(4) The letter further contends that the monitoring of the harvest is inadequate. We do not agree, as we have routinely provided reliable estimates of both annual harvest and wounding loss from every year that we have conducted these hunts (Trost *et al.* 2001). In addition, with regard to the reliability of monitoring methods, we have discussed the considerations, both of non-response bias and wounding loss extrapolation in several previous documents (i.e., 2001 EA pgs 33–35). However, in recognition of the concerns expressed regarding this issue, we have entered into a Memorandum of Agreement with the State of Utah detailing all specific requirements for harvest monitoring for the experimental season in Utah. We also note the EA's assessment of the potential impacts of harvest in Nevada and Montana (2001 EA pgs 41–45). We concluded that the harvest monitoring occurring in these two States is adequate and not a major consideration in winter distribution questions raised by those opposed to continuation of the swan hunts in Montana, Utah, and Nevada. We have not ignored this issue, but, on the contrary, the regulations account for the fact that the two swan species are not readily distinguishable and establishes a cessation of all swan hunting, including for tundra swans, when 5 or 10 trumpeter swans (respectively, in Nevada and Utah) are killed. We selected such low numbers to allow for and address the concerns about monitoring, although we believe the monitoring system to be very reliable.

(5) Finally, the letter included as an attachment an anonymous report circulated by an organization Public Employees for Environmental Responsibility (PEER) entitled ''Swan Dive''. At this juncture, we note that this anonymous report makes unsubstantiated allegations about decisions we have made and we strongly disagree with them. In addition, the report contains numerous factual errors and omissions such that its content is of little value to the decision process with regard to swan hunting regulations in the Pacific Flyway.

In conclusion, we have assessed the information available and conclude that the preferred alternative will not adversely impact trumpeter or tundra swans in the Pacific Flyway. The relatively small number of trumpeter swans that we expect to be harvested by this action will not pose a risk to either the RMP as a whole, or any segment of this population that has been identified by others. We recognize that there are many challenges still present in developing and implementing a broad-scale management program for trumpeter swans in the Pacific Flyway and we will continue to work with interests to ensure the continued growth of this population. We are committed to meeting the goals and objectives of the 1998 Pacific Flyway Management Plan for this population of trumpeter swans, including all of the Regional and State-specific objectives. We are strongly committed to maintaining and enhancing trumpeter swan numbers throughout the Tristate region, including those associated with Yellowstone National Park, and should new evidence become available that suggests that efforts to maintain and enhance these trumpeter swans are being jeopardized by existing hunting seasons, we will modify or suspend these seasons to ensure no adverse impacts are manifested. We believe the existing evidence does not support the contention that these existing seasons are currently having a significant impact with regard to protecting and conserving trumpeter swan populations. In addition, we believe the active program proposed for direct augmentation of the Code Tristate Area nesting trumpeter swans will offset any potential negative impacts caused by adopting the preferred alternative.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We publish a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under the caption **ADDRESSES**. Additionally, issues pertaining to swan hunting in the Pacific Flyway were covered under a separate NEPA document, ''Swan Hunting in the Pacific Flyway,'' issued June 14, 2001, with a Finding of No Significant Impact issued June 14, 2001. Copies are available from the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *'' Consequently, we conducted formal consultations to ensure that action resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and concluded that the regulations are not likely to adversely affect any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed and the final frameworks reflect any such modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection at the address indicated under the caption **ADDRESSES**.

Executive Order (E.O.) 12866

This rule was reviewed by the Office of Management and Budget (OMB). The migratory bird hunting regulations are economically significant and are annually reviewed by OMB under E.O. 12866. As such, a cost/benefit analysis was prepared in 1998 and is further discussed below under the heading Regulatory Flexibility Act. Copies of the cost/benefit analysis are available upon request from the address indicated under the caption **ADDRESSES.**

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities.

The primary source of information about hunter expenditures for migratory game bird hunting is a National Hunting and Fishing Survey, which is conducted at 5-year intervals. The analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1,084 million at small businesses. The Analysis is available upon request from the address indicated under the caption **ADDRESSES.**

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we plan to make the rule effective immediately under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned control number 1018–0015 (expires 9/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not ''significantly or uniquely'' affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Energy Effects—E.O. 13211

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under E.O. 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Takings Implication Assessment

In accordance with E.O. 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges, and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyaway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the rules or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with E.O. 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We, therefore, find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will take effect immediately upon publication.

Therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711), we prescribe final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials will select hunting season dates and other options. Upon receipt of season and option selections from these officials, we will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 2001–02 season.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2001–02 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j, Pub. L. 106–108.

Dated: September 19, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 2001–02 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department has approved the following frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 2001, and March 10, 2002.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Caroline, Pennsylvania, Rhode Island, South Caroline, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

High Plains Mallard Management Unit—roughly defined as that portion of the Central Flyway which lies west of the 100th meridian.

Definitions: For the purpose of hunting regulations listed below, the collective terms ''dark'' and ''light'' geese include the following species:

Dark geese—Canada geese, white-fronted geese, brant, and all other goose species except light geese.

Light geese—snow (including blue) geese and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to the late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Atlantic Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between October 1 and January 20.

Hunting Seasons and Duck Limits: 60 days, except canvasbacks which may not exceed 20 consecutive days, and daily bag limit of 6 ducks, including no more than 4 mallards (2 hens), 3 scaup, 1 black duck, 1 pintail, 1 mottled duck, 1 fulvous whistling duck, 2 wood ducks, 2 redheads, 1 canvasback and 4 scoters.

Closure: The season on harlequin ducks is closed.

Sea Ducks: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl season, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Connecticut River Zone, Vermont: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Inland Zone of New Hampshire.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone.

Canada Geese

Season Lengths, Outside Dates, and Limits: Specific regulations for Canada geese are shown below by State. Unless specified otherwise, seasons may be split into two segments. In areas within States where the framework closing date for Atlantic Population (AP) goose seasons overlaps with special late season frameworks for resident geese, the framework closing date for AP goose season is January 14.

Connecticut

North Atlantic Population (NAP) Zone: A 45-day season may be held between October 1 and January 20 with a 2-bird daily bag limit.

Atlantic Population (AP) Zone: A 30-day season may be held between last Saturday in October (October 27) and January 20 with a 2-bird daily bag limit.

South Zone: A special experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit.

Delaware

A 30-day season may be held between November 15 and January 20 with a 1-bird daily bag limit.

Florida

A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Georgia

In specific areas, a 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Maine

A 45-day season may be held Statewide between October 1 and January 20 with a 2-bird daily bag limit.

Maryland

Southern James Bay Population (SJBP) Zone: A 40-day season may be held between November 15 and January 14, with a 2-bird daily bag limit. The season may be split 3-ways. Additionally, an experimental season may be held from January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 30-day season may be held between November 15 and January 20 with a 1-bird daily bag limit.

Massachusetts

NAP Zone: A 45-day season may be held between October 1 and January 20 with a 2-bird daily bag limit. Additionally, a special season may be held from January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 30-day season may be held between last Saturday in October (October 27) and January 20 with a 2-bird daily bag limit.

New Hampshire

A 45-day season may be held statewide between October 1 and January 20 with a 2-bird daily bag limit.

New Jersey

Statewide: A 30-day season may be held between last Saturday in October (October 27) and January 20 with a 2-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held in designated areas of North and South New Jersey from January 15 to February 15, with a 5-bird daily bag limit.

New York

SJBP Zone: A 70-day season may be held between the last Saturday in October (October 27) and January 30, with a 2-bird daily bag limit.

NAP Zone: A 45-day season may be held between October 1 and January 20 with a 2-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit in designated areas of Chemung, Delaware, Tioga, Broome, Sullivan, Westchester, Nassau, Suffolk, Orange, Dutchess, Putnam, and Rockland Counties.

AP Zone: A 30-day season may be held between the last Saturday in October (October 27) and January 20 with a 2-bird daily bag limit.

North Carolina

A 50-day season may be held between October 1 and December 31, with a 2-bird daily bag limit, except for the Northeast Hunt Unit and Northampton County, which is closed.

Pennsylvania

SJBP Zone: A 40-day season may be held between November 15 and January 14, with a 2-bird daily bag limit.

AP Zone: A 30-day season may be held between last Saturday in October (October 27) and January 20 with a 2-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held from January 15 to February 15 with a 5-bird daily bag limit.

Pymatuning Zone: A 35-day season may be held between October 1 and January 20, with a 1-bird daily bag limit.

Rhode Island

A 45-day season may be held between October 1 and January 20 with a 2-bird daily bag limit. An experimental season may be held in designated areas from January 15 to February 15, with a 5-bird daily bag limit.

South Carolina

In designated areas, a 70-day season may be held during November 15 to February 15, with a 5-bird daily bag limit.

Vermont

A 30-day season may be held between last Saturday in October (October 27) and January 20 with a 2-bird daily bag limit.

Virginia

SJBP Zone: A 40-day season may be held between November 15 and January 14, with a 2-bird daily bag limit. Additionally, an experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 30-day season may be held between November 15 and January 20 with a 1-bird daily bag limit.

Back Bay Area: Season is closed.

West Virginia

A 70-day season may be held between October 1 and January 31, with a 3-bird daily bag limit.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and March 10, with a 15-bird daily bag limit and no possession limit. States may split their seasons into three segments, except in Delaware and Maryland, where, following the completion of their duck season, and until March 10, Delaware and Maryland may split the remaining portion of the season to hunt on Mondays, Wednesdays, Fridays, and Saturdays only.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 50-day season between October 1 and January 20, with a 2-bird daily bag limit. States may split their seasons into two segments.

Mississippi Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest October 1 (September 29) and the Sunday nearest January 20 (January 20). Seasons in Alabama, Mississippi, and Tennessee may extend to January 31.

Hunting Seasons and Duck Limits: 60 days (51 days in Alabama, Mississippi, and Tennessee), except that the season for canvasbacks may not exceed 20 consecutive days. The daily bag limit is 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 3 scaup, 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback, and 2 redheads.

Merganser Limits: The daily bag limit is 5, only 1 of which may be a hooded merganser. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only one of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Arkansas, Minnesota, and Mississippi, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Mississippi Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Season Lengths, Outside Dates, and Limits: States may select seasons for light geese not to exceed 107 days with 20 geese daily between the Saturday nearest October 1 (September 29) and March 10; for white-fronted geese not to exceed 86 days with 2 geese daily or 107 days with 1 goose daily between the Saturday nearest October 1 (September 29) and the Sunday nearest February 15 (February 17); and for brant not to exceed 70 days with 2 brant daily or 107 days with 1 brant daily between the Saturday nearest October 1 (September 29) and January 31. There is no possession limit for light geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State. Except as noted below, the outside dates

for Canada geese are the Saturday nearest October 1 (September 29) and January 31.

Alabama

In the Southern James Bay Population (SJBP) Goose Zone, the season for Canada geese may not exceed 50 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas

The season for Canada geese may extend for 23 days. The season may extend to February 15. The daily bag limit is 2 Canada geese.

Illinois

The total harvest of Canada geese in the State will be limited to 54,800 birds. The possession limit is 10 Canada geese.

(a) North Zone—The season for Canada geese will close after 70 days or when 7,250 birds have been harvested in the Northern Illinois Quota Zone, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Central Zone—The season for Canada geese will close after 70 days or when 9,250 birds have been harvested in the Central Illinois Quota Zone, whichever occurs first. The daily bag limit is 2 Canada geese.

(c) South Zone—The harvest of Canada geese in the Southern Illinois and Rend Lake Quota Zones will be limited to 16,550 and 2,100 birds, respectively. The season for Canada geese in each zone will close after 70 days or when the harvest limit has been reached, whichever occurs first. The daily bag limit is 2 Canada geese. In the Southern Illinois Quota Zone, if any of the following conditions exist after December 20, the State, after consultation with the Service, will close the season by emergency order with 48 hours notice:

(1) Average body weights of adult female geese less than 3,200 grams as measured from a weekly sample of a minimum of 50 geese.

(2) Starvation or a major disease outbreak resulting in observed mortality exceeding 5,000 birds in 10 days, or a total mortality exceeding 10,000 birds.

In the remainder of the South Zone, the season may extend for 70 days or until both the Southern Illinois and Rend Lake Quota Zones have been closed, whichever occurs first. The daily bag limit is 2 Canada geese.

Indiana

The total harvest of Canada geese in the State will be limited to 19,200 birds. The daily bag limit is 2 Canada geese.

(a) *North zone:* The season for Canada geese may extend for 50 days.

(b) SJBP Zone—The season for Canada geese may extend for 50 days.

(c) South Zone—The season for Canada geese may extend for 56 days.

(d) Ohio River Zone

(1) Posey County—The season for Canada geese will close after 56 days or when the Canada goose harvest at Hovey Lake Fish and Wildlife Area exceeds 960 birds, whichever occurs first.

(2) Remainder of the Ohio River Zone—The season may extend for 56 days.

Iowa

The season may extend for 70 days. The daily bag limit is 2 Canada geese.

Kentucky

(a) Western Zone—The season for Canada geese may extend for 50 days (65 days in Fulton County), and the harvest will be limited to 11,520 birds. Of the 11,520-bird quota, 7,490 birds will be allocated to the Ballard Reporting Area and 2,880 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 50-day season, the season in that reporting area will be closed. If the quotas in both the Ballard and Henderson/Union reporting areas are reached prior to completion of the 50-day season, the season in the counties and portions of counties that comprise the Western Goose Zone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 50 days (65 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana

The season for Canada geese may extend for 9 days. During the season, the daily bag limit is 1 Canada goose and 2 white-fronted geese with an 86-day white-fronted goose season or 1 white-fronted goose with a 107-day season. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan

(a) MVP Zone—The total harvest of Canada geese will be limited to 30,950 birds. The framework opening date for all geese is September 16 and the season for Canada geese may extend for 17 days. The daily bag limit is 2 Canada geese.

(1) Allegan County GMU—The Canada goose season will close after 25 days or when 1,100 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Muskegon Wastewater GMU—The Canada goose season will close after 25 days or when 350 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) SJBP Zone—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 30 days. The daily bag limit is 2 Canada geese.

(1) Saginaw County GMU—The Canada goose season will close after 50 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Tuscola/Huron GMU—The Canada goose season will close after 50 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(c) Southern Michigan GMU—A special Canada goose season may be held between January 5 and February 3. The daily bag limit is 5 Canada geese.

(d) Central Michigan GMU—A special Canada goose season may be held between January 5 and February 3. The daily bag limit is 5 Canada geese.

Minnesota

(a) West Zone

(1) West Central Zone—The season for Canada geese may extend for 40 days. In the Lac Qui Parle Zone, the season will close after 40 days or when 12,000 birds have been harvested, whichever occurs first. Throughout the West Central Zone, the daily bag limit is 1 Canada goose.

(2) Remainder of West Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(b) Northwest Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(c) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

(d) Special Late Canada Goose Season—An experimental special Canada goose season of up to 10 days may be held in December, except in the West Central and Lac qui Parle Goose zones. During the special season, the daily bag limit is 5 Canada geese, except in the Southeast Goose Zone, where the daily bag limit is 2.

Mississippi

The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri

(a) Swan Lake Zone—The season for Canada geese may extend for 70 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments. The daily bag limit is 2 Canada geese.

(b) Southeast Zone—The season for Canada geese may extend for 70 days. The season may be split into 3 segments, provided that at least 1 segment occurs prior to December 1. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(c) Remainder of the State—

(1) North Zone—The season for Canada geese may extend for 70 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments, provided that 1 segment of at least 9 days occurs prior to October 15. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(2) Middle Zone—The season for Canada geese may extend for 70 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments, provided that 1 segment of at least 9 days occurs prior to October 15. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(3) South Zone—The season for Canada geese may extend for 70 days. The season may be split into 3 segments, provided that at least 1 segment occurs prior to December 1. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

Ohio

The season for Canada geese may extend for 70 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 35 days and the daily bag limit is 1 Canada goose. A special experimental Canada goose season of up to 22 days, beginning the first Saturday after January 10, may be held in selected areas of the State. During the special season, the daily bag limit is 2 Canada geese.

Tennessee

(a) Northwest Zone—The season for Canada geese will close after 65 days or when 4,300 birds have been harvested, whichever occurs first. The season may extend to February 15. A 3,000-bird harvest quota will be monitored in the Reelfoot Quota Zone. The remaining 1,300 quota will be assigned to the area outside the Reelfoot Zone. If the quota in the Reelfoot Quota Zone is reached prior to completion of the 65-day season, the season in the entire Northwest Zone will close. The daily bag limit is 2 Canada geese.

(b) Southwest Zone—The season for Canada geese may extend for 50 days, and the harvest will be limited to 500 birds. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(d) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin

The total harvest of Canada geese in the State will be limited to 46,000 birds.

(a) Horicon Zone—The framework opening date for all geese is September 17. The harvest of Canada geese is limited to 16,900 birds. The season may not exceed 94 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose, and the season limit will be the number of tags issued to each permittee.

(b) Collins Zone—The framework opening date for all geese is September 17. The harvest of Canada geese is limited to 600 birds. The season may not exceed 68 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose, and the season limit will be the number of tags issued to each permittee.

(c) Exterior Zone—The framework opening date for all geese is September 22. The harvest of Canada geese is limited to 24,000 birds, with 500 birds allocated to the Mississippi River Subzone. The season may not exceed 70 days, except in the Mississippi River Subzone, where the season may not exceed 80 days. The daily bag limit is 1 Canada goose. In that portion of the Exterior Zone outside the Mississippi River Subzone, the progress of the harvest must be monitored, and the season closed, if necessary, to ensure that the harvest does not exceed 24,000 birds.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, Southern Illinois, and Rend Lake Quota Zones in Illinois; Posey County in Indiana; the Ballard and Henderson-Union Subzones in Kentucky; the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan; the Lac Qui Parle Zone in Minnesota; the Northwest Zone in Tennessee; and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective zone (and associated area, if applicable) will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Central Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between September 29 and January 20.

Hunting Seasons and Duck Limits

(1) *High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian):* 97 days, except canvasbacks which may not exceed 25 consecutive days, and a daily bag limit of 6 ducks, including no more than 5 mallards (no more than 2 of which may be hens), 1 mottled duck, 1 canvasback, 1 pintail, 2 redheads, 3 scaup, and 2 wood ducks. The last 23 days may start no earlier than the Saturday nearest December 10 (December 8).

(2) *Remainder of the Central Flyway:* 74 days, except canvasbacks which may not exceed 25 consecutive days, and a daily bag limit of 6 ducks, including no more than 5 mallards (no more than 2 of which may be hens), 1 mottled duck, 1 canvasback, 1 pintail, 2 redheads, 3 scaup, and 2 wood ducks.

Merganser Limits: The daily bag limit is 5 mergansers, only 1 of which may be a hooded merganser. In States that include mergansers in the duck daily bag limit, the daily limit may be the same as the duck bag limit, only one of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Kansas (Low Plains portion), Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the

regular season may be split into two segments.

In Colorado, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation by each participating State.

Outside Dates: For dark geese, seasons may be selected between the outside dates of the Saturday nearest October 1 (September 29) and the Sunday nearest February 15 (February 17). For light geese, outside dates for seasons may be selected between the Saturday nearest October 1 (September 29) and March 10. In the Rainwater Basin Light Goose Area (East and West) of Nebraska, temporal and spatial restrictions consistent with the experimental late-winter snow goose hunting strategy endorsed by the Central Flyway Council in July 1999, are required.

Season Lengths and Limits

Light Geese: States may select a light goose season not to exceed 107 days. The daily bag limit for light geese is 20 with no possession limit.

Dark Geese: In Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas, States may select a season for Canada geese (or any other dark goose species except white-fronted geese) not to exceed 95 days with a daily bag limit of 3. Additionally, in the Eastern Goose Zone of Texas, an alternative season of 107 days with a daily bag limit of 1 Canada goose may be selected. For white-fronted geese, these States may select either a season of 86 days with a bag limit of 2 or a 107-day season with a bag limit of 1.

In South Dakota, for Canada geese in the Big Stone Power Plant Area of Canada Goose Unit 3, the daily bag limit is 3 until November 30 and 2 thereafter.

In Colorado, Montana, New Mexico and Wyoming, States may select seasons not to exceed 107 days. The daily bag limit for dark geese is 5 in the aggregate.

In the Western Goose Zone of Texas, the season may not exceed 107 days. The daily bag limit for Canada geese (or any other dark goose species except white-fronted geese) is 5. The daily bag limit for white-fronted geese is 1.

Pacific Flyway

Ducks, Mergansers, Coots, Common Moorhens, and Purple Gallinules

Hunting Seasons and Duck Limits: Concurrent 107 days and daily bag limit of 7 ducks and mergansers, including no more than 2 female mallards, 1 pintail, 4 scaup, 2 redheads. The season on canvasbacks is closed, except one canvasback may be included in the daily bag for 38 consecutive days within the Pacific Flyway duck season. A single canvasback may also be included in the 7-bird daily bag limit for designated youth-hunt days.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

Coot, Common Moorhen, and Purple Gallinule Limits: The daily bag and possession limits of coots, common moorhens, and purple gallinules are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest October 1 (September 29) and the Sunday nearest January 20 (January 20).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may split their seasons into two segments.

Colorado, Montana, New Mexico, and Wyoming may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (September 29), and the Sunday nearest January 20 (January 20), and the basic daily bag limits are 3 light geese and 4 dark geese, except in California, Oregon, and Washington, where the dark goose bag limit does not include brant.

Split Seasons: Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Brant Season

A 16-consecutive-day season may be selected in Oregon. A 16-day season may be selected in Washington, and this season may be split into 2-segments. A 30-consecutive-day season may be selected in California. In these States, the daily bag limit is 2 brant and is in addition to dark goose limits.

Arizona: The daily bag limit for dark geese is 3.

California

Northeastern Zone—White-fronted geese and cackling Canada geese may be taken only during the first 44 days of the goose season. The daily bag limit is 3 geese and may include no more than 2 dark geese; including not more than 1 cackling Canada goose or 1 Aleutian Canada goose.

Balance-of-the-State Zone—A 79-day season may be selected. Limits may not include more than 3 geese per day, of which not more than 2 may be white-fronted geese and not more than 1 may be a cackling Canada goose or Aleutian Canada goose. Three areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the Counties of Del Norte and Humboldt, there will be no open season for Canada geese, except for the Special September Canada goose hunt in Humboldt County.

(2) In the Sacramento Valley Special Management Area (West), the season on white-fronted geese must end on or before December 14, and, in the Sacramento Valley Special Management Area (East), there will be no open season for Canada geese.

(3) In the San Joaquin Valley Special Management Area, there will be no open season for Canada geese.

Oregon: Except as subsequently noted, the dark goose daily bag limit is 4, including not more than 1 cackling Canada goose or Aleutian Canada goose.

Lake County Zone—The daily dark goose bag limit may not include more than 2 white-fronted geese.

Western Zone—Special Canada Goose Management Area, except for designated areas, there will be no open season on Canada geese. In the designated areas, individual quotas will be established that collectively will not exceed 165 dusky Canada geese. See section on quota zones. In those designated areas, the daily bag limit of dark geese is 4 and may include no more than 1 Aleutian Canada goose.

Closed Zone: Those portions of Coos and Curry Counties west of US 101 and all of Tillamook and Lincoln Counties.

Washington: The daily bag limit is 4 geese, including 4 dark geese but not more than 3 light geese.

Southwest Quota Zone—In the Special Goose Management Area, except for designated areas, there will be no open season on Canada geese. In the designated areas, individual quotas will be established that collectively will not exceed 85 dusky Canada geese. See section on quota zones. In this area, the daily bag limit of dark geese is 4 and

may include 4 cackling Canada geese. In Southwest Quota Zone Area 2B (Pacific and Grays Harbor Counties) the dark goose bag limit may include 1 Aleutian Canada goose.

Colorado: The daily bag limit for dark geese is 3 geese.

Idaho

Northern Unit—The daily bag limit is 4 geese, including 4 dark geese, but not more than 3 light geese.

Southwest Unit and Southeastern Unit—The daily bag limit on dark geese is 4.

Montana: West of Divide Zone and East of Divide Zone—The daily bag limit of dark geese is 4.

Nevada: The daily bag limit for dark geese is 3 except in the Lincoln and Clark County Zone, where the daily bag limit of dark geese is 2.

New Mexico: The daily bag limit of dark geese is 3.

Utah: The daily bag limit for dark geese is 3 geese.

Wyoming: The daily bag limit is 4 dark geese.

Quota Zones: Seasons on dark geese must end upon attainment of individual quotas of dusky Canada geese allotted to the designated areas of Oregon and Washington. The September Canada goose season, the regular goose season, any special late dark goose season, and any extended falconry season, combined, must not exceed 107 days, and the established quota of dusky Canada geese must not be exceeded. Hunting of dark geese in those designated areas will only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese. If the monitoring program cannot be conducted, for any reason, the season must immediately close. In the designated areas of the Washington Quota Zone, a special late dark goose season may be held between the Saturday following the close of the general goose season and March 10. In the Special Canada Goose Management Area of Oregon, the framework closing date is extended to the Sunday closest to March 1 (March 3). Regular dark goose seasons may be split into 3 segments within the Oregon and Washington quota zones. The 3-way split seasons are considered experimental for this year. An evaluation of the 3-way split seasons is required and must be submitted by July 2002.

Swans

In designated areas of Utah, Nevada, and the Pacific Flyway portion of Montana, an open season for taking a limited number of swans may be selected. Permits will be issued by States and will authorize each permittee to take no more than 1 swan per season. The season may open no earlier than the Saturday nearest October 1 (September 29). The States must implement a harvest-monitoring program to measure the species composition of the swan harvest. In Utah and Nevada, the harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. All States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination or, in the case of Montana, reporting bill-measurement and color information. All States must achieve at least an 80-percent compliance rate, or subsequent permits will be reduced by 10 percent. All States must provide to the Service by June 30, 2002, a report covering harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas. These seasons will be subject to the following conditions:

In Utah, no more than 2,000 permits may be issued. The season must end no later than the second Sunday in December (December 9) or upon attainment of 10 trumpeter swans in the harvest, whichever occurs earliest. Utah must enter into a Memorandum of Agreement with the Service regarding harvest monitoring, season closure procedures, and education requirements for swan seasons in Utah.

In Nevada, no more than 650 permits may be issued. The season must end no later than the Sunday following January 1 (January 6) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In Montana, no more than 500 permits may be issued. The season must end no later than December 1.

Tundra Swans

In the Central Flyway portion of Montana, and in North Carolina, North Dakota, South Dakota (east of the Missouri River), and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by States that authorize the take of no more than 1 tundra swan per permit. A second permit may be issued to hunters from unused permits remaining after the first drawing. The States must obtain harvest and hunter participation data. These seasons will be subject to the following conditions:

In the Atlantic Flyway

—The season will be experimental.
—The season may be 90 days, from October 1 to January 31.
—In North Carolina, no more than 5,000 permits may be issued.
—In Virginia, no more than 600 permits may be issued.

In the Central Flyway

—The season may be 107 days, from the Saturday nearest October 1 (September 29) to January 31.
—In the Central Flyway portion of Montana, no more than 500 permits may be issued.
—In North Dakota, no more than 2,000 permits may be issued.
—In South Dakota, no more than 1,500 permits may be issued.

Area, Unit, and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I–95.

South Zone: Remainder of the State.

Maine

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire and Maine border to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of Interstate Highway 95 in Augusta; then north and east along I–95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

South Zone: Remainder of the State.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to

the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Coastal Zone: That portion of the State east of a line extending west from the Maine border in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I–95 (New Hampshire Turnpike) in Hampton, and south along I–95 to the Massachusetts border.

Inland Zone: That portion of the State north and west of the above boundary and along the Massachusetts border crossing the Connecticut River to Interstate 91 and northward in Vermont to Route 2, east to 102, northward to the Canadian border.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York border in Raritan Bay and extending west along the New York border to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware border in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania border in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81 to NY 31, east along NY 31 to NY 13, north along NY 13 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to US 2; east along US 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

West Virginia

Zone 1: That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I–64; I–64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I–79, I–79 north to I–68; I–68 east to the Maryland border; and along the border to the point of beginning.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

Central Zone: That portion of the State south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana border.

South Zone: The remainder of Illinois.

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State *Road* 56, east along State *Road* 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway

175 to State *Highway* 37, southeast along State *Highway* 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Kentucky

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana

West Zone: That portion of the State west and south of a line extending south from the Arkansas border along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to the Mississippi State line.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm. See State regulations for additional information.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

South Zone: The remainder of Michigan.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois border (Lock and Dam 25) on Lincoln County Highway N to Missouri Highway 79; south on Missouri Highway 79 to Missouri Highway 47; west on Missouri Highway 47 to Interstate 70; west on Interstate 70 to U.S. Highway 54; south on U.S. Highway 54 to U.S. Highway 50; west on U.S. Highway 50 to the Kansas border.

South Zone: That portion of Missouri south of a line running west from the Illinois border on Missouri Highway 34 to Interstate 55; south on Interstate 55 to U.S. Highway 62; west on U.S. Highway 62 to Missouri Highway 53; north on Missouri Highway 53 to Missouri Highway 51; north on Missouri Highway 51 to U.S. Highway 60; west on U.S. Highway 60 to Missouri Highway 21; north on Missouri Highway 21 to Missouri Highway 72; west on Missouri Highway 72 to Missouri Highway 32; west on Missouri Highway 32 to U.S. Highway 65; north on U.S. Highway 65 to U.S. Highway 54; west on U.S. Highway 54 to the Kansas border.

Middle Zone: The remainder of Missouri.

Ohio

North Zone: That portion of the State north of a line extending east from the Indiana border along U.S. Highway 30 to State Route 37, south along SR 37 to SR 95, east along SR 95 to LaRue-Prospect Road, east along LaRue-Prospect Road to SR 203, south along SR 203 to SR 739, east along SR 739 to SR 4, north along SR 4 to SR 309, east along SR 309 to U.S. 23, north along U.S. 23 to SR 231, north along SR 231 to U.S. 30, east along U.S. 30 to SR 42, north along SR 42 to SR 603, south along SR 603 to U.S. 30, east along U.S. 30 to SR 60, south along SR 60 to SR 39/60, east along SR 39/60 to SR 39, east along SR 39 to SR 241, east along SR 241 to U.S. 30, then east along U.S. 30 to the West Virginia border.

South Zone: The remainder of Ohio.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending east from the Minnesota border along State Highway 77 to State 27, south along State 27 and 77 to U.S. Highway 63, and continuing south along State 27 to Sawyer County Road B, south and east along County B to State 70, southwest along State 70 to State 27, south along State 27 to State 64, west along State 64/27 and south along State 27 to U.S. 12, south and east on State 27/U.S. 12 to U.S. 10, east on U.S. 10 to State 310, east along State 310 to State 42, north along State 42 to State 147, north along State 147 to State 163, north along State 163 to Kewaunee County Trunk A, north along County Trunk A to State 57, north along State 57 to the Kewaunee/Door County Line, west along the Kewaunee/Door County Line to the Door/Brown County Line, west along the Door/Brown County Line to the Door/Oconto/Brown County Line, northeast along the Door/Oconto County Line to the Marinette/Door County Line, northeast along the Marinette/Door County Line to the Michigan border.

South Zone: The remainder of Wisconsin.

Central Flyway

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That area of Kansas east of U.S. 283, and generally west of a line beginning at the Junction of the Nebraska border and KS 28; south on KS 28 to U.S. 36; east on U.S. 36 to KS 199; south on KS 199 to Republic Co. Road 563; south on Republic Co. Road 563 to KS 148; east on KS 148 to Republic Co. Road 138; south on Republic Co. Road 138 to Cloud Co. Road 765; south on Cloud Co. Road 765 to KS 9; west on KS 9 to U.S. 24; west on U.S. 24 to U.S. 281; north on U.S. 281 to U.S. 36; west on U.S. 36 to U.S. 183; south on U.S. 183 to U.S. 24; west on U.S. 24 to KS 18; southeast on KS 18 to U.S. 183; south on U.S. 183 to KS 4; east on KS 4 to I–135; south on I–135 to KS 61; southwest on KS 61 to KS 96; northwest on KS 96 to U.S. 56; west on U.S. 56 to U.S. 281; south on U.S. 281 to U.S. 54; and west on U.S. 54 to U.S. 183; north on U.S. 183 to U.S. 56; southwest on U.S. 56 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

Nebraska

High Plains Zone: That portion of the State west of highways U.S. 183 and U.S. 20 from the South Dakota border to Ainsworth, NE 7 and NE 91 to Dunning, NE 2 to Merna, NE 92 to Arnold, NE 40 and NE 47 through Gothenburg to NE

23, NE 23 to Elwood, and U.S. 283 to the Kansas border.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north and west of a line extending from the South Dakota border along NE 26E Spur to NE 12, west on NE 12 to the Knox/Boyd County line, south along the county line to the Niobrara River and along the Niobrara River to U.S. 183 (the High Plains Zone line). Where the Niobrara River forms the boundary, both banks will be in Zone 1.

Low Plains Zone 2: Area bounded by designated Federal and State highway's and political boundaries beginning at the Kansas-Nebraska border on U.S. Hwy. 73; north to NE Hwy. 67 north to U.S. Hwy 136; east to the Steamboat Trace (Trace); north to Federal Levee R–562; north and west to the Trace/Burlington Northern Railroad right-of-way; north to NE Hwy 2; west to U.S. Hwy 75; north to NE Hwy. 2; west to NE Hwy. 43; north to U.S. Hwy. 34; east to NE Hwy. 63; north and west to U.S. Hwy. 77; north to NE Hwy. 92; west to U.S. Hwy. 81; south to NE Hwy. 66; west to NE Hwy. 14; south to U.S. Hwy 34; west to NE Hwy. 2; south to U.S. Hwy. I–80; west to Gunbarrrel Rd. (Hall/Hamilton county line); south to Giltner Rd.; west to U.S. Hwy. 281; south to U.S. Hwy. 34; west to NE Hwy 10; north to County Road ''R'' (Kearney County) and County Road #742 (Phelps County); west to County Road #438 (Gosper County line); south along County Road #438 (Gosper County line) to County Road #726 (Furnas County Line); east to County Road #438 (Harlan County Line); south to U. S. Hwy 34; south and west to U.S. Hwy. 136; east to NE Hwy. 10; south to the Kansas-Nebraska border.

Low Plains Zone 3: The area east of the High Plains Zone, excluding Low Plains Zone 1, north of Low Plains Zone 2.

Low Plains Zone 4: The area east of the High Plains Zone and south of Zone 2.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota

High Plains Unit: That portion of the State south and west of a line from the South Dakota border along U.S. 83 and I–94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains: The remainder of North Dakota.

Oklahoma

High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas border along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I–40, east along I–40 to U.S. 177, north along U.S. 177 to OK 33, west along OK 33 to I–35, north along I–35 to U.S. 412, west along U.S. 412 to OK 132, then north along OK 132 to the Kansas border.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota

High Plains Unit: That portion of the State west of a line beginning at the North Dakota border and extending south along U.S. 83 to U.S. 14, east along U.S. 14 to Blunt-Canning Road in Blunt, south along Blunt-Canning Road to SD 34, east to SD 47, south to I–90, east to SD 47, south to SD 49, south to Colome and then continuing south on U.S. 183 to the Nebraska border.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along US 212 to the Minnesota border.

South Zone: That portion of Gregory County east of SD 47, Charles Mix County south of SD 44 to the Douglas County line, south on SD 50 to Geddes, east on the Geddes Hwy. to U.S. 281, south on U.S. 281 and U.S. 18 to SD 50, south and east on SD 50 to Bon Homme County line, the Counties of Bon Homme, Yankton, and Clay south of SD 50, and Union County south and west of SD 50 and I–29.

Middle Zone: The remainder of South Dakota.

Texas

High Plains Zone: That portion of the State west of a line extending south from the Oklahoma border along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I–10 to the Louisiana border at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

Wyoming (Central Flyway portion)

Zone 1: The Counties of Converse, Goshen, Hot Springs, Natrona, Platte, and Washakie Counties; and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary meets Park County Road 8VC, east along Park County Road 8VC to Park County Road 1AB, continuing east along Park County Road 1AB to Wyoming Highway 120, north along WY Highway 120 to WY Highway 294, south along WY Highway 294 to Lane 9, east along Lane 9 to Powel and WY Highway 14A, and finally east along WY Highway 14A to the Park County and Big Horn County line.

Zone 2: The reminder of Wyoming.

Pacific Flyway

Arizona

Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B–45.

North Zone: GMUs 1–5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada state line; north along the California-Nevada state line to the junction of the California-Nevada-Oregon state lines

west along the California-Oregon line state to the point of origin

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1: Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following Counties or portions of Counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of ID 75, south and east of U.S. 93, and between ID 75 and U.S. 93 north of U.S. 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Includes the following Counties or portions of Counties: Ada; Blaine between ID 75 and U.S. 93 south of U.S. 20 and that additional area between ID 75 and U.S. 93 north of U.S. 20 within the Silver Creek drainage; Boise; Canyon; Cassia except within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada

Lincoln and Clark County Zone: All of Clark and Lincoln Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon

Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

Utah

Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties and that part of Toole County north of I–80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Geese

Atlantic Flyway

Connecticut

NAP Zone: Statewide, except for Hartford and Litchfield Counties west of the Connecticut River.

AP Zone: Remainder of the State.

South Zone: Same as for ducks.

North Zone: Same as for ducks.

Maryland

SJBP Zone: Allegheny, Carroll, Frederick, Garrett, Washington counties and the portion of Montgomery County south of Interstate 270 and west of Interstate 495 to the Potomac River.

AP Zone: Remainder of the State.

Massachusetts

NAP Zone: Central Zone (same as for ducks) and that portion of the Coastal Zone that lies north of route 139 from Green Harbor.

AP Zone: Remainder of the State.

Special Late Season Area: That portion of the Coastal Zone (see duck zones) that lies north of Route 14, east of St. George Road, and east of the Powder Point Bridge.

New Hampshire

Same zones as for ducks.

New Jersey

North—that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94: then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South—that portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to Route 70; then west along Route 70 to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then east along Route 49 to Route 555; then south along Route 555 to Route 553; then east along Route 553 to Route 649; then north along Route 649 to Route 670; then east along Route 670 to Route 47; then north along Route 47 to Route 548; then east along Route 548 to Route 49; then east along Route 49 to Route 50; then south along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic

Ocean; then north to the beginning point.

New York

Special Late Season Area for Canada Geese: all of Tioga and Broome Counties; and that area of Chemung County lying east of a continuous line extending southeast along Route 224 from the Schuyler County line to Route 34, then south along Route 34 to the New York-Pennsylvania boundary; and that area of Delaware, Sullivan, and Orange Counties lying southwest of a continuous line extending east along State Route 17 from the Broome County line to U.S. Route 209 at Wurtsboro and then south along Route 209 to the New York-Pennsylvania boundary at Port Jervis, excluding areas on or within 50 yards of the Delaware River between the confluence of the West Branch and East Branch below Hancock and the mouth of the Shingle Kill (3 miles upstream from Port Jervis); and that area of Orange, Rockland, Dutchess, Putnam and Westchester Counties lying southeast of a continuous line extending north along State Route 17 from the New York-New Jersey boundary at Suffern to Interstate Route 87, then north along Route 87 to Interstate Route 84, then east along Route 84 to the northern boundary of Putnam County, then east along that boundary to the New York-Connecticut boundary; and that area of Nassau and Suffolk Counties lying north of State Route 25A and west of a continuous line extending northward from State Route 25A along Randall Road (near Shoreham) to North Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York-Connecticut boundary.

Long Island (NAP) Zone: Same as Long Island Duck Zone.

Southwest (SJBP) Zone: all of Allegany, Cattaraugus, and Chautauqua Counties; and that area of Niagara, Erie, Genesee, Wyoming, Livingston, Yates, Steuben, Schuyler, Chemung and Tioga Counties lying south and west of a continuous line extending from the New York-Ontario boundary near Lewiston east along Interstate Route 190 to Route 31, then east along Route 31 to Route 78 in Lockport, then south along Route 78 to the Niagara-Erie County boundary (Tonawanda Creek), then east along the Niagara-Erie County boundary to Route 93, then south along Route 93 to Route 5, then east along Route 5 to Crittenden-Murrays Corners Road, then south along Crittenden-Murrays Corners Road to the NY State Thruway, then east along the Thruway to Route 98 at Batavia, then south along Route 98 to Route 20, then east along Route 20 to Route 19, then south along Route 19 to Route 63, then southeast along Route 63 to Route 246, then south along Route 246 to Route 39, then southwest along Route 39 to Route 19A, then south and east along Route 19A to Route 436, then east along Route 436 to Route 36 in Dansville, then south along Route 36 to Route 17, then east along Route 17 to Belfast Street in Bath, then east along Belfast Street to Route 415 (Washington Street), then east along Route 415 to Route 54, then northeast along Route 54 to Steuben County Route 87, then east along Route 87 to Steuben County Route 96, then east along Route 96 to Steuben County Route 114, then east along Route 114 to Schuyler County Route 23, then east along Route 23 to Schuyler County Route 28, then southeast along Route 28 to Route 409 at Watkins Glen, then southeast along Route 409 to Route 14, then south along Route 14 to Route 224, then southeast along Route 224 to Route 34 at Van Etten, then south along Route 34 to the New York-Pennsylvania boundary.

AP Zone: Remainder of the State.

North Carolina

Regular Season for Canada Geese: Statewide, except for the Northeast Hunt Unit.

Northeast Hunt Unit—Counties of Bertie (that portion east of NC–45, and that portion which is both west of U.S. 17, and east of US–13), Camden, Chowan, Currituck, Dare, Hyde, Northhampton (that portion which is both north of US–158 and east of NC–35), Pasquotank, Perquimans, Tyrrell, and Washington.

Pennsylvania

SJBP Zone: Area from the New York State line west of U.S. Route 220 to intersection of I–180, west of I–180 to intersection of SR 147, west of SR 147 to intersection of U.S. Route 322, west of U.S. Route 322 to intersection of I–81, west of I–81 to intersection of I–83, west of I–83 to I–283, west of I–283 to SR 441, west of SR 441 to U.S. Route 30, west of U.S. Route 30 to I–83, west of I–83 to Maryland State line, except for the Pymatuning Zone.

Pymatuning Zone: Area south of SR 198 from the Ohio State line to the intersection of SR 18, to the intersection of US Route 322/SR 18, to the intersection of SR 3013, then south to the Crawford/Mercer County line.

Special Late Season Area for Canada Geese: Same as SJBP Zone and the area from New York State line east of U.S. Route 220 to intersection of I–180, east of I–180 to intersection of SR 147, east of SR 147 to intersection of U.S. Route 322, east of Route 322 to intersection of I–81, north of I–81 to intersection of I–80, north of I–80 to New Jersey State line.

AP Zone: Remainder of the State.

Rhode Island

Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina

Canada Goose Area: Statewide except for Clarendon County and that portion of Lake Marion in Orangeburg County and Berkeley County.

Vermont

Same zones as for ducks.

Virginia

SJBP Zone and Special Late Season Area for Canada Geese: All areas west of I–95.

Back Bay Area: The waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

AP Zone: Remainder of the State.

West Virginia

Same zones as for ducks.

Mississippi Flyway

Alabama

Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Illinois

Same zones as for ducks, but in addition:

North Zone: Northern Illinois Quota Zone: The Counties of McHenry, Lake, Kane, DuPage, and those portions of LaSalle and Will Counties north of Interstate Highway 80.

Central Zone: Central Illinois Quota Zone: The Counties of Grundy, Woodford, Peoria, Knox, Fulton, Tazewell, Mason, Cass, Morgan, Pike, Calhoun, and Jersey, and those portions of LaSalle and Will Counties south of Interstate Highway 80.

South Zone: Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

Indiana

Same zones as for ducks, but in addition:

SJBP Zone: Jasper, LaGrange, LaPorte, Starke, and Steuben Counties, and that portion of the Jasper-Pulaski Fish and Wildlife Area in Pulaski County.

Iowa

Same zones as for ducks.

Kentucky

Western Zone: That portion of the State west of a line beginning at the Tennessee border at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana border.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

Michigan

MVP Zone: The MVP Zone consists of an area north and west of the point beginning at the southwest corner of Branch county, north continuing along the western border of Branch and Calhoun counties to the northwest corner of Calhoun county, then easterly to the southwest corner of Eaton county, then northerly to the southern border of Ionia county, then easterly to the southwest corner of Clinton county, then northerly along the western border of Clinton County continuing northerly along the county border of Gratiot and Montcalm counties to the southern border of Isabella county, then easterly to the southwest corner of Midland county, then northerly along the west Midland county border to Highway M–20, then easterly to U.S. Highway 10, then easterly to U.S. Interstate 75/U.S. Highway 23, then northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, then easterly on U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

SJBP Zone is the rest of the state, that area south and east of the boundary described above.

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly ½ mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons: Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Interstate Highway 94 to I–69, westerly along I–69 to Michigan Highway 21, westerly along Michigan 21 to I–96, northerly along I–96 to I–196, westerly along I–196 to Lake Michigan Drive (M–45) in Grand Rapids, westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake Michigan Drive to the Wisconsin border.

Central Michigan GMU: That portion of the Lower Peninsula north of the Southern Michigan GMU but south of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, easterly along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border, excluding the Tuscola/Huron GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

Minnesota

West Zone: That portion of the state encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border.

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County,

east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Lac qui Parle Zone: That area encompassed by a line beginning at the intersection of U.S. Highway 212 and County State Aid Highway (CSAH) 27 in Lac qui Parle County and extending north along CSAH 27 to CSAH 20 in Lac qui Parle County, west along CSAH 20 to State Trunk Highway (STH) 40, north along STH 40 to STH 119, north along STH 119 to CSAH 34 in Lac qui Parle County, west along CSAH 34 to CSAH 19 in Lac qui Parle County, north and west along CSAH 19 to CSAH 38 in Lac qui Parle County, west and north along CSAH 38 to U.S. 75, north along U.S. 75 to STH 7, east along STH 7 to CSAH 6 in Swift County, east along CSAH 6 to County Road 65 in Swift County, south along County 65 to County 34 in Chippewa County, south along County 34 to CSAH 12 in Chippewa County, east along CSAH 12 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 7, southeast along STH 7 to Montevideo and along the municipal boundary of Montevideo to U.S. 212; then west along U.S. 212 to the point of beginning.

Northwest Zone: That portion of the state encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Special Canada Goose Seasons: Southeast Zone: That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U.S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U. S. Highway 63; thence along U. S. Highway 63 to the south boundary of the State; thence along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Missouri

Same zones as for ducks but in addition:

North Zone

Swan Lake Zone: That area bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri 240 and U.S. 65 on the south, and U.S. 65 on the west.

Middle Zone

Southeast Zone: That portion of the State encompassed by a line beginning at the intersection of Missouri Highway (MO) 34 and Interstate 55 and extending south along I–55 to U.S. Highway 62, west along U.S. 62 to MO 53, north along MO 53 to MO 51, north along MO 51 to U.S. 60, west along U.S. 60 to MO 21, north along MO 21 to MO 72, east along MO 72 to MO 34, then east along MO 34 to I–55.

Ohio

Same zones as for ducks but in addition:

North Zone

Lake Erie SJBP Zone: That portion of the State encompassed by a line beginning in Lucas County at the Michigan State line on I–75, and extending south along I–75 to I–280, south along I–280 to I–80, east along I–80 to the Pennsylvania State line in Trumbull county, north along the Pennsylvania State line to SR 6 in Ashtabula county, west along SR 6 to the Lake/Cuyahoga county line, north along the Lake/Cuyahoga county line to the shore of Lake Erie.

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama border to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky border.

Wisconsin

Same zones as for ducks but in addition:

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to Interstate Highway 39, southerly along Interstate Highway 39 to Interstate Highway 90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly and southerly along Poplar Grove Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois border in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota border.

Rock Prairie Subzone: That area encompassed by a line beginning at the intersection of the Illinois border and Interstate Highway 90 and extending north along I–90 to County Highway A, east along County A to U.S. Highway 12, southeast along U.S. 12 to State Highway 50, west along State 50 to State 120, then south along 120 to the Illinois border.

Brown County Subzone: That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State Highway 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All lands in Adams, Boulder, Clear Creek, Denver, Gilpin, Jefferson, Larimer, and Weld Counties west of I–25 from the Wyoming border south to I–70; west on I–70 to the Continental Divide; north along the Continental Divide to the Jackson-Larimer County Line to the Wyoming border.

South Park/San Luis Valley Area: Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Teller, and Rio Grande Counties and those portions of Hinsdale, Mineral, and Saguache Counties east of the Continental Divide.

North Park Area: Jackson County.

Arkansas Valley Area: Baca, Bent, Crowley, Kiowa, Otero, and Prowers Counties.

Pueblo County Area: Pueblo County.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: that portion of the State east of Interstate Highway 25.

Nebraska

Dark Geese

North Unit: Keya Paha County east of U.S. 183 and all of Boyd County, including the boundary waters of the Niobrara River, all of Knox County and that portion of Cedar County west of U.S. 81. Where the Niobrara river forms the boundary, both banks will be in the north Unit.

Platte River Unit: That area south and west of U.S. 281 at the Kansas/Nebraska border, north to Giltner Road (near Doniphan), east to NE 14, north to NE 91, west to U.S. 183, south to NE 92, west to NE 61, north to U.S. 2, west to the intersection of Garden, Grant, and Sheridan counties, then west along the northern border of Garden, Morrill, and Scotts Bluff counties to the Wyoming border.

Northcentral Unit: That area north of the Platte River Unit and west of U.S. 183.

East Unit: The remainder of Nebraska.

Light Geese

Rainwater Basin Light Goose Area (West): The area bounded by the junction of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

Rainwater Basin Light Goose Area (East): The area bounded by the junction of U.S. 281 and US 30 at Grand Island, north and east on U.S. 30 to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

Remainder of State: The remainder portion of Nebraska.

New Mexico (Central Flyway Portion)

Dark Geese

Middle Rio Grande Valley Unit: Sierra, Socorro, and Valencia counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

South Dakota

Canada Geese

Unit 1: Statewide except for Units 2, 3 and 4.

Big Stone Power Plant Area: That portion of Grant and Roberts Counties east of SD 15 and north of SD 20.

Unit 2: Brule, Buffalo, Charles Mix, Gregory, Hughes, Hyde, Lyman, Potter, Stanley, and Sully Counties and that portion of Dewey County south of U.S. 212.

Unit 3: Clark, Codington, Day, Deuel, Grant, Hamlin, Marshall, and Roberts Counties.

Unit 4: Bennett County.

Texas

West Unit: That portion of the State laying west of a line from the international toll bridge at Laredo; north along I–35 and I–35W to Fort Worth; northwest along U.S. 81 and U.S. 287 to Bowie; and north along U.S. 81 to the Oklahoma border.

East Unit: Remainder of State.

Wyoming (Central Flyway Portion)

Dark Geese

Area 1: Hot Springs, Natrona, and Washakie Counties, and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Area 2: Converse County.

Area 3: Albany, Big Horn, Campbell, Crook, Fremont, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties, and that portion of Carbon County east of the Continental Divide; that portion of Park County west of the Shoshone National Forest boundary, and that Portion of Park County north of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Area 4: Goshen and Platte Counties.

Pacific Flyway

Arizona

GMU 1 and 27: Game Management Units 1 and 27.

GMU 22 and 23: Game Management Units 22 and 23.

Remainder of State: The remainder of Arizona.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of

intersection with the California-Nevada state line; north along the California-Nevada state line to the junction of the California-Nevada-Oregon state lines west along the California-Oregon line state to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Special Management Area (East): That area bounded by a line beginning at the junction of the Gridley-Colusa Highway and the Cherokee Canal; west on the Gridley-Colusa Highway to Gould Road; west on Gould Road and due west 0.75 miles directly to Highway 45; south on Highway 45 to Highway 20; east on Highway 20 to West Butte Road; north on West Butte Road to Pass Road; west on Pass Road to West Butte Road; north on West Butte Road to North Butte Road; west on North Butte Road and due west 0.5 miles directly to the Cherokee Canal; north on the Cherokee Canal to the point of beginning.

Sacramento Valley Special Management Area (West): That area bounded by a line beginning at Willows south on I–5 to Hahn Road; easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes; northerly on CA 45 to the junction with CA 162; northerly on CA 45/162 to Glenn; and westerly on CA 162 to the point of beginning in Willows.

San Joaquin Valley Special Management Area: That area bounded by a line beginning at the intersection of Highway 5 and Highway 120; south on Highway 5 to Highway 33; southeast on Highway 33 to Crows Landing Road; north on Crows Landing Road to Highway 99; north on Highway 99 to Highway 120; west on Highway 120 to the point of beginning.

Western Canada Goose Hunt Area: That portion of the above described Sacramento Valley Area lying east of a line formed by Butte Creek from the Gridley-Colusa Highway south to the Cherokee Canal; easterly along the Cherokee Canal and North Butte Road to West Butte Road; southerly on West Butte Road to Pass Road; easterly on Pass Road to West Butte Road; southerly on West Butte Road to CA 20; and westerly along CA 20 to the Sacramento River.

Colorado (Pacific Flyway Portion)

West Central Area: Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral, and Saguache Counties west of the Continental Divide.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho

Zone 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Zone 2: The Counties of Ada; Adams; Boise; Canyon; those portions of Elmore north and east of I–84, and south and west of I–84, west of ID 51, except the Camas Creek drainage; Gem; Owyhee west of ID 51; Payette; Valley; and Washington.

Zone 3: The Counties of Blaine; Camas; Cassia; those portions of Elmore south of I–84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51; Power within the Minidoka National Wildlife Refuge; and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Bonneville, Butte; Caribou except the Fort Hall Indian Reservation; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; Power west of ID 37 and ID 39 except the Minidoka National Wildlife Refuge; and Teton.

Zone 5: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

In addition, goose frameworks are set by the following geographical areas:

Northern Unit: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Southwestern Unit: That area west of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border (except the Northern Unit and except Custer and Lemhi Counties).

Southeastern Unit: That area east of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border, including all of Custer and Lemhi Counties.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

Nevada

Lincoln Clark County Zone: All of Lincoln and Clark Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific Flyway portion of New Mexico located north of I–40.

South Zone: The Pacific Flyway portion of New Mexico located south of I–40.

Oregon

Southwest Zone: Douglas, Coos, Curry, Josephine, and Jackson Counties.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I–5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I–5; then south on I–5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow

Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to OR 36; then north on OR 36 to Forest Road 5070 at Brickerville; then west and south on Forest Road 5070 to OR 126; then west on OR 126 to the Pacific Coast.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone.

Closed Zone: Those portions of Coos and Curry Counties west of US 101 and all of Tilamook and Lincoln Counties.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Lake County Zone: All of Lake County.

Utah

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Washington

Area 1: Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone): Clark County, except portions south of the Washougal River; Cowlitz, and Wahkiakum counties.

Area 2B (SW Quota Zone): Pacific and Grays Harbor counties.

Area 3: All areas west of the Pacific Crest Trail and west of the Big White Salmon River which are not included in Areas 1, 2A and 2B.

Area 4: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5: All areas east of the Pacific Crest Trail and east of the Big White Salmon River which are not included in Area 4.

Wyoming (Pacific Flyway Portion)

See State Regulations.

Bear River Area: That portion of Lincoln County described in State regulations.

Salt River Area: That portion of Lincoln County described in State regulations.

Eden-Farson Area: Those portions of Sweetwater and Sublette Counties described in State regulations.

Swans

Central Flyway

South Dakota

Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Davison, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury, Lake, Marshall, McCook, McPherson, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Sully, and Walworth Counties.

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah

Open Area: Those portions of Box Elder, Weber, Davis, Salt Lake, and Toole Counties lying west of I–15, north of I–80 and south of a line beginning from the Forest Street exit to the Bear River National Wildlife Refuge boundary, then north and west along the Bear River National Wildlife Refuge boundary to the farthest west boundary of the Refuge, then west along a line to Promontory Road, then north on Promontory Road to the intersection of SR 83, then north on SR 83 to I–84, then north and west on I–84 to State Hwy 30, then west on State Hwy 30 to the Nevada-Utah state line, then south on the Nevada-Utah state line to I–80.

[FR Doc. 01–24069 Filed 9–26–01; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Thursday,
September 27, 2001

Part IV

The President

Proclamation 7470—Family Day, 2001

Memorandum of September 25, 2001—Delegation of Authority To Compensate Air Carriers for Losses Resulting From the Terrorist Attacks of September 11, 2001

Federal Register
Vol. 66, No. 188
Thursday, September 27, 2001

Presidential Documents

Title 3—

The President

Proclamation 7470 of September 24, 2001

Family Day, 2001

By the President of the United States of America

A Proclamation

Strong families make a strong America. Responsible, caring, and involved parenting dramatically affects the direction of a child's life and fundamentally influences the well-being of society as a whole. To help ensure a bright future for our children and for our Nation, we must expand our efforts to strengthen and empower families in their important task of effectively preparing children for the challenges of tomorrow.

To help families, we must fight crime and violence in our schools and communities, and we must make a quality education available to all young people, regardless of background. We must also work to ensure that adults have the skills and resources they need to provide for the health, safety, and well-being of their children.

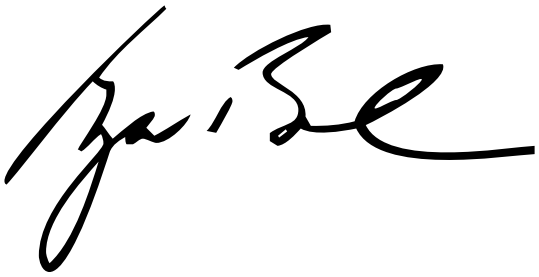
Our Nation should send a consistent message that hails the vital importance of families. We live in an era of busy schedules and significant commitments to work, school, and community. However, quality time among family members remains as vital as ever to maintaining strong and loving bonds between parents and children and to protecting young people from harm. In its most recent survey, the National Center on Addiction and Substance Abuse at Columbia University (CASA) found that a teenager who sits down to dinner with his or her family seven nights a week is 20 percent less likely to smoke, drink, or use illegal drugs than those that do not. By contrast, teenagers who never eat dinner with their families are 61 percent more likely to engage in these activities.

According to CASA's research, other family-bonding activities can similarly promote the avoidance of drug, alcohol, or cigarette use by teens. These include helping teenagers with homework, attending religious services with them, making religion an important part of their lives, and praising and disciplining teens as appropriate. CASA also advises that parents should monitor their teen's television viewing, music purchases, and Internet use, and should establish curfews and know where their children are after school and on weekends. Perhaps most importantly, parents should send a clear message, by example and word, of their clear disapproval of cigarette, alcohol, and drug use.

CASA's findings demonstrate how parental influence remains the single most important weapon in the war on drugs. Americans must continue to recognize the importance of strong families and involved parents in setting our Nation on the road to a drug-free society. The health, safety, and well-being of our young people merit nothing less.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 24, 2001, as Family Day. I call upon the people of the United States to observe this day by spending quality time with family members and engaging in other wholesome activities that help unite and strengthen the bonds between parents and children.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of September, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01–24453
Filed 9–26–01; 10:17 am]
Billing code 3195–01–P

Presidential Documents

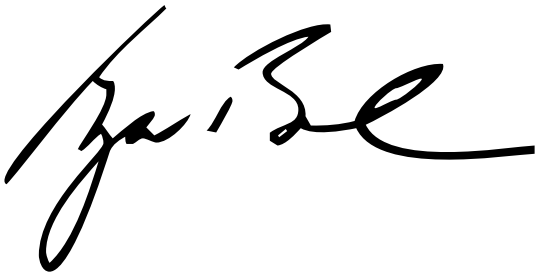
Memorandum of September 25, 2001

Delegation of Authority To Compensate Air Carriers for Losses Resulting From the Terrorist Attacks of September 11, 2001

Memorandum for the Secretary of Transportation

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 101 of the Air Transportation Safety and System Stabilization Act (Public Law 107–42) (the ''Act''), and section 301 of title 3, United States Code, I hereby delegate to the Secretary of Transportation the authority vested in the President under section 101 (a) (2) of the Act to compensate air carriers for the direct and incremental losses they incurred from the terrorist attacks of September 11, 2001, and any resulting ground stop order.

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



THE WHITE HOUSE,
Washington, September 25, 2001.

[FR Doc. 01–24454
Filed 9–26–01; 10:17 am]
Billing code 4910–62–M

Federal Register

Thursday,
September 27, 2001

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 39

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–299–AD; Amendment 39–12451; AD 2001–17–09 R1]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; rescission.

SUMMARY: This amendment rescinds Airworthiness Directive (AD) 2000–17–09, which is applicable to certain McDonnell Douglas Model MD–11 series airplanes. That AD requires an inspection of the upper avionics circuit breaker panel at the main observer's station to detect damage of the wires and to verify the correct routing of the wire bundles; corrective actions, if necessary; and installation of a new clamp, spacer, and sta-straps. The requirements of that AD were intended to prevent chafing in the upper avionics circuit breaker panel of the main observer's station, which could result in arcing and consequent smoke and/or fire in the cockpit. Since the issuance of that AD, the FAA has determined that the improper procedures specified by the service bulletin referenced in that AD could lead to wiring pre-load conditions and consequent wire damage, and arcing in the upper avionics circuit breaker panel. Such conditions could result in arcing and consequent smoke and/or fire in the cockpit.

EFFECTIVE DATE: September 27, 2001.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On August 14, 2001, the Federal Aviation Administration (FAA) issued AD 2001–17–09, amendment 39–12400 (66 FR 44041, August 22, 2001), applicable to certain McDonnell Douglas Model MD–11 series airplanes. That AD requires an inspection of the upper avionics circuit breaker panel at the main observer's station to detect damage of the wires and to verify the correct routing of the wire bundles; corrective actions, if necessary; and installation of a new clamp, spacer, and sta-straps. Chafing in the upper avionics circuit breaker panel of the main observer's station, could result in arcing and consequent smoke and/or fire in the cockpit.

Background

During the comment period preceding the issuance of AD 2001–17–09, an operator submitted a letter stating its concern about the validity of the wiring procedures specified by Boeing Alert Service Bulletin MD11–24A179, Revision 01, dated October 31, 2000, which was cited in that AD. In response to that concern, the FAA consulted with the airplane manufacturer and was informed that the wiring procedures in the service bulletin were workable, and that the specified wire lengths were adequate. In light of this information, we determined that no change to the wire routing requirements of paragraph (a)(1)(ii) in the final rule was necessary.

Actions Since Issuance of Previous AD

Following the issuance of AD 2001–17–09, the same operator contacted the FAA, informing us that the wiring procedures required by the AD per the Boeing service bulletin could cause wiring pre-load conditions. In response, we again consulted with Boeing to re-confirm their previous assessment. Boeing informed us that it had re-evaluated the procedures specified in the service bulletin and determined that, contrary to its original assessment, those procedures could actually cause wiring pre-load conditions and chafing.

In light of this information, the FAA has determined that the procedures in the previously referenced Boeing service bulletin could lead to wiring pre-load conditions and consequent wire damage, and arcing in the upper avionics circuit breaker panel. Such conditions could result in arcing and consequent smoke and/or fire in the cockpit.

FAA's Determination

Since accomplishment of the requirements of AD 2001–17–09 could cause conditions that may contribute to the identified unsafe condition, the FAA has determined that it is necessary to rescind that AD to prevent operators from performing the procedures included in the previously referenced Boeing service bulletin, which was cited in that AD. The FAA may consider further rulemaking to correct the original unsafe condition that prompted AD 2001–17–09.

Since this action rescinds a requirement to perform improper procedures, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the rescission may be made effective upon publication in the **Federal Register**.

The Rescission

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding an AD which removes amendment 39–12400, to read as follows:

2001–17–09 R1 McDonnell Douglas: Amendment 39–12451. Docket No. 2001–NM–299–AD. Rescinds AD 2001–17–09, Amendment 39–12400.

Applicability: Model MD–11 series airplanes, as listed in Boeing Alert Service Bulletin MD11–24A179, Revision 01, dated October 31, 2000; certificated in any category.

This rescission is effective September 27, 2001.

Issued in Renton, Washington, on September 25, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–24456 Filed 9–26–01; 11:10 am]

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